

INFORMATIONAL

Continuing Education

Web CRD E-Mail Notifications Regarding Regulatory Element Requirements And Notifications Of CE Inactive Registered Persons

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Continuing Education
- Legal & Compliance
- Registration Department
- Senior Management

KEY TOPICS

- CE Inactive Individuals
- E-Mail Notifications
- Regulatory Element Requirement Windows

Executive Summary

NASD Regulation, Inc. announces a new feature in the *Firm Notification* section of Web CRDSM. Firms can now request an automatic e-mail reminder from Web CRD whenever a registered representative at the firm has 90 days remaining in his or her 120-day Regulatory Element requirement window. Firms request this e-mail reminder by logging on to the *Firm Notification* section of Web CRD (see steps below) and selecting the 90-day CE notification option from the list of available e-mail notifications that Web CRD will send firms. Notification of persons with 90 days remaining in their Regulatory Element window provides firms with yet another tool to help them monitor their registered persons' compliance with Regulatory Element requirements. Firms are reminded to consult *NASD Notice to Members 01-07* for a complete explanation of the CE Queues and other CE e-mail notifications available from Web CRD.

Firms are also reminded that the e-mail notifications that Web CRD sends to firms notifying them of registered persons who go inactive for failing to satisfy their Regulatory Element requirements within 120 days, do not get sent for new hires at the firm. To learn of new hires who are inactive, firms must view the queue *Current Individual Deficiencies* and select *CE Inactive* from the deficiencies list.

Questions/Further Information

Questions concerning this *Notice* may be directed to Heather Bevans, Continuing Education, NASD Regulation, Inc., at (240) 386-4685, or Matthew Swyndle, Continuing Education, NASD Regulation, Inc., at (240) 386-4686.

Discussion

Following are steps to request the e-mail notifications.

1. E-Mail Notifications of Registered Persons with 90 Days Remaining in their Regulatory Element Requirement Windows

Members can now request that the Web CRD system send an e-mail notification to the firm whenever a registered person has not satisfied his or her Regulatory Element requirement within the first 30 days of his or her 120-day requirement window.

To request this e-mail notification:

1. Logon to Web CRD and go to the *CRD Main* tab.
2. Under the *Organization* column of the Site Map, click on *NFI Organization Search*.
3. Click on *Firm Notification* on the Navigation Panel at the left of the screen, or on the footer at the bottom of the screen.
NOTE: If you do not see *Firm Notification* on the Navigation Panel, you may not have authorization for this function. Please contact your firm's Web CRD Account Administrator.
4. Enter the e-mail address to which the Web CRD system should send the notification, and the contact's name and phone number.
5. Check the fourth box indicating you would like to receive e-mail notices when registered individuals have 90 days remaining to complete the Regulatory Element.
6. Click on Save.

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2. Web CRD E-Mail Notifications of CE Inactive Persons

The e-mail notifications of CE Inactive individuals do not include new hires. Web CRD categorizes CE Inactive new hires as "Deficient-CE". To view these individuals, firms must access their Registration Queues. To do this, click on the Registrations Queue, then Current Individual Deficiencies, and select CE Inactive from the deficiencies list. Always be sure to check the CE status and requirement windows for all new hires.

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INFORMATIONAL

Fixed Income Transaction Reporting And Dissemination

SEC Approves Rules To Require Fixed Income Transaction Reporting And Dissemination; **Effective Date: 180 Days After Publication Of TRACE Technical Specifications**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Corporate Finance
- Legal & Compliance
- Operations
- Senior Management
- Technology
- Trading & Market Making
- Training

KEY TOPICS

- Fixed Income Securities
- Dissemination
- Operations
- Transaction Reporting
- Trading

Executive Summary

On January 23, 2001, the Securities and Exchange Commission (SEC) approved proposed rules that will require National Association of Securities Dealers, Inc. (NASD® or Association) members to report secondary market transactions in eligible fixed income securities to the NASD and subject certain transaction reports to dissemination.¹ The rules, referred to as the "TRACE rules," will be set forth in the new Rule 6200 Series and provide the following:

- 1) fixed income transactions that must be reported under the new TRACE rules are those secondary market transactions involving a "TRACE-eligible security";
- 2) the term "TRACE-eligible security" means all United States dollar denominated debt securities that are depository-eligible securities; Investment Grade and Non-Investment Grade (as defined in the TRACE rules); issued by United States and/or foreign private corporations; and: (1) registered with the SEC; or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 (Securities Act) and purchased or sold pursuant to Rule 144A under the Securities Act;
- 3) the term "TRACE-eligible security" specifically excludes mortgage-or asset-backed securities, collateralized mortgage obligations, and money market instruments;
- 4) a member that is a party to a transaction involving a member and a non-member, including a customer, in a fixed income security that is a "TRACE-eligible security" must report the transaction to the NASD within one hour of the time of execution;

- 5) when the party on the sell side and the party on the buy side of a transaction in a "TRACE-eligible security" are both members, both members must report the transaction to the NASD within one hour of the time of execution;
- 6) the NASD will disseminate transaction information relating to transactions in the following two types of securities:
 - a) a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade at the time of receipt of the transaction report (except those securities that are issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Rule 144A); and
 - b) a TRACE-eligible security that is designated as a Fixed Income Pricing System (FIPS) security (a FIPS 50 security) immediately prior to the time that the FIPS rules² (the current Rule 6200 Series) are rescinded; and
- 7) dissemination in the securities transactions referenced in 6 above will occur immediately after the transaction information is received by the NASD.

The TRACE rules will become effective 180 days following the NASD's publication of the TRACE technical specifications for members. On or near that time, the NASD will announce the specific date of effectiveness of the TRACE rules in an *NASD Notice to Members*. When the TRACE rules take effect, the FIPS rules, which are set forth in the current Rule 6200 Series, will be rescinded. The TRACE rules are provided in Attachment A.

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Questions/Further Information

Questions regarding this *Notice* may be directed to Justin Tubiolo, Vice President, Fixed Income Department, NASD, at 212-858-4419, or by e-mail at justin.tubiolo@nasd.com, or Sharon K. Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8985, or by e-mail at sharon.zackula@nasd.com.

Background

The SEC approved SR-NASD-99-65, the TRACE rules, after more than two years of industry and NASD discussion and review. The NASD received and considered many comments, and, in response to comments, made significant changes to the original proposal. With the implementation of the TRACE rules, secondary market transactions in broad categories of registered and unregistered debt instruments will become subject to reporting for the first time. In addition, price and other transaction information in two types of debt instruments will be publicly disseminated for the first time. In order for the industry to prepare for such changes, the NASD has delayed the effective date and implementation of the TRACE rules to allow for technological changes to be made throughout the industry. The scope of the regulatory changes and the schedule for implementation are described in greater detail below.

Discussion

The TRACE rules have three main components: (1) identifying those fixed income securities transactions that are required to be reported; (2) detailing the reporting requirements; and (3) identifying those fixed income securities

transactions that are subject to dissemination.

TRACE-Eligible Securities

If a fixed income security is a "TRACE-eligible security," generally transactions in such securities to which a member is a party must be reported to the NASD.³ Most corporate debt securities fall within the definition of "TRACE-eligible security." Specifically, "TRACE-eligible security" means all United States dollar denominated debt securities that are depository-eligible securities; Investment Grade and Non-Investment Grade (as defined in TRACE Rule 6210(h) and (i), respectively); issued by United States and/or foreign private corporations; and: (1) registered with the SEC; or (2) issued pursuant to Section 4(2) under the Securities Act and purchased or sold pursuant to Rule 144A.⁴ Specifically excluded from the term "TRACE-eligible security" are mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments.⁵ The term "TRACE-eligible security" also does not include municipal securities; thus, the TRACE rules do not apply to municipal securities, which are currently subject to reporting under the rules of the Municipal Securities Rulemaking Board. The TRACE rules do apply to those Non-Investment Grade (as defined in the TRACE rules)⁶ securities that are currently designated as "FIPS securities" or "FIPS 50 securities."⁷ In addition, securities that are sold in private placements under Section 4(2) of the Securities Act, are eligible for resale under Rule 144A, and are DTC eligible, including certain PORTAL debt securities, are "TRACE-eligible securities."

Reporting Requirements

A transaction in a TRACE-eligible security must be reported to the NASD within one hour of the time of execution by an NASD member.⁸ When two members are the parties to the transaction, both the member representing the sell side and the member representing the buy side must report the transaction.⁹ When a member is a party to a transaction involving a member and a non-member, including a customer, the member must submit the transaction report.¹⁰ Each transaction report must include: (1) CUSIP number or NASD symbol; (2) number of bonds; (3) price or the elements necessary to calculate the price, which are contract amount and accrued interest; (4) a symbol indicating whether the transaction is a buy, sell, or cross; (5) date of trade execution (as/of trades only); (6) contra-party identifier; (7) capacity - principal or agent; (8) time of trade execution; (9) reporting side executing broker as "give-up" (if any); (10) contra side Introducing Broker in case of "give-up" (if any); (11) stated commission; (12) such trade modifiers as required by the TRACE rules or the TRACE *users guide*; and (13) yield as required by Rule 10b-10 of the Securities Exchange Act of 1934.¹¹

Reporting Mechanisms

Members will be able to choose from among several different mechanisms in order to meet their reporting obligations. First, members may report directly through a Computer-to-Computer-Interface (CTCI). Second, members may report through a Web-based application that the NASD will provide. Third, vendors and service bureaus may provide a reporting service for their clients. Finally, the NASD and the National Securities Clearing Corporation

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(NSCC) have agreed that members may forward transaction reports to NSCC, which will forward them to the NASD.

Dissemination

The TRACE rules provide that the Association will disseminate transaction information relating to transactions in two types of securities: (1) a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade at the time of receipt of the transaction report (except those securities that are issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Rule 144A); and (2) a TRACE-eligible security that is designated a "FIPS 50 security" immediately prior to the rescission of the FIPS rules.¹²

Not all of the information that is reported will be disseminated. For each transaction, the NASD will disseminate, or supply to vendors to disseminate, the following information: (a) NASD symbol for the fixed income security; (b) CUSIP; (c) date and time of trade execution; (d) price; (e) yield; and (f) quantity of bonds, subject to the following limitations.¹³ For a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade as referenced above, the actual quantity of the transaction (the total par value of the bonds purchased or sold) will be disseminated if the total par value of the reported transaction is \$5 million or less; if the reported amount is greater than \$5 million, a large volume trade dissemination cap identifier of "5MM+" will be disseminated instead of the actual quantity. For a TRACE-eligible security that is designated as a "FIPS 50 security" as referenced above, the actual quantity of the transaction will be disseminated if

the total par value of the reported transaction is \$1 million or less; if the reported amount is greater than \$1 million, a large volume trade dissemination cap identifier of "1MM+" will be disseminated instead of the actual quantity.

Immediately upon receipt of transaction reports between 8:00 a.m. and 6:30 p.m., Eastern Time, the Association will disseminate the transaction information.¹⁴ (Reports received earlier or later than the times set forth above are also subject to dissemination as set forth in greater detail in TRACE Rule 6250(c) and (d).)

The Association expects that more fixed income securities transactions will become subject to dissemination in the future. In order to expand the classes and types of fixed income securities that would become subject to dissemination, the Association will work with the Bond Transaction Reporting Committee (BTRC), a special committee of the NASD that will be formed to analyze the effect that the dissemination of price and other information in certain TRACE-eligible securities transactions has upon the liquidity of those markets. Based in part on those results, the Association will determine a schedule for the dissemination of additional TRACE-eligible bonds.

Announcement Of Technical Specifications

The NASD will publish the technical specifications that members will need in order to make the technical changes required for members to comply with the TRACE rules. Publication will be on the NASD Regulation Web Site at www.nasdr.com. In addition, the technical specifications may be made available through other media.

Effective Date

The Association is not yet able to announce a specific date of effectiveness for the TRACE rules. Instead, the TRACE rules will take effect 180 days after the NASD provides the TRACE technical specifications to its members. The specific date of effectiveness will be announced in an *NASD Notice to Members* when the date is determined. When such rules become effective, both the reporting and the dissemination provisions will be in effect.

FIPS Rules Rescission

When the TRACE rules take effect, the FIPS rules, which are currently set forth in the Rule 6200 Series, will be rescinded. There are 50 securities, called the "FIPS 50 securities" for which certain price information is available currently. When the FIPS rules are rescinded, as noted above, transaction information in those FIPS 50 securities will be subject to dissemination under the new TRACE rules. As a result, pricing information for the FIPS 50 securities will continue to be available following the implementation of TRACE. The pricing and other information will be transaction-specific data that is updated continuously and, therefore, will be better data than the information that is available currently.¹⁵

Endnotes

- ¹ See Securities Exchange Act Release No. 43873 (January 23, 2001); 66 Fed. Reg. 8131 (January 29, 2001) (File No. SR-NASD-99-65). On March 6, 2001, the SEC approved amendments to the Rule 5300 Series regarding the PORTAL Market (the PORTAL rules) to require members to submit trade reports of secondary market transactions in PORTAL-designated equity securities through the Automated Confirmation Transaction Service (ACT)

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- and certain PORTAL-designated debt securities in accordance with the TRACE rules. See *NASD Notice to Members 01-19*.
- 2 The FIPS rules are set forth in the current Rule 6200 Series.
 - 3 See TRACE Rule 6230. Paragraph (e) of the rule sets forth limited exceptions to the general reporting requirement.
 - 4 TRACE Rule 6210(a).
 - 5 *Id.*
 - 6 TRACE Rule 6210(i).
 - 7 The FIPS 50 securities will be published in a future *NASD Notice to Members*. However, a member will not be subject to two types of reporting requirements because the member's obligations under the FIPS rules will cease when the TRACE rules become effective.
 - 8 TRACE Rule 6230(a). Although the current reporting period is one hour, the NASD expects to propose to the SEC that the reporting period be reduced to 15 minutes (or an even shorter period). The NASD expects this to occur as the NSCC moves toward using a real-time messaging approach, and away from its current "multi-batch" reporting, as part of the industry's T + 1 initiative.
 - 9 TRACE Rule 6230(b)(1). As originally adopted, TRACE Rule 6230(b)(1) required only the member representing the sell side of the transaction to submit the transaction report. However, the SEC recently approved the Association's request for an amendment to TRACE Rule 6230(b)(1) that requires both members to report a transaction, which is known as "dual trade reporting." See SR-NASD-01-04, approved in Securities Exchange Act Release No. 44039 (March 5, 2001).
 - 10 TRACE Rule 6230(b)(2).
 - 11 TRACE Rule 6230(c). The term "Introducing Broker" is defined in TRACE Rule 6210(g).
 - 12 TRACE Rule 6250(a).
 - 13 For each security, the highest price of the day, the lowest price of the day, and the last sale price of the day also will be "flagged" or "marked" with indicators for dissemination, when applicable. Certain modifiers also may be part of the information disseminated.
 - 14 TRACE Rule 6250(a).
 - 15 TRACE Rule 6250(a)(2). For a "FIPS 50 security," the NASD currently disseminates only the following information, which is updated only once an hour: (1) the highest and lowest price of the prior hour and the aggregate volume for the prior hour; and (2) the highest price and lowest price of the day and the aggregate daily volume. FIPS Rule 6250(b).

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ATTACHMENT A

Text of Rule Changes.

Note: New language is underlined; deletions are in brackets.

[6200. FIXED INCOME PRICING SYSTEM (FIPS)]

Note: The current Rule 6200 Series relating to FIPS will be deleted in its entirety and replaced with the rule text set forth below.

6200. TRADE REPORTING AND COMPARISON ENTRY SERVICE (TRACE)

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private corporations; and: (1) registered with the Securities and Exchange Commission; or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased or sold pursuant to Rule 144A. The term "TRACE-eligible security" excludes mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments.

(b) The term "Trade Reporting And Comparison Entry Service" or "TRACE" shall mean the automated system owned and operated by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities and which may submit "locked-in" trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a "locked-in" trading environment.

(c) The term "reportable TRACE transaction" shall mean any transaction in a TRACE-eligible security.

(d) The term "time of execution" for a transaction in a TRACE-eligible security shall be the time when the parties to the transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading "when issued" on a yield basis shall be when the yield for the transaction has been agreed to by the parties to the transaction.

(e) The term "parties to the transaction" shall mean the executing broker/dealer, introducing broker/dealer, and clearing brokers, if any.

(f) The term "TRACE Participant" shall mean any NASD member that uses the TRACE system.

(g) The term "Introducing Broker" shall mean the member firm that has been identified in the TRACE system as a party to the transaction, but does not execute or clear trades.

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(h) The term "Investment Grade" shall mean any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(i) The term "Non-Investment Grade" shall mean any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below investment grade), or does not meet the definition of Investment Grade in paragraph (h) above.

6220. Participation in TRACE

(a) Mandatory Member Participation

(1) Member participation in TRACE for trade reporting purposes is mandatory. Such mandatory participation obligates members to submit transaction reports in TRACE-eligible securities in conformity with the Rule 6200 Series.

(2) Participation in TRACE shall be conditioned upon the TRACE Participant's initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACE Participant application agreement and all applicable rules and operating procedures of the Association and the Commission; and

(B) Maintenance of the physical security of the equipment located on the premises of the TRACE Participant to prevent unauthorized entry of information into TRACE.

(3) Each TRACE Participant shall be obligated to inform the Association of non-compliance with, or changes to, any of the participation requirements set forth above.

(b) Participant Obligations in TRACE

(1) Access to TRACE

Upon execution and receipt by the Association of the TRACE Participant application agreement, a TRACE Participant may commence input and validation of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

(2) Clearing Obligations

If at any time a TRACE Participant fails to maintain a clearing arrangement, it shall be removed from the TRACE system until such time as a clearing arrangement is re-established and notice of such arrangement is provided to the Association. If, however, the Association finds that the TRACE Participant's failure to maintain a clearing arrangement is voluntary, the withdrawal will be considered voluntary and unexcused. This section shall not apply to TRACE Participants whose trading activity obviates the need for maintaining a clearing relationship.

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6230. Transaction Reporting

(a) When and How Transactions are Reported

(1) (A) Members that are required to report transaction information pursuant to paragraph (b) below shall, within one hour of the time of execution transmit through TRACE during system hours, or if TRACE is unavailable due to system or transmission failure, by telephone to the TRACE Operations Center, reports of transactions in TRACE-eligible securities executed between 8:00 a.m. and 6:30 p.m. Eastern Time. Transactions not reported within one hour after the time of execution shall be designated as late; provided, however, that if inadequate time remains prior to system close to allow a timely report, the member may report the transaction the next day at system open designated "as/of."

(B) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

(2) Transaction Reporting Between 6:30 p.m. and 8:00 a.m. Eastern Time

(A) Reports of transactions in TRACE-eligible securities executed after 6:30 p.m. Eastern Time and before 12:00 a.m. Eastern Time shall be reported on the next day and be designated "as/of."

(B) Reports of transactions in TRACE-eligible securities executed after 12:00 a.m. Eastern Time and before 8:00 a.m. Eastern Time shall be reported that same day beginning at 8:00 a.m. Eastern Time within the maximum time frame mandated.

(b) Which Party Reports Transaction

Trade data input obligations are as follows:

(1) In transactions between two members, both members shall submit a trade report to TRACE:

(2) In transactions involving a member and a non-member, including a customer, the member shall submit a trade report to TRACE.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) CUSIP number or NASD symbol;

(2) Number of bonds as required by paragraph (d) below;

(3) Price of the transaction as required by paragraph (d) below;

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- (4) A symbol indicating whether the transaction is a buy, sell or cross;
- (5) Date of Trade Execution (as/of trades only);
- (6) Contra-party's identifier;
- (7) Capacity - Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;
- (8) Time of trade execution;
- (9) Reporting side executing broker as "give-up" (if any);
- (10) Contra side Introducing Broker in case of "give-up" trade;
- (11) Stated commission;
- (12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide; and
- (13) Yield as required by SEC Rule 10b-10.

(d) Procedures for Reporting Price, Capacity, Volume

(1) For agency and principal transactions, report the price, including the mark-up, mark-down or commission (commission entered separately). Do not include accrued interest.

(2) For agency and principal transactions, report the actual number of bonds traded. Baby bonds (those with a face value of less than \$1,000) should be reported expressed as a decimal.

(3) For in-house cross transactions, report as follows: Agency cross - report once as an agency trade; Principal cross - report twice, once as an individual principal buy and once as an individual principal sell.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be required to be reported:

- (1) Transactions that are part of a primary distribution by an issuer;
- (2) Transactions in listed securities that are both executed on, and reported to, a national securities exchange; and
- (3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).

(f) Compliance With Reporting Obligations

A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

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6240. Termination of TRACE Service

The Association may, upon notice, terminate TRACE service to a member in the event that a member fails to abide by any of the rules or operating procedures of the TRACE service or the Association, or fails to honor contractual agreements entered into with the Association or its subsidiaries, or fails to pay promptly for services rendered by the TRACE service.

6250. Dissemination of Corporate Bond Trade Information

(a) Immediately upon receipt of transaction reports between 8:00 a.m. and 6:30 p.m. Eastern Time, the Association will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m.) relating to transactions in:

(1) a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade at the time of receipt of the transaction report; and

(2) a security that is denominated as a "Fixed Income Pricing System (FIPS)" security under NASD Rules relating to FIPS securities immediately prior to the time that such rules are rescinded.

(b) All trade reports in TRACE-eligible securities approved for dissemination and submitted to TRACE prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

(1) trades reported on an "as of" basis,

(2) "when issued" trades executed on a yield basis,

(3) trades in baby bonds with a par value of less than \$1,000, or

(4) trades in which the price is determined by a weighted average.

(c) Reports of transactions in TRACE-eligible securities executed after 6:30 p.m. Eastern Time and before 12:00 a.m. Eastern Time that are reported pursuant to Rule 6230(a)(2)(A) on the next day and designated "as/off" will not be included in daily market aggregates and will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt.

(d) Reports of transactions in TRACE-eligible securities executed after 12:00 a.m. Eastern Time and before 8:00 a.m. Eastern Time and reported that same day beginning at 8:00 a.m. Eastern Time pursuant to Rule 6230(a)(2)(B) will be included in that day's market aggregates and disseminated upon receipt.

6260. Lead Underwriter Information Obligation

In order to facilitate trade reporting of secondary transactions in TRACE-eligible securities, the member that is the lead underwriter of any newly issued TRACE-eligible security shall provide to the TRACE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering.

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INFORMATIONAL

The PORTAL Market

SEC Approves Trade Reporting For PORTAL Securities; Effective June 16, 2001 For PORTAL Equity Securities

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Corporate Finance
- Legal & Compliance
- Registered Representatives
- Senior Management
- Technology
- Trading & Market Making
- Training

KEY TOPICS

- Equity Trading
- Fixed Income Securities
- Private Placements
- SEC Rule 144A
- NASD Rule 5300 Series
- NASD Rule 6100 Series
- NASD Rule 6200 Series
- Trading
- Operations

Executive Summary

On March 6, 2001, the Securities and Exchange Commission (SEC) approved amendments to the rules of The PORTAL[®] Market (PORTAL rules) to require that National Association of Securities Dealers, Inc. (NASD[®] or Association) members submit trade reports of secondary market transactions in PORTAL-designated equity securities through the Automated Confirmation Transaction Service[®] (ACT) and of PORTAL-designated debt securities pursuant to rules that require members to report secondary market transactions in eligible fixed income securities to the NASD, currently referred to as the "TRACE rules." Other amendments revise the security application process and eliminate unnecessary provisions in the PORTAL rules.¹ The amendments to the PORTAL rules were effective when approved by the SEC, except for the reporting requirements. The reporting requirements for PORTAL equity securities will be effective on June 16, 2001. The reporting requirements for PORTAL debt securities will be effective on a date announced in a subsequent *NASD Notice to Members* regarding the implementation of TRACE rules. The revised text of the PORTAL rules is included with this *NASD Notice to Members 01-19* (see Attachment A).

Questions/Further Information

Questions concerning reporting for PORTAL equity securities may be directed to Lucy Pasqua, Supervisor, Nasdaq Market Operations, at (203) 378-0166. Questions concerning reporting for PORTAL debt securities may be directed to Justin Tubiolo, Vice President, Fixed Income Department, NASD, at (212)

858-4419 or to Sharon K. Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8985.

Background

The NASD created The PORTAL Market for securities that are sold in private placements and are eligible for resale under SEC Rule 144A adopted under the Securities Act of 1933 (Securities Act). Rule 144A provides an exemption from SEC registration for resales by investors of privately placed securities to qualified institutional buyers (QIBS), *i.e.*, institutional investors with at least \$100 million invested in securities.

The PORTAL Market reviews whether an issue of privately placed securities meets the eligibility requirements of Rule 144A. PORTAL designation is required for all Rule 144A security issues, except investment grade rated debt,² in order for the security to receive a CUSIP number and the book-entry services of The Depository Trust & Clearing Corporation (DTCC). An issuer of an investment grade rated debt issue can apply directly to DTCC for book-entry services under DTCC rules.

Summary Of Amendments

The PORTAL rules in the NASD Rule 5300 Series have been amended to require that NASD members submit trade reports of secondary market transactions in PORTAL equity securities through ACT pursuant to the ACT rules in the Rule 6100 Series. ACT is a system operated by The Nasdaq Stock Market[®] that accommodates reporting of secondary market transactions in equity securities (including preferred stock issues), and can provide automated comparison and confirmation services

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and can forward confirmed trades to DTCC for settlement. The reporting requirements for PORTAL equity securities are effective on June 16, 2001.

In addition, the PORTAL rules have been amended to require that trade reports of secondary market transactions in PORTAL debt securities be submitted pursuant to the TRACE rules in the Rule 6200 Series. The reporting for PORTAL debt securities will be subject to TRACE rules and will be effective on a date announced by the NASD.³

Only reporting obligations will be imposed with respect to secondary market transactions in PORTAL equity and debt securities. Members that use ACT rules for reporting secondary market transactions in PORTAL securities have, however, the option to also use automated services for comparison, confirmation, and the forwarding of confirmed trades to DTCC for settlement.

Other amendments to the PORTAL rules that revise the security application process and eliminate obsolete provisions were effective upon approval by the SEC.

The rule amendments approved by the SEC did not include a provision that would have prohibited members from entering a quotation in any PORTAL security in any electronic communications network or other inter-dealer quotation system. The NASD requested that the proposed provision be deleted in light of the potential negative effect of the provision on the liquidity of Rule 144A securities. However, members entering quotations in PORTAL securities in any electronic system should be aware of their obligations under the federal securities laws with respect to restricted securities.⁴

Description Of Amendments

Definitions – Rule 5310

PORTAL Equity Security—The term “PORTAL equity security” is defined to include any:

security that represents an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable).

PORTAL Debt Security—The term “PORTAL debt security” is defined to include all PORTAL securities that are:

United States dollar denominated debt securities issued by United States and/or foreign private corporations, but shall not include mortgage- or asset-backed securities, collateralized mortgage obligations, money market instruments, or municipal or municipal-derivative securities.

This definition is consistent with the definition of “TRACE-eligible security” in the TRACE rules.

Time Of Execution—The commencement of the obligation to report a secondary market transaction in a PORTAL security occurs at the “time of execution.” This term is defined to mean:

the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate

the dollar price of the transaction and a determination has been made that the transaction is in compliance with Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.

If the time of execution must be included in the trade report for a secondary market transaction in a PORTAL security, the reported time may reflect the time necessary to determine that the transaction is in compliance with Rule 144A or another applicable exemption from Securities Act registration. This definition differs from that in TRACE rules, which is only intended to apply to non-PORTAL securities.

PORTAL Market System—The definition of “PORTAL Market system” has been revised to allow the Association to designate one or more computer systems to accept trade reports or to display transaction, quotation or other information on PORTAL securities.

PORTAL Transaction Report—The definition of “PORTAL transaction report” has been revised to eliminate the requirement that trade reports be submitted within 15 minutes of the execution of the transaction.

Reporting Requirements – Rule 5332

General Reporting Obligation—Rule 5332 that contains the reporting requirements for PORTAL securities has been significantly revised.⁵ New paragraph (a) of Rule 5332 requires that all secondary market transactions in PORTAL equity securities be reported through ACT, except for those transactions meeting certain exceptions in the TRACE rules discussed below.⁶ Members may, at their option, also use the

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confirmation, comparison, and settlement features of ACT with respect to secondary market transactions in PORTAL equity securities.⁷

New paragraph (b) of Rule 5332 requires that all secondary market transactions in PORTAL debt securities be reported pursuant to TRACE rules, except for transactions that meet the exceptions in the TRACE rules.

Exceptions From Reporting

Obligation—The exceptions to the transaction reporting obligations in Rule 5332(a) for PORTAL equity securities are contained in Rules 6230(e)(1) through (4) of the TRACE rules for reporting secondary market transactions in debt securities.

Two of the trade reporting exceptions have a special applicability to PORTAL securities. In a traditional private placement, the issuer sells its securities to investors under Section 4(2) of the Securities Act, with any participating broker/dealer acting solely as agent. In a “Rule 144A private placement,” the issuer sells its securities under Section 4(2) of the Securities Act to a single broker/dealer. That broker/dealer-purchaser resells the securities to the initial QIBs in reliance on Rule 144A.

Rule 6230(e)(1) of the TRACE rules excepts from reporting “transactions which are part of a primary distribution by an issuer.” This provision will except from reporting **resales** of PORTAL equity securities by a broker/dealer in a “Rule 144A private placement” to the first QIB purchasers, so long as the broker/dealer is acting as an intermediary.

Rule 6230(e)(2) of the TRACE rules excepts from reporting “transactions made in reliance

on Section 4(2) of the Securities Act of 1933. “This provision will except from reporting **initial sales** of PORTAL equity securities by an issuer to a broker/dealer acting as purchaser in a “Rule 144A private placement” or to investors that purchase through a broker/dealer acting solely as placement agent in a traditional private placement.

Where, however, a broker/dealer purchases PORTAL securities from the issuer in a private placement as an investment or is unable to immediately sell all of the securities it purchased intending to act as an intermediary, the broker/dealer will be considered the initial investor in such securities. Under these circumstances, the broker/dealer is obligated to report its resales of the PORTAL securities because none of the trade reporting exceptions are available for the resale transaction.

Thus, the first transaction in a PORTAL security that is subject to trade reporting will be a resale by:

- an investor who has purchased directly from the issuer in a traditional private placement (where a broker/dealer has only acted as an agent);
- a QIB that has purchased directly from the broker/dealer-purchaser in a “Rule 144A private placement;” or
- a broker/dealer that is considered to be the initial investor purchasing from the issuer.

Information In Trade Reports/Time Of Submission

Trade reports for secondary market transactions PORTAL securities are required to include the same information that is required in a trade report for

other securities reported through ACT or pursuant to TRACE rules. Thus, Rule 5332(a) requires that a PORTAL transaction report include the trade report information required by Rule 6130(d) of the ACT rules, and specifically requires that the trade report include the time of execution because PORTAL equity trade reports are unlikely to be reported within 90 seconds of execution. PORTAL transaction reports for equity securities are required to be submitted no later than 6:30 p.m., Eastern Time, to ACT or the currently effective close of the ACT reporting session.

The requirements of the TRACE rules will regulate the content and timing of the submission of trade reports on PORTAL debt securities.

The obligation to submit a trade report with respect to a secondary market trade in a PORTAL security commences as of the time of execution for a PORTAL security, which—as discussed above—takes into account the member’s obligation to make a determination that an exemption from registration is available for the transaction.

Party Obligated To Submit Trade Report

Rule 5332(a) incorporates the requirements in Rule 6130(c) of the ACT rules that specify which party to a secondary market transaction in a PORTAL equity security is obligated to report the transaction. The requirements of the TRACE rules will determine the party responsible for the submission of trade reports in PORTAL debt security.

Rule 144/Offshore Transactions Provision

Rule 5332(c), previously paragraph (d), has been revised to clarify that members are obligated under PORTAL rules to report the resale of

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PORTAL securities:

- into the U.S. public market under the exemption provided by SEC Rule 144; and
- from the U.S. private market to an offshore market or from an offshore market to the U.S. private market.

Transactions in PORTAL securities that occur entirely offshore are not required to be reported.

Imposition Of Fees For Trade Reporting—Under new Rule 5332(d) of the PORTAL rules, members submitting trade reports to ACT with respect to secondary market transactions in PORTAL equity securities will be subject to the same fees currently imposed on other members reporting through ACT under the Rule 7000 Series.⁸ The submission of trade reports in PORTAL securities to ACT and pursuant to TRACE rules are not subject to SEC transaction fees under Subsection 31(d)(1) of the Securities Exchange Act of 1934.

Designation Of PORTAL Securities – Rule 5320

Modification Of PORTAL Security Application Process—Rule 5321 currently requires that an application for designation of a security as a PORTAL security shall be submitted by a PORTAL dealer or broker. Because it is no longer necessary to qualify broker/dealers as PORTAL dealers or brokers, Rule 5321(a) has been amended to permit any member of the Association or the issuer of the securities to submit an application for designation of a security as a PORTAL security.

In addition, Rule 5321(a) has been revised to require that an application for designation of a PORTAL security include three undertakings

proposed to be adopted as new paragraph (c) of Rule 5321. The undertakings may be provided by a member that is submitting the application or by the issuer in lieu of the applicant-member. New paragraph (c) requires that an applicant undertake to promptly advise the Association when the issuer has submitted to the SEC a registration statement to register the resale of a PORTAL security, securities to be exchanged for a PORTAL security, or securities into which the PORTAL security is exchangeable or convertible. In addition, the applicant must undertake to promptly advise the Association of the effectiveness of such a registration statement.

Paragraph (c) also requires that an applicant undertake to promptly advise the Association of the assignment of any CUSIP or CINS security identification to the PORTAL security or any tranche of a PORTAL security issue.

Modification Of PORTAL Security Designation Requirements

The qualification criteria for PORTAL securities in Rule 5322(a)(3) have been amended to require that a PORTAL security must be a “depository eligible security.” The definition of this term in Rule 11310 would operate to only include securities with book-entry services at DTC.

Deletion Of Obsolete Provisions

The PORTAL rules have been amended to delete a large number of obsolete provisions.

Registration Of PORTAL Dealers, Brokers, And Qualified Investors

The original concept of The PORTAL Market was that only designated broker/dealers and investors would trade in an closed system. Remnants of this concept were retained in the

PORTAL rules and are now deleted. The following rules and related definitions have been deleted: Rules 5338, 5339, 5340, 5350, 5351, 5351, 5352, 5353, and Rule 5360; and “PORTAL broker,” “PORTAL dealer,” “PORTAL participant,” and “PORTAL qualified investor.”

Quotations, Trading, Uniform Practice

—The PORTAL rules contain provisions that were intended to regulate the quotation and trading of PORTAL securities between PORTAL participants on a PORTAL-designated computer system. The following rules and related definitions have been deleted: Rules 5370, 5371, 5372, 5373, 5375, 5376, 5377, 5378, 5379, and 5380;⁹ and “PORTAL account instruction system,” “PORTAL clearing organization,” “PORTAL clearing system,” “PORTAL depository organization,” “PORTAL depository system,” “PORTAL Market Information,” and “Short Sale.”

Previously Adopted Reporting Requirements

—The provisions of Rule 5332 that previously were adopted to require that PORTAL dealers and brokers report transactions in PORTAL securities have been mostly replaced by the new reporting requirements discussed above. The following rules and related definitions have been deleted: Rules 5333, 5334, 5335, 5336 and 5337; and “execution,” “PORTAL non-participant report,” “PORTAL surveillance report,” and “PORTAL transaction report.”

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Endnotes

- 1 SEC Release No. 34-44042 (March 6, 2001).
- 2 Investment grade rated debt is a debt security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. *See*, Rule 6210(p).
- 3 SEC Release No. 34-43873 (Jan. 23, 2001); 66 FR 8131 (Jan. 29, 2001). Information submitted in trade reports on secondary market transactions in PORTAL debt securities and in Rule 144A investment grade debt securities will not be publicly disseminated. *See*, *NASD Notice to Members 01-18*.
- 4 *See*, discussion of members' obligations under the federal securities laws with respect to quotations in PORTAL securities in Adopting Release.
- 5 The reporting requirements deleted from Rule 5332 have never been implemented.
- 6 Transaction reports for secondary market trades in PORTAL equity securities are not subject to "prompt last sale reporting" and, therefore, not subject to SEC transaction fees under Subsection 31(d)(1) of the Securities Exchange Act of 1934.
- 7 In its release adopting Rule 144A, the SEC issued an interpretation of its Uniform Net Capital Rule, Rule 15c3-1, with respect to securities which are eligible for resale under Rule 144A. The SEC has not modified its position as a result of this adoption of trade reporting for PORTAL equity securities. *See*, SEC Release No. 33-6862 (April 23, 1990); 55 Fed.Reg.17933 (April 30, 1990).
- 8 Trade reports submitted pursuant to TRACE rules will be subject to fees to be adopted by the NASD.
- 9 The NASD's Uniform Practice Code has been amended to apply to resales of restricted securities as defined in Rule 144(a)(3) under the Securities Act. *See*, paragraph (a) of Rule 11100, NASD Manual (CCH).

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ATTACHMENT A

Revised Text of PORTAL Rules

5300. THE PORTAL[®] MARKET

5310. Definitions

For purposes of the PORTAL[®] Market Rules, unless the context requires otherwise:

(a) "Association" means the National Association of Securities Dealers, Inc. (Association) or its wholly-owned subsidiary, The Nasdaq Stock Market, Inc., as determined by the Association.

(b) "Exchange Act" or "Act" means the Securities Exchange Act of 1934, as amended from time to time.

(c) "PORTAL" or "PORTAL Market" means the Association's market for designated foreign and domestic securities that are eligible for resale under SEC Rule 144A.

(d) "PORTAL equity security" means a PORTAL security that represents an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable).

(e) "PORTAL debt security" means all PORTAL securities that are United States dollar denominated debt securities issued by United States/and or foreign private corporations, but shall not include mortgage- or asset-backed securities, collateralized mortgage obligations, money market instruments, or municipal and municipal-derivative securities.

(f) "PORTAL Market system" or "PORTAL system" means any computer system(s) designated by the Association to accept trade reports on transactions in PORTAL equity and/or debt securities, or to display transaction, quotation, or other information on PORTAL securities.

(g) "PORTAL Rules" or "PORTAL Market Rules" means the PORTAL Market rules as included in the Rule 5300 Series.

(h) "PORTAL security" means a security that is currently designated by the Association for inclusion in the PORTAL Market pursuant to the Rule 5320 Series.

(i) "PORTAL transaction report" means a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL Market system.

(j) "Restricted security" means a security that meets the definition of that term contained in SEC Rule 144(a)(3) under the Securities Act. A PORTAL security continues to be a restricted security even though it is eligible to be resold pursuant to the provisions of SEC Rule 144, including SEC Rule 144(k),

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but has not been so resold.

(k) "SEC" means the United States Securities and Exchange Commission.

(l) "SEC Rule 144A" means SEC Rule 144A adopted under the Securities Act, as amended from time to time.

(m) "Securities Act" means the Securities Act of 1933, as amended from time to time.

(n) "Time of execution" means the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the transaction and a determination has been made that the transaction is in compliance with Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.

(o) "Transaction" or "trade" means the purchase or sale of a PORTAL security.

(p) "United States" or "U.S." means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

5320. Requirements Applicable to PORTAL Securities

5321. Application for Designation

(a) Application for designation as a PORTAL security shall be in the form required by the Association and shall be filed by the issuer or any member of the Association. Applications may be made with or without the concurrence of the issuer. The application shall demonstrate to the satisfaction of the Association that the security meets or exceeds the qualification requirements set forth in Rule 5322 and provides the undertakings required by subparagraph (c) hereof.

(b) Designation of a security as a PORTAL security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a PORTAL security shall be determined by the Association giving due regard to the requirements of the PORTAL Market.

(c) An applicant that submits application for designation of a security as a PORTAL security (or the issuer of the security if the applicant is a member) under subparagraph (a) above shall undertake to promptly advise the Association:

(1) that the issuer has submitted to the SEC a registration statement to register the resale of the PORTAL security, securities to be exchanged for the PORTAL security, or securities into which the PORTAL security is exchangeable or convertible;

(2) of the effective date of a registration statement submitted to the SEC with respect to a PORTAL security, as described in subparagraph (1) hereof; and

(3) of the assignment of any CUSIP or CINS security identification to the PORTAL security or any tranche of a PORTAL security issue.

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5322. Qualification Requirements for PORTAL Securities

(a) To qualify for initial designation and continued designation in the PORTAL Market, a security shall:

(1) be:

(A) a restricted security, as defined in SEC Rule 144(a)(3) under the Securities Act; or

(B) a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering; provided, however, that if the security is a depository receipt, the underlying security shall also be a security that meets the criteria set forth in subparagraphs (A) or (B) hereof;

(2) be eligible to be sold pursuant to SEC Rule 144A under the Securities Act;

(3) be in negotiable form, be a depository eligible security as defined in paragraph (d) of Rule 11310, and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any member;

(4) be assigned a CUSIP or CINS security identification number that is different from any identification number assigned to any unrestricted securities of the same class which do not satisfy paragraph (a)(1)(B); and

(5) satisfy such additional criteria or requirements as the Association may prescribe.

(b) Notwithstanding the provisions of paragraph (a)(1)(B) of this Rule, if a PORTAL security is sold pursuant to the provisions of Rule 144, including Rule 144(k), it will thereby cease being a PORTAL security and it must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.

5323. Suspension or Termination of a PORTAL Security Designation

(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:

(1) the security is not in compliance with the requirements of the PORTAL Rules;

(2) a holder or prospective purchaser that requested issuer information pursuant to SEC Rule 144A(d)(4) did not receive the information;

(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

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(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of members or the Association.

(b) The Association will promptly notify members of the suspension or termination of a security's designation as a PORTAL security through the designated PORTAL Market system through which the security is reported. Suspension or termination shall become effective in accordance with the terms of notice by the Association. The Association also will promptly notify The Depository Trust Company of the suspension or termination.

(c) Notwithstanding the suspension or termination of designation of a security as a PORTAL security, such security shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in accordance with the terms of notice by the Association of the suspension or termination.

5324. Review of Denial, Suspension or Termination of a PORTAL Security

A determination by the Association to deny, suspend or terminate the designation of a PORTAL security may be reviewed upon application by the aggrieved person pursuant to the provisions of the Rule 4800 Series.

5325. PORTAL Entry Fees

When an issuer or member submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Association a filing fee of \$2,000.00 for an application covering a security or group of identifiable securities issuable as part of a single private placement covered by the same offering documents, plus \$200.00 per assigned security symbol that is in addition to the first symbol assigned.

5330. Requirements Applicable to Members of the Association

5331. Limitations on Transactions in PORTAL Securities

(a) No member shall sell a PORTAL security unless:

(1) the sale is to:

(A) an investor or member that the member reasonably believes is a "qualified institutional buyer" in a transaction exempt from registration under the Securities Act by reason of compliance with Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Rule 144A; or

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(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with SEC Rule 144A or an applicable exemption under the Securities Act other than SEC Rule 144A; and

(2) the member maintains in its files information demonstrating that the transaction is in compliance with Rule 144A or with any other applicable exemption from registration under the Securities Act.

5332. Reporting Debt and Equity Transactions in PORTAL Securities

(a) Transactions in a PORTAL equity security shall be reported to the Automated Confirmation Transaction System ("ACT") in accordance with this Rule, except for transactions meeting the requirements of subparagraphs (e)(1) - (4) of Rule 6230. Each PORTAL transaction report on a PORTAL equity security shall:

(1) include the information required by paragraph (d) of Rule 6130, including the time of execution;

(2) be submitted to ACT no later than 6:30 p.m. Eastern Time (or the end of the ACT reporting session that is in effect at that time); and

(3) be submitted by the party as required by paragraph (c) of Rule 6130.

(b) Transactions in PORTAL debt securities shall be reported to the Trade Reporting And Comparison Entry Service ("TRACE") in accordance with the Rule 6200 Series.

(c) The reporting requirements of this Rule shall apply to transactions in reliance on SEC Rule 144 and sales to or purchases from a non-U.S. securities market.

(d) Members that submit PORTAL transaction reports shall be subject to any fees imposed by the particular PORTAL Market system through which the PORTAL transaction report is submitted, as set forth in the Rule 7000 Series.

5340. Arbitration

The facilities of the Association's Arbitration Department, and the procedures of the Code of Arbitration Procedure shall be available to members to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

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5350. Rules of the Association

(a) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to PORTAL securities:

- (1) Rules 0113, 0114, 0115, 2110, 2120, 2230, 2240, 2250, 2260, 2270, 2310, 3370, and 8210;
- (2) the Rule 8100 and Rule 8300 Series; and
- (3) IM-2310-2, IM-2420-1, IM-2440, IM-3310, and IM-3320.

(b) The following rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

- (1) Rule 2320, except for paragraph (g), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;
- (2) Rule 2330, except for paragraph (d); and
- (3) Rule 3110, except paragraph (b)(2).

(c) The following Rules of the Association are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

- (1) Rules 0111, 0112, 0120, and 0121.
- (2) Rules 2210, 3020, 3030, 3040, 3040, 3050, 3060, 3130, 3140, and 3340.

(d) The following Rules of the Association and Interpretative Material thereunder are not applicable to transactions and business activities relating to PORTAL securities:

- (1) Rules 1130, 2450, 2520, 2710, 2730, 2740, 2750, 2810, 2820, 2830, 2860, 3210, and 3360; and
- (2) IM-2110-1.

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Decimalization Testing

Nasdaq Announces Decimalization Rule Changes

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

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

KEY TOPICS

- Decimalization

Executive Summary

In this *NASD Notice to Members* you will find information on Nasdaq® rule changes in response to decimalization efforts. Nasdaq has proposed modifications to rules involving “Manning,” short sales, the conversion of fractional open orders, and the minimum quotation increment. Also, included is a schedule of key dates for industry implementation of decimal quoting and trading.

Questions/Further Information

Questions regarding this *Notice* may be directed to the National Association of Securities Dealers, Inc. (NASD®) Decimalization Program Management Office (DPMO) toll free at: (888) 227-1330 or via e-mail at decimals@nasd.com.

For the most recent decimalization news and developments, visit the NASD Web Site (www.nasd.com) and click on the Decimalization link. Additional decimalization information is available on the Securities Industry Association (SIA) Web Site located at www.sia.com.

Nasdaq Decimalization Rule Changes Filed With The U.S. Securities And Exchange Commission (SEC)

Nasdaq has filed proposals with the SEC to modify the following NASD rules and interpretations for quoting and trading in decimals:

- NASD IM-2110-2 -Trading Ahead of Customer Limit Order
- NASD Rule 3350 - Short Sale Rule
- NASD Rule 4613 - Character of Quotations

The details of these proposals can be found in *Head Trader Alert #2001-17* on the Nasdaq Trader Web Site (www.nasdaqtrader.com), under Hot Topics, Decimalization.

The SEC recently approved rule proposal SR-NASD-01-10, which adopts a mandatory conversion rule for all open orders in Nasdaq securities commencing decimal pricing. Under the rule, all open fractional orders residing in an NASD member firm’s internal systems on the evening prior to the start of decimal pricing for a particular Nasdaq National Market and SmallCap Market security, must be converted no later than midnight (12:00:00 a.m., Eastern Time), to decimal orders priced to two places beyond the decimal point. More information can be found in *Head Trader Alert #2001-32*. For questions concerning these rule changes, please contact Thomas Moran, Nasdaq Office of General Counsel, at (202) 728-8294.

Nasdaq Decimalization Implementation Schedule

- March 12, 2001: Pilot of 15 securities
- March 26, 2001: Second pilot of an additional 180 to 200 securities
- April 9, 2001: Nasdaq equity securities will be fully converted to decimals

The list of securities for each of the pilots can be found on the NASD Web Site, by clicking on the Decimalization link, and looking under the appropriate phase, or the Nasdaq Trader Web Site, clicking on Hot Topics, and then Decimalization.

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Nasdaq Decimalization Testing

Point-to-Point testing will continue through April 6, 2001, via the Customer Subscriber Test (CST) facility for CTCL and API/NWII

participants. Testing of decimal-priced securities in both penny and nickel minimum price variations (MPVs), as well as fractional-priced securities will occur. Complete testing information can be

found by visiting the NASD Web Site, clicking on the Decimalization link, and then the testing button, or the Nasdaq Trader Web Site, clicking on Hot Topics, and then Decimalization.

Key Dates For Industry Implementation

Checkpoint/Phase	Action	Date
Checkpoint 1	Pre-Implementation Evaluation	August 15, 2000
Phase I	Limited Exchange-Listed Issues and Options	August 28, 2000
Checkpoint 2	Determine Readiness for Additional Exchange-Listed Issues and Options	September 19, 2000
Phase IIA	Additional Exchange-Listed Issues and Options	September 25, 2000
Checkpoint 3	Determine Readiness for Full Implementation of Exchange-Listed Issues and/or All Options	November 1, 2000
Phase IIA-21	Additional NYSE equities and Associated Options	December 4, 2000
Phase IIB	Full Conversion Exchange-Listed Issues and Associated Options	January 29, 2001
Checkpoint 4-A	Determine Readiness for Limited Nasdaq Issues and Associated Options	March 6, 2001
Phase III-A	15 Nasdaq Issues and Associated Options	March 12, 2001
Checkpoint 4-B	Determine Readiness for Additional Nasdaq Issues and Associated Options	March 19, 2001
Phase IV-A	180-200 Additional Nasdaq Issues and Associated Options	March 26, 2001
Checkpoint 5	Determine Readiness for All Markets, Full Implementation	April 2, 2001
Phase IV-B	All Markets, Full Implementation	April 9, 2001

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To view the complete Exchange Committee implementation plan submitted to the SEC, visit the SEC Web Site located at www.sec.gov (<http://www.sec.gov/rules/other/decimalp.htm>). The SEC has not given final approval to the plan.

Endnotes

- 1 Phase IIA-2 was not part of the original submission to the SEC. At Checkpoint III, held November 1, 2000, a decision was made to begin trading additional New York Stock Exchange equities and their associated options in decimals.

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FIPS Changes

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of January 22, 2001

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading and Market Making

KEY TOPICS

- FIPS

As of January 22, 2001, the following bonds were added to the Fixed Income Pricing SystemSM (FIPSSM).

Symbol	Name	Coupon	Maturity
AES.GI	AES Corp	8.875	02/15/11
CPN.GJ	Calpine Corp	8.500	02/15/11
HAS.GA	Hasbro Inc	6.150	07/15/08
HAS.GB	Hasbro Inc	6.600	07/15/28
HAS.GC	Hasbro Inc	5.600	11/01/05
HAS.GD	Hasbro Inc	7.950	03/15/03
HAS.GE	Hasbro Inc	8.500	03/15/06
HCA.GC	HCA The Healthcare Co	7.875	02/01/11
KBH.GE	KB Home	9.625	11/15/06
KBH.GF	KB Home	9.500	02/15/11
KM.GJ	K-Mart Corp	9.375	02/01/06
NTRP.GC	NTL Communications Corp	11.875	10/01/10
PCGE.GL	Pacific Gas & Electric Corp	6.750	10/01/23
RELH.GC	Reliance Group Holdings Inc	9.000	11/15/00
SCEP.GM	Southern California Edison Co	5.875	01/15/01
SMG.GA	Scotts Co	8.625	01/15/09
SVRN.GG	Sovereign Bancorp Inc	8.625	03/15/04
TOL.GA	Toll Brothers Inc	8.250	02/01/11
TPLP.GC	Tanger Properties LP	9.125	02/15/08

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As of January 22, 2001, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
ADOC.GA	American Sign & Indicator Corp	15.000	01/15/01
ASCM.GA	Advanstar Communications Inc.	9.250	05/01/08
DBEV.GA	Delta Beverage Group Inc	9.750	12/15/03
HLSU.GA	Health South Corp	10.000	06/15/00
ICF.GA	ICF Kaiser International Inc	12.000	12/31/03
PCGE.GI	Pacific Gas & Electric Co	6.750	10/01/23
PIDM.GG	Piedmont Aviation Inc Ser A	9.900	01/15/01
PIDM.GH	Piedmont Aviation Inc Ser B	9.900	01/15/01
PIDM.GI	Piedmont Aviation Inc Ser C	9.900	01/15/01
SFX.GB	SFX Entertainment Inc	9.125	12/01/08
STO.GD	Stone Container Corp	10.750	04/01/02
STO.GI	Stone Container Corp	11.500	10/01/04
STO.GJ	Stone Container Corp	10.750	10/01/02
STO.GM	Stone Container Corp	10.750	04/01/02
USAR.GC	US Air Inc	9.625	02/01/01
USAR.GQ	US Airways Inc Ser B	10.350	01/15/01
USAR.GR	US Airways Inc Ser C	10.350	01/15/01
USAR.GS	US Airways Inc Ser D	10.350	01/15/01
USAR.GT	US Airways Inc Ser E	10.350	01/15/01
USAR.GU	US Airways Inc Ser F	10.350	01/15/01
USAR.JG	US Airways Inc Ser 88A	9.900	01/15/01
USAR.JH	US Airways Inc Ser 88B	9.900	01/15/01
USAR.JI	US Airways Inc Ser 88C	9.900	01/15/01
USAR.JJ	US Airways Inc Ser 88D	9.900	01/15/01

As of January 22, 2001, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	New Name/Old Name	Coupon	Maturity
RELH.GB	REL.GB	Reliance Group Holdings Inc/ Reliance Group Holdings Inc	9.750	11/15/03

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation, Inc. at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Market Operations, Nasdaq at (203) 385-6310.

Disciplinary Actions

Disciplinary Actions Reported For March

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (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 February, 2001.

Firm Fined, Individual Sanctioned

Amerivet Securities, Inc. (CRD #34786, Los Angeles, California) and Elton Johnson, Jr. (CRD #844428, Registered Principal, Panorama City, California) submitted an Offer of Settlement in which they were fined \$20,000, jointly and severally. In addition, Johnson was suspended from association with any NASD member as a general securities principal for one year, and suspended from association with any NASD member as a financial and operations principal (FINOP) for 90 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Johnson, conducted a securities business while failing to maintain sufficient minimum net capital. The findings also stated that the firm, acting through Johnson, permitted individuals to act as registered representatives, and permitted an individual to act in a principal capacity, without benefit of registration. Furthermore, the NASD found that the firm, acting through Johnson, violated its restriction agreement with the NASD by hiring more than five registered representatives at the firm without prior written approval from the NASD.

Johnson's suspension as a general securities principal began March 5, 2001, and will conclude at the close of business on March 4, 2002, and his suspension as a FINOP began March 5, 2001, and will conclude June 2, 2001. **(NASD Case #C02990049)**

Firms And Individuals Fined

Chapdelaine Corporate Securities & Co. (CRD #23741, New York, New York) and Michael Emmett Walsh (CRD #458064, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$13,000, jointly and severally. The firm was fined an additional \$34,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Walsh, failed to report Fixed Income Pricing System (FIPS) eligible transactions within five minutes after execution and failed to report FIPS transactions by no later than 5:00 p.m. Eastern time on the trade date in which the transactions were executed. The findings also stated that the firm, acting through Walsh, failed to report the correct unit price in transactions in high yield corporate debt securities quoted on FIPS and failed to report the correct symbol indicating whether the transactions were buy, sell, or cross. The NASD also found that the firm, acting through Walsh, failed to report the correct unit price in transactions in high yield corporate debt securities and failed to report the correct symbol indicating whether the transactions were buy, sell, or cross. Furthermore, the NASD found that the respondents failed to establish, maintain, and enforce written supervisory procedures

reasonably designed to achieve compliance with NASD rules applicable to transaction reporting of high yield corporate debt securities. Moreover, the NASD found that the respondents permitted an individual to function as a corporate securities representative without benefit of NASD registration. **(NASD Case #C10010024)**

Melhado, Flynn & Associates, Inc. (CRD #7340, New York, New York) and Pierce John Flynn (CRD #210395, Registered Principal, Bronxville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Flynn, knowingly maintained the registrations of individuals not actively engaged in the firm's securities business, not functioning as registered representatives for the firm, and thereby, avoiding a lapse in registration. **(NASD Case #C10010012)**

Standard New York Securities, Inc. (CRD #35560, New York, New York) and Neil Lutley Sclater-Booth (CRD #1240734, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. The firm was also fined an additional \$1,000, jointly and severally with another individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sclater-Booth, permitted registered representatives of the firm to engage in conduct for which registration was required while the representatives were inactive due to the failure to

complete the Regulatory Element Continuing Education assessment. The findings also stated that the firm, acting through another individual, effected principal transactions in a security that were short sales without affixing the short sale designator when reporting the transactions. **(NASD Case #C3A010002)**

Firms Fined

AM Capital LLC (CRD #44351, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its supervisory procedures concerning the Securities and Exchange Commission (SEC) and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010002)**

Asiel & Co., LLC (CRD #1112, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the FIPS transactions in FIPS securities within five minutes after execution. **(NASD Case #CMS010008)**

Comprehensive Capital Corp. (CRD #6215, Westbury New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010011)**

Dalton Kent Securities Group, Inc. (CRD #38813, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$18,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report to the NASD statistical and summary information relating to the receipt of written customer complaints and failed to amend, or promptly amend, Forms U-4 or Forms U-5 to disclose the written complaints against registered representatives of the firm. The findings also stated that the firm failed to display immediately customer limit orders when each such order was at a price that would have improved the firm's bid or offer in each such security and failed to execute customer limit orders within one minute after each of the orders was activated. The NASD also found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for

certain securities to ensure the resultant price to its customers was as favorable as possible under prevailing market conditions. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures concerning the firm's obligation to file statistical and summary information regarding customer complaints. **(NASD Case #C10010020)**

H&R Block Financial Advisors, Inc., formerly Olde Discount Corporation (CRD #5979, Detroit, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$40,000, and required to establish and provide to the NASD amended written procedures reasonably designed to achieve compliance with the current requirements with respect to timely filing of amendments involving Disclosure Reporting Pages, Forms U-4, and Forms U-5. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file Forms U-4 and Forms U-5 within 30 days after learning of reportable events or after learning of facts and circumstances giving rise to the requirement to amend such forms. **(NASD Case #C8A010004)**

John G. Kinnard and Company (CRD #466, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures relating to the SEC and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or

published offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010007)**

JW Genesis Capital Markets, LLC n/k/a Conifer Securities LLC (CRD #23857, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,750. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity and failed to report transactions within 90 seconds to ACT. The findings also stated that the firm failed to properly prepare and maintain order records in that the firm failed to maintain a record of unexecuted limit orders for more than one day beyond trade date. The NASD also found that the firm held unexecuted customer limit orders and continued to trade the subject securities for the firm's market-making account at prices that would have satisfied the customers' limit orders without executing the limit orders and executed customer limit orders at prices that were not equal to or better than the customers' protected prices. Furthermore, the NASD found that the firm failed to display customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each security or when the order was priced equal to the

firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a de minimis change in relations to the size associated with the firm's bid or offer in each such security. **(NASD Case #C05010004)**

Prudential Securities Incorporated (CRD #7471, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. In addition, the firm was required to conduct a review of its supervisory procedures regarding registration of personnel and to implement changes no later than 90 days from the date of acceptance of this AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed an individual to be actively engaged in the management of the firm's securities business as an executive vice president without being registered with the NASD in any principal capacity. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures that would ensure the proper registration of all persons actively engaged in the management of the firm's investment banking or securities business. **(NASD Case #C05000050)**

Rom-Bo Trading Co. (CRD #37554, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its supervisory procedures with respect to SEC and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented

at the firm's published bid or published offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010006)**

Stock USA, Inc. (CRD #40687, San Diego, California) submitted an Offer of Settlement in which the firm was censured and fined \$5,000, jointly and severally with three respondents. The firm was fined an additional \$15,000 and ordered to retain a consultant to review its supervisory procedures and to adopt and implement all recommendations made by the consultant. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed an unregistered person to engage in its securities business and allowed a statutorily disqualified person to associate with the firm. The findings also stated that the firm, acting through an individual, failed to exercise adequate, meaningful supervision over the operation of a branch office and failed to establish or implement the level of supervision required by the absence of an experienced manager. The NASD also found that the firm's supervisory procedures manual failed to adequately address the various types of business conducted by the firm and to address the need to separate functions so as to prevent unregistered individuals from providing brokerage services to public customers. **(NASD Case #CAF000029)**

The Fleet Trading Division of Fleet Securities (CRD #13071, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$55,000, and required to revise its supervisory procedures concerning the SEC and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010005)**

T.R. Winston & Company, Inc. (CRD #10571, Bedminster, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in Nasdaq SmallCapSM and Nasdaq National Market, (NNM) securities within 90 seconds and failed to accept or decline transactions in ACT eligible securities within 20 minutes after execution. The findings also stated that the firm failed to prepare and maintain purchase and sale memoranda for principal transactions that identified whether the subject transactions were market or limit orders and failed to establish, maintain, and enforce adequate written supervisory procedures regarding its trading and market-making

operations. In addition, the NASD found that the firm allowed an individual to supervise its trading and market-making operations while not properly registered as an equity trader. **(NASD Case #C9B010005)**

U.S. Securities & Futures Corp. (CRD #36045, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$7,000, jointly and severally with an individual respondent. The firm was also fined an additional \$4,981. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it failed to promptly amend its Form BD to indicate that a branch office was an Office of Supervisory Jurisdiction (OSJ) and failed to designate the office as an OSJ in its written supervisory procedures. The findings also stated that the firm, acting through an individual, permitted another individual associated with the firm to act as a registered person while his registration status was inactive due to his failure to complete the Regulatory Element of the NASD's Continuing Education Requirement. The NASD also found that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security. Furthermore, the NASD found that the firm failed to accept or decline transactions in ACT within 20 minutes after execution. **(NASD Case #C10010014)**

Vector Securities International, Inc. (CRD #22010, Deerfield, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its

written supervisory procedures with respect to short sales. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and a long sale transaction and failed to report each of these transactions through ACT with the correct short or long sale modifier. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. **(NASD Case #CMS000231)**

Wall Street Equities, Inc. (CRD #18432, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its supervisory procedures concerning the SEC and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010004)**

WIEN Securities, Inc. (CRD #10467, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$17,500, and required to pay \$150, plus interest, in restitution. Without admitting or denying the

allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to each customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to report to ACT the contra side executing broker in transactions in eligible securities, failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution, and to report to ACT the correct symbol indicating whether transactions in eligible securities were as principal or agent. Furthermore, the NASD determined that the firm failed to immediately display customer limit orders in its public quote, when each such order was at a price better than its public quote, or at a price equal to its public quote when such quote was priced equal to the national best bid or offer in such security and that order represented more than a de minimis change in relation to the size associated with its bid or offer. The NASD also determined that the firm failed to show the correct time of entry, the time of execution, and the correct time of execution on the memorandum of brokerage orders, and failed to provide written notification to its customers that the price to each of its customers was an average price. In addition, the NASD found that the firm failed to provide written notification disclosing to its customers the reported trade price and whether it was a market maker in the security when it acted as principal for its own account, and failed to provide written notification disclosing to its customers its correct capacity. **(NASD Case #CMS010013)**

Individuals Barred Or Suspended

Deborah Suann Angus (CRD #2632511, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$15,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to pay \$227,775 in restitution to public customers. The fine must be paid and satisfactory proof of payment of restitution and interest must be provided before re-associating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Angus consented to the described sanctions and to the entry of findings that she participated in private securities transactions, for compensation, failed to provide her member firm with prior written notice, and failed to receive written permission from her member firm.

Angus' suspension began March 5, 2001, and will conclude at the close of business on September 4, 2002. **(NASD Case #C3A010003)**

Gerald Biegler (CRD #1402834, Registered Representative, Monument, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,511.28, which includes the disgorgement of \$25,511.28 in commissions earned, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam as a general securities representative within 90 days of acceptance of the AWC. If Biegler fails to requalify within the 90 days, he shall cease all activities that require registration in any capacity until he successfully passes the exam. Without admitting or denying the

allegations, Biegler consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to public customers and engaged in unfair dealing with the customers. The NASD found that the basis for Biegler's recommendations was to generate commissions to compensate himself for his services.

Biegler's suspension began February 20, 2001, and concluded at the close of business on March 5, 2001. **(NASD Case #C3A000055)**

Larry Eugene Boyer (CRD #1054795, Registered Principal, Reading, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two months, and ordered to disgorge \$3,600 in commissions. Without admitting or denying the allegations, Boyer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Boyer's suspension began March 5, 2001, and will conclude at the close of business on May 4, 2001. **(NASD Case #C9A010003)**

Tonya Cliché Bradley (CRD #4152813, Registered Representative, Edison, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bradley consented to the described sanctions and to the

entry of findings that she provided false responses on her Form U-4.

Bradley's suspension began February 20, 2001, and will conclude on May 19, 2001. **(NASD Case #C9B000044)**

Gregory Mark Burton (CRD #1026513, Registered Principal, Locust Valley, 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, including clerical or ministerial functions, for five business days. Without admitting or denying the allegations, Burton consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing his member firm with prompt written notice and accepted a \$311,000 finders fee for his services.

Burton's suspension will begin March 19, 2001, and will conclude at the close of business on March 23, 2001. **(NASD Case #C10010025)**

Hector Camacho (CRD #3198218, Registered Representative, Bronx, 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 two years. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Camacho willfully failed to disclose material facts on a Form U-4.

Camacho's suspension began February 20, 2001, and will conclude at the close of business on February 19, 2003. **(NASD Case #C10010007)**

Lee Bao Cao (CRD #3050046, Associated Person, Richardson, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Cao consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Cao's suspension began March 5, 2001, and will conclude at the close of business on September 4, 2001. **(NASD Case #C05010006)**

Marcial Fernando Chiong, Jr. (CRD #1548382, Registered Principal, New York, New York) was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$138,294.66, plus interest, in restitution to public customers. The sanctions were based on findings that Chiong effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Chiong failed to execute sell orders for public customers. **(NASD Case #C10000159)**

Stewart Robert Clark (CRD #1895006, Registered Representative, Mount Vernon, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Clark failed to respond to NASD requests for information. **(NASD Case #C8A000031)**

Steven Mark Cohen (CRD #1585810, Registered Principal, Roslyn, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two

years. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents.

Cohen's suspension will begin March 19, 2001, and will conclude at the close of business on March 18, 2003. **(NASD Case #C10990163)**

David Lee Colwell (CRD #2352256, Registered Representative, Hamilton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to disgorge \$8,540, plus interest, to public customers. The fine must be paid and satisfactory proof of disgorgement, with interest, must be made before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Colwell consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers away from his member firm, failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions.

Colwell's suspension began February 20, 2001, and will conclude on August 19, 2001. **(NASD Case #C8B010002)**

Richard Alan D'Alessandro (CRD #1322113, Registered Representative, Verona, New Jersey) 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 reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, D'Alessandro consented to the described sanctions and to the entry of findings that he provided false responses on his Form U-4.

D'Alessandro's suspension began February 20, 2001, and will conclude at the close of business on April 20, 2001. **(NASD Case #C9B010003)**

Richard Lamar Dukes (CRD #4146680, Registered Representative, Atlanta, Georgia) 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 reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Duke consented to the described sanctions and to the entry of findings that he provided false responses on his Form U-4.

Dukes' suspension began February 20, 2001, and will conclude at the close of business on February 19, 2002. **(NASD Case #C07000073)**

Michael Leroy Dunbar (CRD #2189075, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$135,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$16,912.50 in profits. Without admitting or denying the allegations, Dunbar consented to

the described sanctions and to the entry of findings that he opened an account for a public customer over which he had control and in which he had a beneficial interest without being duly registered with the NASD. The findings also stated that Dunbar traded initial public offering (IPO) warrants (a "hot issue") in the immediate aftermarket. The NASD also found that, in connection with his activities in the IPO, Dunbar omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors. Furthermore, the NASD found that Dunbar requested payment for prospective purchases in the IPO from public customers before the SEC declared the IPO effective and executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. In addition, the NASD found that Dunbar failed to respond to NASD requests for information and/or documents and to appear for an on-the-record interview. **(NASD Case #C10990007)**

Luis Alberto Gonzalez (CRD #2672385, Registered Representative, Rye, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gonzalez consented to the described sanction and to the entry of findings that he effected unauthorized transactions in the account of a public customer. The findings also stated that, in order to effect an unauthorized sale, Gonzalez caused the impersonation of the customer's financial advisor and affixed photocopies of the customer's signature

to letters of authorization and wire instructions in order to effect an unauthorized sale and to wire funds from the customer's account to pay for the loss incurred because of the large difference in price between the original purchase and the sale. **(NASD Case #C10010008)**

Howard Thomas Haynes (CRD #1330130, Registered Principal, Medina, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Haynes consented to the described sanctions and to the entry of findings that he failed to disclose outside business activities to his member firm.

Haynes' suspension began February 20, 2001, and will conclude at the close of business on March 5, 2001. **(NASD Case #C8B010001)**

Thomas Dean Hiles (CRD #1313989, Registered Representative, Galesburg, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to disgorge \$21,210.60 in earned commissions to public customers. The disgorgement must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hiles consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. **(NASD Case #C8A010003)**

Kester Eugene Hood (CRD #2509848, Registered Representative, York, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hood withdrew approximately \$2,890 from general ledger accounts belonging to a bank that was an affiliate of his member firm and converted the funds to his own use and benefit without the knowledge and consent of his member firm. The findings also stated that Hood failed to respond to NASD requests for information. **(NASD Case #C9A000035)**

Jerold Carl Judkowitz (CRD #1025166, Registered Principal, Coral Springs, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in a principal capacity and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Judkowitz consented to the described sanctions and to the entry of findings that, in his capacity as Director of Compliance for a former member firm, he failed to address properly customer complaints and take appropriate disciplinary action against offending registered representatives.

Judkowitz' suspension began March 5, 2001, and will conclude at the close of business on March 4, 2002. **(NASD Case #CAF010001)**

Floyd Prentice Kirby (CRD #1307888, Registered Representative, Wilmington, North Carolina) submitted an Offer of Settlement in which he was fined \$9,750 (which includes the disgorgement of commissions earned of \$4,750, plus interest) and suspended from association with any NASD member in any

capacity for three months. The fine and disgorgement must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kirby consented to the described sanctions and to the entry of findings that he sold promissory notes to a public customer and received compensation, without providing written notice to, or receiving written approval from, his member firm.

Kirby's suspension began February 20, 2001, and will conclude on May 19, 2001. **(NASD Case #C07000056)**

Karim Michael Lamarti (CRD #2737080, Registered Representative, Naples, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lamarti failed to respond to NASD requests for information. **(NASD Case #C07000065)**

Michael Anthony Laster, Sr. (CRD #2009671, Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Laster consented to the described sanction and to the entry of findings that he received \$5,429.74 from a public customer as premium payments on a whole life insurance policy and converted the funds for his own use and benefit without the customer's prior knowledge, authorization, or consent. The findings also stated that Laster willfully failed to disclose material facts on his Form U-4. **(NASD Case #C10010016)**

Susan Jennifer Loetell (CRD #1372725, Registered Principal, Cockeysville, Maryland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Loetell withdrew approximately \$41,000 from proprietary accounts of her member firm and converted the funds to her own use and benefit without the knowledge or consent of her firm. The findings also stated that Loetell failed to respond to NASD requests for information and to appear for an on-the-record interview. **(NASD Case #C9A000034)**

Robert Roy MacGregor (CRD #2048323, Registered Representative, Austin, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that MacGregor failed to respond to NASD requests for information. **(NASD Case #C01000012)**

Brandon Douglas McLarty (CRD #2509059, Registered Principal, Indianapolis, Indiana) 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 allegations, McLarty consented to the described sanction and to the entry of findings that he effected numerous index option transactions in his personal margin accounts maintained at his member firm without depositing the required margin. Moreover, the NASD found that McLarty attempted to meet margin requirements by providing the member firm's clearing firm with checks totaling \$130,000 written on a closed account. **(NASD Case #C8A010006)**

Brian McDonald Megenity (CRD #2889637, Registered Principal, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and

Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Megenity consented to the described sanctions and to the entry of findings that he acted in the capacity of a general securities principal before passing the Series 24 qualification exam and becoming properly registered with the NASD as a general securities principal.

Megenity's suspension began March 5, 2001, and will conclude at the close of business on March 16, 2001. **(NASD Case #C07000096)**

Biagio Anthony Mento (CRD #3254784, Registered Representative, Palm City, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Mento provided false responses on his Form U-4. Mento also failed to respond to NASD requests for information. **(NASD Case #C07000062)**

Russell Scott Moriarty (CRD #2519745, Registered Representative, Lindenhurst, New York,) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Moriarty consented to the described sanctions and to the entry of findings that he submitted, as the writing representative, applications for the purchase of whole life insurance products for non-existent persons to his member firm.

Moriarty's suspension began March 5, 2001, and will conclude at the close of business on June 4, 2001. **(NASD Case #C10010022)**

Gary Brian Neus (CRD #3067192, Registered Representative, Baltimore, 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 30 days. The fine must be paid before re-associating with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Neus consented to the described sanctions and to the entry of findings that he submitted a Form U-4 to a member firm and failed to disclose that he was the subject of an investigation.

Neus' suspension began February 20, 2001, and will conclude at the close of business on March 21, 2001. **(NASD Case #C9A010001)**

Gary Dean Newell (CRD #1591288, Registered Representative, Farwell, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Newell, no monetary sanction has been imposed. Without admitting or denying the allegations, Newell consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to, or receiving permission from, his member firm.

Newell's suspension began February 20, 2001, and will conclude at the close of business on August 19, 2002. **(NASD Case #C3A010001)**

David Eric Niederkrome (CRD #2220569, Registered Principal, Kirkland, Washington) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Niederkrome consented to the described sanctions and to the entry of findings that he actively solicited the opening of accounts to be used solely as lending accounts and solicited customers with trading accounts to make margin loans and misrepresented the actual or potential risk associated with the loans. The findings also stated that Niederkrome failed to disclose material information to the customers in that they were unaware their funds could be unavailable for longer than they intended or that they might not get repaid at all.

Niederkrome's suspension will begin March 19, 2001, and will conclude at the close of business on March 28, 2001. **(NASD Case #CAF00028)**

Richard Allen Nunes (CRD #349871, Registered Representative, East Providence, Rhode Island) 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 allegations, Nunes consented to the described sanction and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, or approval from, his member firms. **(NASD Case #C11010003)**

Russell David Perlmutter (CRD #1930171, Registered Representative, Flushing, New York) 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 reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Perlmutter consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U-4.

Perlmutter's suspension began February 20, 2001, and will conclude at the close of business on February 19, 2002. **(NASD Case #C10000177)**

Ryan Jay Posewitz (CRD #2121957, Registered Representative, Green Bay, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,800 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Posewitz consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities.

Posewitz' suspension began February 20, 2001, and will conclude at the close of business on March 12, 2001. **(NASD Case #C8A010001)**

Richard Alexander Preisig, Jr. (CRD #2372868, Registered Representative, Pelham Manor, New York) submitted an Offer of Settlement in which he was fined \$25,000 and barred from association with any NASD member in any capacity with the right to reapply in five years. The fine must be paid before reassociating with a member firm or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, Preisig consented to the described sanctions and to the entry of findings that he trained registered representatives to aggressively telemarket low-priced, speculative securities underwritten and/or recommended by his member firm to the public. The findings also stated that Preisig directed the representatives to engage in abusive sales practices including making baseless price predictions, making material misrepresentations, omitting material negative information during sales presentations, and discouraging representatives from processing net customer sell orders in the member firm's house stocks. **(NASD Case #CAF990045)**

Stephen Earl Prout (CRD #857060, Registered Principal, Clovis, California) was fined \$10,000 and suspended from association with any NASD member in any capacity for one year (which was reduced by three months). The National Adjudicatory Council (NAC) imposed the sanctions following a call for review of an Office of Hearing Officers decision. The sanctions were based on findings that Prout falsified customers' dates of birth on variable annuity applications.

Prout's suspension began February 20, 2001, and will conclude at the close of business on November 19, 2002. **(NASD Case #C01990014)**

David Reynoso (CRD #2406265, Registered Representative, Westbury, New York) was fined \$12,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before re-associating with any NASD member following the suspension. The sanctions were based on findings that Reynoso

effected a transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent and failed to execute a purchase order for a public customer.

Reynoso's suspension began February 5, 2001, and will conclude at the close of business on May 4, 2001. **(NASD Case #C10000099)**

Shawn Joseph Smith (CRD #2676952, Registered Representative, Edison, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C9B010001)**

Steven Michael Spicer (CRD #2382732, Registered Representative, Dayton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spicer consented to the described sanction and to the entry of findings that he accepted a \$10,000 check from public customers to purchase an investment on their behalf, failed to make the investment, and placed the funds into an account that he controlled. The findings also stated that Spicer failed to respond to NASD requests for information and documents. **(NASD Case #C8B010003)**

Michael Arlan Sprick (CRD #1217506, Registered Principal, Odessa, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sprick

failed to respond to an NASD request for information. **(NASD Case #C06000015)**

Bob Allen Steinberg (CRD #2223889, Registered Representative, Great Neck, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension. Without admitting or denying the allegations, Steinberg consented to the described sanctions and to the entry of findings that he purchased call options in his cash account without having sufficient funds to cover the purchase. The findings also stated that Steinberg effected a purchase of call options in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Steinberg's suspension began March 5, 2001, and will conclude at the close of business on April 3, 2001. **(NASD Case #C10010021)**

Donna Michelle Thomas-Gardner (CRD #2808748, Registered Representative, East Point, Georgia) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas-Gardner consented to the described sanction and to the entry of findings that she changed a public customer's name and address on a brokerage account without the authorization of the customer. The findings also stated that Thomas-Gardner caused cashier's checks to be issued that were drawn against the customer's account without the authorization of the customer. The NASD found that the checks were negotiated and the proceeds were

used for the benefit of Thomas-Gardner. Furthermore, the findings stated that Thomas-Gardner failed to respond to NASD requests for information. **(NASD Case #C07000081)**

Gavin John Towers (CRD #2233516, Registered Representative, Cammerly, Australia) 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 allegations, Towers consented to the described sanction and to the entry of findings that he effected a wire transfer of \$6,049.53 from the account of a public customer, deposited the funds into his personal bank account, and converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that Towers composed a Letter of Authorization that authorized the transfer of the public customer's funds from his account at a member firm into a bank account controlled by Towers. Towers forged the customer's signature to the letter without the customer's knowledge or consent. **(NASD Case #C05010005)**

Jeffrey Gordon Trolley (CRD #2976992, Registered Representative, Havertown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before re-associating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Trolley consented to the described sanctions and to the entry of findings that he wrote and signed a \$770 check on an association account to an individual to

compensate him for services performed relating to Trolley's business activities at a member firm although he knew that the payment did not constitute proper use of the funds.

Trolley's suspension began March 5, 2001, and will conclude at the close of business on March 4, 2002. **(NASD Case #C9A010002)**

Michael Byron Turner (CRD #852773, Registered Representative, Del Mar, California) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Turner recommended purchase and sale transactions in various securities for the account of a public customer without having reasonable grounds for believing such transactions were suitable for the customer in view of the frequency and nature of the recommended transactions and the customer's financial situation, objectives, circumstances, and needs. Turner also failed to respond to NASD requests for information. **(NASD Case #C02000052)**

Jason Edward Van Ackeren (CRD #4156341, Associated Person, Omaha, Nebraska) 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 allegations, Van Ackeren consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4. **(NASD Case #C04010001)**

Howard Irving Weinstein (CRD #1846150, Registered Representative, Port Washington, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD

member in any capacity for two years. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Weinstein consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents.

Weinstein's suspension will begin March 19, 2001, and will conclude at the close of business on March 18, 2003. **(NASD Case #C10990152)**

Individual Fined

Austin Francis Mitchel, Jr. (CRD #336780, Registered Representative, Westfield, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Mitchel consented to the described sanctions and to the entry of findings that he failed to display immediately customer limit orders in his member firm's public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security. **(NASD Case #CMS010003)**

Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of February 9, 2001. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions for which the time for appeal has not yet expired will be reported in the next *Notices to Members*.

U.S. Rica Financial, Inc. (CRD #38742, San Jose, California) and Vinh Huu Nguyen (CRD #2374393, Registered Principal, San Jose, California) were fined \$240,000, jointly and severally, and required to disgorge \$58,579.83, plus interest, jointly and severally. In addition, the firm was expelled from NASD membership, and Nguyen was barred from association with any NASD member in any principal capacity. Nguyen was also suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that the firm, acting through Nguyen, falsely advertised on the firm's Web site that the firm would effect transactions for "free" or in accordance with the firm's published commission schedule, and failed to disclose that the firm might effect transactions on a riskless principal basis and charge markups and markdowns on such transactions. Furthermore, the firm, acting through Nguyen, engaged in securities fraud by failing to disclose, in connection with customer transactions, the markups and markdowns charged, retaining "secret profits" in connection with these transactions, and sent confirmations that represented that the firm had acted as an agent and had charged no commissions, or had charged commissions in accordance with its published commission schedule. The firm, acting through Nguyen, also failed to make appropriate memoranda of brokerage orders.

The firm and Nguyen have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C01000003)**

Complaints Filed

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

Henry Dwayne Bumpers (CRD #2830074, Registered Representative, Tigard, Oregon) was named as a respondent in an NASD complaint alleging that he engaged in unauthorized trading in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the accounts. The complaint also alleges that Bumpers exercised discretion in the accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. (NASD Case #C3B000016)

Jeffrey David Eise (CRD #2164695, Registered Representative, St. Louis, Missouri) was named as a respondent in an NASD complaint alleging that he received a \$21,128.29 check from a public customer intended for the purchase of a mutual fund and, without the knowledge or consent of the customer, endorsed the check and converted the customer's funds to his own use and benefit. The complaint also alleges that Eise failed to respond to NASD requests for information. (NASD Case #C04010002)

Gaylon Wayne Laboa (CRD #3134751, Registered Representative, Atlanta, Georgia) was named as a respondent in an NASD complaint alleging that he received checks totaling \$2,800 from a public customer for investment purposes. The complaint alleges that Laboa failed to deposit these checks in the customer's account and, instead, converted the funds to his own use and benefit without authorization from the customer. The complaint also alleges that Laboa failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C07010007)

Jang Soo Lim (CRD #2881926, Registered Representative, Forest Hills, New York) was named as a respondent in an NASD complaint alleging that he arranged for \$15,000 in loans to be issued against the life insurance policy of a public customer without the customer's knowledge, authorization, or consent and converted and/or misused the loan proceeds. The complaint also alleges that Lim forged the signature of the customer on checks issued by an insurance company to the customer in connection with the conversion. In addition, the complaint alleges that Lim failed to respond to NASD requests for information. (NASD Case #C10010019)

Danny Ray Parker (CRD #1921892, Registered Representative, New Carney, Texas) was named as a respondent in an NASD complaint alleging that he received a \$7,000 check from an insurance customer, wrote his own name in the payee section of the check, and endorsed it, without the customer's authorization, knowledge, or consent. The complaint also alleges that Parker failed to respond to NASD requests for information. (NASD Case #C06010001)

Frank Jack Zangara (CRD #1551637, Registered Principal, Hicksville, New York) was named as a respondent in an NASD complaint alleging that he executed separate sales of U.S. Treasury STRIPS to a public customer and charged the customer excessive markups for each of the sales. The complaint also alleges that Zangara failed to respond to NASD requests for information. (NASD Case #C10010027)

Firms Expelled For Failing To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Cambridge Capital, LLC, Garden City, New York (February 9, 2001)

First Madison Securities, Inc., Boca Raton, Florida (February 9, 2001)

Harbay, Kessef & Co., Columbus, Ohio (February 9, 2001)

Providential Securities, Inc., Fountain Valley, California (February 9, 2001)

William & Co. Capital Markets, Ltd, Long Valley, New Jersey (February 9, 2001)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations

Cohen, Jason A., Searingtown, New York (February 9, 2001)

Feyerabend, James A., Jr., Bristol, Connecticut (February 9, 2001)

Pascente, Christopher B., Aurora, Illinois (February 9, 2001)

Sutter, Mark, Scottsdale, Arizona (February 9, 2001)

Van Ahn, Thomas K., Oshkosh, Wisconsin (February 9, 2001)

Winston, Jonathan D., Great Neck, New York (February 9, 2001)

Individuals Suspended Pursuant To NASD Rule 9540 Series For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)

Arnett, Catherine, Rosemeade, California (January 25, 2001)

Cossu, Claude Gerald, Fairfield, California (January 31, 2001)

Englesberg, Samuel, Brooklyn, New York (February 12, 2001)

Spomer, Todd Jacob, Madison, South Dakota (February 6, 2001)

Warren, Raymond P., Escondido, California (January 31, 2001)

NASD Regulation's National Adjudicatory Council Sanctions Former Monitor Investment Group Executives

NASD Regulation's National Adjudicatory Council (NAC) affirmed an NASD Regulation Hearing Panel's decision to permanently bar from the securities industry John Montelbano, Gerard McMahon and Michael Galasso, Jr., who were previously associated with Monitor Investment Group, Inc. The bar of all three respondents was based on their manipulation of the market in connection with Monitor's sale of the common stock of Accessible Software, Inc.

Following their appeal of the Hearing Panel's decision, the NAC affirmed the Panel's findings that Montelbano, Galasso and McMahon participated in a fraudulent stock manipulation scheme that

violated federal securities laws and NASD rules. The NAC imposed the following sanctions for the manipulation and other violations:

- John Montelbano, former acting president of Monitor and general principal, was permanently barred from the securities industry and fined \$90,000;
- Michael Galasso, Jr., former trader at Monitor and registered representative, was permanently barred from the securities industry and fined \$91,000;
- Gerard McMahon, former research analyst of Monitor and registered representative, was permanently barred from the securities industry and fined \$90,000.

After calling the case for review as to the findings and sanctions against two other Monitor employees, Dwayne Leverett and Todd Nejaime, the NAC dismissed the charges that Nejaime had engaged in manipulative and deceptive trading practices and that he had failed to testify truthfully during NASD Regulation's investigation. The sanctions imposed upon Nejaime were set aside. With respect to Leverett, the NAC affirmed the Hearing Panel's findings that he failed to take any action to detect, prevent, or remedy the manipulation and that he failed to testify truthfully during NASD Regulation's investigation. The NAC also found that Leverett had assisted in the falsification of order tickets by reviewing and approving altered order tickets that Monitor produced to NASD Regulation during its investigation (reversing the Hearing Panel's dismissal of the charge). The NAC dismissed the charges that Leverett had engaged in manipulative and deceptive trading practices and that he had failed to produce for NASD Regulation original order tickets. The NAC

imposed the following sanctions on Leverett: a two-year suspension from associating with any member of the NASD, plus a suspension for 45 business days from associating with a member of the NASD; a \$25,000 fine; and a requalification requirement as a general securities principal and a general securities representative.

Accessible Software, Inc. is not a party to this action and there are no allegations or findings that it or its officers knew that its shares were being manipulated or were in any way involved in illegal conduct.

Monitor was based in Pennsylvania but conducted most of its business through three branch offices located in New York City. The firm withdrew its membership from the NASD in October 1996.

Montelbano and McMahon have appealed to the SEC.

For Your Information

Decimalization And Qualification Exams

On April 9, 2001, equity securities trading on Nasdaq® will be fully converted to decimals. On that date, test questions on all qualification examinations administered by the NASD® will also be changed to decimals. The purpose of these changes is to conform with the new industry norm. This will not result in substantive changes to the content of the questions and/or examination programs. Questions regarding this information may be directed to Karen Bescher, Testing and Continuing Education Department, NASD Regulation, Inc., at (240) 386-4677.