

MARCH 2007

Notice to Members

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Disciplinary and Other NASD Actions



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Notice to Members

MARCH 2007

SUGGESTED ROUTING

Legal and Compliance
Registered Representatives
Senior Management
Training

KEY TOPICS

Arbitration
Code of Arbitration Procedure
Dispute Resolution
Subpoenas

GUIDANCE

Code of Arbitration Procedure

SEC Approves Amendments to NASD Code of Arbitration Procedure Concerning Subpoenas and Payment of Arbitrators; **Effective Date: April 2, 2007**

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to the subpoena rule as set forth in Rule 10322 of the NASD Code of Arbitration Procedure (Code)¹ to allow only arbitrators to issue subpoenas, whether for discovery in arbitration or for appearance at a hearing before the arbitrators.² The SEC also approved an amendment to the payment of arbitrators rule as set forth in IM-10104 to provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas.³

The text of Rule 10322 and IM-10104, as approved, are set forth in Attachment A of this *Notice*. The changes to Rule 10322 will become effective on April 2, 2007, and will apply to subpoenas issued on or after that date, regardless of when the case was filed. The changes to IM-10104 will apply to decisions rendered on a contested subpoena request on or after April 2, 2007.

Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Vice President and Chief Counsel, Dispute Resolution, at (202) 728-6959; or Mignon McLemore, Assistant Chief Counsel, Dispute Resolution, at (202) 728-8151.

Background and Discussion

Under current Rule 10322(a) of the Code of Arbitration Procedure (Code), both arbitrators and counsel of record to the arbitration have the power to issue a subpoena, as provided by law. In the course of preparing their cases, attorneys sometimes issue subpoenas to non-parties requesting the production of documents in advance of an arbitration hearing. Disputes regarding the propriety or scope of these subpoenas to non-parties occasionally arise, raising the question of whether the subpoenaed materials should be produced. Currently, the Code does not contain any rules that specifically address the issuance of subpoenas to non-parties or the resolution of disputes involving such subpoenas. Thus, parties may bring their disputes to the arbitrators or, if arbitrators have not yet been appointed, then they may resort to litigation in court. This process may be expensive and confusing to parties.

Under amended Rule 10322, only arbitrators will be permitted to issue subpoenas for both parties and non-parties, whether for discovery or for appearance at a hearing. Parties will send their requests for issuance of a subpoena to the NASD Director of Arbitration and to all other parties at the same time and in the same manner. The request must be in the form of a written motion and must include a draft subpoena.⁴ The requesting party may not serve the motion or draft subpoena on a non-party.

If another party objects to the scope or propriety of the subpoena, that party must—within 10 calendar days of service of the motion—file written objections with the Director, with an additional copy for the arbitrator, and must serve copies on all other parties at the same time and in the same manner as on the Director. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. After considering timely objections, the arbitrator responsible for deciding discovery-related motions will rule promptly on the issuance and scope of the subpoena.⁵ Arbitrators will use their discretion to determine whether or not to issue a subpoena, and whether or not to limit the scope of a subpoena before it is issued.

After the requesting party receives subpoenaed documents from a non-party, the requesting party must notify all other parties within five calendar days of receipt. If another party requests copies of documents that were received in response to a non-party subpoena, the party that requested the documents must provide the copies within ten calendar days. The arbitration panel has authority to determine the amount of costs incurred as a result of subpoenaed documents and by whom such costs should be borne.

NASD believes that providing arbitrators with greater control over the issuance of subpoenas will help to protect investors, associated persons and other parties from abuse in the discovery process. In addition, the establishment of a uniform, nationwide rule will reduce potential confusion for parties and their counsel regarding whether they have the ability to issue subpoenas, minimize gamesmanship in the subpoena process and make the rule easier to administer.

Payment of Arbitrators for Deciding Contested Subpoena Requests

In 2005, NASD amended IM-10104 to provide arbitrators with an honorarium of \$200 to decide discovery-related motions without a hearing session. The revised rule did not discuss whether a contested motion concerning a subpoena constitutes a discovery-related motion. NASD recognizes that arbitrators may spend a significant amount of time and effort deciding contested subpoena motions and believes that arbitrators should be compensated for this work. Therefore, NASD has amended the payment of arbitrators rule to provide a \$200 honorarium for each arbitrator who decides contested motions for subpoenas.

Under most circumstances, the chairperson will be the only arbitrator to consider the subpoena requests based on the documents supplied by the parties. If a party requests that the entire panel decide the contested motion, each arbitrator who participates in the decision on the subpoena will receive an honorarium of \$200. The honorarium will be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case. Furthermore, the maximum amount that will be paid by the parties for any one case will be \$600, irrespective of any changes to the composition of the panel.⁶ NASD believes that structuring the honorarium in this manner will limit the arbitration costs for parties while at the same time compensating arbitrators for the time that they spend considering contested subpoena requests.

Endnotes

- 1 Rule 10322 will be renumbered as Rule 12512 in the NASD Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13512 in the NASD Code of Arbitration Procedure for Industry Disputes (Industry Code) when those Codes become effective on Apr. 16, 2007. Similarly, IM-10104 will be renumbered as Rules 12214 and 13214. See *Notice to Members 07-07* (Feb. 2007).
- 2 Exchange Act Release No. 55038 (Jan. 3, 2007), 72 FR 1353 (Jan. 11, 2007) (File No. SR-NASD-2005-079).
- 3 Exchange Act Release No. 55108 (Jan. 16, 2007), 72 FR 2914 (Jan. 23, 2007) (File No. SR-NASD-2006-101).
- 4 Motions are not required to be in any particular format. They may take the form of a letter, legal motion or any other format that the panel decides is acceptable. NASD anticipates that the motion accompanying a subpoena will provide the panel with relevant information that would not be obvious from the draft subpoena itself, such as the rationale for the request.
- 5 Normally, the chair will issue subpoenas. In customer cases, the parties are given an opportunity to agree on their chairperson, who is almost always a public arbitrator, and if they cannot agree, then the highest-ranked public arbitrator is appointed as the chairperson. See NASD Rule 10308(c)(5). In intra-industry cases, the chair may be a public or non-public arbitrator, as appropriate to the type of case. Under the amendments to the Code that will be effective on April 16, 2007, parties will select their chair from a list of chair-qualified arbitrators; see the Rule 12400 and 13400 Series.
- 6 If more than three arbitrators decide contested subpoena motions in a particular case because of changes in the panel, NASD will absorb the cost of any honorarium that exceeds \$600.

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ATTACHMENT A

New language is underlined. Deleted language is in brackets.

* * * * *

NASD Code of Arbitration Procedure¹

IM-10104. Arbitrators' Honorarium

(a) - (e) No change

(f) Payment for Deciding Contested Subpoena Requests Without a Hearing Session

(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena without a hearing session shall be \$200. The honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$600 in fees under this paragraph in any arbitration proceeding. The honorarium shall not be paid for cases administered under Rules 10203 or 10302.

(2) For purposes of paragraph (f)(1), a contested motion requesting the issuance of a subpoena shall include a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position.

(3) The panel will allocate the cost of the honorarium under paragraph (f)(1) to the parties pursuant to Rules 10205(c) and 10332(c).

* * *

10322. Subpoenas and Power to Direct Appearances

(a) [Subpoenas

The arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of a subpoena upon its issuance. Parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.] To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. Arbitrators shall have the authority to issue subpoenas for the production of documents or the appearance of witnesses.

(b) A party may make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party. The motion must include a draft subpoena and must be filed with the Director, with an additional copy for the arbitrator. The requesting party must serve the motion and draft subpoena on each other party, at the same time and in the same manner as on the Director. The requesting party may not serve the motion or draft subpoena on a non-party.

(c) If a party receiving a motion and draft subpoena objects to the scope or propriety of the subpoena, that party shall, within 10 calendar days of service of the motion, file written objections with the Director, with an additional copy for the arbitrator, and shall serve copies on all other parties at the same time and in the same manner as on the Director. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the subpoena .

(d) If the arbitrator issues a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties and, if applicable, on any non-party receiving the subpoena.

(e) Any party that receives documents in response to a subpoena served on a non-party shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 calendar days following receipt of the request.

(f) [Power to Direct Appearances and Production of Documents

An arbitrator] The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed by or associated with any member of the Association and/or the production of any records in the possession or control of such persons or members. Unless an arbitrator directs otherwise, the party requesting the appearance of a person or the production of documents under this Rule shall bear all reasonable costs of such appearance and/or production.

1 The text of these rules as renumbered by the Customer and Industry Codes can be found on the NASD Web site. While the new Codes generally apply to claims filed on or after April 16, 2007, amended Rules 12214 and 13214 will apply to decisions rendered on a contested subpoena request on or after April 2, 2007; and the changes to Rules 12512 and 13512 are effective on April 2, 2007, for subpoenas issued on or after that date.

Notice to Members

MARCH 2007

SUGGESTED ROUTING

Legal and Compliance
Margin
Operations
Senior Management

KEY TOPICS

Margin Requirements
Options
Portfolio Margin
Portfolio Margin Risk Disclosure Statement
Rule 2520
Rule 2860

GUIDANCE

Portfolio Margin Risk Disclosure Statement

Portfolio Margin Risk Disclosure Statement and Written Acknowledgement to be Furnished to Customers Using a Portfolio Margin Account

Executive Summary

As announced in *Notice to Members (NTM) 07-11* (February 2007), recent amendments to NASD Rule 2520 (Margin Requirements) permit members to margin certain products according to a prescribed portfolio margin methodology on a pilot basis. Related amendments to Rule 2860 (Options) require that a disclosure statement and written acknowledgement for use with the proposed portfolio margin program be furnished to customers using a portfolio margin account.¹ This *Notice* sets forth the language required for the written disclosure statement and acknowledgment pursuant to Rule 2860(c).

Member firms participating in, or planning to participate in, the Portfolio Margin Risk pilot program should refer to Attachment A of this Notice for sample disclosure and acknowledgement statements.

Questions/Further Information

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

Background and Discussion

On February 12, 2007, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule change to amend Rule 2520 (Margin Requirements) to permit members, on a pilot basis, to margin certain products according to a prescribed portfolio margin methodology. NASD also amended Rule 2860 (Options) to require that a disclosure statement and written acknowledgement for use with the proposed portfolio margin program be furnished to customers using a portfolio margin account.

The portfolio margin program will operate on a pilot basis starting on April 2, 2007 and ending on July 31, 2007, unless the SEC approves an extension of the pilot or adoption of the program on a permanent basis.² Details of these rule amendments and the related pilot program can be found in *NTM 07-11*.

As noted in *NTM 07-11*, Rule 2860(c) requires member firms to provide every portfolio margin customer with a written risk disclosure statement at, or prior to, the initial transaction in a portfolio margin account. The disclosure must be in a format prescribed by NASD or in a format developed by the member, provided it contains substantially similar information as in the prescribed NASD format and has received the prior written approval of NASD. Attachment A of this *Notice* sets forth the language required in the written disclosure statement and acknowledgement.³

Members seeking approval to participate in the portfolio margining pilot should refer to *NTM 07-11* for details on the program and the application submission and approval process. As a reminder, applications should be submitted to Susan M. DeMando, Associate Vice President, Financial Operations, 1735 K Street, NW, Washington, DC 20006.

Endnotes

- 1 See SR-NASD-2007-013 filed on February 12, 2007. Under Section 19(b) of the Securities Exchange Act of 1934, the SEC has the authority to summarily abrogate this type of rule change within 60 days of filing.
- 2 The pilot period conforms to the time periods of substantially similar portfolio margin pilot programs of the New York Stock Exchange (NYSE) and the Chicago Board Options Exchange (CBOE), which were approved by the SEC. See *Notice to Members 07-11*.
- 3 The NYSE and CBOE also have adopted the disclosure document and acknowledgement set forth in Attachment A in connection with their respective portfolio margin programs.

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ATTACHMENT A

Sample Portfolio Margining Risk Disclosure Statement to Satisfy Requirements of NASD Rule 2520(g)

OVERVIEW OF PORTFOLIO MARGINING

1. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a “security class” or “product group” as determined by an options theoretical pricing model using multiple pricing scenarios. These pricing scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model.

2. The goal of portfolio margining is to set levels of margin that more precisely reflect actual net risk. The customer benefits from portfolio margining in that margin requirements calculated on net risk are generally lower than alternative “position” or “strategy” based methodologies for determining margin requirements. Lower margin requirements allow the customer more leverage in an account.

CUSTOMERS ELIGIBLE FOR PORTFOLIO MARGINING

3. To be eligible for portfolio margining, customers (other than broker-dealers or members of a national futures exchange) must be approved for writing uncovered options. If a customer (other than a broker-dealer or member of a national futures exchange) wishes to trade in unlisted derivatives, the customer must have and maintain at all times account equity of not less than five million dollars, aggregated across all accounts under identical ownership at the clearing broker. This identical ownership requirement excludes accounts held by the same customer in different capacities (e.g., as a trustee and as an individual) and accounts where ownership is overlapping but not identical (e.g., individual accounts and joint accounts). In addition to the requirements of the self-regulatory organization rule, carrying broker-dealers may have their own minimum equity requirement and possibly other eligibility requirements.

POSITIONS ELIGIBLE FOR A PORTFOLIO MARGIN ACCOUNT

4. All margin equity securities (as defined in Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System), warrants on equity securities or on indices of equity securities, equity-based or equity-index based listed options, and security futures products (as defined in Section 3(a)(56) of the Securities Exchange Act of 1934) are eligible for a portfolio margin account. In addition, a customer that has an account with equity of at least five million dollars may establish and maintain positions in unlisted derivatives (e.g., OTC swaps, options) on an equity security or index of equity securities that can be priced by a theoretical pricing model approved by the Securities and Exchange Commission (“SEC”).

SPECIAL RULES FOR PORTFOLIO MARGIN ACCOUNTS

5. A portfolio margin account may be either a separate account or a sub-account of a customer's standard margin account. In the case of a sub-account, equity in the standard account will be available to satisfy any margin requirement in the portfolio margin sub-account without transfer to the sub-account.

6. A portfolio margin account or sub-account will be subject to a minimum margin requirement of \$.375 for each listed option, unlisted derivative and security futures product, multiplied by the contract's or instrument's multiplier, carried long or short in the account. Other eligible products are not subject to a minimum margin requirement.

7. A margin deficiency in the portfolio margin account or sub-account, regardless of whether due to new commitments or the effect of adverse market movements on existing positions, must be met within three business days. Failure to meet a portfolio margin deficiency prior to the end of the third business day will result in a prohibition on entering any new orders, with the exception of new orders that reduce the margin requirement. Failure to meet a portfolio margin deficiency by the end of the third business day will result in immediate liquidation of positions on the fourth business day, to the extent necessary to eliminate the margin deficiency.

8. Any shortfall in aggregate equity across accounts, when required, must be met within three business days. Failure to meet a minimum equity deficiency prior to the end of the third business day will result in a prohibition on entering any new orders, with the exception of new orders that reduce the margin requirement, beginning on the fourth business day and continuing until such time as the minimum equity requirement is satisfied or all unlisted derivatives are liquidated or transferred out of the portfolio margin account to the appropriate securities account.

9. When a broker-dealer carries a standard cash account or margin account for a customer, the broker-dealer is limited by rules of the SEC and of the Options Clearing Corporation ("OCC") to the extent to which the broker-dealer may permit the OCC to have a lien against long option positions in those accounts. In contrast, the OCC will have a lien against all long option positions that are carried by a broker-dealer in a portfolio margin account, and this could, under certain circumstances, result in greater losses to a customer having long option positions in such an account in the event of the insolvency of the customer's broker. Furthermore, the carrying broker-dealer has a lien on all long positions in a portfolio margin account, including margin equity securities, even if fully paid. Accordingly, to the extent that a customer does not borrow against long options and margin equity positions in a portfolio margin account or have margin requirements in the account against which the long options or margin equity securities can be credited, there is no advantage to carrying the long options and margin equity securities in a portfolio margin account and the customer should consider carrying them in an account other than a portfolio margin account.

10. Customers participating in portfolio margining will be required to sign an agreement acknowledging that their security positions and property in the portfolio margin account will be subject to the customer protection provisions of Rule 15c3-3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act.

SPECIAL RISKS OF PORTFOLIO MARGIN ACCOUNTS

11. Portfolio margining generally permits greater leverage in an account, and greater leverage creates greater losses in the event of adverse market movements.

12. Because the maximum time limit for meeting a margin deficiency is shorter than in a standard margin account, there is increased risk that a customer's portfolio margin account will be liquidated involuntarily, possibly causing losses to the customer.

13. Because portfolio margin requirements are determined using sophisticated mathematical calculations and theoretical values that must be calculated from market data, it may be more difficult for customers to predict the size of future margin deficiencies in a portfolio margin account. This is particularly true in the case of customers who do not have access to specialized software necessary to make such calculations or who do not receive theoretical values calculated and distributed periodically by an approved vendor of theoretical values.

14. For the reasons noted above, a customer that carries long eligible positions in a portfolio margin account could, under certain circumstances, be less likely to recover the full value of those positions in the event of the insolvency of the carrying broker.

15. Trading of margin equity securities, warrants on equity securities or on indices of equity securities, listed options, unlisted derivatives, and security futures products in a portfolio margin account is generally subject to all the risks of trading those same products in a standard securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklets entitled "Characteristics and Risks of Standardized Options" and "Security Futures Risk Disclosure Statement". Because this disclosure statement does not disclose the risks and other significant aspects of trading in security futures and options, customers should review those materials carefully before trading in a portfolio margin account.

16. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in margin equity securities, warrants on equity securities or on indices of equity securities, listed options, unlisted derivatives, and security futures products, including tax consequences of trading strategies involving both security futures and option contracts.

17. The descriptions in this disclosure statement relating to eligibility requirements for portfolio margin accounts, and minimum equity and margin requirements for those accounts, are minimums imposed under the self-regulatory organization rules. Time frames within which margin and equity deficiencies must be met are maximums imposed under the self-regulatory organization rules. Broker-dealers may impose their own more stringent requirements.

18. Customers should bear in mind that the discrepancies in the cash flow characteristics of security futures and certain options are still present even when those products are carried together in a portfolio margin account. In addition, discrepancies in the cash flow characteristics of certain unlisted derivatives may also be present when those products are carried in a portfolio margin account. Both security futures and options contracts are generally marked to the market at least once each business day. Similarly, certain unlisted derivatives may also be marked to the market on a daily basis. However, there may be incongruity between each eligible product in that marks may take place with different frequency and at different times within the day. For example, when a security futures contract is marked to the market, the gain or loss is immediately credited to or debited from, respectively, the customer's account in cash. While a change in the value of a long option contract may increase or decrease the equity in the account, the gain or loss is not realized until the option is liquidated, exercised, or assigned. Accordingly, a customer may be required to deposit cash in the account in order to meet a variation payment on a security futures contract even though the customer is in a hedged position and has experienced a corresponding (but yet unrealized) gain on an option. Alternatively, a customer who is in a hedged position and would otherwise be entitled to receive a variation payment on a security futures contract may find that the cash is required to be held in the account as margin collateral on an offsetting option position.

* * * * *

Sample Portfolio Margining Acknowledgement

ACKNOWLEDGEMENT FOR CUSTOMERS

UTILIZING A PORTFOLIO MARGIN ACCOUNT

As discussed in the Portfolio Margining Risk Disclosure Statement, portfolio margining must be conducted in a margin account dedicated exclusively to portfolio margining. Portfolio margin accounts are treated as securities accounts carried with broker-dealers. As such, positions in portfolio margin accounts are covered by Rule 15c3-3 under the Securities Exchange Act of 1934, which protects customer accounts.

Rule 15c3-3 under the Securities Exchange Act of 1934 requires that a broker or dealer promptly obtain and maintain physical possession or control of all fully-paid securities and excess margin securities and maintain a special reserve account for the benefit of their customers. Fully-paid securities are securities carried in a cash account and margin equity securities carried in a margin or special account (other than a cash account) that have been fully paid for. Excess margin securities are a customer's margin securities having a market value in excess of 140% of the total of the debit balances in the customer's non-cash accounts. For the purposes of Rule 15c3-3, securities held subject to a lien to secure obligations of the broker-dealer are not within the broker-dealer's physical possession or control. The Securities and Exchange Commission ("SEC") staff has taken the position that all long option positions in a customer's portfolio margining account may be subject to such a lien by the Options Clearing Corporation ("OCC") and will not be deemed fully-paid or excess margin securities under Rule 15c3-3.

The hypothecation rules under the Securities Exchange Act of 1934 (Rules 8c-1 and 15c2-1) prohibit broker-dealers from permitting the hypothecation of customer securities in a manner that allows those securities to be subject to any lien or liens in an amount that exceeds the customer's aggregate indebtedness. However, all long option positions in a portfolio margining account will be subject to the OCC's lien, including any positions that exceed the customer's aggregate indebtedness. Furthermore, all long positions, including margin equity securities, in a portfolio margin account are held subject to a lien by the carrying broker-dealer, even if fully paid. The SEC staff has taken a position that would allow customers to carry positions in portfolio margining accounts even when those positions exceed the customer's aggregate indebtedness. Accordingly, within a portfolio margin account, to the extent that you have long option and/or margin equity securities positions that do not operate to offset your aggregate indebtedness and thereby reduce your margin requirement, you receive no benefit from carrying those positions in your portfolio margin account and incur the additional risk of the OCC's lien on your long option position(s) and the carrying broker-dealer's lien on all of your long positions.

Additionally, the Securities Investor Protection Corporation insures customer accounts against the financial insolvency of a broker-dealer in the amount of up to \$500,000 to protect against the loss of registered securities and cash maintained in the account for purchasing securities or as proceeds from selling securities (although the limit on cash claims is \$100,000).

BY SIGNING BELOW YOU AFFIRM THAT YOU HAVE READ AND UNDERSTOOD THE PORTFOLIO MARGINING RISK DISCLOSURE STATEMENT AND ACKNOWLEDGE AND AGREE THAT:

LONG POSITIONS IN A PORTFOLIO MARGINING ACCOUNT WILL BE EXEMPTED FROM CERTAIN CUSTOMER PROTECTION RULES OF THE SECURITIES AND EXCHANGE COMMISSION AS DESCRIBED ABOVE AND WILL BE SUBJECT TO A LIEN BY THE CARRYING BROKER-DEALER, AS WELL AS BY THE OPTIONS CLEARING CORPORATION WITH RESPECT TO LONG OPTION POSITIONS, WITHOUT REGARD TO SUCH RULES.

CUSTOMER NAME: _____

BY: _____

DATE: _____

(Signature/title)

Notice to Members

MARCH 2007

SUGGESTED ROUTING

Legal and Compliance
Operations
Registered Representatives
Senior Management
Trading and Markets

KEY TOPICS

Debt Securities
Operations
Rule 7000 Series
TRACE Rules

GUIDANCE

Trade Reporting and Compliance Engine (TRACE)

SEC Approves Amendments to TRACE Rules to Reflect the Availability of TRACE "Snapshot" Data for a Reduced Monthly Fee; **Effective Date: May 1, 2007**

Executive Summary

On March 6, 2007, the Securities and Exchange Commission approved an amendment to Rule 7030 relating to the availability of TRACE Snapshot data, which is real-time TRACE transaction data that is available once per day, for a reduced monthly fee. The rules, as amended, are set forth in Attachment A.

The amendments become effective May 1, 2007.

Questions/Further Information

Questions concerning this *Notice* should be directed to Ola Persson, Director, TRACE Data, Transparency Services, at (212) 858-4796; Elliot Levine, Chief Counsel, Transparency Services, Markets, Services and Information, at (202) 728-8405; and James L. Eastman, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

Background and Discussion

On March 6, 2007, the SEC approved amendments to Rule 7030 (until recently Rule 7010(k)), which sets forth certain fees related to NASD's Trade Reporting and Compliance Engine (TRACE).¹ Specifically, the rule changes lower the fee related to the receipt of real-time TRACE transaction data by persons opting to receive the data once a day (Snapshot TRACE data), which will be limited to one TRACE price per security per day rather than made available on a continuous basis. A person choosing to receive Snapshot TRACE data (a Snapshot TRACE data subscriber) will pay \$250 per month for the receipt of Snapshot TRACE data rather than paying \$1,500 per month to receive TRACE data continuously throughout the day.

A Snapshot TRACE data subscriber will be able to choose the specific time of day it will receive Snapshot TRACE data each day; however, it is expected that certain market participants will choose to receive Snapshot TRACE data at or shortly after 4:00 p.m. each day and use it to value certain positions held in their investment portfolios. The reduced fee for Snapshot TRACE data is intended to be better aligned with the more tailored information requirements of a subset of market participants that today are foregoing TRACE data at the higher costs per month for continuous TRACE data. For example, to date, no institutional buy-side participants have subscribed for the receipt of TRACE data continuously throughout the day for portfolio valuation purposes. As is the case today with the distribution of TRACE desktop data, NASD will work with third-party re-transmission vendors to distribute Snapshot TRACE data to market participants.

Frequently asked questions regarding the new Snapshot TRACE data program are available on NASD's Web site at www.nasd.com/trace.

Endnote

- 1 See Securities Exchange Act Release No. 55409 (March 6, 2007), 72 FR 11416 (March 13, 2007) (SR-NASD-2007-004). Amendment No. 1 to SR-NASD-2007-004 was filed on March 2, 2007, to reflect renumbering of the Rule 7000 Series, which became immediately effective on March 1, 2007. See SR-NASD-2007-018 (available at www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NASDW_018722). Attachment A to this Notice reflects changes made to the text of the Rule 7000 Series by SR-NASD-2007-004 and is marked to show changes against the *newly renumbered* rules of the Rule 7000 Series. For example, former Rule 7010(k) has been renumbered as Rule 7030 and the changes initially made to the text of Rule 7010(k) have been reflected in the newly renumbered Rule 7030.

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ATTACHMENT A

New language is underlined; deletions are in brackets

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7010. OTC Reporting Facility No change.

7020. OTC Bulletin Board Service No change.

7030. Trade Reporting and Compliance Engine (TRACE)

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine ("TRACE"):

System Fees	Transaction Reporting Fees	Market Data Fees
Level I Trade Report Only Web Browser Access - \$20/month per user ID Level II Full Service Web Browser Access - \$80/month per user ID, except that the charge for the first such user ID shall be \$50/month	Trades up to and including \$200,000 par value - \$0.475/trade; Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more - \$2.375/trade	BTDS Professional Real-Time Data Display - \$60/month per terminal, or a flat fee of \$7,500/month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices
CTCI/Third Party - \$25/month/ per firm	Cancel/Correct - \$1.50/trade	Vendor Real-Time Data Feed - \$1,500/ month for <u>receipt of continuous</u> Real-Time TRACE transaction data except for qualifying Tax-Exempt Organizations, or \$250/month for <u>daily receipt of Snapshot Real-Time TRACE transaction data</u>
	"As of" Trade Late - \$3/trade	Vendor Real-Time Data Feed - \$400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations
		BTDS TRACE Non-Professional Real-Time Data Display - No charge

(a) through (b) No change.

(c) Market Data Fees

Professionals and Non-Professionals may subscribe to receive Real-Time TRACE transaction data disseminated by NASD in one or more of the following ways for the charges specified, as applicable. Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

(1) Professional Fees

Professionals may subscribe for the following:

(A) Bond Trade Dissemination Service ("BTDS") Professional Real-Time Data Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving Real-Time TRACE transaction data, or a flat fee of \$7,500 per month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices.

(B) Vendor Real-Time Data Feed Fee of \$1,500 per month for receipt of continuous Real-Time TRACE transaction data for any person or organization (other than a Tax-Exempt Organization) that receives a Real-Time TRACE transaction data feed, or \$250 per month for daily receipt of Snapshot Real-Time TRACE transaction data which shall consist of one TRACE price per security per day. These fees entitles use in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities, and the repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products. (Th[is]ese fees do[es] not include per terminal charges for each interrogation or display device receiving Real-Time TRACE transaction data.)

(C)-(D) No change.

(2) through (4) No change.

Disciplinary and Other NASD Actions

REPORTED FOR MARCH

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 January 2007.

Firms Fined

Cantor Fitzgerald & Co. (CRD #134, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit accurate trading information through the submission of electronic blue sheets in response to NASD requests. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD Rules 8211 and 8213 concerning the submission of electronic blue sheet data. **(NASD Case #2005002507802)**

Capstone Investments (CRD #41400, San Diego, California) 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 entered short sale orders and, for each order, failed to annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. **(NASD Case #2004200014601)**

Citigroup Global Markets, Inc. (CRD #7059, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$42,500 and required to revise its written supervisory procedures regarding transaction reporting of Over-the-Counter (OTC) equity and Consolidated Quotation System (CQS) securities, and SEC Rule 10a-1. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity and eligible securities through the Automated Confirmation Transaction ServiceSM (ACTSM), now the NASDAQ Market Center (NMC), failed to designate some of the reports as late through ACT and incorrectly designated some sales reports as late. The findings stated that the firm failed to designate last sale reports of transactions in OTC equity securities

executed outside normal market hours as “.T” through ACT. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning transaction reporting of OTC equity and Consolidated Quotation System (CQS) securities, and SEC Rule 10a-1. The findings also included that the firm failed to submit New Order and Route Reports to the Order Audit Trail SystemSM (OATSSM), failed to provide written notification disclosing the firm’s correct capacity in transactions to its customers, and failed, on one occasion, when the firm acted as principal for its own account, to provide written notification disclosing that it was a market maker in the security to the firm’s customer. NASD found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. (NASD Case #2004200009101)

Commerce Capital Markets, Inc. (CRD #6940, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$75,000 and required to revise the firm’s written supervisory procedures with respect to compliance with MSRB Rule G-17. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system did not provide for sufficient supervision reasonably designed to achieve compliance with applicable securities laws and regulations, specifically MSRB Rule G-17. The findings stated that the firm’s supervisory system did not include sufficient written supervisory procedures that provided for identification of the person(s) responsible for supervision with respect to compliance with MSRB Rule G-17, a statement of the supervisory step(s) to be taken by the identified person(s), a statement as to how often such person(s) should take such step(s) and a statement as to how completion of the step(s) included in the written supervisory procedures should be documented. (NASD Case #20050003239)

Domestic Securities, Inc. (CRD #34721, Montvale, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$28,000 and required to revise its written supervisory procedures regarding limit order display, limit order protection, the “Three Quote Rule,” best execution,

SEC Rule 11Ac1-5 (nka SEC Rule 605), anti-competitive practices, trade reporting, short sales and recordkeeping. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report them to the NMC with a short sale modifier. The findings stated that the firm failed to report the correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity to the NMC. The findings also stated that the firm incorrectly reported the first leg of “riskless” principal transactions in NASDAQ National Market (NNM) securities to ACT, and incorrectly designated the capacity of each transaction as agent and incorrectly reported the second leg of “riskless” principal transactions by failing to submit the transaction reports as clearing-only reports or non-tape, non-clearing reports. The findings also included that the firm incorrectly reported a “riskless” principal transaction in an OTC equity security to ACT by incorrectly reporting the entire amount of the transaction as “riskless,” when only a portion of the transaction was a “riskless” principal transaction.

NASD found that the firm’s written supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning limit order display, limit order protection, the “Three Quote Rule,” best execution, SEC Rule 11Ac1-5 (nka SEC Rule 605), anti-competitive practices, trade reporting, short sales and recordkeeping. NASD also found that the firm failed to enforce its written supervisory procedures with respect to registration, OATS clock synchronization, OATS accuracy and “riskless” principal trade reporting. In addition, NASD determined that the firm failed to evidence that it conducted the reviews its written supervisory procedures described. (NASD Case #2005000264301)

Frost Brokerage Services, Inc. (CRD #17465, San Antonio, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected municipal securities transactions that were reported late to the MSRB, were reported with the incorrect trade time, were reported without the special price reason code that would have identified the transaction as a “when

issued" trade, and one transaction was reported with an inaccurate trade report and one transaction was reported without a price. The findings stated that the firm failed to supervise the conduct of its municipal securities activities and failed to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure compliance with MSRB Rule G-14's municipal transaction reporting requirements. **(NASD Case #E062005008401)**

FSC Securities Corporation (CRD #7461, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report several matters and reported one matter late pursuant to NASD Rule 3070(c), and failed to report one disclosable event on a Uniform Application for Securities Industry Registration or Transfer (Form U4), and reported other events late on Forms U4 or Uniform Termination Notices for Securities Industry Registration (Forms U5). **(NASD Case #E072005019701)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$85,000 and required to review its supervisory system and procedures concerning compliance with MSRB rules with respect to reporting inter-dealer transactions. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report and/or incorrectly reported inter-dealer transactions in Periodic Auction Reset Securities (PARS) to the MSRB. The finding stated that the firm failed to submit information and/or instructions required to allow for automated comparison of the firm's inter-dealer transactions to a registered clearing agency. The findings also stated that its supervisory system and procedures were not reasonably designed to achieve compliance with MSRB rules regarding reporting inter-dealer transactions in PARS. The findings also included that the firm failed to adequately monitor its reporting of those transactions for compliance with MSRB rules. **(NASD Case #E1020050169-01)**

GunnAllen Financial, Inc. (CRD #17609, Tampa, Florida) submitted an Offer of Settlement in which the firm was censured and fined \$50,000. Without

admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, while acting through an individual, it failed to obtain written consent to conduct numerous unauthorized Web-based Central Registration Depository® (CRD®) searches and falsely certified that the firm had obtained written consent. The findings stated that the firm failed to establish and maintain written procedures to supervise the use of Web CRD, failed to supervise the use of Web CRD to ensure that the requisite written consents were obtained prior to conducting all Web CRD searches, and failed to ensure that all Web CRD searches were conducted for authorized purposes. **(NASD Case #2005002392101)**

Headwaters MB, LLC (CRD #117042, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted a representative to function in a registered capacity while his registration status was inactive due to his failure to complete the Regulatory Element of the NASD Continuing Education requirement. The findings stated that the firm failed to enforce its written supervisory procedures pertaining to the Regulatory Element of Continuing Education. **(NASD Case #2006003911601)**

Hold Brothers On-Line Investment Services L.L.C. (CRD #36816, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit accurate trading information through the submission of electronic blue sheets in response to NASD requests for the information. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD Rules 8211 and 8213 concerning the submission of electronic blue sheet data. **(NASD Case #2005003312502)**

HSBC Brokerage (USA), Inc. (CRD #6956, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to

engage in activities that required registration as a General Securities Representative and General Securities Principal when he was not registered as either. The findings stated that the firm began to clear its own transactions and, as a result, the firm's supervisors no longer received consolidated transactional data from its clearing firm. The findings also stated that the firm was unable to create a consolidated transaction log for supervisory review and approval as its written supervisory procedures required. (NASD Case #E102004098801)

HSBC Securities (USA) Inc. (CRD #19585, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500, required to pay \$1,329.53, plus interest, in restitution to public customers, and required to revise its supervisory procedures addressing fair pricing and markups. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it sold municipal securities for its own account to a customer, and failed to sell the security at a price that was fair and reasonable, taking into consideration all relevant factors including market conditions at the time of transaction, the expense involved in effecting the transaction, that the firm was entitled to a profit and the total dollar amount of the transaction. The findings stated that the firm's written supervisory procedures for its municipal bond trading department were not reasonably designed to ensure compliance by the firm and its associated person with MSRB rules, federal securities laws and regulations concerning fair pricing and NASD rules concerning markups. (NASD Case #2005000190002)

HSBC Securities (USA) Inc. (CRD #19585, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit the execution time for trade reports submitted to the NMC. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules related to compliance with trade reporting requirements contained in NASD Rule 6130(d)(4). The findings also stated that the firm failed

to electronically file large options position reports in conventional options with NASD and, instead, filed them manually. (NASD Case #20060043371-01)

Itradedirect.Com Corp. (CRD #18281, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm 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 preserve any of the firm's internal or external electronic mail communications, as SEC Rule 17a-4 and NASD Rule 3110 require. (NASD Case #2005001025901)

Lehman Brothers Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it incorrectly reported short interest positions. (NASD Case #2004100007601)

Lehman Brothers Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$45,000 and required to revise its written supervisory procedures regarding order handling, best execution, anti-intimidation and coordination, customer sale transactions, and preparation and maintenance of books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning order handling, best execution, trade reporting, anti-intimidation and coordination, customer sale transactions, OATS reporting, and preparation and maintenance of books and records. The findings stated that the firm accepted customer short sale orders in securities and, for each order, failed to annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings also stated that the firm failed to correctly report trades effected in NNM securities to ACT as riskless principal, and failed to report a trade in an NNM security to ACT, failed to report the correct symbol indicating whether the firm

executed transactions in eligible securities in a principal or agency capacity to ACT, failed to report the contra side executing broker in transactions in eligible securities to ACT, failed to correctly report "riskless" principal transactions in transactions in OTC equity securities to ACT, and failed to provide written notification disclosing to its customers its correct capacity in transactions and/or that the transactions were executed at an average price. The findings also included that the firm failed to report the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to ACT. NASD found that the firm failed to provide classification information for apparent customer orders, unnecessarily published statistics by classifying orders as covered, which were found to be routed away and in non-market making securities, and failed to include a covered order and miscalculated the "away executed shares" in its monthly data. (NASD Case #2005000260501)

Miller Johnson Steichen Kinnard, Inc. (CRD #694, Minneapolis, Minnesota) 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 issued research reports concerning stock issuers that were unbalanced, unfair and made unwarranted statements, in violation of NASD Rules 2210 and 2110. (NASD Case #20050005619-01)

Natexis Bleichroeder Inc. (CRD #1101, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,500, \$7,500 of which is joint and several, and required to revise the firm's written supervisory procedures regarding best execution, "riskless" principal trade reporting, ACT reporting, short sale reporting and recordkeeping. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through ACT, and failed to designate some last sale reports as late through ACT. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS and the "Three Quote Rule." The findings also

stated that the firm failed to enforce its written supervisory procedures with respect to best execution of customer orders as agent, "riskless principal" trade reporting, ACT reporting, short sale reporting and recordkeeping. The findings also included that the firm's documentation failed to evidence that it conducted the reviews described in its written supervisory procedures.

NASD found that the firm, when it acted as principal for its own account, failed to provide written notification disclosing to its customers that it was a market maker in each security, its correct capacity in transactions or that transactions were executed at an average price. NASD also found that the firm, acting through an individual, failed to register a person engaged in the firm's investment banking or securities business in the registration category appropriate to the function to be performed. (NASD Case #20050002081)

Oscar Gruss & Son, Incorporated (CRD #2091, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$28,000, and required to revise its written supervisory procedures and supervisory enforcement regarding best execution, trade reporting, sale transactions, backing away, OATS, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report Reportable Order Events (ROEs) to OATS, and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to report the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to ACT, and failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity to the NMC. The findings also stated that the firm failed to provide written notification disclosing to its customers its correct capacity in a transaction, that the transaction was executed at an average price or that the firm was a market maker. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning best execution, trade reporting, sale transactions, backing away, OATS, and books and records. (NASD Case #20050006513)

RBC Capital Markets Corporation (CRD #6579, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding NASD Rule 3010(a)(3) and (g)(1) – Supervisory System, Procedures and Qualifications (designation of OSJ offices and principals); SEC Rule 11Ac1-5 (nka Reg NMS 605) – Order Handling (disclosure of order routing information); NASD Rule 2320 – Best Execution (orders routed to other market centers as agent and regular and rigorous reviews); NASD Rules 5430, 4632, 4642, 6420, 6620 and 6130 – Trade Reporting (riskless principal trade reporting); SEC Rule 202 and NASD Rule 3370 – Sales Transactions (affirmative determination and sales in threshold securities); and NASD Rules 3340, 4120, 4120A and 6545 – Other Trading Rules (trading halt activity).

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to provide written notification disclosing its correct capacity in transactions to its customers. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations and NASD rules concerning: NASD Rule 3010(a)(3) and (g)(1) – Supervisory System, Procedures and Qualifications (designation of OSJ offices and principals); SEC Rule 11Ac1-5 (nka Reg NMS 605) – Order Handling (disclosure of order routing information); NASD Rule 2320 – Best Execution (orders routed to other market centers as agent and regular and rigorous reviews); NASD Rules 5430, 4632, 4642, 6420, 6620 and 6130 – Trade Reporting (riskless principal trade reporting); SEC Rule 202 and NASD Rule 3370 – Sales Transactions (affirmative determination and sales in threshold securities); and NASD Rules 3340, 4120, 4120A and 6545 – Other Trading Rules (trading halt activity). **(NASD Case #20042000258)**

Regional Brokers, Inc. (CRD #30392, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report municipal securities transactions to the MSRB.

The findings stated that the firm failed to adopt, maintain and enforce written supervisory procedures that were reasonably designed to achieve compliance with its trade reporting obligations under MSRB Rule G-14. **(NASD Case #2006003790401)**

Summit Brokerage Services, Inc. (CRD #34643, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, of which \$7,500 is joint and several, and required to retain an independent consultant to conduct a complete audit of the firm's policies, practices, and procedures regarding reporting requirements under NASD Rule 3070 and NASD By-Laws Article V. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain written supervisory procedures that identified the principal responsible for reviewing customer complaints, disclosures and arbitrations. The findings stated that the firm reported customer complaints late and failed to amend Forms U4 and a Form U5 in a timely manner. The findings also stated that the firm, acting through an individual, failed to maintain a supervisory system reasonably designed to achieve compliance with applicable rules and regulations, in that the individual responsible for the direct supervision of the firm's equity trader was not licensed as a Series 55 trading principal. **(NASD Case #E072004009101)**

The Shemano Group, Inc. (CRD #35528, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to have a properly licensed and registered equity trader to supervise a representative's equity trading activity. **(NASD Case #E0120050081-03)**

Thomas Weisel Partners LLC (CRD #46237, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market to OATS that were not in the electronic form prescribed

by NASD and were repairable. The findings also stated that the OATS system rejected the reports and notice of the rejection was made available to the firm on the OATS Web site, but the firm did not correct or replace many of the reports. **(NASD Case #2004200013701)**

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 \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS and failed to timely report ROEs to OATS. The findings stated that the firm submitted orders and reports to OATS with respect to equity securities traded on the NASDAQ Stock Market that were not in the electronic form prescribed by NASD and were repairable. The findings also stated that the OATS system rejected the reports and notice of such rejection was made available to the firm on the OATS Web site, but the firm did not correct or replace most of the reports. The findings included that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. **(NASD Case #2004200005501)**

UBS Securities LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$65,000 and required to submit a written report of the efforts it has taken to improve OATS reporting and supervision. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and erroneously submitted Execution Reports it routed away for handling and/or execution to OATS. The findings stated that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market to OATS that were not in the electronic form prescribed by NASD and were repairable. The findings also stated that the OATS system rejected the reports and notice of the rejection was made available on the OATS Web site, but the firm did not correct or replace any of the reports. **(NASD Case #2004200014401)**

Vision Securities, Inc. (CRD #35001, Melville, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined

\$27,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to fully comply with the Firm Element of NASD's Continuing Education requirements for the years 2001 and 2002 by failing to maintain records documenting the content of its continuing education programs and completion of the programs by covered registered persons. The findings stated that the firm failed to develop an anti-money laundering (AML) program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. The findings also stated that the firm failed to create or maintain a Business Continuity Plan. The findings also included that while conducting a securities business, the firm failed to maintain the minimum required net capital. **(NASD Case #ELI20050012-01)**

vFinance Investments, Inc. (CRD #44962, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its supervisory procedures with respect to SEC Rule 11Ac1-5 (nka Reg. NMS 605), SEC Rule 11Ac1-6 (nka Reg. NMS 606), regular and rigorous reviews, riskless principal trade reporting, supervisory system, procedures and qualification, NASD Rule 2320 (best execution) and trading rules regarding activity during trading halts and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 11Ac1-5 (nka Reg. NMS 605), SEC Rule 11Ac1-6 (nka Reg. NMS 606), regular and rigorous reviews, riskless principal trade reporting, supervisory system, procedures and qualification, NASD Rule 2320 (best execution), and trading rules regarding activity during trading halts and OATS. The findings stated that the firm failed to enforce its written supervisory procedures with respect to customer short sale reporting and OATS. The findings also stated that the firm made available reports on covered orders in national market system securities that it received for execution from any person that contained material, inaccurate order execution statistics. **(NASD Case #20050035967-01)**

Wachovia Securities, LLC (CRD #19616, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in spite of indicators that a registered representative of the firm was operating a fraudulent Ponzi scheme and using firm stationery to create false account statements, it failed to conduct a meaningful investigation of the individual's activities and to contact the customers regarding their receiving funds from the individual and his fictitious entity. The findings stated that the firm failed to establish and maintain a system to supervise the representative's activities that was reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules. The findings also stated that the firm failed to review other bank statements, did not ask the representative for a contact within the fictitious organization or review any of his customer accounts to see if they had written checks to the fictitious organization. (NASD Case #2005001720503)

Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS, failed to mark whether customer orders were long or short sales transactions, and failed to maintain a daily trading ledger showing the firm's positions and proprietary transactions executed in connection with customer trades reported to ACT as riskless principal. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules relating to personnel registration and qualifications, order handling and execution, anti-intimidation and coordination, trade reporting, customer sales transactions, short sales transactions, OATS, best execution and books and records. The findings also stated that the firm incorrectly reported its capacity for transactions in NNM securities through the NMC and reported a transaction as riskless principal when the transaction was not executed at the same price. The findings also included that the firm failed to report to the NMC the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency

capacity, incorrectly reported a long sale as a short exempt sale for a transaction in eligible securities, reported trade cancellations that should not have been reported, and executed short sale orders and failed to properly mark the order tickets as long or short for the orders. (NASD Case #2005000251801)

Wilson-Davis & Co., Inc. (CRD #3777, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures concerning limit order protection, best execution, "regular & rigorous" reviews, the "Three Quote Rule," trade reporting, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each order was at a price that would have improved the firm's bid or offer in each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in the market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to show the correct entry time on brokerage order memoranda. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning limit order protection, best execution, "regular & rigorous" reviews, the "Three Quote Rule," trade reporting, and books and records. NASD found that the firm failed to enforce its written supervisory procedures with respect to best execution and "regular & rigorous" reviews. (NASD Case #2005000061701)

Individuals Barred or Suspended

Joseph Abbondante (CRD #1879052, Registered Principal, Freehold, New Jersey) was barred from association with any NASD member in any capacity and ordered to pay \$276,265, plus interest, in restitution to public customers. The United States Court of Appeals

upheld the Securities and Exchange Commission's decision affirming the National Adjudicatory Council's (NAC) findings. The sanctions were based on findings that Abbondante engaged in private securities transactions without providing prior written notice to, and obtaining prior written approval from, his member firm. The findings stated that Abbondante engaged in an outside business activity without providing written notice to his member firm. The findings also stated that Abbondante engaged in material misrepresentation and omission of material facts in connection with his recommendation of an investment to public customers. The findings also included that Abbondante caused to be created, and knowingly facilitated an individual in providing, fictitious account statements purporting to show pertinent information to their investments. **(NASD Case #C1020020090-01)**

Henry Carl Barefield (CRD #4075146, Registered Principal, Chicago, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Barefield received \$10,000 from a public customer to be credited to a mutual fund in her IRA but co-endorsed the checks, deposited them into his own account and used the funds for some purpose other than to benefit the customer without her knowledge or consent. The findings stated that Barefield forged a customer's signature on forms requesting distribution of \$40,690 from the customer's accounts, deposited the funds into his own account and used the funds for some purpose other than to benefit the customer without her knowledge or consent. The findings also stated that Barefield received a \$4,000 check from the customer to re-deposit in her annuity, but deposited the check into his own account and used the funds for some purpose other than to benefit the customer without her knowledge or consent. The findings also included that Barefield received \$13,000 from a public customer to purchase mutual fund shares but used the funds for some purpose other than to benefit the customer. NASD found that Barefield failed to respond to NASD requests for information and documents. **(NASD Case #2005000934401)**

Gerard Francis Byrne (CRD #1032847, Registered Representative, Short Hills, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Byrne obtained a wrongful extension of credit in violation of

Section 7(f) of the Exchange Act and Regulation X promulgated thereunder. The findings stated that Byrne failed to post trades made in his personal margin account to the clearing firm, which caused his member firm's books and records to be inaccurate. **(NASD Case #20050008469-01)**

Juan Manuel Carranza Jr. (CRD #4893986, Associated Person, Travis AFB, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Carranza reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Carranza 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 January 16, 2007, through April 15, 2007. **(NASD Case #2005000409501)**

Tom Chau (CRD #2373251, Registered Representative, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Chau reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Chau consented to the described sanctions and to the entry of findings that he shared in a public customer's trading loss by causing \$40,000 to be deposited in the customer's account. Chau did not obtain written authorization from the customer or his member firm before making the deposit.

The suspension in any capacity is in effect from February 20, 2007, through March 21, 2007. **(NASD Case #20060050897-01)**

Hong Joon Chun (CRD #3205680, Registered Representative, Forest Hills, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chun failed to appear for an NASD on-the-record interview. The findings stated that Chun sent a response letter to a public customer without making the letter available to

his member firm for prior supervisory review and approval, thus preventing the firm from discharging its obligation to review outgoing correspondence. **(NASD Case #E1020041114-01)**

Michael L. Donaldson (CRD #4489845, Registered Representative, Jamaica, New York) submitted a Letter of Acceptance, Waiver and consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Donaldson reassociates with a member firm following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Donaldson consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information and documentation.

The suspension in any capacity is in effect from February 5, 2007, through March 19, 2007. **(NASD Case #2005003622002)**

Morton Bruce Erenstein (CRD #201845, Registered Representative, Boca Raton, Florida) was suspended from association with any NASD member in any capacity for one year. The NAC imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Erenstein failed to answer a question during an NASD on-the-record interview. The findings stated that Erenstein failed to timely respond to an NASD request for documents and information.

This decision has been appealed to the Securities and Exchange Commission (SEC), and the sanction is not in effect pending consideration of the appeal. **(NASD Case #C9B20040080)**

Byron D. Forsythe (CRD #4910101, Registered Representative, Dallas, Texas) 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, Forsythe consented to the described sanction and to the entry of findings that he falsely represented to his member firm, in writing, that he had taken and passed the Series 6 examination and failed the Series 63 examination when he had failed to appear for both examinations. The findings stated that Forsythe failed to timely respond to NASD requests for information. **(NASD Case #2006004236902)**

George Kelly Francis Jr. (CRD #2668503, Registered Representative, Baton Rouge, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 30 days. In light of Francis' financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Francis consented to the described sanction and to the entry of findings that he engaged in a private securities transaction without providing prior written notice to his member firm describing in detail the proposed transaction, his role therein, and stating whether or not he had received, or might receive, selling compensation.

The suspension in any capacity was in effect from February 5, 2007, through March 6, 2007. **(NASD Case #2005002917301)**

Robert Allen Frost (CRD #1067640, Registered Representative, Temecula, California) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Frost consented to the described sanction and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to his member firm. The findings stated that Frost maintained a desk in a local bank, falsely told a public customer that he was a salaried bank employee, and failed to disclose that he was a registered representative with a firm and received transaction-based commissions. The findings also stated that Frost recommended a securities transaction to a public customer without having a reasonable basis for believing the transaction was suitable for the customer based upon her age, financial objectives, situation and needs. The findings also included that Frost failed to fully and timely respond to NASD requests for information. **(NASD Case #20050013646-01)**

Dan Alan Harbertson (CRD #1007005, Registered Principal, Severna Park, Maryland) 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 three months. Without admitting or denying the findings, Harbertson 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 January 16, 2007, through April 15, 2007. (NASD Case #2006006474101)

Brown Jin Ho (CRD #2340460, Registered Principal, San Marino, 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 four months. The fine must be paid before Ho reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Ho consented to the described sanctions and to the entry of findings that he signed customers' names on account transfer forms without the customers' knowledge or consent, and submitted them to his member firm to effect the transfer of the accounts from his previous firm to his new firm. The findings stated that, after learning that one of the customers had complained about the unauthorized transfer, Ho contacted the customer several times to persuade her to drop the complaint without advising his firm.

The suspension in any capacity is in effect from February 20, 2007, through June 19, 2007. (NASD Case #20050035972-01)

Richard Horton III (CRD #2944981, Registered Principal, Camden, New Jersey) submitted an Offer of settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Horton consented to the described sanction and to the entry of findings that he improperly attempted to have his member firm reimburse him for his personal expenses. (NASD Case# 2005003570601)

Donald Scott Huffman (CRD #4449502, Registered Representative, Boardman, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Huffman received \$5,600 from public customers to purchase insurance but failed to apply the funds as directed and, instead, used the funds for his own benefit, thereby misusing customer funds. The findings also stated that Huffman issued a false business document to a public customer representing that her unoccupied house was insured when it was not. (NASD Case #E8A2004067501)

Nathan Dale Layman (CRD #4022928, Registered Representative, Farmersville, Texas) 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, Layman consented to the described sanction and to the entry of findings that he effected, or caused to be effected, the purchase and sale of securities in public customers' accounts without their knowledge or authorization. The findings stated that Layman forged a public customer's signature to a "Switch Letter/ Repositioning of Assets Form," which Layman's member firm required in order to effectuate the unauthorized transactions. (NASD Case #2005001687401)

Jeffrey Michael Martinous (CRD #3011007, Registered Representative, Quincy, Massachusetts) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Martinous reassociates with a member firm following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Martinous consented to the described sanctions and to the entry of findings that without a public customer's consent or authority, he sold the customer's mutual fund shares and used the proceeds to purchase shares of another fund. The findings stated that Martinous signed, or caused to be signed, the customer's signature on documents that were required to effect the mutual fund transaction.

The suspension in any capacity is in effect from February 5, 2007, through February 4, 2008. (NASD Case #2005001624101)

Gregory Roy Masceri (CRD #727672, Registered Representative, Rochester, New York) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Masceri forged public customers' signatures on insurance documents without the customers' authorization or consent. The findings also stated that Masceri responded untruthfully to NASD requests for information. (NASD Case #C8A20040079)

Joseph James Montalbano (CRD #4675694, Registered Principal, Fishkill, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with

any NASD member in any capacity for nine months. The fine must be paid before Montalbano reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Montalbano consented to the described sanctions and to the entry of findings that he signed the public customers' names on updated risk tolerance questionnaires without their knowledge or authorization.

The suspension in any capacity is in effect from February 5, 2007, through November 4, 2007. **(NASD Case #2006005043901)**

David A. Ohlson (CRD #2027621, 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, Ohlson consented to the described sanction and to the entry of findings that he failed to disclose a material fact on his Form U4. **(NASD Case #20050033982-01)**

Elvis Sylvester Parkes (CRD #2358223, Registered Representative, Floral Park, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, ordered to pay \$4,142.87 in restitution to public customers and suspended from association with any NASD member in any capacity for 35 days. Without admitting or denying the findings, Parkes consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, the purchase and sale of securities in the public customers' accounts without their knowledge, authorization or consent.

The suspension in any capacity was in effect from February 5, 2007, through March 11, 2007. **(NASD Case #20050014908-01)**

Robert Sean Paruch Jr. (CRD #3139293, Registered Representative, Bay Harbor Island, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Paruch offered and sold shares of common stock to public customers when there was no registration statement filed or in effect with the SEC with respect to the common stocks as required by Section 5 of the Securities Act of 1933, and the transactions were not exempt from registration requirements. The findings stated that Paruch engaged in acts operating as a fraud

or deceit in connection with the purchase or sale of securities. The findings also stated that Paruch misused public customers' funds intended to pay for their stock purchases and solicited investors to purchase securities without the benefit of a general securities representative registration. **(NASD Case #EFL2004000401)**

Randall Dean Poe (CRD #2348692, Registered Representative, Kansas City, Missouri) 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, Poe consented to the described sanction and to the entry of findings that he made a withdrawal of \$23,501.33 from a public customer's account without her authorization, knowledge or consent, with the purpose of earning commissions for himself. The findings stated that Poe forged the customer's signature on annuity contracts without her authorization, knowledge or consent. The findings also stated that Poe engaged in outside business activities, for compensation, and failed to provide prompt written notice to his member firm. **(NASD Case #20060045558-01)**

Arthur Charles Rosen (CRD #404170, Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$9,000, which includes a \$4,000 disgorgement of financial benefits he received, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Rosen reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Rosen consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, outside the scope of his employment with his member firm without providing his member firm with prior written notice.

The suspension in any capacity is in effect from January 16, 2007, through April 15, 2007. **(NASD Case #2005003404501)**

Raghavan Sathianathan (CRD #1743692, Registered Representative, Montclair, New Jersey) was barred from association with any NASD member in any capacity. The SEC sustained sanctions the NAC affirmed following an OHO decision. The sanctions were based

on findings that Sathianathan recommended and effected securities transactions for public customers that were not suitable in light of the customers' financial situations, investment objectives, circumstances and needs. The findings stated that Sathianathan exercised discretion in a customer's account without the customer's prior written authorization and his member firm's acceptance of the account as discretionary.

This decision has been appealed to the U.S. Court of Appeals and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C9B20030076)**

David Lee Steadman (CRD #2371970, Registered Representative, Virginia Beach, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Steadman forged public customers' signatures on documents without the customers' authorization or consent. The findings also stated that Steadman failed to respond to NASD requests for an on-the-record interview. **(NASD Case #2005000613301)**

Viswanathan Sundaresan (CRD #2699304, Registered Representative, Flushing, New York) 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 30 business days. The fine must be paid before Sundaresan reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Sundaresan 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 February 5, 2007, through March 19, 2007. **(NASD Case #20050032093-01)**

James Casey Timmons (CRD #4949617, Registered Representative, Childress, Texas) 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 Timmons reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification.

Without admitting or denying the findings, Timmons consented to the described sanctions and to the entry of findings that, without a public customer's knowledge or consent, he affixed, or caused to be affixed, the customer's signature to a disclosure letter that purported to acknowledge the fact that a pending variable universal life insurance policy constituted a modified endowment contract, and that he had explained to the customer the tax implications involved.

The suspension in any capacity is in effect from February 5, 2007, through April 5, 2007. **(NASD Case #20060049237-01)**

Jorge Luis Torres (CRD #2777878, Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Torres consented to the described sanction and to the entry of findings that he withdrew \$47,000 from a public customer's account without the customer's knowledge or authorization, and converted the funds for his own use and benefit. The findings also stated that Torres failed to respond to NASD requests for information. **(NASD Case #2006005044401)**

Travis Donald Wakeley (CRD #1305643, Registered Representative, Hurst, Texas) 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, Wakeley consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written or verbal notice to his member firm describing in detail the proposed transactions, his role therein and whether he had received, or might receive, compensation in connection with the transactions. The findings stated that Wakeley engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Wakeley made an investment recommendation to a public customer without having reasonable grounds for believing that the recommendation was suitable for the customer based on her age, risk tolerance, investment objective, investment experience and net worth. **(NASD Case #2005001267501)**

Michael Patrick Walsh (CRD #4366426, Registered Representative, Capitola, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Walsh reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Walsh 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 February 5, 2007, through May 4, 2007. **(NASD Case #20050028832-01)**

Individuals Fined

Guillherme Loos Martins (CRD #4585724, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the findings, Martins consented to the described sanctions and to the entry of findings that, while associated with his member firm, he engaged in activities requiring registration while his registration status with NASD was inactive due to his failure to complete the Continuing Education Regulatory Element requirement. **(NASD Case #20050020893-02)**

Claudia Joanne McElwee (CRD #2575420, Registered Principal, Carrollton, Texas) submitted a Letter of Acceptance, Waiver and Consent in which she was censured and fined \$10,000, of which \$5,000 was assessed joint and several. The fine must be paid before McElwee reassociates with any NASD member, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, McElwee consented to the described sanctions and to the entry of findings that she failed to timely file an application with NASD for approval of a change in ownership of her member firm. The findings stated that McElwee performed the duties of a Financial and Operations Principal (FINOP) on her member firm's behalf without being registered as a FINOP. **(NASD Case #2005000468501)**

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 January 31, 2007. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed the decisions. Initial decisions which time for appeal has not yet expired will be reported in the next *Notices to Members*.

Keith Howard Medeck (CRD #3011429, Registered Representative, Bayport, New York) was barred from association with any NASD member in any capacity and ordered to pay \$41,493, plus interest, in restitution to a public customer. The sanctions were based on findings that Medeck recommended transactions to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in light of the size and frequency of the transactions, the nature of the customer's account and his financial situation, investment objectives and needs. The findings stated that Medeck intentionally and aggressively churned the customer's account to generate commissions.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #E9B2003033701)**

Complaint 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.

Charles Louis Bolton III (CRD #1753380, Registered Principal, Scottsdale, Arizona) was named as a respondent in an NASD complaint alleging that he received \$99,000 from a public customer for investment purposes, but failed to invest the funds as the customer intended and conducted unauthorized transactions in the customer's account. The complaint also alleges that

Bolton failed to respond to NASD requests for information. (NASD Case #2006004356201)

Michael David McClellan (CRD #4369132, Registered Representative, Fort Wayne, Indiana) was named as a respondent in an NASD complaint alleging that he recommended and effected securities transactions in a public customer's account without having a reasonable basis for believing that the transactions were suitable for the customer based on his age, net worth, liquid net worth, financial situation and investment objectives. The complaint also alleges that McClellan failed to respond to NASD requests for documents and information. (NASD Case #E8A2004095001)

Michael James Resciniti (CRD #4006304, Registered Representative, Sound Beach, New York) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, transactions in a public customer's account without the customer's prior knowledge, authorization or consent. (NASD Case #ELI20030562-01)

Plase Michael Tansil (CRD #2317768, Registered Representative, Murfreesboro, Tennessee) was named as a respondent in an NASD complaint alleging that he made an improper guarantee to public customers, misused customer funds to cover a shortfall regarding the guarantee, made material misrepresentations to customers that their funds would be used for investment purposes, and settled a customer complaint without his member firm's knowledge or consent. (NASD Case #2005002229201)

Firms Suspended for Failure to Supply Financial Information

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

Graydon-Elliott Capital, LLC
Abbotsford, Canada
(January 8, 2007)

InCap Securities, Inc.
Baltimore, Maryland
(January 5, 2007 – February 9, 2007)

Firms Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

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

Archer Alexander Securities Corporation
Kansas City, Missouri
(January 8, 2007)

Essex & York, Inc.
New York, New York
(January 30, 2007)

Trautman Wasserman & Company, Inc.
New York, New York
(January 8, 2007)

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

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

Edwin Nazaire
Red Bank, New Jersey
(January 2, 2007)

Individuals Barred Pursuant to NASD Rule 9552(h)

Michael Andrew Capul
Manhasset Hills, New York
(January 31, 2007)

Faith Yvette Dove
Bronx, New York
(January 11, 2007)

David Frederick Patton
Goliad, Texas
(January 22, 2007)

Cheryl Janette Suggs
Rockingham, North Carolina
(January 12, 2007)

Individuals Suspended Pursuant to NASD Rule 9552(d)

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

John Rholtz Blot
Brooklyn, New York
(January 8, 2007)

Kathy Ann Bowling
Midland, Texas
(January 16, 2007)

Vince Morgan Brotherton
Friday Harbor, Washington
(January 9, 2007)

Richard R. Chervenak
Newcomerstown, Ohio
(January 24, 2007)

Robert Joseph Crawford
Port Jefferson, New York
(January 16, 2007)

Robert Dane Freeman
Travelers Rest, South Carolina
(January 16, 2007)

Chad Eric Steiner
Dunlap, Illinois
(January 3, 2007)

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.)

Theodore David Beckman
Avon Lake, Ohio
(January 18, 2007)

Jason Briggs
New York, New York
(January 29, 2007)

Art De La Rosa
Walnut, California
(January 19, 2007)

Anthony Joseph Fareri
Lighthouse Point, Florida
(January 29, 2007)

Leon Fintz
N. Bellmore, New York
(January 3, 2007)

Lawrence Suemitsu Furukawa
Honolulu, Hawaii
(January 8, 2007)

Ronnie William Flint
Stuart, Florida
(January 4, 2007)

Gregg Francis Gallagher
Port Washington, New York
(January 29, 2007)

Harold Bailey Gallison
Las Vegas, Nevada
(January 23, 2007)

Carlos Antonio Garceran
Mendham, New Jersey
(January 8, 2007)

Gregory Mumtaz Hasho
Coram, New York
(January 3, 2007)

David Martin Ritz
Dallas, Texas
(January 31, 2007 – February 9, 2007)

Gary Alan Rusche
Glendale, Arizona
(January 10, 2007)

Stephen Jefferson Sumner
Orlando, Florida
(August 8, 2006 – January 8, 2007)

Daniel V. Scouler
New York, New York
(January 29, 2007)

Roger Wa Spillmann
Corona, California
(January 29, 2007)

NASD Fines Banc of America Investment Services, Inc. \$3 Million for Failing to Comply With Anti-Money Laundering Rules in Connection With High Risk Accounts

Firm Failed to Heed Repeated Requests for Information from Its Own Clearing Firm

NASD has fined Banc of America Investment Services, Inc. (BAI) \$3 million in connection with the firm's failure to obtain customer information for certain high-risk accounts and for failing to have adequate communication with its parent bank to ensure that BAI's independent suspicious activity report (SAR) filing obligations were met.

"The anti-money laundering and terrorist financing laws are designed to ensure that customer and transaction risks are assessed and that firms take appropriate steps to address high risks," said NASD Executive Vice President and Head of Enforcement James S. Shorris. "BAI fundamentally failed to meet its obligations with these high risk accounts by failing to adequately investigate and pursue red flags, especially in the face of repeated requests for additional information about the accountholders from its own clearing firm."

NASD found that BAI failed to obtain required additional customer information for high risk accounts. The 34 accounts at issue involved trust and private investment corporations domiciled in the Isle of Man and apparently affiliated with one family. The offshore entities located in the Isle of Man collectively held from \$79 million to \$93 million in assets and engaged in multi-million-dollar wire transfers across international boundaries. At the time the accounts were opened in August 2003, BAI had established anti-money laundering procedures designed to address certain customer account risks by requiring additional information from the accountholders, specifically, the names of the beneficial owners, before conducting substantial transactions in the accounts.

Nevertheless, from August 2003 to Oct. 22, 2004, BAI did not require the names of the beneficial owners and never restricted the activities in the accounts. BAI allowed the accounts to engage in large wire transactions, even though BAI did not have beneficial ownership information for them. In addition, throughout this time period, the firm continued to allow significant transactions to occur in the accounts despite

the advice from a senior lawyer at BAI in March 2004 that BAI should obtain the names of the beneficial owners, and a determination by the BAI risk committee in May 2004 that the information must be obtained.

Further, despite repeated and ongoing requests by its clearing firm, BAI failed to obtain the names of the beneficial owners, and to provide them to its clearing firm. Over a 10-month period, BAI received from its clearing firm numerous requests for ownership information and notices pointing out circumstances that could signal money-laundering activity. Some at BAI expressed concerns that insisting upon the beneficial ownership information might cause the account holders to move the accounts to another institution. But without the names of the beneficial owners, BAI could not reasonably evaluate whether activity in the accounts, which had been brought to BAI's attention by its clearing firm, was suspicious and reportable.

In addition, NASD also found that BAI had an inadequate compliance program for reporting suspicious transactions. While BAI relied on its parent, a bank with its own independent reporting obligations, to determine whether a suspicious activity report (SAR) should be filed, BAI did not have sufficient procedures in place to ensure that there was adequate communication between BAI and its parent as to whether a SAR should be filed and whether a SAR had in fact been filed. Consequently, BAI did not make certain that its independent obligations regarding the filing of a SAR were met. BAI was also unable to reliably incorporate the information that a SAR had been filed into an ongoing risk assessment of its customers and to evaluate account activity going forward.

In concluding this settlement, BAI neither admitted nor denied the findings, but consented to their entry.