

DECEMBER 2006

Notice to Members

Notices

- 06-69** NASD Issues Additional Guidance on Rule 3060 (Influencing or Rewarding Employees of Others)
- 06-70** SEC Approves Amendments Expanding the OATS Requirements to OTC Equity Securities and NASD Publishes Revised OATS Reporting Technical Specifications; **Effective Date: June 11, 2007**
- 06-71** Clarification of Exemption for Market Makers Acting in the Capacity of Exchange Market Maker and Interpretive Guidance Relating to Riskless Principal Transactions
- 06-72** Amendments to Rule 2340 Requiring Customer Account Statements to Include a Statement Reminding Customers to Report Inaccuracies in Their Accounts in Writing; **Revised Effective Date: May 31, 2007**
- 06-73** 2007 Trade Date–Settlement Date Schedule
- 06-74** Member Business Continuity Experiences regarding Hurricanes Katrina and Rita

For Your Information

2006 – 2007 Filing Due Dates

Disciplinary and Other NASD Actions



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Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

Continuing Education
Executive Representatives
Internal Audit
Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Gifts
Gratuities
Rule 3060

GUIDANCE

Gifts and Gratuities

NASD Issues Additional Guidance on Rule 3060
(Influencing or Rewarding Employees of Others)

Executive Summary

As a result of a recent review of gift and gratuity practices at member firms, NASD has become aware of several deficiencies in firms' compliance procedures relating to the application of Rule 3060. To aid firms in their compliance efforts, NASD is issuing the *Notice*, which focuses on some of the more common compliance weaknesses observed.

Questions/Further Information

Questions regarding this *Notice* may be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of the General Counsel, at (202) 728-8104; or Joseph P. Savage, Associate Vice President, Investment Companies Regulation, Regulatory Policy and Oversight, at (240) 386-4534.

Background and Discussion

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

A. Personal Gifts/Exclusions

The prohibitions in Rule 3060 generally do not apply to personal gifts such as a wedding gift or a congratulatory gift for the birth of a child, provided that these gifts are not “in relation to the business of the employer of the recipient.” In determining whether a gift is “in relation to the business of the employer of the recipient,” members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient, and whether the registered representative paid for the gift. When a firm bears the cost of a gift, either directly or by reimbursing an employee, NASD presumes that such gift is in relation to the business of the employer of the recipient.

The analysis of whether a gift is “in relation to the business of the employer” is required in connection with all gifts; firms should not treat gifts given during the holiday season or for other life events as personal in nature.

B. *De minimis* and Promotional Items

Rule 3060 also does not apply to gifts of *de minimis* value (e.g., pens, notepads or modest desk ornaments) or to promotional items of nominal value that display the firm’s logo (e.g., umbrellas, tote bags or shirts).¹ In order for a promotional item to fall within this exclusion, its value must be substantially below the \$100 limit. Gifts valued in amounts above or near \$100 would not be considered nominal. For example, expensive leather luggage and crystal pieces, notwithstanding the presence of firm logos, are not eligible for the exclusion for promotional items of nominal value.

NASD also generally does not apply the prohibition in Rule 3060 to customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction, even when such items have a cost of more than \$100. NASD does not believe such gifts are items of value within the scope of Rule 3060. The restrictions of Rule 3060 would apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction. For example, NASD staff observed firms providing individuals with a bicycle and elaborate electronic equipment following the closing of a transaction. Such items are impermissible gifts under Rule 3060.

C. Aggregation of Gifts

Rule 3060 imposes a gift limit of \$100 per individual recipient per year. To ensure compliance with this \$100 limit, firms must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of a year. In addition, each firm must state in its procedures whether it is aggregating all gifts given by the firm and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.

D. Valuation of Gifts

In general, gifts should be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets, a member should use the higher of cost or face value. For example, if a member makes a gift of a ticket to a sporting event that it procured in the secondary market, the value of such ticket would be the higher cost to the member, not the face value of the ticket.²

If gifts are given to multiple recipients, members should record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the \$100 limit. A gift basket worth \$250 delivered to an office of three individuals for the benefit of each individual would be permissible under the Rule.

E. Gifts Incidental to Business Entertainment

There is no express exclusion from Rule 3060 for gifts given during the course of business entertainment and conferences.³ Thus, for example, purchasing an umbrella during a round of golf would be considered a gift. Firms must record these gifts, and include the value of such gifts, as part of their Rule 3060 compliance procedures.

F. Supervision and Recordkeeping

Rule 3060 requires separate recordkeeping of gifts and gratuities. Rule 3010 requires a firm to have a supervisory system reasonably designed to achieve compliance with Rule 3060. In order to meet these standards, firms are required to have systems and procedures reasonably designed to ensure that gifts in relation to the business of the employer of the recipient given by the firm and its associated persons to employees of clients of the firm are (i) reported to the firm, (ii) reviewed for compliance with Rule 3060, including aggregation as discussed above, and (iii) maintained in the firm's records. Such procedures should include provisions reasonably designed to ensure that an associated person who is making a gift is not responsible for determining whether such gift is personal rather than in relation to the business of the recipient's employer. Items of *de minimis* value or nominal promotional or commemorative items are not subject to Rule 3060's record-keeping requirements.

Endnotes

- 1 Additional guidance concerning recordkeeping requirements, is provided in Section F, *infra*.
- 2 For purposes of this example, we are treating the ticket as a gift insofar as no representative from the member firm accompanied the recipient at the event.
- 3 In some cases, gifts given during business entertainment may fall within the exclusion for promotional items, discussed above.

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Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

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

KEY TOPICS

NASD Rules 6950 through 6958
Order Audit Trail System (OATS)

GUIDANCE

Order Audit Trail System (OATS)

SEC Approves Amendments Expanding the OATS Requirements to OTC Equity Securities and NASD Publishes Revised *OATS Reporting Technical Specifications*; **Effective Date: June 11, 2007**

Executive Summary

On October 10, 2006, the Securities and Exchange Commission (SEC) approved amendments to NASD Rules 6951, 6952, and 6955 to expand the OATS reporting requirements to over-the-counter (OTC) equity securities.¹ NASD is publishing this *Notice* to explain those amendments and inform members that a new version of the *OATS Reporting Technical Specifications (Technical Specifications)* also is being published to reflect these amendments and other technical changes described herein. The *Technical Specifications* can be found on NASD's Web site at Regulatory Systems > OATS > Technical Specifications. The effective date of the amendments and the changes to the *Technical Specifications* is June 11, 2007.

Questions/Further Information

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

Discussion

Amendments to the OATS Rules

Expansion of the OATS Reporting Requirements to OTC Equity Securities

NASD Rules 6950 through 6958 (the OATS Rules) require member firms to record in electronic form and report to NASD on a daily basis certain information regarding orders originated, received, transmitted, modified, canceled or executed by NASD members relating to equity securities listed and traded on the NASDAQ Stock Market. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes and transactions. This information is critical to NASD staff in conducting surveillance and investigations of member firms for violations of NASD rules and federal securities laws.

Currently, the OATS reporting requirements do not apply to OTC equity securities. To enhance the effectiveness of NASD's surveillance programs, the SEC approved amendments to the OATS Rules to expand the types of securities that members must report to OATS. Under these amendments, members will be required to record and report order information relating to "OTC equity securities," which are defined as equity securities that (1) are not listed on a national securities exchange; or (2) are listed on one or more regional stock exchanges and do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape. This definition would include, inter alia, equity securities quoted on the OTC Bulletin Board Service or on the Pink Sheets Electronic Quotation Service. For purposes of the OATS Rules, the definition of "OTC equity securities" specifically excludes direct participation programs, as defined in Rule 6910.²

As a result of these amendments, beginning on June 11, 2007, members will be required to record and report to OATS all order information regarding equity securities listed on the NASDAQ Stock Market and OTC equity securities.

Revision to OATS Rules Regarding Orders with Unavailable Information

From time to time, a member may receive or execute orders in a security that does not have a symbol assigned to it at the time an OATS order event occurs. To address this situation, and any other situation involving information that is unavailable at the time of an OATS order event, the SEC approved amendments to NASD Rule 6955 to clarify that a member is not required to transmit an OATS report to NASD until NASD has assigned a symbol to that security.³ After a symbol has been assigned, the member must report all applicable order information to OATS.⁴ Although the OATS reporting requirement is delayed pending the assignment of a symbol, the member must comply with the recording requirements under Rule 6954, which requires that the member record an order event immediately following its occurrence.⁵ Order events that are submitted to OATS on an OATS processing date later than the order event date because of a delay in the assignment of a symbol will not be marked late by OATS.

Changes to the Technical Specifications

NASD is also announcing the publication of a new version of the *Technical Specifications*. The primary revision to the *Technical Specifications* is the expansion of the list of securities that will be reportable to OATS as of June 11, 2007; namely, OTC equity securities. A list of OTC equity securities that are subject to the OATS reporting requirements will be available through the OATS Web page on NASD's Web site at www.nasd.com.

In addition to the expanded list of reportable securities, the following changes will also be effective as of June 11, 2007:

- Addition of new Destination Codes to indicate that an order was routed to a specific U.S. exchange, a non-U.S. exchange or to a non-member affiliate of an NASD member.
- Addition of a new Member Type Code to indicate that an order was received from a non-member affiliate of an NASD member.
- Addition of new Special Handling Codes.
- Addition of a new Reporting Exception Code to identify transactions reported to NASD on Form T.⁶
- Addition of new Desk Type Codes.

Endnotes

- 1 Exchange Act Rel. No. 54585 (Oct. 10, 2006), 71 FR 61112 (Oct. 17, 2006) (SR-NASD-2005-101).
- 2 Consistent with the trade reporting rules for OTC Equity Securities under the Rule 6600 Series, "restricted securities," as defined in Rule 144(a)(3) under the Securities Act of 1933, and any securities designated in the PORTAL Market (the Rule 6700 Series) are not subject to the OATS Rules.
- 3 The amendments to Rule 6955 provide that members are not required to transmit the OATS report to NASD until all of the information identified in Rule 6954(b), (c) and (d) is available. Although the provision is not limited to orders involving securities without symbols, NASD anticipates that most, if not all, delayed OATS reports will involve such orders. The security symbol is a unique data element in that the timing of its issuance is not wholly within the control of the member. NASD anticipates that, in general, most OATS information should be available on the date on which the OATS reporting event occurs.
- 4 NASD emphasizes that members should make requests for symbols promptly to minimize any delay in trade reporting, as well as delays between the OATS order event and the transmission of the OATS report to NASD. In general, members are required to report trades within 90 seconds of execution or on a next-day basis, as applicable, under Rule 6620(a).
- 5 Most situations relating to orders placed in securities without assigned symbols involve foreign securities. In connection with such orders, members should convert any foreign currency amounts to U.S. dollars for purposes of OATS reporting. Members are permitted to use reasonable business practices for the conversion; however, members should document their practice regarding currency conversion and should be consistent in their methodology.
- 6 NASD Rule 6620(a)(4) provides that in instances where electronic submission to the OTC Reporting Facility is not possible, last sale reports of transactions in OTC Equity Securities shall be reported as soon as practicable to the Market Regulation Department on Form T.

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Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

Finance
Legal & Compliance
Registered Representatives
Senior Management
Trading

KEY TOPICS

NASDAQ Exchange Market Makers
Riskless Principal
Trading Activity Fee

GUIDANCE

Trading Activity Fee

Clarification of Exemption for Market Makers Acting in the Capacity of Exchange Market Maker and Interpretive Guidance Relating to Riskless Principal Transactions

Executive Summary

NASD is issuing this *Notice* to supplement guidance provided in *NASD Notice to Members (NTM) 06-44* relating to the application of the Trading Activity Fee (TAF) to members acting in the capacity of an exchange specialist or market maker.

In *NTM 06-44*, NASD stated that the exemption for proprietary transactions effected on the NASDAQ Exchange in the capacity of a market maker was limited to those transactions effected through a registered market maker's attributable quote. In response to members' concerns regarding the complexity of distinguishing between transactions resulting from attributable versus unattributable quotes, NASD is expanding the exemption for proprietary transactions effected on an exchange in the capacity of a market maker to include transactions effected through both attributable and unattributable orders/quotes.

This expansion of the market maker proprietary transaction exemption will be retroactively effective to August 1, 2006. Members that have already calculated and reported their TAF obligations under the previous guidance that do not wish to re-calculate and amend previously submitted TAF Self-Reporting Forms may begin applying the expanded exemption beginning December 1, 2006.

NASD is also providing in this *Notice* additional guidance regarding the application of the TAF with respect to riskless principal transactions.

Questions/Further Information

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

Background and Discussion

In 2003, the SEC approved NASD's new member regulatory pricing structure, which: (1) eliminated the NASDAQ market-based regulatory fee; (2) instituted a new transaction-based TAF applied across a broader range of equity, options and securities futures transactions; (3) increased the rates assessed to member firms under the Personnel Assessment (PA); and (4) implemented a simplified three-tiered flat rate for the Gross Income Assessment (GIA), whereby deductions and exclusions were eliminated.¹ NASD uses fees collected under the member regulatory pricing structure to fund member regulatory activities, including the regulation of members through examination, processing of membership applications, financial monitoring, policymaking, rulemaking, and interpretive and enforcement activities.

Exemption for Market Makers Acting in the Capacity of Exchange Market Maker

Section 1 of Schedule A to NASD's By-Laws exempts from the TAF "proprietary transactions by a firm that is a member of both NASD and a national securities exchange, effected in its capacity as an exchange specialist or market maker, and that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1-1(T)(a) thereunder." Accordingly, this exemption applies to transactions that occur on the NASDAQ Exchange in the same manner it is applicable to transactions that occur on other exchanges. To assist members in understanding the application of this exemption to market making activity on the NASDAQ Exchange, NASD published *NTM 06-44* and is now supplementing that guidance in this *Notice*.

Specifically, NASD has expanded the exemption to include all proprietary transactions effected in a member's capacity as a market maker on the NASDAQ Exchange (or any other exchange on which the member is a registered exchange market maker), regardless of whether the quote/order was initially entered on an attributable or unattributable basis. As stated in *NTM 06-44*, transactions not effected through the NASDAQ Exchange, such as those reported to either a Trade Reporting Facility (TRF)² or the Alternative Display Facility (ADF),³ will be subject to the TAF, regardless of whether the transaction was effected in the member's capacity as a market maker.

Riskless Principal Transactions

Since the implementation of the TAF in 2003, NASD has issued numerous *NTMs* containing interpretive guidance regarding how the TAF is to be applied in various trading scenarios, including the treatment of riskless principal transactions. In response to questions received by the staff with respect to riskless principal transactions, NASD is clarifying guidance with respect to the appropriate application of the TAF to such transactions. The following guidance applies to all riskless principal transactions regardless of whether the member is a market maker or non-market maker, or if the transaction is executed on a national securities exchange or over-the-counter.

As provided for in Question 14 of *NTM 02-63*, transactions that qualify for riskless principal treatment under applicable trade reporting rules will be viewed as one transaction for purposes of assessing the TAF.⁴ Assessment of the TAF for trades executed in a riskless principal capacity depends on whether your firm received the order from another NASD member broker-dealer, a customer⁵ or a non-NASD member broker-dealer. Specifically:

- Members executing sell orders in a riskless principal capacity on behalf of another NASD member will not be assessed a TAF, consistent with application of the TAF to transactions where one member acts as agent on behalf of another member (See Q3 of *NTM 02-75*). Rather, the TAF is assessed on the NASD member who is the ultimate seller of the security, not the firm acting as riskless principal.
- Members executing sell orders in a riskless principal capacity on behalf of a customer will be assessed the TAF, consistent with the application of the TAF to transactions where a member effects a sale for a customer on an agency basis (See Q2 of *NTM 02-75*).
- Members executing sell orders in a riskless principal capacity on behalf of a non-NASD member broker/dealer will be assessed a TAF only if the transaction occurs otherwise than on a national securities exchange. If the order is executed on a national securities exchange, no TAF will be assessed on the member acting in a riskless principal capacity.

Endnotes

- 1 See Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148) and Exchange Act Release No. 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003) (approving SR-NASD-2002-99).
- 2 See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR-NASD-2005-087) (SEC approval of the changes to NASD rules to reflect NASDAQ's Exchange Registration and the operation of the TRF by NASDAQ subject to NASD's regulatory license and oversight).
- 3 See Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (SEC approval of SR-NASD-2002-97 authorizing NASD to operate the ADF on a pilot basis); Exchange Act Release No. 47633 (Apr. 10, 2003), 68 FR 19043 (Apr. 17, 2003) (File No. SR-NASD-2003-067) (extension of ADF pilot until January 26, 2004); Exchange Act Release No. 49131 (Jan. 27, 2004), 69 FR 5229 (Feb. 3, 2004) (File No. SR-NASD-2004-012) (extension of ADF pilot until October 26, 2004); Exchange Act Release No. 50601 (Oct. 28, 2004), 69 FR 64611 (Nov. 5, 2004) (File No. SR-NASD-2004-160) (extension of ADF pilot until July 26, 2005); Exchange Act Release No. 52122 (July 25, 2005), 70 FR (Aug. 1, 2005) (File No. SR-NASD-2005-092) (extension of ADF pilot until April 26, 2006); and Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (Apr. 28, 2006) (File No. SR-NASD-2006-050) (extension of ADF pilot period until January 26, 2007).
- 4 Specifically, Q14 in *NTM 02-63* states: "Q. If a firm executes a trade on a riskless principal basis, will a fee be assessed on both the initial leg of the transaction and the offsetting transaction with the customer? A. No. Riskless principal transactions reported correctly will be viewed as one transaction for the purposes of assessing the Trading Activity Fee."
- 5 For purposes of these requirements, customer is defined as not a broker-dealer. See NASD Rule 0120(g).

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Notice to Members

DECEMBER 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

Amendments to Rule 2340 Requiring Customer Account Statements to Include a Statement Reminding Customers to Report Inaccuracies in Their Accounts in Writing;
Revised Effective Date: May 31, 2007

Executive Summary

NASD is issuing this *Notice* to supersede *NASD Notice to Members (NTM) 06-60* and replace the guidance provided in that *Notice*. On September 7, 2006, the Securities and Exchange Commission (SEC) 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.¹ *NTM 06-60* announced the effective date of that rule change as March 6, 2007. On December 5, 2006, the SEC approved NASD's request to change the effective date of this requirement to May 31, 2007.²

Additionally, this *Notice* clarifies an interpretation of the SEC's Division of Market Regulation under the net capital rule and SEC Rule 15c3-3 that requires clearing firms to include in customer account statements a telephone number at the clearing firm that a customer may use to contact the firm with inquiries regarding the customer's account.³

As revised, the effective date of this rule change is May 31, 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 M. 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.⁴ This is important because, in the event a firm 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 such writing.⁵ The SIPC brochure also advises customers that if there is something wrong with the brokerage firms' records of their accounts, the customer will have to prove that, or SIPC and the trustee will assume that the firm's records are accurate.

Consistent with GAO's recommendation, NASD has amended Rule 2340 to require general securities firms to include in account statements required by Rule 2340 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 must state that the reports be made to both firms. This statement must 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 inaccurate.

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 pertinent telephone number at the clearing firm that a customer may use to contact the firm with inquiries regarding his or her account.⁶ 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).⁷

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 Exchange Act Release No. 54872 (December 5, 2006) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Establishing an Effective Date for Amendments to NASD Rule 2340); File No. SR-NASD-2006-128). NASD notes that the effective date of May 31, 2007 is consistent with the effective date of a substantially similar New York Stock Exchange LLC requirement. See SR-NYSE-2005-09.
- 3 See *infra* note 6.
- 4 See Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors (GAO-01-653).
- 5 The SIPC brochure, entitled *Understanding the Securities Investor Protection Corporation*, is published on SIPC's Web site at www.sipc.org. The brochure provides a basic explanation of SIPC and SIPA and answers questions about SIPC liquidations.
- 6 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) (S7-28-89). See also *supra* note 1, 71 FR at 54107, footnote 24, as corrected by Exchange Act Release No. 54411A.

NASD noted in *NTM 93-46* (July 1993) that SEC staff subsequently clarified this requirement. The *Notice* stated that SEC staff had reconsidered its interpretation concerning customer account statements that a clearing firm must send directly to the customers of an introducing firm. In reviewing its position that each account statement had to include the name and telephone number of a responsible clearing firm employee that a customer could contact with inquiries regarding the customer's account, SEC staff noted that individuals may assume different responsibilities at their firms or may leave their employment altogether. Hence, requiring firms to name a specific individual on customer account statements, which are often pre-printed, may lead to confusion for customers inquiring about their accounts. For this reason, SEC staff determined

that it is sufficient for firms to include just the pertinent telephone number. This requirement became effective as of October 1, 1993. NASD advised its members in the *Notice* that the following language is acceptable to SEC staff for use on customer account statements for purposes of meeting the requirements of the SEC's net capital rule and SEC Rule 15c3-3:

[Name of clearing firm] carries your account and acts as your custodian for funds and securities deposited with us directly by you, through [name of introducing firm] or as a result of transactions we process for your account. Inquiries concerning the position and balances in your account may be directed to our Client Service Department: [telephone number]. All other inquiries regarding your account or the activity therein should be directed to [name of introducing firm].

- 7 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

* * * * *

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

* * * * *

Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

Internal Audit
Legal and Compliance
Municipal/Government Securities
Operations
Trading and Market Making

KEY TOPICS

Holiday Trade Date-Settlement
Date Schedule

INFORMATIONAL

Trade Date–Settlement Date

2007 Trade Date–Settlement Date Schedule

Martin Luther King, Jr., Day:

The NASDAQ Stock Market® and the securities exchanges will be closed on **Monday, January 15, 2007**, in observance of Martin Luther King, Jr., Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Jan. 9	Jan. 12	Jan. 17
10	16	18
11	17	19
12	18	22
15	Markets Closed	—
16	19	2

Presidents' Day:

The NASDAQ Stock Market and the securities exchanges will be closed on **Monday, February 19, 2007**, in observance of Presidents' Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Feb. 13	Feb. 16	Feb. 21
14	20	22
15	21	23
16	22	26
19	Markets Closed	—
20	23	27

06-73

Good Friday:

The NASDAQ Stock Market and the securities exchanges will be closed on **Good Friday, April 6, 2007**. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
April 2	April 5	April 10
3	9	11
4	10	12
5	11	13
6	Markets Closed	–
9	12	16

Memorial Day:

The NASDAQ Stock Market and the securities exchanges will be closed on **Monday, May 28, 2007**, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
May 22	May 25	May 30
23	29	31
24	30	June 1
25	31	4
28	Markets Closed	–
29	June 1	5

Independence Day:

The NASDAQ Stock Market and the securities exchanges will be closed on **Wednesday, July 4, 2007**, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
June 28	July 3	July 6
29	5	9
July 2	6	10
3	9	11
4	Markets Closed	–
5	10	12

Labor Day:

The NASDAQ Stock Market and the securities exchanges will be closed on **Monday, September 3, 2007**, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Aug. 28	Aug. 31	Sept. 5
29	Sept. 4	6
30	5	7
31	6	10
Sept. 3	Markets Closed	–
4	7	11

Columbus Day:

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, **Monday, October 8, 2007**. On this day, The NASDAQ Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Reg. T Date*
Oct. 2	Oct. 5	Oct. 9
3	9	10
4	10	11
5	11	12
8	11	15
9	12	16

Note: October 8, 2007, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 8, will be combined with transactions made on the previous business day, October 5, for settlement on October 11. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 8.

Thanksgiving Day:

The schedule of trade dates-settlement dates below reflects the observance of the financial community of Thanksgiving Day, **Thursday, November 22, 2007**. All securities markets will be closed on Thursday, November 22, 2007, in observance of Thanksgiving Day.

Trade Date	Settlement Date	Reg. T Date*
Nov. 16	Nov. 21	Nov. 26
19	23	27
20	26	28
21	27	29
22	Markets Closed	–
23	28	30

Christmas Day and New Year's Day:

The NASDAQ Stock Market and the securities exchanges will be closed on **Tuesday, December 25, 2007**, in observance of Christmas Day and **Tuesday, January 1, 2008**, in observance of New Year's Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Dec. 19	Dec. 24	Dec. 27
20	26	28
21	27	31
24	28	Jan. 2, 2008
25	Markets Closed	–
26	31	3
27	Jan. 2, 2008	4
28	3	7
31	4	8
Jan. 1, 2008	Markets Closed	–
2	7	9

Brokers, dealers and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and the Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of those settlement dates to a particular situation may be directed to the Market Integrity Department at (203) 375-9609.

- * Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

Executive Representatives
Information Technology
Legal & Compliance
Operations
Senior Management
Training

KEY TOPICS

Business Continuity Planning
Rule 3500 Series (Emergency Preparedness)

GUIDANCE

Business Continuity Planning

Member Business Continuity Experiences regarding Hurricanes Katrina and Rita

Executive Summary

In May 2004, NASD issued *Notice to Members 04-37* regarding business continuity planning. That *Notice* addressed NASD Rules 3510 and 3520 and provided supplemental detail regarding the key elements of a business continuity plan (BCP).

Following Hurricanes Katrina and Rita in August and September 2005, NASD issued a voluntary survey on the topic of business continuity planning to certain member firms within the affected areas. The objective of the survey was to assess the value of business continuity planning and to learn from these firms' experiences. Overall, the survey helped provide valuable insight into business continuity planning and the implementation of such plans in the wake of a disaster. Firm responses also provide guidance to all member firms about specific business functions and tools that performed well following these events, as well as those that did not. **The information in this *Notice* does not create new rules or obligations on members, nor does the implementation of any or all of the guidance create a "safe harbor" relative to any NASD rules.**

Questions/Further Information

Questions concerning this *Notice* may be directed to Daniel M. Sibears, Executive Vice President & Deputy, Member Regulation, at (202) 728-8221.

Background

Implementation of NASD Rules 3510 and 3520 Addressing BCPs and Emergency Contact Information

In the days and weeks following September 11, 2001, the securities markets and industry showed an impressive ability to recover and continue business. To learn from the events of this period, NASD surveyed randomly selected members to gauge the industry's recovery capabilities in greater detail to determine, among other things, whether any regulatory action was needed to assure swift recovery in the event of any future significant business disruptions.

The survey yielded valuable results. It showed that a significant number of NASD member firms did not have BCPs in place at the time, or had plans that did not provide coverage in certain areas, such as document back-up and customer access to accounts during an emergency. As a result, NASD determined that member firms would benefit from the implementation of a BCP that contained, at a minimum, the following ten key components:

- (i) Data back-up and recovery;
- (ii) All mission-critical systems;
- (iii) Financial and operational assessments;
- (iv) Alternate communications between the member and its customers;
- (v) Alternate communications between the member and its employees;
- (vi) Alternate physical location of employees;
- (vii) Critical business constituent, bank and counter-party impact;
- (viii) Regulatory reporting;
- (ix) Communications with regulators; and
- (x) Assurance of customers' prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.

These key components, along with industry feedback, were used to develop the new Rule 3500 Series (Emergency Preparedness) that requires members to establish emergency preparedness plans and procedures. The Securities and Exchange Commission (SEC) approved the rule series on April 7, 2004.¹ NASD issued *Notice to Members 04-37* in May 2004 to provide guidance to members regarding the implementation of the rules.

Rule 3510 (Business Continuity Plans) requires each member to create and maintain a written BCP identifying procedures relating to an emergency or significant business disruption that are “reasonably designed to enable the member to meet its existing obligations to customers” and enumerates certain requirements that each plan must address.² Rule 3510 further requires each member to update its plan upon any material change in operations, structure, business or location and, at a minimum, to conduct an annual review of its plan.³ Each member also must disclose to its customers how its BCP addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope.⁴

Rule 3520 (Emergency Contact Information) requires each member to report to NASD prescribed emergency contact information for the member and update that information in the event of any material change.⁵ This is done electronically through NASD’s Contact System (NCS).

Learning from Hurricanes Katrina and Rita

Following Hurricanes Katrina and Rita in 2005, NASD conducted a survey (“Katrina Survey” or “survey”) of the business continuity planning of certain member firms impacted by these events. The objective of this voluntary survey was to assess the value of business continuity planning and to learn from these firms’ experiences. The selected members included local, regional and national firms operating in affected areas of Louisiana, Mississippi and Alabama at the time of the hurricanes.

The Katrina Survey contained questions regarding the performance of firms’ BCPs before, during and after Hurricanes Katrina and Rita. For various plan aspects, the survey asked firms to rank the performance of their BCPs and to provide feedback on their experiences. Overall, the Katrina Survey helped provide insight into business continuity planning that was effective and ineffective during these events. Firm responses also provided guidance about specific business functions and tools that performed successfully, as well as those that did not. In this regard, the results offered in this *Notice* are provided as guidance to members to use as they deem appropriate. **The information does not create new rules or obligations on members, nor does the implementation of any or all of the guidance create a “safe harbor” relative to any NASD rules.**

Discussion

Input from firms that found their business continuity planning effective during Hurricanes Katrina and Rita:

- Some firms had pre-established and pre-tested recovery sites, systems and servers in place prior to the hurricanes. These back-up resources were activated by designated staff in advance of storm arrival and allowed for seamless transition of operations from the impacted offices to the back-up facilities. Additionally, persons at recovery sites were specifically empowered to act on behalf of the firm.
- Some medium and larger firms represented that they benefited from having fully functional branch offices outside of the affected area. The branch offices served in some cases as the back-up center of operations as well as the relocation site for evacuated staff members. Telephones were forwarded to the branch office or recovery site in advance of storm arrival.
- Some firms established nationwide toll-free numbers and Web site information specifically for business continuity purposes. This contact information was disseminated to customers (via such means as customer account statements) and employees well in advance of a disruptive event. Customers and employees were also encouraged to access the firm Web site for updates.
- Some smaller firms noted the importance of cross-training employees to perform necessary functions. Employees experienced logistical difficulties, inconsistent access to firm systems and customers, and unavailability of relevant staff at particular locations. Cross-training allowed those employees with access to firm systems the ability to cover the responsibilities of, and handle customer contacts for, their impacted colleagues.
- Medium and smaller firms stated that their respective clearing firms were instrumental in assisting with continuity of operations during these events. It was reported that clearing firms performed consistently well by providing access to customer funds and securities.

Input from firms that found their business continuity planning was not effective enough to compensate for the effects of Hurricanes Katrina and Rita:

- Some firms noted the challenge of identifying and verifying customers following the hurricanes. These firms noted that they had underdeveloped customer identification procedures to address such circumstances.
- Some small, medium and large firms experienced problems at their respective back-up/recovery sites due to untested servers, untested systems, inadequate access to systems or inadequate capacity.

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- Small firms with the fewest resources available to them had no alternate or recovery site in place at the time of the hurricanes.
 - Firms that relied heavily on paper records experienced the loss of irreplaceable documents and critical business information.
 - Some firms determined that portions of their BCPs were incomplete or out-of-date. Some plans, for example, did not provide clearing firm contact information or contained out-of-date employee or customer contact information.

The survey also sought to learn specific lessons based on the experiences of member firms during Hurricanes Katrina and Rita. Members responding to the survey provided suggestions, feedback and advice borne from these experiences.

What some firms found helpful during the events of Hurricanes Katrina and Rita:

- Across the board, firms surveyed noted that text messaging proved surprisingly reliable as compared to use of cell phones or land lines. In some cases, text messaging was the only reliable way to communicate with colleagues for a period of weeks.
- Some firms recommended shipping in cell phones that have area codes outside the impacted regions, as they proved more reliable than cell phones with local area codes during and after the storms. Others found that having pre-loaded laptops with wireless cards or laptops shipped in by a parent company or clearing firm provided significant assistance in re-establishing and/or maintaining continuity of operations.
- Medium and small firms expressed the importance of maintaining a relationship with a “sister” broker-dealer where they could recover, as well as implementing a “buddy” system among firm employees to assist in locating one another.
- One firm recommended gathering additional information from customers, including contact numbers of relatives who could contact the customer. This information would be gathered on a voluntary basis in advance of an event. This additional information would assist a firm in communicating with displaced customers.
- Having a Web site with screens for check-in, updates and postings for employees aided communication and coordination. In addition, firms recommended establishing a toll-free number for employees to check-in or “meet” by telephone.
- Periodically repeating employee training to aid in memory recall of emergency plans during such an event and to keep procedures and protocols fresh in employees’ minds.
- Having a checklist of steps to follow and documents to move during evacuation of a site.

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- Understanding how to remove hard drives from desktop computers so that valuable information could be preserved even though hardware was lost.
 - Ensuring a clear understanding between clearing and correspondent firms as to the actions triggered by emergency circumstances and the time frames for the commencement and termination of the emergency procedures.

What some firms found least useful/helpful during Hurricanes Katrina and Rita:

- Firms found that land line telephones within the impacted regions, as well as cell phones with area codes of the impacted regions, were not reliable. Also, firms that intended to rely on call forwarding through local switching stations found that switching stations impacted by flooding could not re-route telephones. These firms suffered from the inability to contact, or be contacted by, customers and employees.
- When the hurricanes hit, some firms were relying on a local electronic mail (email) provider rather than a national email provider. The local provider was also impacted during the storms and service was disrupted. In addition, servers located within impacted regions were disabled and unable to be serviced.
- Firms noted two items that posed significant employee-related challenges during and after Hurricanes Katrina and Rita: (1) Employees refusing to leave the impacted region and (2) long-term office space and employee housing in alternate locations/recovery sites that were not secured in advance of, or immediately following, the disasters.

Firm Feedback regarding NASD's BCP Tool, Templates and Related Resources:

Member firms were asked in the Katrina Survey to assess NASD's post-disaster response as well as to rate NASD's BCP guidance. The overall response was positive with firms saying NASD was "flexible," "accommodating" and "realistic." Firms stated they found NASD's BCP guidance to be satisfactory.

Resources Available through NASD

NASD continues to provide multiple BCP tools, templates and related resources on its Web site,
www.nasd.com/RulesRegulation/IssueCenter/BusinessContinuityPlanning/index.htm.

These online resources include:

- BCP Frequently Asked Questions (FAQ).
- BCP Repository Service.

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- The BCP Repository Service is powered by EVault and offered in association with NASD to provide members, for a fee, the following:
 - Remote access: upload, download and modify documents from anywhere with an Internet connection;
 - Collaboration: smooth document collaboration across authorized users;
 - Security: over-the-wire encryption of all uploaded and downloaded documents; and
 - Varied authorization levels: different access controls may be granted to individual users in the same account.
 - An example of a BCP disclosure statement for introducing firms with a clearing firm arrangement.
 - NASD Small Firm BCP Template as an optional guide to small introducing firms to assist them in creating and maintaining BCPs and emergency contact person lists under NASD Rules 3510 and 3520. The template recognizes that many small introducing firms rely on parts of a clearing firm's BCP for many of the mission-critical functions of the introducing firm. The template also contains instructions, relevant rules and Web sites, and other resources that are useful for developing a BCP for a small introducing firm.
 - A BCP planning case study.

Common Findings from NASD Examinations

Members have generally been in compliance with the requirements of NASD Rules 3510 and 3520 since implementation in 2004. Many have used the NASD Small Firm Business Continuity Plan Template to develop plans. Nonetheless, there have been areas of concern related to business continuity uncovered during NASD examinations that include:

- (i) *Consistency of addressing all of the BCP Requirements.* Findings include members not adequately addressing one or more of the following key components of an effective BCP:
 - Impact of disruption upon critical business constituents.
 - Regulatory reporting and communications with regulators.
 - Providing customers with prompt access to funds and securities in the event that the firm is unable to continue its business.
 - Disclosure statement that addresses the possibility of a future business disruption and how the firm plans to respond to events of varying scope.
 - Updating and annually reviewing BCPs, and senior management approval of BCPs.
 - Data back-up and recovery during an emergency or significant business disruption.

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- (ii) *Firm Identification of Emergency Contact Persons on NCS.* Various NASD exams reviewing BCP compliance found that firms had not filed their designated two emergency contact person information on NCS as required by Rule 3520.

Summary of Survey Results

Based on the Katrina Survey results, firms found they were impacted in different ways by Hurricanes Katrina and Rita. Their experiences varied depending on the firm's size and preparedness. Smaller firms with fewer relative resources faced the most severe impacts. Some of these small firms benefited from strong relationships with their respective clearing firms, which in turn were able to take calls and handle customer needs during the emergency. Medium-size and larger firms had additional staff and resources to absorb the storms' impacts, including established and fully functional alternate business locations outside of the directly impacted areas.

Regardless of a firm's size or impact proximity, firms with well-tested BCPs found they faced minimal disruption. For example, firms of various sizes and resources operating inside the city of New Orleans that had thoroughly developed and tested their plans encountered fewer disruptions than less prepared firms operating outside of directly impacted areas. In this regard, the results of the survey captured in this Notice may assist members in better preparing for emergencies or significant business disruption caused by events such as fire, flood, wind and earthquake, a disruption involving power or property, or an unknown variable. Preparation and practice, as evidenced by the results of the Katrina Survey, will support a firm's ability to address the needs of all constituents during a time of crisis.

Endnotes

- 1 See Securities Exchange Act Release No. 49537 (Apr. 7, 2004), 69 Fed. Reg. 19586 (Apr. 13, 2004) (SEC Notice of Order Approving File No. SR-NASD-2002-108).
- 2 Rule 3510(a) and (c).
- 3 Rule 3510(b). Each member must designate a member of senior management who is also a registered principal to approve the plan and be responsible for conducting the required annual review. Rule 3510(d).
- 4 Rule 3510(e).
- 5 In addition, each member must review and, if necessary, update the member's emergency contact information within 17 business days after the end of each calendar quarter. See Rule 3520(b).

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2006 – 2007 Filing Due Dates

NASD would like to remind members of their obligation to file the appropriate FOCUS reports, Annual Audits, Customer Complaints and Short Interest reports by their due dates. The following schedule outlines due dates for 2006 – 2007. Questions regarding the information to be filed can be directed to the appropriate District Office. Business questions as to how to file the FOCUS report, resetting passwords & technical questions concerning system requirements, file uploads, submission problems for Web-Based FOCUS and Customer Complaints can all be directed to (800) 321-NASD. Business questions regarding the Short Interest Reporting deadlines should be directed to Yvonne Huber at (240) 386-5034 or Jocelyn Mello at (240) 386-5091.

2007 FOCUS Due Dates

Annual Schedule I for 2006 Year End	Due Date
2006 FOCUS Schedule I	January 25, 2007
Annual Schedule I for 2007 Year End	Due Date
2007 FOCUS Schedule I	January 25, 2008

2006 Monthly and Fifth* FOCUS II/IIA Filings

A Fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

January 31, 2007	February 26, 2007
February 28, 2007	March 23, 2007
April 30, 2007	May 23, 2007
May 31, 2007	June 25, 2007
July 31, 2007	August 23, 2007
August 31, 2007	September 26, 2007
October 31, 2007	November 26, 2007
November 30, 2007	December 26, 2007

2006 Quarterly FOCUS Part II/IIA Filings

Quarter Ending	Due Date
December 31, 2006	January 25, 2007
March 31, 2007	April 25, 2007
June 30, 2007	July 25, 2007
September 30, 2007	October 23, 2007
December 31, 2007	January 25, 2008

2007 Annual Audit Filings Due Dates

Period End	Due Date
January 31, 2007	April 2, 2007
February 28, 2007	April 30, 2007
March 31, 2007	May 30, 2007
April 30, 2007	June 29, 2007
May 31, 2007	July 30, 2007
June 30, 2007	August 29, 2007
July 31, 2007	October 1, 2007
August 31, 2007	October 30, 2007
September 30, 2007	November 29, 2007
October 31, 2007	December 31, 2007
November 30, 2007	January 29, 2008
December 31, 2007	February 29, 2008

2007 3070/Customer Complaints Due Dates

4th quarter 2006:	January 16, 2007
1st quarter 2007:	April 16, 2007
2nd quarter 2007:	July 16, 2007
3rd quarter 2007:	October 15, 2007
4th quarter 2007:	January 15, 2008

Market Regulation Department 2007 Short Interest Reporting Deadlines

Trade Date	Settlement Date	Exchange-Listed Short Interest Due*	NASDAQ Short Interest Due*
January 9 Tuesday	January 12 Friday	January 17 - 1 p.m. Wednesday	January 17 - 6 p.m. Wednesday
February 12 Monday	February 15 Thursday	February 20 - 1 p.m. Tuesday	February 20 - 6 p.m. Tuesday
March 12 Monday	March 15 Thursday	March 19 - 1 p.m. Monday	March 19 - 6 p.m. Monday
April 10 Tuesday	April 13 Friday	April 17 - 1 p.m. Tuesday	April 17 - 6 p.m. Tuesday
May 10 Thursday	May 15 Tuesday	May 17 - 1 p.m. Thursday	May 17 - 6 p.m. Thursday
June 12 Tuesday	June 15 Friday	June 19 - 1 p.m. Tuesday	June 19 - 6 p.m. Tuesday
July 10 Tuesday	July 13 Friday	July 17 - 1 p.m. Tuesday	July 17 - 6 p.m. Tuesday
August 10 Friday	August 15 Wednesday	August 17 - 1 p.m. Friday	August 17 - 6 p.m. Friday
September 11 Tuesday	September 14 Friday	September 18 - 1 p.m. Tuesday	September 18 - 6 p.m. Tuesday
October 10 Wednesday	October 15 Monday	October 17 - 1 p.m. Wednesday	October 17 - 6 p.m. Wednesday
November 9 Friday	November 15 Thursday	November 19 - 1 p.m. Monday	November 19 - 6 p.m. Monday
December 11 Tuesday	December 14 Friday	December 18 - 1 p.m. Tuesday	December 18 - 6 p.m. Tuesday

* EASTERN TIME

Disciplinary and Other NASD Actions

REPORTED FOR DECEMBER

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 November 2006.

Firms Fined, Individuals Sanctioned

Hattier Sanford & Reynoir, a Limited Partnership L.L.P. (CRD #2148, Memphis, Tennessee) and Vance Greenslit Reynoir (CRD #1060803, Registered Principal, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500, and Reynoir was fined \$7,500 and suspended from association with any NASD member in any principal capacity for one year. Without admitting or denying the findings, the firm and Reynoir consented to the described sanctions and to the entry of findings that Reynoir failed to take appropriate action to supervise an individual to prevent violations of, and achieve compliance with, applicable securities laws, regulations and NASD rules; that the firm's written supervisory procedures failed to contain procedures for the detection of manipulative wash sales and matched trading and that the firm did not timely comply with NASD Rule 3011 to adopt a written anti-money laundering (AML) compliance program designed to achieve and monitor ongoing compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder.

The suspension in any principal capacity is in effect from November 6, 2006, through November 5, 2007. (NASD Case #EAF0400190002)

J.P. Turner & Company, L.L.C. (CRD #43177, Atlanta, Georgia) and S. Cheryl Bauman (CRD #2207311, Registered Principal, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$211,372, \$86,372 of which represents disgorgement of commissions and fees received and \$40,000 of which was jointly and severally with Bauman. The firm is prohibited from offering hedge fund interests or opening new hedge fund accounts for six months, and is thereafter suspended from offering hedge fund interests and opening new hedge fund accounts until the firm submits revised written supervisory procedures with NASD that satisfactorily address the supervision of hedge fund offerings as well as the trading in hedge fund accounts. The firm is also subject to a six-month pre-use filing requirement with NASD for all customer advertisements and sales literature relating to hedge

funds, beginning with the first use of such sales communications following the suspension from offering hedge fund interests and opening new hedge fund accounts. Bauman was also suspended from association with any NASD member in any principal capacity for three months.

Without admitting or denying the findings, the firm and Bauman consented to the described sanctions and to the entry of findings that the firm, acting through Bauman, failed to establish and maintain a supervisory system reasonably designed to ensure compliance with applicable laws, rules and regulations relating to the trading activity in a hedge fund account, and failed to reasonably supervise the offering of the fund's interest and the trading activity in the fund account to prevent violations. The findings stated that, in connection with the hedge fund offering, the firm made improper use of a public customer's funds by permitting the deposit of customer subscription funds into the hedge fund account and permitting the funds to be used to meet margin calls without prior approval of the subscription by the firm's compliance department and by failing to return the deposit to the customer in a timely manner after the firm rejected his subscription. The findings also stated that the firm, acting through Bauman, approved and permitted the use of a brochure for the fund that contained statements and claims for which it failed to provide a sound basis and failed to disclose the inherent risks associated with the absence of an operating history for both the partnership and the general partner; exaggerated the experience and services the registered representatives operating the fund offered and made false statements regarding the fund's investment strategy. The findings also stated that the firm failed to establish a proper escrow account for a private offering and the firm, acting through Bauman, failed to establish and maintain a supervisory system reasonably designed to ensure compliance with applicable laws, rules and regulations in connection with a private offering. NASD also found that the firm paid securities commissions that totaled \$2,226,130.90 to non-member entities or persons.

The suspension in a principal capacity is in effect from November 6, 2006, through February 5, 2007. (NASD Case #E072003011201)

The Oak Ridge Financial Services Group, Inc. (CRD #42941, Golden Valley, Minnesota) and Laurence Stuart Zipkin (CRD #1535080, Registered Principal, Minnetonka, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Zipkin was fined \$20,000 and suspended from association with any NASD member in any principal capacity for four months. Without admitting or denying the findings, the firm and Zipkin consented to the described sanctions and to the entry of findings that, in connection with private placement contingency offerings, the firm, acting through Zipkin, opened bank accounts to receive public customer funds for the offerings when there were no escrow agreements signed by the firm or the issuer. The findings stated that a separate account for one of the offerings was established, but funds continued to be deposited in the first account and were not promptly sent to the second account, which led to net capital problems. The findings also stated that the firm had possession and control of customer funds on contingency "best effort" offerings, yet did not conduct an NASD Rule 15c3-3 reserve account computation and segregate funds in a designated account. The findings also stated that the firm, acting through Zipkin, participated in a "best efforts" offering and, despite reaching the offering maximum, continued to offer shares of the common stock and did not give notice to the original investors that the offering maximum had changed, did not give the original investors the opportunity to reaffirm or rescind their purchases and did not notify customers that the offering period had been extended. NASD found that for the second offering, the firm sent written requests to customers requesting that the offering period be extended but did not terminate the offering even after the original maximum had been raised to offer shares, did not give notice to the original investors that the offering maximum had changed, and did not give them the opportunity to reaffirm or rescind their purchases.

The suspension in any principal capacity is in effect from November 6, 2006, through March 5, 2007. (NASD Case #E0420050103-02/#E0420050103-03)

Westpark Capital, Inc. (CRD #39914, Los Angeles, California) and Richard Alyn Rappaport (CRD #1885122, Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined

\$10,000. Rappaport was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, the firm and Rappaport consented to the described sanctions and to the entry of findings that Rappaport failed to comply with a suspension NASD imposed, and continued to be actively involved in the management of his member firm's investment banking and securities business during the suspension period. The findings stated that the firm failed to establish, maintain and enforce a supervisory system or written procedures reasonably designed to ensure that Rappaport did not act in a principal capacity during the suspension period.

The suspension in any capacity was in effect from November 6, 2006, through December 5, 2006. (NASD Case #E022004062801)

Firm and Individual Fined

Surety Financial Services Inc., (CRD #18344, Wantagh, New York) and John Thomas Renck (CRD #1171278, Registered Principal, Seaford, 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 Renck consented to the described sanctions and to the entry of findings that the firm, acting through Renck, conducted a securities business while failing to maintain the minimum net capital requirement. (NASD Case #2005000841501)

Firms Fined

Banc One Securities Corporation (CRD #16999, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$142,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5) with NASD for numerous individuals. (NASD Case #E8A2005001601)

Friedman, Billings, Ramsey & Co. Inc., (CRD #25027, Arlington, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the

findings, the firm consented to the described sanctions and to the entry of findings that it failed in certain respects to enforce its written supervisory procedures relating to securities transactions by its research analysts and other associated persons that required the firm's compliance department to obtain duplicate confirmations and statements for all securities accounts maintained by those associated persons at other firms. The findings also stated that, as a result of its failure to enforce those provisions with respect to the research analyst, the firm failed to detect and prevent the research analyst's violations of NASD rules. (NASD Case #E9A2005004702)

FTN Financial Securities Corp. (CRD #46346, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent in which it was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to comply with SEC Rule 15c3-3, in that it failed to deposit amounts required to satisfy its reserve requirement. (NASD Case #2005001713201)

Hampton Securities (USA), Inc. (CRD #46816, Toronto, Ontario, Canada) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, and required to review its system and procedures regarding the preservation of electronic mail communications for compliance with federal securities laws, regulations and NASD rules. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm did not maintain and preserve electronic communications as SEC Exchange Act Rule 17a-4 requires, in that it utilized an electronic back-up system to capture and retain email communications but recycled the back-up tapes each week, overwriting them with new data. (NASD Case #2006003899801)

Harris Williams LLC, nka Harris Williams & Co. (CRD #113930, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to review its procedures regarding the preservation of electronic mail communications for compliance with federal securities laws, regulations and NASD rules. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system and written

procedures were not reasonably designed to ensure compliance with email retention requirements because they did not provide for adequate follow-up and review to ensure that hard copies of email communications were being retained. The findings stated that the firm did not maintain and preserve all email communications as SEC Exchange Act Rule 17a-4 requires. **(NASD Case #2006003783701)**

Honor, Townsend & Kent, Inc. (CRD #4031, Horsham, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish and maintain a system to supervise the activities of each registered representative and associated person reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules related to the sale of group variable annuity contracts. The findings stated that the firm failed to establish and maintain written supervisory procedures related to the sale of group variable annuity contracts, and failed to properly record group variable annuity contract transactions on its books and records. **(NASD Case #E8A2004070901)**

Invest Financial Corporation (CRD #12984, Tampa, 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 to timely report municipal trades to the MSRB, failed to accurately report customer trade prices in customer municipal trades and failed to accurately report the capacity in which the firm conducted the transaction in some of the municipal trades. The findings stated that the firm, in connection with municipal securities transactions, sent customers written confirmations that incorrectly indicated that the firm acted as an agent for transactions when the firm acted as a principal. **(NASD Case #E0720050201-01)**

Libertas Partners, LLC (CRD #124790, Greenwich, Connecticut) 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 the firm permitted individuals to perform duties that require registration while their

NASD registrations were inactive due to their failure to complete the Regulatory Element of the Continuing Education Program. **(NASD Case #E112005021201)**

Track Data Securities Corporation (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that while engaging in option trading, the firm failed to assign and identify to NASD its senior registered option principal and its compliance registered options principal, each of whom is required to be a registered option principal. The findings also stated that the firm failed to maintain a separate file or log for complaints received involving options securities, and failed to promptly report statistical and summary information regarding customer complaints to NASD. The findings also stated that the firm published newspaper advertisements and did not retain evidence of principal approval. **(NASD Case #ELI2005004702)**

Individuals Barred or Suspended

Aida Bakamovic (CRD #4873334, Registered Representative, Scottsdale, Arizona) 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, Bakamovic consented to the described sanction and to the entry of findings that she signed public customers' names in order to open bank accounts without the customers' knowledge or consent. **(NASD Case #2005003411101)**

Francis John Bello Jr. (CRD #1089387, Registered Representative, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Bello reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Bello consented to the described sanctions and to the entry of findings that he submitted a Special Accommodation Request Form to NASD seeking an additional 60 minutes to complete the Regulatory Element of NASD's Continuing Education Requirements that required the signature of his member

firm's compliance officer, but he signed the form himself without the compliance officer's knowledge, authorization or consent.

The suspension in any capacity is in effect from November 6, 2006, through January 4, 2007. (NASD Case #2006005426501)

Kristin M. Brown (CRD #5057244, Associated Person, Midlothian, Virginia) 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, Brown consented to the described sanction and to the entry of findings that she drew a \$500 check on a company's business bank account to her own name, forged the account owner's signature and deposited the check to her own bank account without the owner's knowledge or consent. (NASD Case #2006005464501)

Daniel Alan Buchalter (CRD #1891292, Registered Principal, Phoenix, Arizona) 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. The fine must be paid before Buchalter reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Buchalter consented to the described sanctions and to the entry of findings that he borrowed \$15,000 from a public customer and failed to obtain his member firm's written permission prior to borrowing the customer's money. The findings also stated that Buchalter failed to disclose the loan when completing an annual compliance questionnaire that asked, among other things, whether he had ever accepted a loan from a customer.

The suspension in any capacity is in effect from November 20, 2006, through January 18, 2007. (NASD Case #2006004288601)

Fausto Efrain Callava (CRD #4139260, Registered Representative, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on the findings that Callava participated in the sale of an unregistered security to a public customer in contravention of Section 5 of the Securities Act of 1933, because no registration statement had been filed for the security and there was no exemption from registration. The findings stated

that Callava, in an effort to cover up the sale of the unregistered security, falsified documents and deliberately deceived his member firm. (NASD Case #E072004088501)

Jeremy Michael Chapman (CRD #4984194, Associated Person, Morrilton, Arkansas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chapman failed to respond to NASD requests for information and willfully failed to disclose material information on his Uniform Application for Securities Industry Registration and Transfer (Form U4). (NASD Case #2005002166501)

Qi Chen (CRD #2233415, Registered Representative, Vernon Hills, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chen sent to a public customer a false account statement on a defunct company's letterhead purporting to show investments in certificates of deposit (CDs) and a viatical settlement worth a total of \$314,501, and failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #E8A2004107002)

John Stuart Coffey (CRD #1342181, Registered Principal, Washington, Pennsylvania) submitted a Letter of Acceptance, Waiver and consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Coffey reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Coffey consented to the described sanctions and to the entry of findings that, acting on his member firm's behalf, he failed to obtain the required written consent in connection with Central Registration Depository® (Web CRD®) searches of individuals. The findings stated that these individuals were not seeking employment with the firm, nor was the firm considering any of them for employment, but the searches were conducted to identify the member firms which employed registered representatives whose names had appeared in a commercial publication listing high-producing individuals and thereby determine if Coffey's firm already had selling agreements with the firms. The findings also stated that Coffey failed to cause his member firm to have a supervisory system

and procedures reasonably designed to ensure that the firm obtained the required written consent before conducting searches on Web CRD and that it retained required documentation.

The suspension in any capacity is in effect from November 6, 2006, through February 5, 2007. (NASD Case #E9A2005000602)

Derek Lamont Colbert (CRD #2406931, Registered Representative, Upper Marlboro, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Colbert consented to the described sanction and to the entry of findings that he created customer retirement account applications falsely reflecting that the customers wanted to increase their biweekly contribution amounts and submitted the applications to his member firm, and that his conduct resulted in the improper receipt of \$1,960 in commissions. (NASD Case #2005003384102)

Brian Ellsworth Crosby II (CRD #3067628, Registered Representative, Milan, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Crosby consented to the described sanction and to the entry of findings that he executed transactions in public customers' accounts without their knowledge or consent, and without written or oral authorization to exercise discretion in their accounts. (NASD Case #2005000279301)

Derek Jamal Deane (CRD #2551532, Registered Representative, Hyattsville, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Deane consented to the described sanction and to the entry of findings that he created falsified customer retirement accounts and submitted them to his member firm, and that his conduct resulted in the improper receipt of \$1,600 in commissions. (NASD Case #2005003384101)

Daniel Diaz (CRD #4169098, Registered Representative, Phoenix, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that Diaz submitted

fictitious account applications to his member firm and received \$1,700 in commissions based on those fraudulent applications and failed to respond to NASD requests for information. (NASD Case #2005002377201)

Richard Albert Hellmann (CRD #1140122, Registered Representative, High Ridge, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Hellmann reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Hellmann consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation and failed to provide his member firm with prompt written notice.

The suspension in any capacity is in effect from November 6, 2006, through December 18, 2006. (NASD Case #20050016607-01)

Adam Chamroern Heng (2831137, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Heng executed unauthorized transactions, used margin without authorization, failed to follow instructions in public customers' accounts and failed to respond to an NASD request for an on-the-record interview. (NASD Case #E072004051101)

Tyjuan Deleon Jackson (CRD #4224623, Registered Representative, Inkster, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jackson failed to disclose material information on his Form U4 and failed to respond to NASD requests for documents and information. (NASD Case #2005003480801)

Anthony John Johnson (CRD #2511827, Registered Representative, Garrison, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Johnson engaged in fraudulent sales practices, failed to comply with SEC penny stock disclosure rules, and provided false and misleading testimony during an NASD on-the-record interview. (NASD Case #CMS20040165)

Edward Hinton Johnson (CRD #1446749, Registered Principal, Lumberton, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Johnson engaged in private securities transactions for compensation without providing prior written notice to, or receiving approval from, his member firm. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative who engaged in private securities transactions. **(NASD Case #E3B20040206-01)**

Elton Johnson, Jr. (CRD #844428, Registered Principal, Moreno Valley, California) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any supervisory capacity and in a financial and operations principal (FINOP) capacity for 18 months, and must requalify by exam as a general securities principal and FINOP prior to reassociation with any NASD member following the suspension. Johnson is also required to ensure that his member firm employs a second general securities principal and a FINOP until his suspensions have concluded and he has requalified as a principal and FINOP. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative's private securities transactions activities in the manner NASD Rule 3040 requires.

The suspensions in any supervisory and FINOP capacities are effective from December 4, 2006, through June 3, 2008. **(NASD Case #C3A20030008)**

William George Kelly, Jr. (CRD #1773462, Registered Representative, Fort Lauderdale, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kelly consented to the described sanction and to the entry of findings that he borrowed \$25,000 from a public customer in contravention of his member firm's written supervisory procedures stating that employees were not allowed to borrow money from, or lend money to, firm customers. The findings stated that Kelly falsely represented to his firm in a signed compliance questionnaire that he had not borrowed money from any firm customer. The findings also stated that Kelly delivered a personal check to the customer as

repayment of the loan but the check was returned to the customer for insufficient funds due to a closed account—Kelly has never made any payment on the loan. The findings also included that Kelly failed to respond to NASD requests for information. **(NASD Case #2005002049901)**

Sandeep David Kitson (CRD #2508526, Registered Principal, New York, New York) and Gurpreet Singh Sabharwal (CRD #3206745, Registered Principal, Linden Hill, New York) submitted an Offer of Settlement in which Kitson was barred from association with any NASD member in any capacity, and Sabharwal was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Sabharwal reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kitson and Sabharwal consented to the described sanctions and to the entry of findings that they participated in private securities transactions without providing prior written notice to, or obtaining approval from, their member firm. The findings also stated that Kitson and Sabharwal willfully failed to disclose material information on their Forms U4.

Sabharwal's suspension in any capacity is in effect from November 20, 2006, through May 19, 2007. **(NASD Case #E102003128802)**

Joseph Latour (CRD #2070716, Registered Representative, Cumming, Georgia) 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, Latour consented to the described sanctions and to the entry of findings that, in an effort to cause an annuity to be liquidated for a public customer and the proceeds sent to the customer so that the funds could be reinvested, Latour called the company that had issued the annuity, falsely identified himself as the representative of record and asked that the annuity be liquidated and the proceeds remitted to the customer.

The suspension in any capacity was in effect from November 6, 2006, through November 17, 2006. **(NASD Case #2005002247101)**

Thomas Arnold Letzler (CRD #2209007, Registered Representative, Stow, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Letzler consented to the described sanction and to the entry of findings that he received \$40,000 from a public customer for investment purposes and failed to make the investment or return the funds, thereby improperly using customer funds. The findings also stated that Letzler failed to respond to NASD requests for information. **(NASD Case #2006004510601)**

William Harold Lofthus Sr. (CRD #1098734, Registered Representative, Plainfield, 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, Lofthus consented to the described sanction and to the entry of findings that he accepted checks totaling \$105,000 for investment purposes but failed to make the investments or return the funds to the customers, thereby misusing customer funds. **(NASD Case #2006004563201)**

Dominique Demetri Logan (CRD #4648601, Associated Person, North Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Logan consented to the described sanction and to the entry of findings that, while taking the Series 7 licensing examination, he retained in his possession and had access to notes related to the subject matter of the licensing examination even though he knew this was prohibited. **(NASD Case #20060052481-01)**

David Mario Lombardo (CRD #2773342, Registered Representative, Ramsey, 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, Lombardo consented to the described sanction and to the entry of findings that he purchased securities for a public customer without the customer's consent or authority. The findings stated that Lombardo appeared for an NASD on-the-record interview and provided false and misleading testimony regarding the circumstances surrounding the purchase. **(NASD Case #2005002372001)**

Dan K. Ly (CRD #5054402, Associated Person, West Valley, Utah) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Ly reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Ly consented to the described sanctions and to the entry of findings that he misrepresented a material fact on his Form U4.

The suspension in any capacity is in effect from November 20, 2006, through January 3, 2007. **(NASD Case #2005003477201)**

Sekou Mansur McClendon (CRD #2960072, Registered Representative, Jersey City, 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, McClendon consented to the described sanctions and to the entry of findings that he exercised discretionary authority in a deceased public customer's account without the customer's written authorization to exercise discretionary authority in his account, and without having obtained his member firm's written acceptance to exercise discretionary authority in the account.

The suspension in any capacity was in effect from November 6, 2006, through November 17, 2006. **(NASD Case #2005003508701)**

James Andrew Moon (CRD #5022710, Associated Person, Jacksonville, North Carolina) 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 Moon reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Moon consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from November 20, 2006, through February 19, 2007. **(NASD Case #2005002671801)**

Richard James Morgan (CRD #3056196, Registered Representative, Missouri City, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Morgan exercised discretion in public customers' accounts without obtaining their written discretionary authority and without his member firm's acceptance of the accounts as discretionary. The findings stated that Morgan engaged in excessive trading in the public customers' accounts. (NASD Case #E062004026501)

Samuel Gasper Morocco (CRD #852196, Registered Principal, North Lima, Ohio) 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 nine months and ordered to pay \$30,000 in disgorgement. Without admitting or denying the findings, Morocco consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without providing prior notification to, or receiving prior approval from, his member firm.

The suspension in any capacity is in effect from December 4, 2006, through September 3, 2007. (NASD Case #2005001452001)

James Clayton Mulholland Jr. (CRD #729636, Registered Representative, Haslett, Michigan) 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 90 days. The fine must be paid before Mulholland reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Mulholland consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing his member firm with prompt written notice.

The suspension in any capacity is in effect from November 20, 2006, through February 17, 2007. (NASD Case #20050020324-01)

Jae Young Oh (CRD #4576773, Registered Representative, Los Angeles, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Oh, in response to a public customer's request for a current account statement, altered an old account statement

misrepresenting that it was the current account statement. The findings stated that Oh failed to respond to NASD requests for information. (NASD Case #20050009134-01)

Michael Francis O'Neill (CRD #352958, Registered Representative, Asbury Park, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that O'Neill conducted his securities business jointly with an unregistered person who had been barred from associating with a member firm in any capacity for serious misconduct, and O'Neill knowingly violated NASD's registration requirements by compensating the individual for soliciting customers. (NASD Case #E102003130804)

Kurt Louis Rhode (CRD #1858847, Registered Representative, Battle Creek, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Rhode reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Rhode consented to the described sanctions and to the entry of findings that he received a \$30,000 loan from individuals, including a client, even though his member firm had written procedures forbidding registered representatives from borrowing money from customers.

The suspension in any capacity is in effect from November 6, 2006, through January 4, 2007. (NASD Case #2006004154401)

Christopher John Rocco Santanelli (CRD #4392280, Registered Representative, Massapequa, 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, Santanelli consented to the described sanction and to the entry of findings that he failed to complete an NASD on-the-record interview and failed to respond to NASD requests for information. The findings also stated that Santanelli failed to amend his Form U4 to disclose material facts, and engaged in a pattern of trading activity in public customers' accounts that was excessive in light of the customers' objectives, financial situations and needs. (NASD Case #ELI2004036401)

Ronald Shuichi Sasaki (CRD #1628925, Registered Representative, Nevada City, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Sasaki reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Sasaki consented to the described sanctions and to the entry of findings that he borrowed \$74,818 from a trust for which he acted as a trustee in contravention of his member firm's written policy prohibiting its employees from borrowing money from firm customers. The findings stated that Sasaki engaged in business activities outside the scope of his member firm and failed to provide his firm with prompt written notice.

The suspension in any capacity is effective from November 20, 2006, through November 19, 2007. (NASD Case #20050002599-01)

Kenneth Donald Schacht (CRD #3142740, Registered Representative, Racine, Wisconsin) was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months and required to requalify in all capacities. The fine is due and payable when Schacht returns to the industry after the end of his suspension. The sanctions were based on findings that Schacht falsified a letter of indemnity and forged the signature of his member firm's chief operating officer on the letter.

The suspension in any capacity is in effect from November 20, 2006, through May 19, 2008. (NASD Case #2005003490801)

Mary Frances Spears (CRD #4297575, Registered Representative, Nampa, Idaho) was barred from association with any NASD member in any capacity. The sanction was based on findings that Spears participated in private securities transactions without providing her member firm with prior written notification. The findings stated that Spears recommended securities transactions to public customers without having reasonable basis for believing the investment was suitable based on the customers' financial situations and needs. The findings also stated that Spears engaged in an outside business activity for compensation and failed to provide her member firm with prompt written notice. (NASD Case #E3B20040231-02)

Chad Marion David Stephenson (CRD #3085358, Registered Representative, Roseville, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Stephenson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Stephenson 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 is in effect from November 20, 2006, through November 19, 2007. (NASD Case #20050022243-01)

Patricia Louise Strandberg (CRD #2010553, Registered Representative, San Antonio, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Strandberg failed to respond to NASD requests for information. (NASD Case #2005001735001)

Michael Steven Thannert (CRD #4452543, Registered Representative, Richfield, Minnesota) 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, Thannert consented to the described sanction and to the entry of findings that he received \$3,591.36 from public customers to pay for their insurance policies but failed to do so. The findings stated that Thannert failed to respond to NASD requests for information. (NASD Case #20050033391-01)

Charles Roland Triana Jr. (CRD #1863426, Registered Principal, Frankfort, 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. Without admitting or denying the findings, Triana consented to the described sanctions and to the entry of findings that he affixed a public customer's signature and the signature of a former associated person to insurance forms with their knowledge and consent but in violation of his member firm's written supervisory procedures that prohibited representatives from signing another person's name whether or not such person consented.

The suspension in any capacity is in effect from November 6, 2006, through January 4, 2007. (NASD Case #2005002343501)

Andrew Jerome Whelan (CRD #1491284, Registered Principal, Quincy, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, barred from association with any NASD member in any principal capacity and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Whelan consented to the described sanctions and to the entry of findings that he signed and submitted audit reports to his member firm representing that he had conducted inspections of branch offices, although he had not.

The suspension in any capacity is in effect from December 4, 2006, through January 2, 2007. (NASD Case #2005003189401)

David Phillip Zipkin (CRD #2377301, Registered Representative, Plymouth, Minnesota) 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, Zipkin consented to the described sanction and to the entry of findings that he failed to amend his Form U4 to disclose material information. The findings stated that Zipkin failed to appear for an NASD on-the-record interview. (NASD Case #20050022099-01)

Robert Louis Zins (CRD #2436090, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Zins consented to the described sanction and to the entry of findings that he converted \$3,750 from the bank account of public customers by ordering checks from their account without their knowledge or consent, forged the customers' signatures on checks, deposited the checks into a bank account under his control, withdrew cash from the account and deposited the cash into his personal bank account for his personal benefit and not for the benefit of the customers. The findings stated that Zins forged the endorsement of another individual on the back of the checks and deposited them into a bank account opened in the individual's name without his knowledge or consent. (NASD Case #2005003107701)

Individual Fined

Chad Eugene Miller (CRD #3167130, Registered Principal, Fruit Heights, Utah) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$16,000. Without admitting or denying the findings, Miller consented to the described sanctions and to the entry of findings that he allowed public customers to trade online through an expelled firm's Web site, but never altered the Web site to reflect a change of ownership, and as a result, the Web site contained numerous statements that misleadingly portrayed the expelled firm as an active NASD member and broker-dealer. The findings stated that the Web site did not provide sufficient information to determine the relationships that existed among the expelled firm, Miller's member firm and its clearing firm. The findings also stated that the Web site did not contain the appropriate Securities Investor Protection Corporation (SIPC) disclosures. (NASD Case #20050005531-01)

Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of November 3, 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*.

Bryan L. Claggett (CRD #820866, Registered Principal, Benton, Arkansas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Claggett forged a deceased customer's signature on account transfer forms and created a document purporting to be a 1099 Tax Form in order to mislead another customer as to the positions and balances in her account. The Hearing Panel also found that Claggett exercised discretionary authority over a customer account at his prior member firm without disclosing it to his new member firm. The Hearing Panel declined to impose any sanctions for that violation, however, in light of the bar it imposed for the forgery and falsification of record violations. (NASD Case #2005000631501)

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal.

Andrew Joseph Hardin (CRD #4534287, Registered Representative, Greenville, South Carolina) was censured and fined \$10,000. The sanctions were based on findings that Hardin, pursuant to verbal authority, exercised discretion in a public customer's account without the customer's written authorization and his member firm's written acceptance of the account as discretionary. The findings stated that Hardin knowingly and intentionally purchased and parked CDs in a customer's account with the intent to resell them to other customers, and later requested that the original purchases be corrected and reassigned to other customers to whom he had sold the respective CD, therefore misrepresenting to his member firm that the original purchase was mistakenly put in the customer's account.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #E072004072501)

Ara Proudian (CRD #2488729, Registered Principal, New Rochelle, New York) was fined \$5,000, suspended from association with any NASD member in any capacity for 90 business days and required to requalify in all capacities. The sanctions are based on findings that Proudian aided and abetted market manipulation in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rule 2120. The findings stated that Proudian processed orders in spite of red flags, thereby aiding and abetting the manipulation.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #CMS040165)

Wanda Pittman Sears (CRD #2214419, Registered Representative, Roanoke, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sears effected unauthorized transactions in public customers' accounts. The decision also found that Sears engaged in an outside business activity without giving prompt written notice to her member firm.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C0720050042)

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.

Carl Thomas Cirillo (CRD #1321207, Registered Representative, Huntington, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce, or by the mails, he directly or indirectly, knowingly or recklessly, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit upon any person. The complaint alleges that Cirillo made an improper guarantee against loss and used fraudulent and deceptive price predictions, misrepresentations and omissions in connection with his recommendations and sale of securities to public customers. (NASD Case #20050000286-03)

Jamin Marlowe Epstein (CRD #1897974, Registered Representative, Wexford, Pennsylvania) was named as a respondent in an NASD complaint alleging that he caused checks totaling \$130,955.70 to be issued from public customer variable annuity policies in the name of Epstein's relative and deposited the checks into an account he jointly owned with the relative. The complaint alleges that Epstein falsely represented that the owners of the policies were related to his relative and provided false documentation to his member firm affirming the false relationships. The complaint also alleges that Epstein failed to respond to NASD requests to provide testimony. (NASD Case #2005003508101)

Paul Douglas Paratore (CRD #2054004, Registered Representative, Webster, New York) was named as a respondent in an NASD complaint alleging that he did not use a public customer's premiums that were intended to pay for the customer's insurance policies, but instead diverted all or portions of the funds to pay other customers' premiums and charges for insurance policies and annuities. The complaint alleges that Paratore converted approximately \$3,804.24 of the customer's insurance premiums without the customer's knowledge, authorization or consent. The complaint also alleges that Paratore settled customer complaints by paying the premiums and charges on their insurance policies and annuities with the converted funds without his member firm's knowledge or approval. (NASD Case #2005002570601)

James Anthony Parrelly (CRD #728368, Registered Principal, Dearborn, Michigan) was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in Class B shares of mutual funds for a public customer without having reasonable grounds for believing that the resultant transactions were suitable for the customer on the basis of her financial situation, investment objective and needs. (NASD Case #E8A2003033801)

Firms Expelled for Failure to Supply Financial Information

America First Associates Corp.
Stewart Manor, New York
(November 29, 2006)

Oxford Capital Securities
New York, New York
(November 16, 2006)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Annual Assessment Fees

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

Amerifinancial
Boca Raton, Florida
(November 20, 2006)

Laconia Capital Corporation
New York, New York
(November 3, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Jerry Chu
Menlo Park, California
(November 8, 2006)

Michael Benjamin Evans
Roosevelt, New York
(November 20, 2006)

Sean Matthew McCarthy
Boston, Massachusetts
(November 14, 2006)

Steven H. Rubin
Brookline, Massachusetts
(November 14, 2006)

Robert Craig Rudder
Warren, Michigan
(November 20, 2006)

Individuals Suspended Pursuant to NASD Rule 9552(d)

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

Ignacio Santiago Altuve
Carolina, Puerto Rico
(November 27, 2006)

Courtney Wayne Davis
Huntsville, Texas
(November 29, 2006)

Charles Stephen Farrell III
Charlotte, North Carolina
(November 29, 2006)

Jordon Ernest Goodrich
Las Vegas, Nevada
(November 27, 2006)

Dante Foree Gray
Indianapolis, Indiana
(November 21, 2006)

David Lobato
Pueblo West, Colorado
(November 20, 2006)

Janis Ann Logay
Rochester Hills, Michigan
(November 20, 2006)

Brian Lee McKnight
Westchester, Ohio
(November 29, 2006)

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

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

Jason Albertson Bishara
Massapequa Park, New York
(November 30, 2006)

Nevil Lloyd Denton
Lake Mary, Florida
(November 30, 2006)

Steven William Hanna
Bend, Oregon
(November 1, 2006)

Francis Hartley-Edwards
San Francisco, California
(November 1, 2006)

Stanislav Kaminsky
Brooklyn, New York
(November 1, 2006)

John Charles Kawas Jr.
East Northport, New York
(November 27, 2006)

Franklyn Ross Michelin
Boca Raton, Florida
(November 27, 2006)

Daniel Dwaine Oberst
Henderson, Nevada
(November 28, 2006)

David Wayne Parsons
Baldwin, New York
(November 1, 2006)

Jordan Elijah Scales
Coral Springs, Florida
(November 27, 2006)

Irene Ryskina Sinow
San Francisco, California
(November 28, 2006)

Mitchell Aaron Weisberg
Deerfield Beach, Florida
(November 27, 2006)

NASD Fines Chase Investment Services, MetLife Securities \$500,000 Each for Supervisory Violations in 529 College Savings Plan Sales

Firms Also Ordered to Pay More than \$660,000 to Compensate Customers

NASD has fined Chase Investment Services Corporation of Chicago and MetLife Securities, Inc. of New York \$500,000 each for failing to establish systems and procedures to supervise the sales of 529 College Savings Plans.

NASD also ordered the firms to compensate customers disadvantaged by those supervisory failures. Chase will pay approximately \$288,500 into about 300 customer accounts, while MetLife will pay approximately \$376,000 into a similar number of accounts.

“Firms must take steps to ensure that investors are aware of the critical features of the many different 529 Plans that are being offered today, so investors are better able to choose a plan that’s right for them,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “Brokers must consider all relevant factors—including possible state tax benefits, investment choices and expenses, and more in determining whether a 529 Plan is a suitable investment for a particular customer. And brokers must disclose those relevant factors to the customer.”

NASD found that during the relevant time periods—from January 2002 through August 2004 for Chase, from January 2002 until March 2005 for MetLife—neither firm had specific procedures governing the sale of 529 Plans, including procedures governing suitability requirements. During these time periods, Chase’s 529 Plan sales exceeded \$134 million, while MetLife’s were over \$150 million. The firms made these sales without providing specific criteria or guidance for their registered representatives to use when recommending 529 Plan purchases. Moreover, both firms failed to establish criteria for supervisors to use when reviewing 529 Plans recommended by their registered representatives and failed to establish effective procedures concerning documenting the suitability of determinations that were made.

In settling with NASD, Chase and MetLife neither admitted nor denied the findings, but consented to the entry of NASD’s findings.

NASD Fines EKN Financial Services, Suspends Principals for Securities Registration Violations in PIPE Deals

EKN Suspended From Engaging In PIPE Transactions for Six Months

NASD has imposed a \$200,000 fine against EKN Financial Services Inc. of Woodbury, NY—along with CEO Anthony Ottimo, President Thomas Giugliano, Head Trader William Baker and Financial and Operations Principal Michael Benvenuto—for engaging in improper short selling in connection with three unregistered securities offerings, commonly referred to as PIPE (Private Investment in Public Equity) deals, and other violations. As part of the settlement, EKN will be suspended for six months from engaging in any PIPE transactions.

“This action represents NASD’s continued commitment to ensuring that those firms and individuals who engage in improper activity involving PIPE trading will be held accountable,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “Suspending the firm for six months from future PIPE deals illustrates the seriousness with which we view these violations.”

A PIPE is a private offering in which accredited investors agree to purchase restricted, unregistered securities of public companies. The companies agree, in turn, to file a resale registration statement so that investors can resell the shares to the public. Only after the PIPE shares registration is approved by the Securities and Exchange Commission (SEC) are investors free to sell them on the open market.

NASD found that on three separate occasions, between January and May 2004, EKN (formerly known as Ehrenkrantz King Nussbaum, Inc.) either directly or through one of its affiliated entities, MFN LLC or Wheatley Capital, purchased restricted PIPE shares in Authentidate Holding Corp. (ADAT), Radyne Comstream (RADN) and Escalon Medical Corp. (ESMC). Immediately, after agreeing to purchase these shares, but after the public announcement of the PIPE deal by the issuers, EKN established short positions in the stock without either owning unrestricted shares or borrowing unrestricted shares to cover the short sales. EKN then used the PIPE shares, once they were registered, to cover the short positions.

By short selling shares of ADAT, RADN and ESMC—without borrowing unrestricted shares and while intending to cover the short sales with the restricted shares purchased in the PIPE transactions—EKN, acting through Ottimo, Giugliano and Baker, engaged in unregistered securities distributions in violation of federal securities laws.

In addition to the PIPE-related violations, NASD also found that EKN failed to maintain adequate written supervisory procedures and records in certain areas, including its research activities, and failed to report 10 customer complaints to NASD. Additionally, NASD found that on multiple occasions in 2004, EKN, acting through its Financial and Operations Principal, Michael Benvenuto, operated a securities business while failing to maintain sufficient net capital. Finally, EKN, acting through Ottimo and Giugliano, permitted an individual to act in a capacity at EKN requiring registration without being properly registered.

Of the \$200,000 fine imposed against EKN, \$35,000 is joint and several with Ottimo, \$35,000 is joint and several with Giugliano, \$15,000 is joint and several with Benvenuto and \$15,000 is joint and several with Baker. Ottimo and Giugliano will also serve separate 30-day suspensions as principals and Baker will serve a 10-day suspension, also in a principal capacity. Benvenuto will be suspended for six months as a Financial and Operations Principal.

In settling with NASD, the respondents neither admitted nor denied the findings, but consented to the entry of NASD's findings and the sanctions imposed.