

# NASD Notice to Members 01-63

## INFORMATIONAL

## Exempted Securities

### SEC Approves New Rule Relating To The Application Of NASD Rules And Interpretive Materials To Exempted 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.*

- Executive Representatives
- Legal & Compliance
- Registered Representatives
- Senior Management

## KEY TOPICS

- Exempted Securities
- Government Securities
- Group Variable Contracts
- Non-Cash Compensation

## Executive Summary

On July 31, 2001, the Securities and Exchange Commission (SEC) approved National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 0116, which enumerates those NASD rules and interpretive materials that apply to transactions and business activities involving exempted securities, other than municipal securities.<sup>1</sup> The rule change also codifies an NASD staff interpretation that the non-cash compensation provisions set forth in paragraph (g) of NASD Rule 2820 apply to group variable contracts that are exempted securities.

The text of Rule 0116 is provided in Attachment A. This rule becomes effective on **October 28, 2001**.

## Questions/Further Information

Questions concerning this *Notice* may be directed to the Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

## Background And Discussion

Through the passage of the Government Securities Act Amendments of 1993 (GSAA), Congress authorized the NASD to apply its sales practice rules to transactions involving exempted securities, other than municipal securities. In 1996, the SEC approved an NASD proposal to implement its new authority granted under the GSAA.<sup>2</sup> The 1996 SEC Order set forth the NASD rules and interpretive materials that apply to transactions involving exempted securities,

except municipal securities. In addition, in *Notice to Members (NtM) 96-66* (October 1996), the NASD also enumerated the NASD rules and interpretive materials that are applicable to transactions in exempted securities, excluding municipal securities.<sup>3</sup>

Although *NtM 96-66* listed the NASD rules and interpretive materials outlined in the 1996 SEC Order, the *NASD Manual* did not identify them. New Rule 0116 now codifies the rules and interpretive materials that are applicable to transactions in exempted securities (other than municipal securities) as outlined in the 1996 SEC Order and *NtM 96-66*.<sup>4</sup> The new rule will help members, their associated persons, and other interested persons identify those NASD rules and interpretive materials applicable to transactions involving certain exempted securities.

In addition, new Rule 0116 codifies an NASD staff interpretation concerning the application of Rule 2820(g) (non-cash compensation provision) to certain group variable contracts that are exempted securities.<sup>5</sup> When the NASD identified the NASD rules that would apply to exempted securities following the passage of the GSAA, it had not adopted NASD Rule 2820(g), and thus Rule 2820(g) was not included in the 1996 SEC Order and *NtM 96-66*. However, since the implementation of Rule 2820(g), the staff consistently has interpreted Rule 2820(g) to apply to group variable contracts that are exempted securities.

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## Endnotes

- 1 See Securities Exchange Act Release No. 44631 (July 31, 2001), 66 FR 41283 (August 7, 2001) (order approving File No. SR-NASD-00-38) (the "SEC Approval Order").
- 2 See Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR-NASD-95-39) (the "1996 SEC Order").
- 3 NASD rules and interpretive materials in the Rule 8000 Series were omitted from the list in *NtM 96-66*, although they were included in the 1996 SEC Order.
- 4 Rule 0116(b) provides that, unless stated otherwise, members and their associated persons engaging in transactions and business activities relating to exempted securities, other than municipal securities, are subject to the following NASD Rules and Interpretive Materials: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310-1, IM-8310-2, 8320 and 8330. This list reflects any deletions or other revisions to the rules and interpretive materials originally enumerated in the 1996 SEC Order. A detailed discussion of these changes is provided in the SEC Approval Order.
- 5 Rule 2820(g) limits the manner in which members and their associated persons may pay or accept non-cash compensation in connection with the sale or distribution of variable contracts.

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## **ATTACHMENT A – RULE TEXT**

*Note: All language is new.*

### **0116. Application of Rules of the Association to Exempted Securities**

(a) For purposes of this Rule, the terms “exempted securities” and “municipal securities” shall have the meanings specified in Sections 3(a)(12) and 3(a)(29) of the Act, respectively.

(b) Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretive Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310-1, IM-8310-2, 8320 and 8330.

# Special NASD Notice to Members 01-64

## INFORMATIONAL

### NAC Nominees

#### NASD Announces Nominees For Regional Industry Member Vacancies On The National Adjudicatory Council

## 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
- Senior Management

## KEY TOPICS

- National Adjudicatory Council

### Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the National Adjudicatory Council (NAC) for the West Region and New York Region. The nominees, nominated for two-year terms beginning in January 2002, are listed in Exhibit I. These nominees will be proposed to the National Association of Securities Dealers, Inc. (NASD®) National Nominating Committee in 14 calendar days, unless an election is contested.

We appreciate the interest shown by many members in expressing their desire to serve on the NAC and thank everyone for their continuing support of the self-regulatory process. The Regional Nominating Committees thoroughly reviewed the background of every candidate before selecting their nominee in an effort to secure appropriate and fair representation of the regions.

### Contested Election Procedures

If an officer, director, or employee of an NASD member in the West Region and New York Region has not been proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she should send a written notice to Barbara Z. Sweeney, Corporate Secretary, at the address below within 14 calendar days after the publishing date of this *Special Notice*.

*Barbara Z. Sweeney  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500  
(202) 728-8062*

The Contested Nomination Procedures can be found in Article VI of the NASDR<sup>SM</sup> By-Laws. If no

additional candidate comes forward within 14 calendar days, the Regional Nominating Committees shall certify their candidates to the National Nominating Committee.

### Questions/Further Information

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

### National Adjudicatory Council Membership And Function

#### Membership

The NAC consists of 14 members—seven Industry members and seven Non-Industry members. Two Industry members are nominated by the NASD National Nominating Committee and are appointed by the Board of Directors of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) as at-large members. Five Industry members each represent one of the following geographic regions:

**West Region:** Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, and Washington (Districts 1, 2, and 3)

**South Region:** Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South Carolina, Puerto Rico, Virginia, Canal Zone, and the Virgin Islands (Districts 5, 6, and 7)

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**Central Region:** Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Michigan, part of Western New York state, and Wisconsin (Districts 4 and 8)

**North Region:** Delaware, Maryland, Pennsylvania, West Virginia, District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for New York City, Long Island, and Western New York state) (Districts 9 and 11)

**New York:** New York City and Long Island (District 10)

Only two regions (West and New York) have vacancies for this election. NAC members for the other three regions (North, South, and Central) are completing the second year of their two-year term.

### Function

According to the NASD By-Laws, the NAC is authorized to act for the NASD Board of Governors in matters concerning:

- appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- the review of offers of settlement; letters of acceptance, waiver, and consent; and minor rule violation plan letters;
- the exercise of exemptive authority; and
- other proceedings or actions authorized by the Rules of the Association.

The NAC also considers and makes recommendations to the Board on enforcement policy and rule changes relating to the business and sales practices of NASD members and associated persons.

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# **Special NASD Notice to Members 01-64**

## **EXHIBIT A**

### **Nominees For NAC Industry Member Vacancies**

#### **West Region (Districts 1, 2, and 3)**

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**William A. Svoboda**

Morgan Stanley Dean Witter  
San Jose, CA

#### **New York Region (District 10)**

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**Philip V. Oppenheimer**

Oppenheimer and Close, Inc.  
New York, NY

# NASD Notice to Members 01-65—Request For Comment

**ACTION REQUESTED BY  
NOVEMBER 24, 2001**

## Expungement

### NASD Seeks Comment On Proposed Rules And Policies Relating To Expungement Of Information From The Central Registration Depository

#### 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.*

- Executive Representatives
- Legal & Compliance
- Operations
- Registration
- Senior Management

#### KEY TOPICS

- Central Registration Depository System
- Expungement

#### Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) requests comment on the establishment of certain criteria that must be met, and procedures that must be followed, before NASD Regulation would expunge certain information from the Central Registration Depository (CRD®) system pursuant to an expungement order. By way of background, information generally is expunged from the CRD system pursuant to a specific statutory requirement or a court order. While this practice is appropriate in most cases, NASD Regulation believes that refinements to this policy are necessary to address the expungement of customer dispute information (e.g., customer complaints or arbitration claims). With respect to customer dispute information, NASD Regulation believes that additional safeguards and procedures in the expungement process are necessary to ensure that investor protection interests are served before the extraordinary relief of expungement is granted.

Accordingly, NASD specifically seeks comment on whether it should generally limit expungement of customer dispute information from the CRD system to cases where an expungement order is based on a finding by a fact finder (i.e., either an arbitrator or a court) that (1) the subject matter of a claim or information in the system involves a case of factual impossibility or “clear error” (e.g., the associated person named in the proceeding did not work for the firm, or worked in a different office, and was named in error); (2) the claim in question is without legal merit; or (3) the information contained in the CRD system is determined to be defamatory in nature.

NASD also seeks comment on (1) specific procedures that would be required to be followed depending on whether the finding that is made results from a contested proceeding (e.g., an arbitration hearing or judicial proceeding) or from a settled matter (e.g., a stipulated award rendered in an arbitration forum or judicial proceedings based on a settlement); (2) the adoption of a rule amending the Code of Arbitration Procedure to require a finding in an arbitration award of one or more of the expungement criteria discussed in this *Notice*; and (3) the adoption of a rule or Interpretive Material that clearly articulates NASD Regulation’s authority to pursue disciplinary action against a member that or associated person who seeks to have information about an arbitration claim expunged after there has been an award rendered against that member or associated person by the arbitrators or seeks to expunge any arbitration award that does not contain an expungement order and a finding of at least one of the criteria set forth in this *Notice*.

#### Action Requested

NASD encourages all interested parties to comment on the proposal. Comments must be received by November 24, 2001. Members and interested persons can submit their comments using the following methods:

- \* mailing in the checklist (Attachment A)
- \* mailing in written comments
- \* e-mailing written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com)
- \* submitting comments using the online form at the NASDR Web Site ([www.nasdr.com](http://www.nasdr.com))

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If you decide to submit comments using both the checklist and one of the other methods listed above, please indicate that in your submissions. The checklist and/or written comments should be mailed to:

*Barbara Z. Sweeney  
Office of the Corporate Secretary  
The National Association of  
Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500*

**Important Note:** The only comments that will be considered are those submitted in writing or by e-mail.

Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation and/or NASD Dispute Resolution Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission (SEC) following public comment.

### Questions/Further Information

As noted above, written comments should be submitted to Barbara Z. Sweeney. Questions concerning this *NASD Notice to Members—Request For Comment* may be directed to Richard E. Pullano, Chief Counsel, CRD/Public Disclosure, NASD Regulation, at (240) 386-4821; or to Shirley H. Weiss, Office of General Counsel, NASD Regulation, at (202) 728-8844.

### Background

The CRD system is the registration and licensing system for the United States securities industry and its state and federal regulators and self-regulatory organizations.<sup>1</sup>

NASD Regulation and the North American Securities Administrators Association (NASAA) jointly administer the CRD system.<sup>2</sup> All broker/dealers registered with the SEC are required to file their registration forms (Form BD and Form BDW) through the CRD system. Such broker/dealers also are required to file the registration forms of any of their associated persons who are NASD-registered through the CRD system (Form U-4 and Form U-5). These registration forms require comprehensive reporting of administrative information (personal, organizational, employment, registration, and other information) and disclosure information (information about criminal, regulatory, and financial matters, including information relating to customer disputes). This final category of “customer dispute information” includes customer complaints, arbitration claims, court filings made by customers, and the arbitration awards or court judgments that may result from those claims. This category of information contains allegations that a member or one or more of its associated persons has engaged in some type of misconduct.

Regulators use the registration information, and other information contained in the CRD system,<sup>3</sup> to assist them in fulfilling their regulatory responsibilities, including making determinations about registration and licensing of firms and associated persons. Member firms use the CRD system to help them meet their registration, licensing, and certain other compliance obligations. Much of the information reported to the CRD system is made publicly available, either by NASD Regulation through its Public Disclosure Program (PDP) or

by the SEC and individual state securities administrators pursuant to applicable law.

In operating the CRD system, NASD Regulation has followed procedures designed to ensure that the information in the system is accurate and complete. In establishing these procedures, NASD Regulation is guided by its mission of protecting investors and by CRD policy established with NASAA and the SEC. As the operator of the system with primary responsibility for maintaining its integrity, NASD Regulation also has an obligation to consider compelling issues involving personal privacy and fundamental fairness. Accordingly, NASD Regulation, working with the SEC, NASAA, other members of the regulatory community, and member firms, has endeavored to establish procedures reasonably designed to ensure that information submitted to and maintained on the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system in narrowly defined circumstances. Expungement is a remedy provided by federal and state law in certain circumstances that usually is effected through a court order.

Since the inception of the CRD system in 1981, court-ordered expungements generally have been honored. Arbitrator-ordered expungements that met certain requirements also were honored until January 1999. In January 1999, after consultation with NASAA, NASD Regulation imposed a moratorium on arbitrator-ordered expungements from the CRD system. Under the moratorium, which is still in effect, NASD Regulation will not expunge information from the CRD system

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based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or its associated persons, unless that award has been confirmed by a court of competent jurisdiction.<sup>4</sup>

In July 1999, NASD issued *NASD Notice to Members 99-54* seeking comment on issues related specifically to arbitrator-ordered expungements. NASD sought comment on possible approaches that would address the interests of parties in arbitration in having arbitrators' expungement orders given some meaningful effect while still addressing state record-retention requirements and other issues. Among other things, *NASD Notice to Members 99-54* sought comment on whether NASD Regulation should establish specific standards that would have to be met before NASD Regulation would honor an expungement that was ordered by an arbitrator. The comments received in response to *NASD Notice to Members 99-54* were mixed, although most commenters were in favor of allowing arbitrator-ordered expungements, particularly if arbitrators had the benefit of standards to guide them in making such determinations. On the other hand, many commenters opposed allowing arbitrators to direct expungement because of concerns about arbitrator authority or training and state law issues, among other reasons.

### Discussion

Federal and state laws provide for expungement relief under very limited circumstances. In addition, persons may be granted an expungement remedy in a civil action (as a form of equitable relief) when, for example, harm is done to their reputations, or based on other equitable grounds.

Expungement of information from the CRD system also is appropriate in certain circumstances where it is not expressly required by applicable law or by a court order in a legal proceeding to which NASD Regulation is a party.

Expungement of information from the CRD system is an extraordinary remedy, however, that clearly is not appropriate in all circumstances. In addition, there is a potential for inappropriate use of the expungement process, particularly where parties have agreed to expunge customer dispute information as a part of a settlement. Both the investing public and regulators have interests in maintaining customer dispute information within the CRD system that may not be considered when two private parties agree to settle a civil suit or arbitration claim and to expunge information relating to that suit or arbitration claim from the CRD system.

Since the issuance of *NASD Notice to Members 99-54*, NASD Regulation has been considering how to craft an approach that would balance all of the competing interests associated with executing arbitrator-ordered expungements that include customer dispute information. Developing an approach has been a difficult undertaking, as it requires a balancing of at least three legitimate but sometimes competing interests. NASD Regulation, the states, and other regulators have an interest in retaining broad access to customer dispute information to fulfill their regulatory responsibilities; individuals in the brokerage community have an interest in securing a fair process that recognizes their stake in protecting their reputations and permits expungement from the

CRD system when appropriate; and investors have an interest in having access to information about brokers with whom they do business or may do business.<sup>5</sup> NASD Regulation also has been concerned about crafting an approach that does not have an overly broad chilling effect on the settlement process or inappropriately interfere with the arbitration process or arbitrators' authority to award appropriate remedies.

After considering the compelling interests at stake, NASD Regulation preliminarily has identified three bases that it believes warrant the extraordinary relief of expunging information from the CRD system. They include a finding that (1) factual impossibility or "clear error" exists (*e.g.*, the associated person named in the proceeding did not work for the firm, or worked in a different office, and was named in error); (2) the claim is without legal merit; or (3) the information on the CRD system is defamatory in nature.<sup>6</sup> As discussed in more detail below, NASD is seeking comment on whether interested parties agree that findings falling into one of these three categories are a sufficient basis for expungement of information from the CRD system and whether additional categories should be considered. With respect to the first category, NASD Regulation is specifically interested in hearing interested parties' views on whether the "factual impossibility" category is clear and broad enough, or whether the category also should address "clear error" situations (*e.g.*, when a customer or a regulator names one registered person at a firm, but intended to name another registered person). NASD Regulation also is interested in

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commenters' views on what constitutes "clear error" or "factual impossibility."

NASD Regulation also generally believes that, before any customer dispute information is expunged, an independent fact finder should make a finding that expungement relief is warranted on one of these three bases. With respect to the second category (*i.e.*, claims that are found to be "without legal merit"), NASD Regulation emphasizes that merely prevailing in an arbitration or court proceeding would not, by itself, justify expungement. A fact finder would be required to make a specific finding that a claim was factually impossible, without legal merit, or defamatory in nature before NASD Regulation would execute any expungement directive. With respect to the third category, NASD is interested in commenters' views on whether fact finders should be required to find that information in the CRD system is defamatory in nature, or whether a finding that information is false or defamatory in nature would be a sufficient basis to expunge. NASD Regulation discusses below its preliminary views on specific categories of information that may be subject to expungement requests and proposed approaches/ criteria for expunging that information from the CRD system.

### **Expungement Of Customer-Initiated Complaints/ Arbitrations/Court Proceedings**

Expungement of customer dispute information is an especially difficult area given the competing interests involved.

NASD Regulation recognizes that, in some cases, allegations of

misconduct may be without merit or may falsely or mistakenly accuse associated persons of engaging in misconduct. Such allegations may unfairly tarnish the reputations of those associated persons and, as a result, associated persons increasingly are requesting expungement of the information as a form of equitable relief in connection with the resolution of these disputes. NASD Regulation also recognizes that some brokers and firms may inappropriately attempt to have meritorious or accurate information about their misconduct or alleged misconduct expunged from the CRD system.<sup>7</sup>

Most customer/broker disputes are resolved in arbitration or, alternatively, are settled by the parties without the involvement of a finder of fact. Typically, neither of these dispute resolution methods results in a record that explicitly identifies the rationale for granting expungement relief.<sup>8</sup> "Stipulated" (or consent) awards or settlements are a source of particular concern because typically there has been no hearing on the merits, no independent fact finder involved in the negotiations, and no rationale provided for the expungement. While there may be legitimate reasons for the expungement, those reasons generally are not provided in a stipulated award or settlement. Therefore, NASD Regulation is proposing that any approach dealing with the expungement of customer dispute information must address both expungement orders in arbitration awards after a hearing on the merits and "stipulated" or consent awards in which parties agree to expungement as part of the settlement and then present the settlement to the arbitrator for inclusion in an award.

### **Awards After Hearing/Determination<sup>9</sup>**

NASD Regulation believes that merely prevailing in an arbitration case is not, by itself, an appropriate ground for expunging the proceeding from the CRD system.<sup>10</sup>

Expungement is extraordinary relief that should be granted in limited circumstances only after a determination by an independent adjudicator that the matter in question meets at least one of the criteria established for expungement. As discussed above, NASD Regulation believes that the appropriate criteria for expunging customer dispute information may include a finding that: (1) factual impossibility or "clear error" exists (*e.g.*, the associated person named in the proceeding did not work for the firm, or worked in a different office, and was named in error); (2) the claim is without legal merit; or (3) the information on the CRD system is defamatory in nature. NASD Regulation proposes to execute arbitrators' directives to expunge customer dispute information from the CRD system only if one of these three findings is made and is expressly contained in the arbitration award. As discussed in more detail below, NASD Regulation also would require that all such directives be confirmed by a court of competent jurisdiction, and that NASD Regulation be given notice of any request for judicial confirmation or order of expungement<sup>11</sup> prior to submission to the court.

NASD Regulation believes that adverse arbitration awards (*i.e.*, arbitration awards against a firm or associated person) should not be expunged pursuant to a post-award settlement with the customer, even if that settlement

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is approved by a court.<sup>12</sup> An adverse arbitration award represents a finding by independent arbitrators, after consideration of the merits, that a customer claim and allegations made therein are meritorious in full or in part, and justify an award to a customer. Such information is valuable to regulators, the investing public, and to other securities firms that may be potential employers of the subject of the award. NASD Regulation believes that this information should be in the CRD system, and that it may be a violation of Rule 2110 to seek expungement under these circumstances.

### Stipulated Awards

Because they originate as settlements between parties and generally do not involve independent fact finders in the entire process, “stipulated” or “consent” awards are especially difficult to address. As noted in *NASD Notice to Members 99-54*, pursuant to the Code of Ethics for Arbitrators in Commercial Disputes, arbitrators are not bound to sign a consent award unless the arbitrator is satisfied with the propriety of the terms of the settlement.<sup>13</sup> Nevertheless, concerns have been raised about the possibility of negotiated arrangements wherein a firm may agree to settle a claim filed by a customer against an associated person and the firm, provided the customer agrees to the inclusion of a directive to expunge all information about the claim from the associated person’s CRD record. In some cases, a customer claim/allegation may have merit and, therefore, should be reported on the uniform registration forms, included in the CRD system for use by regulators and broker/ dealers, and made

available to investors through NASD Regulation’s PDP. Expungement may be inappropriate under these circumstances.<sup>14</sup>

NASD Regulation believes that it would be appropriate to include expungement relief in stipulated awards only in cases involving factual impossibility or in which a party was mistakenly named (the “clear error” criterion). In those cases, such persons should be able to avail themselves of the settlement opportunity outside of arbitration, and then request that an arbitrator issue an award that incorporates the stipulated settlement and includes expungement relief for certain named parties. NASD Regulation is not proposing to include the other two criteria (without legal merit or defamatory in nature) as grounds for expungement in stipulated awards because, in NASD Regulation’s view, it is unlikely that claimants’ counsel would agree to such findings as part of a settlement and because NASD Regulation believes that a fact finder’s explicit determination that expungement is being ordered based on one of the three criteria discussed in this *Notice* is a necessary safeguard. NASD Regulation believes that settlements of customer complaints outside of the arbitration process that are reduced to stipulated court orders of expungement should be treated similarly. Accordingly, NASD Regulation proposes to execute expungement orders incorporating settlement agreements only if they are ordered by a court of competent jurisdiction and include a finding of factual impossibility or that the associated person whose information is to be expunged was named in clear error.<sup>15</sup>

### Court Confirmation Of Expungement Orders

Consistent with the practice announced in *NASD Notice to Members 99-54*, NASD Regulation proposes to continue to require that any arbitration award in a customer dispute containing an expungement order be confirmed by a court of competent jurisdiction before NASD Regulation will execute the order. This requirement also will apply to customer disputes settled outside of the arbitration process and submitted to a court as a stipulated order. NASD Regulation will review every such expungement order to determine whether the expungement criteria have been met. Accordingly, NASD Regulation proposes that any expungement rule would require parties seeking expungement pursuant to an arbitration award to name NASD Regulation as an additional party in the confirmation proceeding, and to serve NASD Regulation with the appropriate court papers.<sup>16</sup> If NASD Regulation determines that the expungement order meets the criteria set forth above, it will advise the court that it will not oppose expungement. On the other hand, if NASD Regulation determines that the expungement order does not meet the criteria, NASD Regulation will participate in the proceeding and oppose confirmation of the expungement portion of the arbitration award.<sup>17</sup> In addition, NASD Regulation will notify the states when NASD-registered firms or individuals provide notice to seek an expungement, and one or more states may choose to intervene in the confirmation or other judicial proceeding.

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## Summary

NASD Regulation believes that there should be a way to remove information that is factually impossible, without legal merit, or defamatory in nature from the CRD system, but that any such removal should be made only after certain criteria are met and certain protocols are followed. Accordingly, NASD seeks comment on the following proposals that are intended to establish those criteria/protocols.

## Proposed Rules/Actions

### **Adoption Of Customer Complaint/Arbitration Expungement Rule**

NASD specifically seeks comment on the following proposal.

NASD Regulation will expunge customer dispute information from the CRD system only under the following conditions:

#### **I. Judicial or Arbitral Findings**

##### **A. By hearing on the merits:**

Expungement resulting from a judicial or arbitral hearing on the merits must contain one of the following findings with respect to the person for whom expungement is ordered:

1. Factual impossibility/ "clear error"
2. Without legal merit
3. Defamatory in nature

##### **B. By stipulated award:**

Expungement resulting from a stipulated award presented to an arbitrator for signature and containing an expungement order must contain a finding by the arbitrator(s) of factual

impossibility or clear error with respect to the associated person for whom expungement is ordered.

##### **C. Settlement of customer complaint without an award:**

Customer complaints that are settled and reduced to a settlement agreement that contains an expungement order will be expunged by NASD Regulation only if the settlement is approved by a court of competent jurisdiction, and the document signed by the court contains a finding that the associated person whose information is to be expunged was named in clear error.

#### **II. Notice and Court Confirmation**

All arbitrator-ordered expungements of customer dispute information must be confirmed by a court of competent jurisdiction. NASD Regulation will not expunge customer dispute information from the CRD system pursuant to a court confirmation of an arbitration award, or other judicial proceeding or a settlement agreement unless it receives notice and a copy of the proposed expungement order prior to its submission to the court,<sup>18</sup> and is named as a party to the proceeding with respect to the expungement issue. NASD Regulation reserves the right to oppose confirmation of an arbitration award (or, in any other proceeding, to oppose the issuance of an expungement order) if it determines that the expungement order does not contain one or more of the criteria set forth in Section I above.

#### **III. Otherwise Required by Law or Court Order**

In addition, NASD Regulation will expunge customer dispute information if required to do so by applicable law or a lawful court order that is binding upon NASD Regulation. NASD Regulation would have to be named as a party to any judicial proceeding where an order to expunge such information from the CRD system is sought.

NASD Regulation proposes to make determinations about what constitutes factual impossibility and "clear error." As discussed above, examples of factual impossibility could include cases where it can be demonstrated that it was factually impossible for the associated person named in the proceeding to have committed the alleged misconduct (*e.g.*, the associated person named in a proceeding did not work for the firm or worked in a different office and was named in error). Examples of "clear error" could include cases where a customer names one registered person at a firm, but intended to name another registered person or where a clerical or procedural error results in the naming of the wrong person). NASD specifically seeks comment on what circumstances or criteria should qualify for the "clear error" category.

# NASD Notice to Members 01-65—Request For Comment

## ***Adoption Of A Rule Or Interpretive Material Articulating NASD Regulation's Authority For Violations Of Conduct Rule 2110***

NASD staff also seeks comment on whether to adopt a rule or Interpretive Material that would expressly articulate NASD Regulation's authority to pursue a disciplinary action (for violation of just and equitable principles of trade) against a member or an associated person who:

1. seeks to have information about an arbitration claim expunged after there has been an award rendered against that member by the arbitrators;<sup>19</sup> or
2. seeks to expunge any arbitration award that does not contain an expungement order and a finding of at least one of the criteria set forth above.

NASD Regulation's authority to pursue disciplinary actions against members for violations of Conduct Rule 2110 is quite broad and would encompass pursuing conduct that would undermine the regulatory function of fostering an effective dispute resolution system. Nevertheless, NASD comment on whether adopting an explicit rule or Interpretive Material may act as an additional deterrent to firms or associated persons who might inappropriately seek expungement relief.

## **Endnotes**

- 1 NASD Regulation and NASAA jointly developed the CRD concept, and they jointly set CRD policy.
- 2 NASAA is an association comprised of state and other securities regulators in the United States, as well as other securities regulators in North America. NASD Regulation was established in 1996 as a separate, independent subsidiary of the NASD. NASD Regulation has responsibility for the operation of the CRD system.
- 3 The CRD system also contains other administrative information (*e.g.*, registration status with various regulators, qualification examination results) and disclosure information reported by participating regulators and the Department of Justice.
- 4 *NASD Notice to Members 99-09* announced the imposition of the moratorium and specifically noted that, under the moratorium, NASD Regulation would continue to expunge information from the CRD system based on expungement directives rendered in disputes between associated persons and firms where arbitrators have awarded such relief based on the defamatory nature of the information at issue. NASD Regulation is not proposing any changes to that limited exception (which also was discussed in *NASD Notice to Members 99-54*) or to the general requirement that awards rendered in disputes between customers and firms or their associated persons that provide expungement relief be confirmed by a court of competent jurisdiction.
- 5 While defamation actions brought by member firms are less likely to occur than actions brought by individuals, member firms also have an interest in protecting their reputations, and may seek appropriate relief against persons who make false statements about firms.
- 6 Generally, defamation requires a false statement about an individual that is published to a third party and harms the individual's reputation. Federal and state courts generally apply a standard of actual malice or reckless disregard for statements about public individuals, and a negligence standard for statements about private individuals, for recovery on a defamation claim. The elements of defamation and the applicable standard of fault may vary among the states.
- 7 With respect to the "alleged misconduct" category, NASD Regulation recognizes that information in the CRD system includes allegations of misconduct that have not yet been proven. Nevertheless, such allegations may have regulatory value as an early indicator of problems or as part of a larger pattern that may also include similar acts of misconduct that were found to have merit. Regulators understand the distinction between allegations and findings of misconduct, and NASD Regulation provides information through its PDP to inform the public of that distinction. Specifically, NASD Regulation informs requestors that customer complaints and other disclosure events may include allegations that have not been verified or proven to be true and that requestors should not assume that they are true. Moreover, with respect to pending regulatory/disciplinary actions that have been reported, requestors are informed that such items may be contested and ultimately withdrawn, dismissed, or otherwise resolved in favor of the broker.
- 8 Arbitrators are not required to provide the reasoning for a particular decision or award and typically do not do so.
- 9 This category includes cases that were decided on the papers, without a hearing.
- 10 In this situation, the appropriate course of action is the filing of an amendment through the CRD system to report that the arbitration has been completed and that the party prevailed in the arbitration.
- 11 While the majority of court orders that NASD Regulation receives confirm an arbitrator-ordered expungement award, NASD Regulation also receives court orders that order the expungement of customer dispute information when the parties went directly to court (and not to arbitration).

## NASD Notice to Members 01-65—Request For Comment

- 12 NASD Regulation notes that an exception to this general policy would be where a court vacates an arbitration award and orders expungement as equitable relief.
- 13 See Canon V(D) of The Code of Ethics for Arbitrators in Commercial Disputes (reproduced on the NASD Dispute Resolution Web Site at [www.nasdadr.com/ethics\\_code.asp](http://www.nasdadr.com/ethics_code.asp)).
- 14 NASD Regulation is aware of allegations that firms have pressed customer/claimants into accepting expungement as a condition of settlement of arbitration proceedings. While we believe that the proposed rules would address these concerns, NASD Regulation would consider this practice to be a possible violation of Rule 2110.
- 15 As discussed in more detail below, under the approach being contemplated in this *NASD Notice to Members*, a member would be required to provide NASD Regulation with notice that it was seeking expungement and would be required to make NASD Regulation a party to that proceeding. NASD Regulation would either advise a court that it did not oppose expungement relief or would participate in the proceeding and oppose the requested relief. NASD Regulation would, of course, abide by an expungement directive lawfully ordered by the courts after a hearing on the merits.
- 16 This requirement would also apply to any other judicial proceeding that could result in an order for the expungement of customer dispute information from the CRD system.
- 17 As noted above, NASD Regulation would, of course, abide by an expungement directive lawfully ordered by the courts after a hearing on the merits.
- 18 A party seeking expungement relief should give notice prior to either the judicial proceeding in which the relief is requested or the judicial proceeding seeking to confirm an arbitration award ordering expungement.
- 19 NASD Regulation does not seek to preclude a member or associated person from seeking to vacate an arbitration award under the limited bases delineated in an appropriate state or federal statute.

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# NASD Notice to Members 01-65—Request For Comment

## ATTACHMENT A

### Request For Comment Checklist

We have provided below a checklist that members and other interested parties may use in addition to or in lieu of written comments. This checklist is intended to offer a convenient way to participate in the comment process, but does not cover all aspects of the proposal described in the *Notice*. We therefore encourage members and other interested parties to review the entire *Notice* and provide written comments, as necessary.

### Instructions

Comments must be received by **November 24, 2001**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- e-mailing written comments to *pubcom@nasd.com*
- mailing in written comments
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments should be mailed to:

*Barbara Z. Sweeney*  
*Office of the Corporate Secretary*  
*The National Association of Securities Dealers, Inc.*  
*1735 K Street, NW*  
*Washington, DC 20006-1500*

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## Proposed Amendments Concerning Expungement of Information for the CRD System

1. Should NASD Regulation adopt a rule that would require members to provide notice to NASD Regulation and make NASD Regulation a party to the proceeding before seeking a court order directing expungement or a confirming of an arbitration award that contains an expungement directive?  
 Yes  No  See my attached written comments
2. Should NASD Regulation establish specific standards that must be met before it will execute orders directing it to expunge customer dispute information from the CRD system? Are the standards identified in the *Notice* (*i.e.*, factually impossible/clear error; without legal merit; and defamatory in nature) appropriate?  
 Yes  No  See my attached written comments
3. Should NASD Regulation execute arbitrators' directives to expunge customer dispute information from the CRD system if (1) arbitrators make specific findings in stipulated or consent awards; (2) arbitrators expressly include those findings in an award; and (3) a party confirms the award in a court of competent jurisdiction?  
 Yes  No  See my attached written comments
4. Should NASD Regulation adopt a rule or Interpretive Material that would explicitly articulate NASD Regulation's authority to pursue disciplinary actions for violations of just and equitable principles of trade against a member or associated person who seeks to have information about an arbitration claim expunged after there has been an award rendered against that member by the

## NASD Notice to Members 01-65—Request For Comment

arbitrators or seeks to expunge any arbitration award that does not contain an expungement order and a finding of at least one of the criteria described in the *Notice*?

Yes  No  See my attached written comments

### Contact Information

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_

State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

### Are you:

An NASD Member

An Investor

A Registered Representative

Other: \_\_\_\_\_  
\_\_\_\_\_

## INFORMATIONAL

### Operations

SEC Approves NASD Rule Proposal Relating to Operations; Effective Date: **September 12, 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.*

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management

## KEY TOPICS

- ACATS Rules
- Uniform Practice Code

### Executive Summary

On September 12, 2001, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 11870(c) and Rule 11870(d)<sup>1</sup> that are designed to expedite the transfer of customer accounts that contain proprietary or third-party products (e.g., mutual funds or money market funds) that the receiving member cannot receive or carry.

The text of the amendments as provided in Attachment A became effective on September 12, 2001.

### Questions/Further Information

Questions concerning this Notice may be directed to Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, at (202) 728-8411, or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8844.

### Discussion

NASD Regulation has amended Uniform Practice Code Rules 11870(c) and 11870(d) to conform to recent modifications to the Automated Account Transfer Service (ACATS).<sup>2</sup> The new procedures will expedite the transfer of accounts containing third-party and/or proprietary products.<sup>3</sup> The account transfer process starts when a customer whose account is carried by a member firm ("carrying member") wishes to transfer the account to another member (the "receiving member") and submits a signed broker-to-broker transfer instruction to the receiving member. The receiving member submits the instruction to the

carrying member, and the carrying member has three business days either to validate and return the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances as shown on its books) or to take exception to the instruction. Specifically, the carrying member: (1) identifies any assets in the account that it knows are nontransferable, including any asset that is a proprietary product of the carrying member, (2) identifies these assets to the customer in writing, and (3) requests instructions from the customer with respect to the disposition of such assets. The customer may ask the carrying member to liquidate the asset, continue to retain the asset, or transfer the asset in the customer's name to the customer.

A customer's account may also contain third-party products (e.g., mutual fund/money market fund) that the receiving firm can neither receive nor carry because it does not maintain the necessary relationship or arrangement with appropriate third parties. The carrying member would not have identified those assets as non-transferable because it would not know whether the receiving member could receive/carry the asset.

Under the prior rules, the carrying member attempted to transfer all third-party assets with the rest of the account within three business days following the validation of a transfer instruction. When the receiving member could not receive or carry the asset, it would reverse the transfer of those assets and send them back to the carrying member. In turn, customers received statements with multiple entries for assets that were unsuccessfully transferred and returned.

## NASD Notice to Members 01-66

Under the amendments to Rule 11870(c) and 11870(d), the receiving member will review the asset validation report, designate those proprietary and/or third-party assets it is unable to receive/carry, provide the customer with a list of those assets, and request instructions from the customer regarding their disposition. The customer may instruct the receiving member to liquidate the asset, continue to retain the asset, transfer the asset in the customer's name to the customer, or transfer the asset to the third party that is the original source of the product. Most importantly, the transfer of the other assets in the account will occur simultaneously with the receiving member's designation of nontransferable assets.

These procedures should eliminate the need for reversing the transfer of third-party and/or proprietary products, thereby reducing delay and the cost of customer transfers incurred by members under the current system. These procedures also will substantially reduce customer confusion in that customers will no longer receive multiple account statements from the carrying and receiving firms as they transfer and then reverse transactions.

Under Rule 11870(d)(3)(C), a member may take exception to a transfer instruction if the account number was invalid, *i.e.*, the account number was not on the carrying member's books. Rule 11870(d)(3)(C), as amended, makes clear that the carrying member is responsible for tracking account number changes. An account number that has been

changed due to internal reassignment of an account to another broker or account executive with the carrying member will not be considered invalid for purposes of taking exception to a transfer instruction.

### Effective Date of Amendments

These amendments became effective on September 12, 2001.

### Endnotes

- 1 See SEC Release No. 34-44787 (Sept. 12, 2001), 66 FR 48301 (Sept. 19, 2001) (File No. SR-NASD-2001-53) ("SEC Approval Order").
- 2 ACATS is administered by the National Securities Clearing Corporation (NSCC).
- 3 These changes also conform to a recent amendment to the Interpretation of New York Stock Exchange (NYSE) Rule 412. See SEC Release No. 34-44596 (July 26, 2001), 66 FR 40306 (Aug. 2, 2001).

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# NASD Notice to Members 01-66

## ATTACHMENT A

*New language is underlined; deletions are in brackets.*

### Uniform Practice Code

#### 11870. Customer Account Transfer Contracts

(a) and (b) No change

##### (c) Transfer Instructions

(1) Account transfers accomplished pursuant to this Rule are subject to the following conditions, which the customer must be informed of, affirm, or authorize through their inclusion in the transfer instruction form required to be completed and signed to initiate the account transfer:

(A) No change.

(B) The customer will be contacted in writing by the carrying member, and/or by the receiving member, with respect to the disposition of any assets in the account that are nontransferable.

(C) and (D) No change.

(E) The carrying member and the receiving member must promptly resolve and reverse any nontransferable assets [which] that were not properly identified during validation. In all cases, each member shall promptly update [their] its records and bookkeeping systems and notify the customer of the action taken.

(2) A proprietary product of the carrying member shall be deemed nontransferable unless the receiving member has agreed to accept transfer of the product. Upon receipt of the asset validation report, the receiving member shall designate any assets that are a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying member, upon receipt of such designation, may treat such designated assets as nontransferable and refrain from transferring the designated assets.

~~[(2)]~~ (3) If an account includes any nontransferable assets that are proprietary products of the carrying member, the carrying member must provide the customer with a list of the specific assets and request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. In particular, such request [,] should provide, where applicable, the customer with the following alternative methods of disposition for nontransferable assets:

(A) through (C) No change.

(4) If an account to be transferred includes any nontransferable assets that the receiving member has designated as assets that are a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the

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## NASD Notice to Members 01-66

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customer's account, the receiving member must provide the customer with a list of the specific assets and request, in writing and prior to the time it makes such designation, further instructions from the customer with respect to the disposition of such assets. In particular, such request should, where applicable, provide the customer with the following alternative methods of disposition for nontransferable assets:

(A) Liquidation, with a specific indication of any redemption or other liquidation related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer.

(B) Retention by the carrying member for the customer's benefit.

(C) Shipment, physically and directly, in the customer's name to the customer.

(D) Transfer to the third party that is the original source of the product, for credit to an account opened by the customer with that third party.

[(3)] (5) If the customer has authorized liquidation or transfer of [such] assets deemed to be nontransferable, the carrying member must distribute[d] the resulting money balance to the customer or initiate the transfer within five (5) business days following receipt of the customer's disposition instructions.

[(4)] (6) With respect to transfers of retirement plan securities accounts, the customer authorizes the custodian/trustee for the account:

(A) and (B) No change.

### **(d) Validation of Transfer Instructions**

(1) and (2) No change.

(3) A carrying member may take exception to a transfer instruction only if:

(A) and (B) No change.

(C) the account number is invalid (account number is not on carrying member's books); however, if the carrying member has changed the account number for purposes of internally reassigning the account to another broker or account executive, it is the responsibility of the carrying firm to track the changed account number, and such reassigned account number shall not be considered invalid for purposes of fulfilling a transfer instruction.

(D) through (L) No change.

(4) through (8) No change.

**(e) through (n) No Change**

## INFORMATIONAL

# Terrorist Activity

## Executive Order Targeting Terrorists

### 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.*

- Executive Representatives
- Legal & Compliance
- Senior Management

### KEY TOPICS

- Office of Foreign Assets Control
- Terrorist Activity

### Executive Summary

At midnight on September 24, 2001, President Bush issued Executive Order 13224 (Executive Order) freezing the property of and prohibiting transactions with persons who commit, threaten to commit, or support terrorism. The order was issued through the United States Treasury Department's Office of Foreign Assets Control (OFAC), and the offices of the Secretaries of State and Treasury and the Attorney General determined the persons and organizations affected.

National Association of Securities Dealers, Inc. (NASD®) members should establish procedures to ensure that they are complying with the rules and regulations set forth by the Treasury Department as outlined below. The OFAC Web Site (<http://www.treas.gov/ofac>) lists those persons and organizations affected by the Executive Order, as well as those persons, organizations, and countries that the Administration suspects are involved in terrorist activities.

### Questions/Further Information

Members should direct questions regarding this *Notice* to Andrew Labadie, Member Regulation, NASD Regulation, Inc., at (202) 728-8397; or Nancy Libin, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8835.

### Background:

OFAC administers and enforces economic and trade sanctions against certain foreign countries, terrorism-sponsoring organizations, and international narcotics traffickers based on U.S. foreign policy and national

security goals. OFAC acts under Presidential wartime and national emergency powers, as well as specific legislative authority, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

Due to the breadth of foreign terrorists' financial assets, President Bush issued an Executive Order freezing the property of and prohibiting transactions with persons who commit, threaten to commit, or support terrorism. The President also indicated that the Administration would pursue further consultation and cooperation with foreign financial institutions as an additional tool to enable the United States to curtail the financing of terrorism.

The number of persons and organizations ultimately affected by the Executive Order could be quite broad. Beyond those specifically named, the Administration will likely name additional persons and entities who:

- pose a significant risk of committing acts of terrorism;
- assist in, sponsor, or provide financial, material, or technological support for terrorist activities; or
- act on behalf of, or associate with, those previously recognized by the Administration as terrorists.

The Executive Order prohibits transactions with those persons and organizations listed on the OFAC Web Site ([www.treas.gov/ofac](http://www.treas.gov/ofac)) under

## NASD Notice to Members 01-67

“Terrorists” and “Specially Designated Nationals and Blocked Persons” (SDN List), as well as with the listed embargoed countries and regions. The names of those persons and organizations included in the September 24, 2001 Executive Order, and not currently reflected in one of the categories on the OFAC Web Site are as follows:

- Al Qaida/Islamic Army
- Abu Sayyaf Group
- Armed Islamic Group (GIA)
- Harakat ul-Mujahidin (HUM)
- Al-Jihad (Egyptian Islamic Jihad)
- Islamic Movement of Uzbekistan (IMU)
- Asbat al-Ansar
- Salafist Group for Call and Combat (GSPC)
- Libyan Islamic Fighting Group
- Al-Itihaad al-Islamiya (AIAI)
- Islamic Army of Aden
- Usama bin Laden
- Muhammad Atif (aka, Subhi Abu Sitta, Abu Hafs Al Masri)
- Sayf al-Adl
- Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)
- Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-Shanqiti)
- Ibn Al-Shaykh al-Libi
- Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)
- Abd al-Hadi al-Iraqi (aka, Abu Abdallah)

- Ayman al-Zawahiri
- Thirwat Salah Shihata
- Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)
- Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)
- Makhtab Al-Khidamat/Al Kifah
- Wafa Humanitarian Organization
- Al Rashid Trust
- Mamoun Darkazanli Import-Export Company

Note that all of these groups have aliases, so it is important that members obtain all of the names from the Web Site to be certain that they can properly identify all of the groups.

### Guidance

As recommended by OFAC, broker/dealers should establish compliance programs to avoid violations and possible enforcement actions. The Treasury Department through OFAC can penalize member firms for initiating a transaction that should be prohibited, *even if a clearing or other intermediary entity refuses to deliver or “blocks” the transaction* based on the customer’s inclusion on OFAC’s SDN List. OFAC’s Web Site gives examples of how violations may arise and notes that they can occur even in cases where a financial institution or intermediary is unaware that the initiating party is publicly suspected of being involved in, or directly supporting, terrorist activities.

If your firm blocks or is subject to a block on the movement of cash or securities, your firm should report the incident and the names of the

persons or organizations involved to the OFAC Compliance Division at (202) 622-2426 (facsimile). Debits to blocked customer accounts are prohibited, although credits are authorized. Cash balances in customer accounts must earn interest at commercially reasonable rates. Blocked securities may not be paid, withdrawn, transferred (even by book transfer), endorsed, or guaranteed.

OFAC also requires the filing of a comprehensive annual report by September 30 each year on blocked property held as of June 30. The report is to be filed using Form TDF 90-22.50, which is available from OFAC’s fax-on-demand service, electronically by clicking on the GPO ACCESS button on OFAC’s Home Page, or by going directly to The Federal Bulletin Board and accessing OFAC’s extended electronic information reading room, which is called the FAC\_MISC file library. Members may request to submit the information in an alternative format or an extension of the reporting deadline. OFAC will consider these requests on a case-by-case basis.

Again, for additional information, visit the OFAC Web Site at [www.treas.gov/ofac](http://www.treas.gov/ofac).

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# NASD Notice to Members 01-68

## FIPS Changes

### Fixed Income Pricing System<sup>SM</sup> Additions, Changes, And Deletions As Of August 21, 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 & Market Making

#### KEY TOPICS

- FIPS

As of August 21, 2001, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

| Symbol  | Name                               | Coupon | Maturity |
|---------|------------------------------------|--------|----------|
| ALWA.GA | Alamosa Delaware Inc               | 12.500 | 02/01/11 |
| AMR.GA  | AMR Corp                           | 9.000  | 09/15/16 |
| AMR.GB  | AMR Corp                           | 10.200 | 03/15/20 |
| AMR.GC  | AMR Corp                           | 9.880  | 06/15/20 |
| AMR.GD  | AMR Corp                           | 10.000 | 04/15/21 |
| AMR.GE  | AMR Corp                           | 9.750  | 08/15/21 |
| AMR.GF  | AMR Corp                           | 9.800  | 10/01/21 |
| AMR.GG  | AMR Corp                           | 9.000  | 08/01/12 |
| BRK.GA  | Berkshire Hathaway                 | 1.000  | 12/02/01 |
| COD.GA  | Chiles Offshore LLC/Fin            | 10.000 | 05/01/08 |
| TWRS.GG | Crown Castle Intl Corp             | 9.375  | 08/01/11 |
| RMY.GC  | Delco Remy Intl Inc                | 11.000 | 05/01/09 |
| DAL.GH  | Delta Air Lines Inc                | 7.700  | 12/15/05 |
| DAL.GI  | Delta Air Lines Inc                | 7.900  | 12/15/09 |
| DAL.GJ  | Delta Air Lines Inc                | 8.300  | 12/15/29 |
| DAL.GA  | Delta Air Lines Inc                | 9.000  | 05/15/16 |
| DAL.GB  | Delta Air Lines Inc                | 10.125 | 05/15/16 |
| DAL.GC  | Delta Air Lines Inc                | 10.375 | 02/01/11 |
| DAL.GD  | Delta Air Lines Inc                | 9.750  | 05/15/21 |
| DAL.GE  | Delta Air Lines Inc                | 8.500  | 03/15/02 |
| DAL.GF  | Delta Air Lines Inc                | 9.250  | 03/15/22 |
| DAL.GG  | Delta Air Lines Inc                | 10.375 | 12/15/22 |
| DIG.GA  | DII Group Inc                      | 8.500  | 09/15/07 |
| FNV.GA  | Finova Group Inc                   | 7.500  | 11/15/09 |
| IEE.GB  | Integrated Electrical Services Inc | 9.375  | 02/01/09 |
| KEG.GB  | Key Energy Services Inc            | 8.375  | 03/01/08 |
| MRD.GA  | MacDermid Inc                      | 9.125  | 07/15/11 |
| MEGA.GA | Media General Inc                  | 6.950  | 09/01/06 |
| MTH.GA  | Meritage Corp                      | 9.750  | 06/01/11 |
| MHDS.GA | Michael Foods Acquisition Corp     | 11.750 | 04/01/11 |
| NVI.GA  | National Vision Inc                | 12.000 | 03/03/09 |
| NXFI.GA | Nexstar Finance LLC                | 12.000 | 04/01/08 |
| NTK.GG  | Nortek Inc Ser B                   | 9.875  | 06/15/11 |
| PYX.GB  | Playtex Products Inc               | 9.375  | 06/01/11 |
| RCL.GB  | Royal Caribbean Cruises            | 8.125  | 07/28/04 |
| RCL.GC  | Royal Caribbean Cruises            | 8.250  | 04/01/05 |
| RCL.GD  | Royal Caribbean Cruises            | 7.125  | 09/18/02 |
| RCL.GE  | Royal Caribbean Cruises            | 7.250  | 08/15/06 |
| RCL.GF  | Royal Caribbean Cruises            | 7.000  | 10/15/07 |
| RCL.GG  | Royal Caribbean Cruises            | 7.500  | 10/15/27 |
| RCL.GH  | Royal Caribbean Cruises            | 6.750  | 03/15/08 |
| RCL.GI  | Royal Caribbean Cruises            | 7.250  | 03/15/18 |
| RCL.GJ  | Royal Caribbean Cruises            | 8.750  | 02/02/11 |
| SLMC.GA | Select Medical Corp                | 9.500  | 06/15/09 |
| PKS.GF  | Six Flags Inc                      | 9.500  | 02/01/09 |
| UAL .GW | United Air Lines Inc               | 9.760  | 05/13/06 |

## NASD Notice to Members 01-68

|        |                       |        |          |
|--------|-----------------------|--------|----------|
| UAL.GU | United Air Lines Inc  | 10.110 | 02/19/06 |
| UAL.GV | United Air Lines Inc  | 10.850 | 07/05/14 |
| UAL.GX | United Air Lines Inc  | 9.760  | 05/20/06 |
| UAL.GY | United Air Lines Inc  | 9.760  | 05/27/06 |
| UAL.GZ | United Air Lines Inc  | 10.360 | 11/20/12 |
| UAL.HA | United Air Lines Inc  | 10.360 | 11/27/12 |
| UAL.GR | United Air Lines Inc  | 10.110 | 01/05/06 |
| UAL.GS | United Air Lines Inc  | 10.850 | 02/19/15 |
| UAL.GT | United Air Lines Inc  | 10.360 | 11/13/12 |
| VPI.GD | Vintage Petroleum Inc | 7.875  | 05/15/11 |

As of August 21, 2001, the following bonds were deleted from the Fixed Income Pricing System.

| <b>Symbol</b> | <b>Name</b>                   | <b>Coupon</b> | <b>Maturity</b> |
|---------------|-------------------------------|---------------|-----------------|
| ANCG.GC       | Anker Coal Group Inc          | 9.750         | 10/01/07        |
| AETC.GA       | Applied Extrusion Tech Inc    | 11.500        | 04/01/02        |
| AXPD.GA       | Axia Inc                      | 10.750        | 07/15/08        |
| BJS.GA        | BJ Services Co                | 12.875        | 12/01/02        |
| BDUS.GA       | Burlington Industries Cap Inc | 16.875        | 07/01/04        |
| BRMH.GA       | Burlington Motor Holdings Inc | 11.500        | 11/01/03        |
| CLUH.GA       | Comcast Cellular Hldgs Inc    | 9.500         | 05/01/07        |
| CYSS.GA       | County Seat Stores Inc        | 12.000        | 10/01/02        |
| CYSS.GB       | County Seat Stores Inc        | 12.000        | 10/01/01        |
| CPFU.GA       | CP Funding Corp               | 12.500        | 06/15/04        |
| WBB.GB        | Del Webb Corp                 | 9.750         | 03/01/03        |
| DIIG.GA       | DII Group Inc                 | 8.500         | 09/15/07        |
| FNVC.GA       | Finova Capital Corp           | 9.125         | 02/27/02        |
| FNVC.GB       | Finova Capital Corp           | 6.625         | 09/15/01        |
| FNVC.GC       | Finova Capital Corp           | 7.400         | 05/06/06        |
| FNVC.GD       | Finova Capital Corp           | 7.125         | 05/01/02        |
| FNVC.GE       | Finova Capital Corp           | 7.125         | 05/17/04        |
| FNVC.GF       | Finova Capital Corp           | 7.400         | 06/01/07        |
| FNVC.GG       | Finova Capital Corp           | 6.900         | 06/19/04        |
| FNVC.GH       | Finova Capital Corp           | 6.500         | 07/28/02        |
| FNVC.GI       | Finova Capital Corp           | 8.375         | 05/15/05        |
| FNVC.GJ       | Finova Capital Corp           | 5.875         | 10/15/01        |
| FNVC.GK       | Finova Capital Corp           | 6.250         | 11/01/02        |
| FNVC.GL       | Finova Capital Corp           | 6.750         | 03/09/09        |
| FNVC.GM       | Finova Capital Corp           | 6.125         | 03/15/04        |
| FNVC.GN       | Finova Capital Corp           | 0.000         | 11/08/02        |
| FNVC.GO       | Finova Capital Corp           | 7.250         | 11/08/04        |
| FNVC.GP       | Finova Capital Corp           | 6.150         | 03/31/03        |
| FNVC.GQ       | Finova Capital Corp           | 7.250         | 07/12/06        |
| FNVC.GR       | Finova Capital Corp           | 7.625         | 09/21/09        |
| GOOA.GA       | Geothermal Resources Intl Inc | 13.000        | 11/15/91        |
| GOOA.GB       | Geothermal Resources Intl Inc | 13.750        | 03/01/96        |
| GBIX.GA       | Globix Corp                   | 11.000        | 04/15/04        |
| GKYD.GA       | Golden Sky DBS Inc            | 13.500        | 03/01/07        |

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|          |   |        |          |
|----------|---|--------|----------|
| GKYS.GA  | Golden Sky System Inc                       | 12.375 | 08/01/06 |
| HAY.GE   | Hayes Wheels International Inc              | 9.250  | 11/15/02 |
| HDRM.GA  | Hedstrom Corp                               | 10.000 | 06/01/07 |
| HDHG.GA  | Hedstrom Holdings Inc                       | 12.000 | 06/01/09 |
| HCOR.GA  | Helathcor Holdings Inc                      | 11.000 | 12/01/04 |
| HEGP.GA  | Helicon Group LP/Cap Corp                   | 11.000 | 11/01/03 |
| HHI.GC   | Home Holdings Inc                           | 7.875  | 12/15/03 |
| HNTC.GB  | Huntsman Corp                               | 11.000 | 04/15/04 |
| HNP.K.GA | Huntsman Packaging Corp                     | 9.125  | 10/01/07 |
| IMAX.GA  | Imax Corp                                   | 10.000 | 03/01/01 |
| IPCG.GA  | Impac Group Inc Ser B                       | 10.125 | 03/15/08 |
| IHMD.GA  | ImperialHome Décor Group Inc                | 11.000 | 03/15/08 |
| IFBC.GA  | Infinity Broadcasting Corp                  | 10.375 | 03/15/02 |
| INGS.GB  | Ingersoll Newspapers Inc                    | 12.125 | 09/01/00 |
| IAD.GA   | Inland Steel Inds Inc                       | 12.750 | 12/15/02 |
| INRK.GA  | International Bank (Wash)                   | 15.750 | 08/01/00 |
| ICFP.GA  | International Comfort Products Holdings Inc | 8.625  | 05/15/08 |
| ITTO.GA  | ITT Corp New                                | 6.250  | 11/15/00 |
| IVXH.GA  | Ivex Holdings Corp                          | 13.250 | 03/15/05 |
| IVEX.GA  | Ivex Packaging Corp                         | 12.500 | 12/15/02 |
| JCOM.GC  | Jacor Communications Co                     |        |          |
| HEFR.GA  | JH Heafner Company                          | 10.000 | 05/15/08 |
| JJSA.GA  | Jitney-Jungle Stores Amer Inc               | 12.000 | 03/01/06 |
| JJSA.GB  | Jitney-Jungle Stores Amer Inc               | 10.375 | 09/15/07 |
| JBLT.GA  | Johnston Cola Group                         | 11.375 | 09/15/01 |
| JOIN.GA  | Jones Intercable Inc                        | 11.500 | 07/15/04 |
| JOSI.GA  | Josephson Intl Inc                          | 12.500 | 05/15/03 |
| JPSA.GA  | JPS Automotive Products Inc                 | 11.125 | 06/15/01 |
| KANE.GA  | Kane Industries Inc                         | 8.000  | 02/01/98 |
| KHKY.GA  | Kash N Karry Food Stores Inc                | 0.000  | 02/01/03 |
| KCS.GB   | KCS Energy Inc                              | 8.875  | 01/15/06 |
| KSRE.GA  | Kearny Street Real Estate LP                | 9.560  | 07/15/03 |
| KEYS.GA  | Keystone Group Inc                          | 9.750  | 09/01/03 |
| KCAS.GA  | Kloster Cruise Ltd                          | 13.000 | 05/01/03 |
| LESI.GA  | Lear Corp                                   | 11.250 | 07/15/00 |
| LPG.GA   | Life Partners Group Inc                     | 12.750 | 07/15/02 |
| LTCH.GA  | Litchfield Fin'l Corp                       | 10.000 | 11/01/02 |
| LSNU.GA  | Louisiana Casino Cruises Inc                | 11.000 | 12/01/05 |
| MACM.GA  | MacMillan Inc                               | 10.250 | 11/01/01 |
| MCU.GA   | Magma Copper Co                             | 12.000 | 12/15/01 |
| MLTT.GA  | MaLette Inc                                 | 12.250 | 07/15/04 |
| MNR.GA   | Manor Care Inc                              | 9.500  | 11/15/02 |
| MCAB.GC  | Marcus Cable Co                             | 14.250 | 12/15/05 |
| MDQC.GA  | Mediq Inc                                   | 13.000 | 06/01/04 |
| MED.GB   | Mediq Inc/PRN Life Support Sus Inc          | 11.000 | 06/01/08 |
| MRBH.GA  | Merit Behavioral Corp                       | 11.500 | 11/15/05 |
| MTLM.GA  | Metal Management Inc                        | 10.000 | 05/15/08 |
| MBCA.GA  | Metropolitan Broadcasting Corp              | 16.500 | 09/30/06 |
| MFST.GA  | MFS Communications Inc                      | 9.375  | 01/15/04 |
| MFST.GB  | MFS Communications Inc                      | 8.875  | 01/15/06 |

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|         |                                 |        |          |
|---------|---------------------------------|--------|----------|
| MCUM.GA | Michael Petroleum Corp          | 11.500 | 04/01/05 |
| MSI.GB  | Movie Star Inc                  | 8.000  | 09/01/01 |
| NEOD.GB | Neodata SVS Inc                 | 12.000 | 05/01/03 |
| NMK.GC  | Niagara Mohawk Power Corp       | 7.125  | 07/01/01 |
| NDCO.GA | Noble Drilling Corp             | 9.250  | 10/01/03 |
| NTK.GC  | Nortek Inc                      | 9.875  | 03/01/04 |
| NOE.GA  | North Atlantic Energy Corp      | 9.050  | 06/01/02 |
| OMM.GA  | Omi Corp                        | 10.250 | 11/01/03 |
| ORX.GC  | Oryx Energy Co                  | 10.000 | 04/01/01 |
| OSPL.GA | OSI Specialties Inc             | 9.250  | 10/01/03 |
| OXAU.GA | Oxford Automotive Inc           | 10.125 | 06/15/07 |
| OXHP.GA | Oxford Health Plans Inc         | 11.000 | 05/15/05 |
| PCFI.GA | P&C Food Markets Inc            | 11.500 | 10/15/01 |
| PFID.GA | P&F Industries Inc              | 13.750 | 01/01/17 |
| PADE.GA | Pace Industries Inc             | 10.625 | 12/01/02 |
| PNAA.GB | Pan Am World Airways Inc        | 15.000 | 04/15/04 |
| PDAG.GA | Panda Global Energy Co          | 12.500 | 04/15/04 |
| PLHC.GB | Paracelsus Healthcare Corp      | 10.000 | 08/15/06 |
| PKOH.GA | Park-Ohio Industries Inc        | 9.250  | 12/01/07 |
| PATH.GA | Pathmark Stores Inc             | 11.625 | 06/15/02 |
| PATH.GB | Pathmark Stores Inc             | 9.625  | 05/01/03 |
| PATH.GC | Pathmark Stores Inc             | 10.750 | 11/01/03 |
| PATH.GD | Pathmark Stores Inc             | 12.625 | 06/15/02 |
| PDVA.GA | PDV America Inc                 | 7.750  | 08/01/00 |
| PFG.GA  | Penncorp Financial Group Inc    | 9.250  | 12/15/03 |
| PHP.GD  | Petroleum Heat & Power Inc      | 12.250 | 02/01/05 |
| PIDM.HS | Piedmont Aviation Inc Ser D     | 10.150 | 03/28/01 |
| PIDM.HT | Piedmont Aviation Inc Ser E     | 10.150 | 03/28/01 |
| PIDM.HU | Piedmont Aviation Inc Ser F     | 10.150 | 03/28/01 |
| PIDM.HV | Piedmont Aviation Inc Ser G     | 10.150 | 03/28/01 |
| PIDM.JN | Piedmont Aviation Inc Ser H     | 9.750  | 05/08/01 |
| PIDM.JO | Piedmont Aviation Inc Ser I     | 9.750  | 05/08/01 |
| PIDM.KN | Piedmont Aviation Inc Ser J     | 9.900  | 05/13/01 |
| PIDM.KO | Piedmont Aviation Inc Ser K     | 9.900  | 05/13/01 |
| PDCH.GA | Plaid Clothing Group Inc        | 11.000 | 08/01/03 |
| PLTC.GA | Plastic Containers Inc          | 10.750 | 04/01/01 |
| PLAY.GA | Players Intl Inc                | 10.875 | 04/15/05 |
| PYX.GA  | Playtex Products Inc            | 8.875  | 07/15/04 |
| PPFG.GA | PNPP II Funding Corp            | 8.070  | 05/30/00 |
| PGLI.GA | Premier Graphics Inc            | 11.500 | 12/01/05 |
| PRVC.GA | President Casinos Inc           | 13.000 | 09/15/01 |
| PRS.GB  | Presidio Oil Co                 | 11.500 | 09/15/00 |
| PRLU.GA | Price Comm Cellular Holding Inc | 11.250 | 08/15/01 |
| PRWL.GA | Pricellular Wireless Corp       | 14.000 | 11/15/01 |
| PRWL.GB | Pricellular Wireless Corp       | 12.250 | 10/01/03 |
| PRWL.GC | Pricellular Wireless Corp       | 10.750 | 11/01/04 |
| PIMO.GA | Primeco Inc                     | 12.750 | 03/01/05 |
| PUML.GA | Purina Mills Inc                | 9.000  | 03/15/10 |
| QHGI.GA | Quorum Health Group Inc         | 11.875 | 12/15/02 |
| ROIA.GA | Radio One Inc                   | 12.000 | 05/15/04 |

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|         |                                 |        |          |
|---------|---------------------------------|--------|----------|
| RGRO.GB | Ralphs Grocery Co               | 9.000  | 04/01/03 |
| RAPA.GB | Rapid American Corp             | 0.000  | 03/01/01 |
| RAPA.GC | Rapid American Corp             | 0.000  | 03/01/02 |
| RAPA.GD | Rapid American Corp             | 0.000  | 03/01/03 |
| RAPA.GE | Rapid American Corp             | 0.000  | 03/01/04 |
| RAPA.GF | Rapid American Corp             | 0.000  | 03/01/05 |
| RAPA.GG | Rapid American Corp             | 0.000  | 03/01/06 |
| RAPA.GH | Rapid American Corp             | 0.000  | 03/01/07 |
| RRI.GA  | Red Roofs Inns Inc              | 9.625  | 12/15/03 |
| REVI.GA | Reeves Industries Inc           | 11.000 | 07/15/02 |
| REGL.GA | Regal Cinemas Inc               | 8.500  | 10/01/07 |
| RSV.GA  | Rental Services Corp            | 9.000  | 05/15/08 |
| RIHF.GC | Resorts Intl Hotel Fin Inc      | 11.000 | 09/15/03 |
| RHC.GB  | Rio Hotel & Casino Inc          | 9.500  | 04/15/07 |
| RVW.GA  | Riverwood Intl Corp             | 10.750 | 06/15/00 |
| RVW.GC  | Riverwood Intl Corp             | 10.750 | 06/15/00 |
| RVW.GE  | Riverwood Intl Corp             | 10.375 | 06/30/04 |
| RMOC.GA | Rutherford-Moran Oil Corp       | 10.750 | 10/01/04 |
| RXIH.GA | RXI Holdings Inc                | 14.000 | 07/15/02 |
| RYL.GB  | Ryland Group Inc                | 9.625  | 06/01/04 |
| SGLS.GA | Safelite Glass Corp             | 9.875  | 12/15/06 |
| ASDW.GA | SD Warren Co                    | 12.000 | 12/15/04 |
| SEG.GA  | Seagate Technology Inc          | 7.125  | 03/01/04 |
| SEG.GB  | Seagate Technology Inc          | 7.370  | 03/01/07 |
| SEG.GC  | Seagate Technology Inc          | 7.875  | 03/01/17 |
| SFXB.GC | SFX Broadcasting Inc            | 11.375 | 10/01/00 |
| SBO.GB  | Showboat Inc                    | 13.000 | 08/01/09 |
| SBDU.GA | Signature Brands USA Inc        | 13.000 | 08/15/02 |
| SIAN.GA | Silgan Corp                     | 11.750 | 06/15/02 |
| SVRN.GE | Sovereign Bancorp Inc           | 6.750  | 07/01/00 |
| SPLT.GA | Splitrock Services Inc          | 11.750 | 07/15/08 |
| STCL.GA | Stone Consolidated Corp         | 10.250 | 12/15/00 |
| STUA.GA | Stuart Entertainment            | 12.500 | 11/15/04 |
| SMKG.GA | Supermarkets Genl Holdings Corp | 11.625 | 06/15/02 |
| SGH.GA  | Surgical Health Corp            | 11.500 | 07/15/04 |
| SNGY.GB | Synergy Group Inc               | 9.500  | 09/15/00 |
| SIND.GA | Synthetic Industries Inc        | 12.750 | 12/01/02 |
| TKPX.GB | Tekin-Plex Inc                  | 11.250 | 04/01/07 |
| TKPX.GA | Tekni-Plex Inc                  | 9.250  | 03/01/08 |
| TETI.GA | Teletrac Inc                    | 14.000 | 08/01/07 |
| SELO.GB | The Selmer Co Inc               | 11.000 | 06/30/00 |
| SELO.GC | The Selmer Co Inc               | 10.920 | 06/30/00 |
| TIPK.GB | Tiphook Financial Corp          | 10.750 | 11/01/02 |
| TVNC.GA | TNV Entertainment Corp          | 14.000 | 08/01/08 |
| TOKM.GB | Tokenheim Corp                  | 11.500 | 08/01/06 |
| TALR.GA | Total Renal Care Inc            | 12.000 | 08/15/04 |
| TEGY.GA | Transamerican Energy Corp       | 11.500 | 06/15/02 |
| TEGY.GB | Transamerican Energy Corp       | 13.000 | 06/15/02 |
| TRAM.GE | Transamerican Refining          | 16.000 | 06/30/03 |
| TRWP.GA | Transwestern Publishing Co LP   | 9.625  | 11/15/07 |

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|         |                                |        |          |
|---------|--------------------------------|--------|----------|
| TCBV.GA | Triarc Consumer/Bev Hldgs Corp | 10.250 | 02/15/09 |
| TMAR.GA | Trico Marine Svs Inc           | 8.500  | 08/01/05 |
| TUES.GC | Tuesday Morning Corp           | 11.000 | 12/15/07 |
| ULTE.GA | Ultimate Electronics Inc       | 10.250 | 01/31/05 |
| UDFS.GA | United Defense Industry Inc    | 8.750  | 11/15/07 |
| UCAN.GA | United States Can Co           | 13.500 | 01/15/02 |
| USAR.GP | US Airways Inc Ser A           | 10.350 | 01/15/01 |
| USAR.OR | US Airways Inc Ser A           | 10.230 | 06/27/00 |
| USAR.OV | US Airways Inc Ser A           | 10.280 | 06/27/01 |
| USAR.OS | US Airways Inc Ser B           | 10.230 | 06/27/00 |
| USAR.OW | US Airways Inc Ser B           | 10.280 | 06/27/01 |
| USAR.OQ | US Airways Inc Ser C           | 10.230 | 06/27/00 |
| USAR.OU | US Airways Inc Ser C           | 10.280 | 06/27/01 |
| USAR.OT | US Airways Inc Ser D           | 10.230 | 06/27/00 |
| USAR.OX | US Airways Inc Ser D           | 10.280 | 06/27/01 |
| USNV.GA | USN Communications Inc         | 14.625 | 08/15/04 |
| VANM.GA | Van Kampen Merritt Cos Inc     | 9.750  | 02/15/03 |
| VEYI.GA | Vista Eyecare Inc              | 12.750 | 10/15/05 |
| WFGM.GA | Waterford Gaming LLC           | 12.750 | 11/15/03 |
| WBST.GA | Webster Financial Corp         | 8.750  | 06/30/00 |
| WLAL.GA | Wells Aluminum Corp            | 10.125 | 06/01/05 |
| WSFB.GB | Western Finl Savings Bank      | 8.500  | 07/01/03 |
| WMAS.GF | Western Mass Electric Co Ser B | 7.375  | 07/01/01 |
| WMAS.GE | Western Mass Electric Co Ser Y | 7.750  | 03/01/24 |
| WR.GB   | Western Resources Inc          | 7.125  | 08/01/09 |
| WHPC.GA | Wheeling Pittsburgh Corp       | 12.250 | 11/15/00 |
| WILX.GA | Wilcox & Gibbs Inc             | 12.250 | 12/15/03 |
| WHSE.GA | Williamhouse Regency Inc       | 11.500 | 06/15/05 |
| JBWB.GA | Williams J.B. Hldgs Inc        | 12.000 | 03/01/04 |
| WCII.GC | Winstar Communications Inc     | 15.000 | 03/01/07 |

As of August 21, 2001 changes were made to the symbols of the following FIPS bonds:

| <u>New Symbol</u> | <u>Old Symbol</u> | <u>New Name/Old</u> | <u>NameCoupon</u> | <u>Maturity</u> |
|-------------------|-------------------|---------------------|-------------------|-----------------|
|-------------------|-------------------|---------------------|-------------------|-----------------|

There were no symbol changes for this time period.

All bonds listed above are subject to trade-reporting requirements.

Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, NASDR Market Regulation, at (301) 590-6447.

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

# Disciplinary Actions

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## Disciplinary Actions Reported For September And October

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of September 2001.

### September Disciplinary Actions

#### Firms Fined, Individuals Sanctioned

**A.S. Goldman & Co., Inc. (CRD #23180, Red Bank, New Jersey) and Stuart Edward Winkler (CRD #1505029, Registered Principal, Brooklyn, New York).** The firm was censured, fined \$150,000, jointly and severally with an individual, and ordered to pay \$549,903, plus interest, in restitution to public customers. In addition, the firm was ordered to retain an independent consultant to review the firm's procedures in regard to markups/markdowns procedures and compliance with SEC Rule 10b-6 and to implement any recommended changes. Winkler was censured, fined \$36,000, and suspended from association with any NASD member in any capacity for two years. The Securities and Exchange Commission (SEC) sustained the disciplinary action by the NASD after considering respondents' appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through Winkler, charged public customers fraudulently excessive markups in sales of

warrants. The findings also stated that the firm and Winkler violated the antifraud provisions of the securities laws by bidding for and purchasing the warrants while engaged in a distribution of the warrants. In addition, the firm and Winkler failed to establish, maintain, and enforce adequate supervisory procedures, including written procedures, reasonably designed to achieve compliance with applicable securities laws and regulations.

Winkler's suspension began September 4, 2001, and will conclude at the close of business September 3, 2003. (**NASD Case #C10960208**)

**Freedom Investors Corp. (CRD #23714, Pewaukee, Wisconsin) and James Russell Fay (CRD #1003069, Registered Principal, Oconomowoc, Wisconsin)** were censured and fined \$40,000, jointly and severally. Fay was also suspended from association with any NASD member in any principal capacity for 90 days and required to requalify by exam before serving in any principal capacity. The NAC imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Fay, conducted a securities business while it failed to maintain the minimum required net capital, prepared inaccurate books and records, and prepared and filed inaccurate FOCUS Part IIA reports. Also, the firm and Fay failed to respond timely to NASD requests for information.

Fay's suspension began August 20, 2001, and will conclude November 17, 2001. (**NASD Case #C8A990071**)

## **Firms And Individuals Fined**

**Gardner Rich & Company (CRD #23681, Chicago, Illinois), Christopher Paul Gardner (CRD #1080424, Registered Principal, Chicago, Illinois) and Maria Luisa Rodriguez (CRD #2316911, Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$2,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gardner and Rodriguez, used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm filed FOCUS Part IIA reports late. **(NASD Case #C8A010041)**

**Hoefer & Arnett, Incorporated (CRD #10883, San Francisco, California) and Arthur Edward Raitano (CRD #1007119, Registered Principal, San Francisco, California)** submitted an Offer of Settlement in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Raitano engaged, and the firm permitted him to engage, in proprietary trading in securities and the direct supervision of such trading, without being registered as a limited representative-equity trader. **(NASD Case #C01010005)**

## **Firms Fined**

**Austin Securities, Inc. (CRD #17094, Forest Hills, New York)** submitted a Letter of Acceptance,

Waiver, and Consent in which the firm was censured and fined \$10,700 (which includes disgorgement of \$5,700; \$5,000 of the fine is joint and several with another individual). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through its president, permitted an individual associated with the firm to act in a capacity requiring registration while his registration status was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement. **(NASD Case #C10010104)**

**Kirlin Securities, Inc. (CRD #21210, Syosset, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>), within 90 seconds after execution, last sale reports of transactions in Nasdaq National Market<sup>®</sup> securities (NNM<sup>®</sup>) and failed to designate last sale reports as late. The findings also stated that the firm failed to transmit through ACT the correct volume and/or price in last sale reports of transactions in NNM securities, and failed to report to ACT the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt, or cross for transactions in NNM securities. The NASD also found that the firm failed to show either the time of entry and/or correct time of execution on the memoranda of brokerage orders and failed to indicate on customer order tickets whether the order was long or short. In addition, the

NASD found that the firm failed to indicate on customer order tickets for non-Nasdaq securities transactions the name of each dealer contacted and the quotations received to determine the best inter-dealer market. Furthermore, the NASD findings stated that the firm failed to include the time of entry and/or execution in terms of hours, minutes, and seconds on order tickets. Moreover, the NASD found that the firm executed short sale orders in securities and failed to maintain a written record of the affirmative determination made for such orders. **(NASD Case #C10010101)**

## **Individuals Barred Or Suspended**

**Henry Belkin (CRD #3176804, Associated Person, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Belkin consented to the described sanction and to the entry of findings that he submitted a Form U-4 that failed to disclose a material fact. The findings also stated that Belkin submitted an inaccurate amended Form U-4 and provided a false response to a question on the Form U-4. **(NASD Case #C02010038)**

**Charon Marie Bogner (CRD #2132017, Registered Representative, Ocala, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Bogner consented to the described sanctions and to the entry of findings that she participated in private securities

transactions without providing prior written notice to, or receiving prior written authorization from, her member firm.

Bogner's suspension began August 20, 2001, and will conclude at the close of business October 18, 2001. **(NASD Case #C07010056)**

**Patrick James Boyce (CRD #2388578, Registered Principal, East Setauket, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. In light of his financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Boyce consented to the described sanction and to the entry of findings that he executed unauthorized trades in the accounts of public customers, failed to execute customer sell orders, and failed to follow customer instructions. In addition, the NASD found that Boyce made material omissions and misrepresentations of fact in his solicitations of public customers to purchase stocks. Moreover, Boyce used high-pressure sales tactics in attempting to get a public customer to purchase stocks. **(NASD Case #CAF010007)**

**Patrick Andrew Brady (CRD #2536672, Registered Representative, Toledo, Ohio)** was fined \$42,943.31 and suspended from association with any NASD member in any capacity for one year for engaging in private securities transactions and barred from association with any NASD member in any capacity for failing to respond to information requests from the NASD. The sanctions are based on findings that Brady engaged in private securities transactions, for compensation, and failed to provide prior written

notice to, or to receive prior written approval from, his member firm to engage in the transactions. The findings also stated that Brady failed to respond to NASD requests for information.

Brady's bar was effective July 16, 2001. **(NASD Case #C8B000013)**

**Terrence Denis Brazeau (CRD #2622967, Registered Representative, Chicago, Illinois)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by exam for the Series 7 registration before again acting in that capacity. The fine must be paid before Brazeau reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brazeau consented to the described sanctions and to the entry of findings that he sat for the Series 7 exam, and contrary to written instructions, took notes that contained material relevant to the exam into the exam room.

Brazeau's suspension began August 20, 2001, and will conclude at the close of business August 19, 2003. **(NASD Case #C8A000067)**

**Ronnilo Panaligan Cabral (CRD #1387489, Registered Representative, Basking Ridge, 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, Cabral consented to the described sanction and to the entry of findings that he participated in outside business activities and failed to provide prompt written notice of such activities

to his member firms. **(NASD Case #C9B010060)**

**Zeng Yi Cai (CRD #1909173, Registered Principal, Bayside, 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, Cai consented to the described sanction and to the entry of findings that he executed unauthorized transactions in the accounts of public customers. The findings also stated that Cai failed to appear for NASD on-the-record interviews. **(NASD Case #C10010095)**

**Robert Charles Cole (CRD #734521, Registered Representative, Spring Lake, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cole consented to the described sanction and to the entry of findings that he received \$49,000 in cash from a public customer for investment purposes, invested \$19,500 of the cash as directed, and used the remaining \$29,500 for some purpose other than the benefit of the customer without the customer's knowledge or consent. **(NASD Case #C8A010044)**

**Michael Anthony Crispo (CRD #2281052, Registered Representative, South Ozone Park, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Crispo submitted insurance applications for public customers, and forged the customers' signatures to the applications, without their authorization or

consent. The findings also stated that Crispo made false, deceptive and/or misleading written statements to the NASD and failed to appear for an NASD on-the-record interview. **(NASD Case #C10010026)**

**Ernest Paul Daulong, II (CRD #1042072, Registered Representative, Houston, Texas)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Daulong reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Daulong consented to the described sanctions and to the entry of findings that he engaged in private securities transactions for compensation, and failed to provide prior written notice to, or to receive written permission from, his member firm before engaging in the transactions.

Daulong's suspension began August 20, 2001, and will conclude at the close of business February 19, 2002. **(NASD Case #C3A010010)**

**Linda Joyce Depaolo (CRD #1390208, Registered Representative, Avon, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Depaolo consented to the described sanction and to the entry of findings that she arranged for partial liquidations of \$47,000 from a public customer's variable annuity policy, asked the issuer to send her the checks, converted them to cashier's checks,

deposited the proceeds in an account she controlled, and used the proceeds for her benefit without the knowledge, consent, or authorization of the customer. The findings also stated that Depaolo arranged for a partial liquidation of \$27,000 from the same customer's variable annuity policy, asked that the liquidation check be made payable to a fund account, altered the check by deleting the customer's name and account number, and attempted to deposit the check into her own account without the knowledge, consent, or authorization of the customer. In addition, the NASD found that Depaolo failed to respond fully and completely to NASD requests for information. **(NASD Case #C8B010016)**

**Kenneth James Disbrow (CRD #1294717, Registered Representative, Upper Montclair, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,000, suspended from association with any NASD member in any capacity for 15 business days, and required to pay \$5,000 in restitution to a public customer. Without admitting or denying the allegations, Disbrow consented to the described sanctions and to the entry of findings that he purchased shares of stock for the account of a public customer without the customer's consent or authorization. The findings also stated that Disbrow caused his member firm's books and records to be inaccurate by marking customer order tickets as unsolicited when, in fact, Disbrow had solicited the transactions.

Disbrow's suspension began September 4, 2001, and concluded at the close of business September 24, 2001. **(NASD Case #C9B010062)**

**Robert William Douglass (CRD #2216606, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Douglass reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Douglass consented to the described sanctions and to the entry of findings that he purchased shares of stock in his personal account and on the same day sold the shares, earning a profit of \$4,529.38, but failed to disclose to his member firm that he was financially unable to pay for the shares of stock.

Douglass' suspension began August 20, 2001, and will conclude at the close of business August 19, 2002. **(NASD Case #C06010016)**

**Jeffrey David Eise (CRD #2164695, Registered Representative, St. Louis, Missouri)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Eise received \$21,128.29 from a public customer to purchase a mutual fund, endorsed the customer's check, and signed it over to a third party not affiliated with any mutual fund, thereby converting the customer's funds for his own use and benefit, without the customer's knowledge or consent. Eise also failed to respond to NASD requests for information. **(NASD Case #C04010002)**

**John Robert Engle (CRD #2211405, Registered Representative, Beavercreek, Ohio)** 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 \$10,000, plus interest, to public customers. Satisfactory proof of payment of the disgorgement, plus interest, must be made before Engle reassociates with any NASD member or requests relief from any statutory disqualification. Without admitting or denying the allegations, Engle consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions. **(NASD Case #C8B010018)**

**Michael Todd Farrah (CRD #2747298, Registered Principal, Connellsville, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Farrah consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. **(NASD Case #C9A010022)**

**Timothy Jude Finegan (CRD #2324579, Registered Representative, Rockville Centre, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 (which includes disgorgement of \$1,000 in commissions to the NASD) and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Finegan

consented to the described sanctions and to the entry of findings that he allowed unregistered persons to use his registered representative number to effect securities transactions on behalf of public customers. The findings also stated that Finegan allowed registered representatives to use his registered representative number to effect securities transactions on behalf of public customers residing in states where the other representatives were not registered, thereby circumventing state securities laws.

Finegan's suspension began August 20, 2001, and will conclude at the close of business October 19, 2001. **(NASD Case #C10010092)**

**Carmen Gonzalez (CRD #2278521, Registered Representative, McAllen, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Gonzalez reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that she received \$445 as payment for a public customer's annual insurance premium and failed to submit the funds to her member firm on the customer's behalf until a later date, thereby misusing the funds without the customer's knowledge or consent.

Gonzalez' suspension began August 20, 2001, and will conclude at the close of business August 19, 2003. **(NASD Case #C05010031)**

**Dennis Gerald Hanson (CRD #1439752, Registered Representative, Bend, Oregon)** 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 three months. Without admitting or denying the allegations, Hanson consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers to annuity applications and other documents to effect the purchase of variable annuity contracts without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion on their behalf.

Hanson's suspension began August 20, 2001, and will conclude at the close of business November 19, 2001. **(NASD Case #C3B010012)**

**Robert Gene Henry, Jr. (CRD #1697736, Registered Representative, Houston, Texas)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 business days for engaging in a private securities transaction, and barred from association with any NASD member in any capacity for failing to respond properly. The sanctions were based on findings that Henry effected a private securities transaction and failed to provide written notice to his member firm describing the transaction, his role therein, and whether he had received, or might receive, selling compensation in connection with the transaction. Henry also failed to respond to NASD requests for information and failed to respond to another request in a complete and timely manner.

Henry's bar became effective July 10, 2001. **(NASD Case #C06000038)**

**Melvin Donald Herrell, Jr. (CRD #2216596, Registered Representative, Coral Springs, Florida)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 business days for failing to provide notice of an outside business activity and barred from association with any NASD member in any capacity for failing to respond. The sanctions were based on findings that Herrell engaged in an outside business activity without providing prompt written notice to his member firm. Herrell also failed to respond to NASD requests for information.

Herrell's bar was effective July 20, 2001. **(NASD Case #C06010002)**

**Clinton Thomas Hoy (CRD #1280883, Registered Representative, Belle, West Virginia)** 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 three months, and required to disgorge \$700, plus interest, to a public customer. Without admitting or denying the allegations, Hoy consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the normal course of his association with his member firm and failed to provide the firm with prior written notice of the transactions.

Hoy's suspension began August 20, 2001, and will conclude at the close of business November 19, 2001. **(NASD Case #C9A010028)**

**Joseph Frank Keppard (CRD #2558464, Registered Representative, Fremont,**

**California)** submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Keppard reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Keppard consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

Keppard's suspension began August 6, 2001, and will conclude at the close of business August 5, 2003. **(NASD Case #C01000022)**

**Norman Gerald Lieberman (CRD #823757, Registered Representative, Weston, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 days and further suspended in all capacities after the expiration of the 30-day suspension until he requalifies. In light of his financial status, no monetary sanction was imposed. Without admitting or denying the allegations, Lieberman consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities, including mutual funds on a short-term basis with the use of margin, without having reason to believe such recommendations were suitable for the customer in light of the customer's investment objectives and financial situation.

Lieberman's suspension began August 6, 2001, and concluded at the close of business September 4, 2001. **(NASD Case #C07010053)**

**Terrell Javon McCuiston (CRD #4190927, Registered Representative, Jonesboro, 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 six months. The fine must be paid before McCuiston reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCuiston consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4. The findings also stated that McCuiston failed to respond timely to NASD requests for information.

McCuiston's suspension began August 20, 2001, and will conclude at the close of business February 19, 2002. **(NASD Case #C07010038)**

**William Martin Ornstein (CRD #500470, Registered Principal, Livingston, New Jersey)** 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 30 days. Without admitting or denying the allegations, Ornstein consented to the described sanctions and to the entry of findings that he participated in an agreement involving an unregistered person and his member firm. The unregistered person would refer prospective investors to Ornstein who were interested in purchasing securities equipment leases offered by the firm in return for a percentage of the commissions that Ornstein would receive from the sale. The NASD found that as a result of this conduct the individual received

\$250,000 in commissions. The findings also stated that Ornstein failed to amend promptly his Form U-4 to disclose a civil complaint filed by former customers against him.

Ornstein's suspension began August 20, 2001, and concluded at the close of business September 18, 2001. **(NASD Case #C9B010063)**

**Malcolm T. Preece, III (CRD #1345897, Registered Representative, Louisa, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Preece consented to the described sanction and to the entry of findings that he received property and casualty insurance premium payments to be deposited into a bank account he controlled and later remitted to an insurance company. Preece neglected to promptly deposit the funds, resulting in periodic negative balances in the account, including an eventual negative balance of \$16,123.28. **(NASD Case #C05010030)**

**John Elliott Raines, Jr. (CRD #2555534, Registered Representative, Mill Valley, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Raines, no monetary sanction has been imposed. Without admitting or denying the allegations, Raines consented to the described sanction and to the entry of findings that he participated in outside business activities and private securities transactions

without providing prior written notice to, and receiving approval from, his member firms. **(NASD Case #C04010028)**

**Ryan Mark Reynolds (CRD #2716545, Registered Representative, Dallas, Texas)** was fined \$85,000, suspended from association with any NASD member in any capacity for 223 days, and ordered to requalify by examination in all capacities before associating with any NASD member. In addition, Reynolds was required to pre-file any advertising and sales literature on which his name appears with the NASD for three years following the suspension. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Reynolds assisted in the publication of a report and a single-page advertisement that omitted material information and contained exaggerated claims and material misinformation. The findings also stated that the advertisements failed to present an accurate and balanced picture of the risks and benefits of investing in a stock, and contained unwarranted predictions of future performance and price of the stock. The NASD also found that Reynolds failed to disclose that the stock issuer funded the printing and publication of the advertisements and that he had received shares of the issuer's stock as compensation in the advertisements. In addition, the NASD found that Reynolds shared in a customer loss and failed to disclose the price of a stock at the time a recommendation was made in a single-page advertisement.

Reynold's suspension began August 6, 2001, and will conclude at the close of business March 19, 2002. **(NASD Case #CAF990018)**

**Leon Salmon (CRD #4306283, Registered Representative, Metairie, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Salmon reassociates with any NASD member or requests relief from any statutory disqualification. Without admitting or denying the allegations, Salmon consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4.

Salmon's suspension began September 4, 2001, and will conclude at the close of business October 15, 2001. **(NASD Case #C05010034)**

**Kevin Arthur Sawicki (CRD #3100380, Registered Representative, West Palm Beach, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sawicki failed to respond to NASD requests for information and to appear for an on-the-record interview. Sawicki also made material misrepresentations and omissions of fact to public customers when soliciting the customers to purchase securities. Moreover, Sawicki failed to disclose that he was paid commission on such sales, and failed to discuss any negative or cautionary information regarding the stock to the customers. **(NASD Case #C07010006)**

**Nathan James Smith (CRD #1946055, Registered Representative, Chatham, New Jersey)** was barred from association with any NASD member in any capacity. The

sanction was based on findings that Smith failed to respond to NASD requests for information. Smith also converted \$200,000 in funds received from a public customer intended for investment purposes to his own use and benefit without the customer's authorization. **(NASD Case #C9B010019)**

**Nicolette Smith (CRD #4166334, Associated Person, Cedar Rapids, Iowa)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Smith failed to disclose a material fact on her Form U-4 and failed to respond to NASD requests for information. **(NASD Case #C04010008)**

**Kristen Nichole Speegle (CRD #2907192, Registered Representative, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity and required to pay \$16,156, plus interest, in restitution to public customers. Satisfactory proof of payment of restitution, plus interest, must be made before Speegle reassociates with any NASD member or requests relief from any statutory disqualification. Without admitting or denying the allegations, Speegle consented to the described sanctions and to the entry of findings that she received compensation for securities transactions that exceeded the compensation to which she was entitled because she entered commission amounts on her member firm's internal record that were greater than the commission amounts reported to the clearing firm and what the customers were charged. The findings also stated that Speegle effected transactions in the accounts of public

customers without the prior authorization of the customers. **(NASD Case #C3A010015)**

**Allan Wayne Talib (CRD #2406626, 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, Talib consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and 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. The findings also stated that Talib failed to respond to NASD requests for information and documents. **(NASD Case #C8B010020)**

**Michael Neal Titus (CRD #706561, Registered Principal, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$43,464, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution, plus interest, must be provided by Titus before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Titus consented to the described sanctions and to the entry of findings that he converted public customer funds to his own use and benefit. **(NASD Case #C3A010026)**

**Michael Verbitsky, a/k/a, Michael Levine (CRD #3070975, Registered Representative, Livingston, New Jersey)** was barred from association with any

NASD member in any capacity. The sanction was based on findings that Verbitsky effected unauthorized transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization from the customers to exercise discretion in said accounts. Verbitsky also failed to respond to NASD requests for information. **(NASD Case #C9B010018)**

**Gregory Lee Woodring (CRD #1469359, Registered Representative, Muskegon, Michigan)** 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 \$1,375 in commissions to a public customer. Payment of the fine and proof of disgorgement shall be a prerequisite before Woodring reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Woodring consented to the described sanctions and to the entry of findings that he participated in a private securities transaction, failed and neglected to give written notice of his intention to engage in such activities to his member firm, and failed to receive written approval from the firm prior to engaging in such activities.

Woodring's suspension began August 6, 2001, and concluded at the close of business October 5, 2001. **(NASD Case #C8A010046)**

**Frank Jack Zangara (CRD #1551637, Registered Principal, Hicksville, New York)** was suspended from association with any NASD member in any capacity

for 30 business days and ordered to pay \$20,214, plus interest, in restitution to a public customer for charging excessive mark-ups, and barred from association with any NASD member in any capacity for failing to respond. The sanctions are based on findings that Zangara effected sales of U.S. Treasury STRIPS (government zero coupon securities) to a public customer on a riskless principal basis and charged excessive mark-ups for the sales. The findings also stated that Zangara failed to respond to NASD requests for information.

Zangara's bar was effective July 24, 2001. **(NASD Case #C10010027)**

**Frank Jack Zangara (CRD #1551637, Registered Principal, Hicksville, New York)** was fined \$46,530 and barred from association with any NASD member in any capacity. The fine must be paid before Zangara re-enters the securities business. The sanctions are based on findings that Zangara opened an account at his member firm that was a fictitious entity and submitted a new account form to his firm and its clearing firm that listed the tax identification number of another company and contained a false name and address for the contact information on the account. The findings also stated that Zangara sold securities to a restricted account in violation of NASD's Free Riding and Withholding Interpretation. **(NASD Case #C10010033)**

**Matthew Laurence Zimmerman (CRD #1800015, Registered Representative, Morris Plains, New Jersey)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$32,511, plus interest, in restitution to public customers. Without admitting or

denying the allegations, Zimmerman consented to the described sanctions and to the entry of findings that he engaged in unauthorized transactions in the accounts of public customers and lulled the customers into inaction by providing false assertions regarding the transactions. The findings also stated that Zimmerman failed to respond to NASD requests to appear for investigative testimony. **(NASD Case #C9B010027)**

### 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 August 10, 2001. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Dennis Jay Sturm (CRD #1407180, Registered Principal, Coral Springs, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sturm failed to respond to NASD requests to produce documents.

Sturm has appealed this action to the NAC and the sanction is not in effect pending consideration of the appeal. **(NASD Case #CAF000033)**

### 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.

**Adam David Gitstein (CRD #1884208, Registered Representative, New York, New York) and Ray Vahab (CRD #1041775, Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that Gitstein recklessly effected transactions in the accounts of a public person that were excessive in size and frequency in view of the customer's financial condition and investment objectives. The complaint also alleges that Gitstein, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative or deceptive or other fraudulent devices or contrivances, thereby violating applicable anti-fraud provisions of federal securities laws and NASD Rules.

Furthermore, the complaint alleges that Gitstein engaged in short-term transactions in a customer's accounts without reasonable grounds for believing that such a strategy was suitable for the customer on the basis of her financial situation, investment objectives, and needs. In addition, the complaint alleges that, in response to an NASD request for documents, Gitstein fabricated order tickets for the customer's accounts and Vahab then provided the NASD with photocopies of the

fabricated order tickets and represented that they were of the original order tickets. The complaint also alleges that Gitstein, at the direction of Vahab, failed to respond truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview and Vahab failed to respond to an NASD request for information. **(NASD Case #C10010105)**

**Michael Glyn Grimes (CRD #2859084, Registered Representative, Memphis, Tennessee)** was named as a respondent in an NASD complaint alleging that he received \$323 from a public customer to pay the premium on the customer's variable life insurance policy and failed to apply the premium payments as instructed. The complaint further alleges that Grimes converted the funds to his own use and benefit without the knowledge or consent of the customer. In addition, the complaint alleges that Grimes failed to respond to NASD requests for information. **(NASD Case #C05010033)**

#### **Firm Canceled**

The following firm was canceled from NASD membership for failure to meet qualification requirements. The action was based on the provisions of NASD Rule 9511(a)(2)(B). The date the cancellation commenced is listed after the entry.

**NI Securities Corp.,**  
Akron, Ohio  
(August 13, 2001)

#### **Suspension Lifted**

The NASD has lifted the suspension from membership on the date shown for the following

firm because it has complied with formal written requests to submit financial information.

**Bennett, Mullaney & Co., Inc.,**  
New York, New York  
(July 19, 2001)

#### **Individuals Barred Pursuant To NASD Rule 9544 For Failure To Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)**

**Breckenridge, Deborah J.,**  
Sunrise, Florida  
(August 2, 2001)

**Carnahan, Michael,**  
Jupiter, Florida  
(August 8, 2001)

**Hanson, Jr., Paul,**  
Sausalito, California  
(July 19, 2001)

**Litwin, Gerald, Summit,**  
New Jersey  
(July 30, 2001)

**Reed, Christopher R.,**  
Cincinnati, Ohio  
(July 26, 2001)

#### **Individuals Suspended Pursuant To NASD Rule 9541(b) For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)**

**Awes, Michael G.,**  
Long Lake, Minnesota  
(August 8, 2001)

**Davis, Rodney J.,**  
West New York, New Jersey  
(July 26, 2001)

**Grant, Holly V.,**  
Tyler, Texas  
(July 26, 2001)

**Navard, Masoud H.,**  
Columbus, Ohio  
(July 31, 2001)

**Roberts, Aimee,**  
Waterbury, Connecticut  
(July 17, 2001)

**Rockwood, Jonathan R.,**  
Ludington, Michigan  
(July 31, 2001)

**Thomas, Mark Allen,**  
St. Joseph, Missouri  
(July 10, 2001)

#### **Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement**

The date the registration was suspended is included after the entry. If the individual has complied, the listing also includes the date the suspension was lifted.

**Gibbons, Brian L.,**  
Scottsdale, Arizona  
(July 26, 2001)

**Greer, III, John L.,**  
Knoxville, Tennessee  
(August 6, 2001)

**Preble, Kevin C.,**  
Litchfield Park, Arizona  
(July 20, 2001)

**Shah, Naishad D.,**  
Staten Island, New York  
(July 18, 2001)

#### **NASD Regulation Charges Security Capital Trading and Exec With Unjustified Termination Of Firm Commitment Underwriting**

NASD Regulation has charged Security Capital Trading, Inc., and its President, Ronald Heineman, with violating NASD rules when they improperly terminated a firm

commitment to underwrite an initial public offering (IPO). The firm currently does business under the name Vertical Capital Partners, Inc. and is located in New York, NY.

In its complaint, NASD Regulation charged that Security Capital was the lead underwriter for Galacticomm Technologies, Inc.'s September 23, 1998, \$11 million IPO. The offering consisted of 1.8 million common shares priced at \$6 per share and a similar number of warrants priced at 10 cents each. The complaint alleged that after the first four days of trading the stock and warrants on the Nasdaq SmallCap Market, Security Capital, through Heineman, unilaterally and without justification, terminated the IPO. Galacticomm was forced out of business, in part, due to the loss of the IPO proceeds. NASD Regulation charged that Security Capital did not observe high standards of commercial honor and just and equitable principals of trade when they terminated the firm commitment made to Galacticomm. According to the complaint, the termination adversely affected over 500 customers and numerous brokerage firms and their clearing agents when trades had to be unwound and canceled.

NASD Regulation further alleged that Timothy Ryan, a registered representative formerly associated with Security Capital, violated NASD rules and federal securities laws by entering purchase orders for customers who had not authorized them. Those orders were entered as part of the IPO.

This case was investigated by NASD Regulation's Enforcement Department with assistance from the Corporate Financing Department.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD Regulation and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, the respondents should be contacted before drawing any conclusion regarding the allegations in the complaint.

Under NASD Regulation rules, the individuals named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

## **October Disciplinary Actions**

### **Firm Expelled, Individuals Sanctioned**

**Meyers Pollock Robbins, Inc. (CRD #13436, Boca Raton, Florida), Michael Ploshnick (CRD #1014589, Registered Principal, Boca Raton, Florida), Bruce Harvey Barbers (CRD #1011037, Registered Representative, Edgewater, New Jersey), and Harry Scott Barbers (CRD #1494670, Registered Representative, South Orange, New Jersey)** submitted Offers of Settlement in which the firm was expelled from membership in the NASD. Ploshnick and Bruce Barbers were barred from association with any NASD member in any capacity, and Harry Barbers was suspended from association with any NASD member in any capacity for 30 days and required to requalify prior to reassociating with a member firm following the suspension. In light of the financial status of Harry Barbers, no monetary sanction has been imposed. Without admitting

or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Ploshnick and Bruce Barbers, recommended and sold secured notes to public customers. In connection with the sales to retail customers, the NASD also found that the firm, acting through Ploshnick and Bruce Barbers, by the use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud these customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements not misleading.

According to the findings, customers were told that payment of principal and interest on notes was insured by performance bonds issued by an insurance company or companies and were purportedly signed by a vice president when, in fact, no performance bond was obtained on the notes and the individual was not an officer, director, or otherwise authorized to incur debt on behalf of the notes. The findings also stated that the firm, acting through Ploshnick, Bruce Barbers, and Harry Barbers, recommended and sold securities to public customers when no registration statement had been filed with the Securities and Exchange Commission (SEC), nor did the securities qualify for any exemption from registration.

Harry Barbers' suspension began September 17, 2001, and will conclude at the close of business October 16, 2001. **(NASD Case #C04970029)**

## **Firms And Individuals Fined**

**C.J.M. Planning Corporation (CRD #5698, Pompton Lakes, New Jersey) and Joseph Charles Musumeci (CRD #821112, Registered Representative, Pompton Lakes, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,000, jointly and severally. The firm was also fined an additional \$4,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Musumeci, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain minimum required net capital. The NASD also found that the firm permitted Musumeci to act as the firm's limited financial operations principal without proper registration. The findings also stated that the firm, acting through Musumeci, in connection with a limited partnership private placement offering, established an escrow account that did not meet the requirements of Section 15(c) of the Securities and Exchange Act and Rule 15c2-4(b)(2) thereunder, and permitted an affiliated person of the issuer to purchase a portion of the private placement offering and subsequently withdraw a portion of that purchase from the offering.

Furthermore, the NASD found that the firm claimed an exemption under the provisions of Section 15(c) of the Exchange Act, which prohibits the receipt of customer funds and/or securities, and acting through Musumeci, opened an account in the issuer's name acting on the issuer's behalf. Moreover, the firm, acting through Musumeci, received funds from subscribers in the private placement offering, therefore failing to

comply with the claimed exemptions and was fully subject to the Customer Protection Rule. In addition, the findings state that the firm permitted registered representatives to conduct a securities business while their securities registrations were inactive because of their failure to satisfy the Regulatory Element of the NASD's Continuing Education Requirement. The NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations; failed to ensure compliance with the firm's continuing education policy; and failed to ensure that registered persons maintain the appropriate registrations for the functions they perform while registered with the firm. **(NASD Case #C9B010067)**

**Clements Company Investment Advisors, Inc. n/k/a First Geneva Securities (CRD #47000, San Diego, California) and James Michael Clements (CRD #2626038, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured, fined \$7,500, jointly and severally, and required to pay \$6,593.21, plus interest, in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with offsetting riskless principal transactions corresponding to public customer buys/sells, the firm, acting through Clements, violated its obligation to deal fairly with its customers. According to the findings, the firm, acting through Clements, failed to adequately disclose on the customer order confirmations the difference in the price that

securities were purchased from and sold to customers and the firm's contemporaneous offsetting purchase or sale price to or from a market maker. Specifically, the NASD found that the firm failed to disclose, or to disclose accurately, the extent of the markup or markdown it charged its customers on confirmations, nor was the firm a market maker in the securities. The findings also stated that the firm, acting through Clements, charged its customers more than a fair markup or markdown taking into consideration all relevant circumstances, including market condition with respect to such securities at the time of the transaction, the expense of executing the orders, and the value of any services they may have rendered by reason of experience in, and knowledge of, such securities and the markets. **(NASD Case #C02010039)**

## **Firms Fined**

**Aegis Capital Corp. (CRD #15007, Uniondale, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which it was censured, fined \$40,000, and required to revise its written supervisory procedures with respect to transaction reporting, customer confirmation disclosures, and best execution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last sale reports of transactions in securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm failed to provide written notification to its customers disclosing its correct capacity in the transaction; failed when it acted as principal for its own

account to provide written notification to its customers disclosing whether it was a market maker in a security, and to provide written notification to its customers disclosing the reported trade price and the difference, if any, between the reported trade price and the price to the customer; and failed to comply with applicable reporting transactions rules that allow customers to determine independently that the firm complied with the duty of best execution.

The findings also stated that the firm failed to provide supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning transaction reporting and customer confirmation disclosures, and the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning best execution, transaction reporting, and customer confirmation disclosures. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person(s) responsible at the firm to ensure compliance with the applicable rules, a statement of the step(s) that such person(s) should take to ensure compliance therewith, a statement as to how often such person(s) should take such step(s), and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010125)**

**CIBC World Markets Corp. (CRD #630, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to its bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. **(NASD Case #CMS010129)**

**Grady and Hatch & Company, Inc. (CRD #14262, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT more than 90 seconds after the transactions' executions, failed to attach the ".SLD" late-trade modifier to transactions reported late, and incorrectly reported to ACT that it had acted as an agent in a transaction when, in fact, it had acted as a principal. The findings also stated that the firm failed to execute limit order transactions when the limit price was reached. In addition, the NASD found that the firm failed to time-stamp, or to accurately time-stamp, order tickets reported to ACT and that order tickets contained an inaccurate date or inaccurate account identity. The NASD also found that the firm failed to maintain order tickets in connection with transactions, failed to disclose the markup charged to the customer on a confirmation, failed to disclose the firm's status

as a market maker on a confirmation, and failed to accurately disclose the firm's capacity on confirmations. **(NASD Case #C10010117)**

**Moors & Cabot, Inc. (CRD #594, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to transaction reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last-sale reports of transactions in Nasdaq National Market, (NNM<sup>®</sup>), Nasdaq SmallCap<sup>SM</sup>, and OTC Equity securities, and failed to designate through ACT such last sale reports as late. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning transaction reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person(s) responsible at the firm to ensure compliance with applicable rules, a statement of the step(s) that such person(s) should take to ensure compliance therewith, a statement as to how often such person(s) should take such step(s), and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. The NASD also found that the firm incorrectly designated as "PRP" through ACT last-sale reports of transactions in NNM and Nasdaq SmallCap securities. **(NASD Case #CMS010120)**

**NatCity Investments, Inc. (CRD #17490, Cleveland, Ohio)** 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 the time of execution through ACT in last-sale reports of transactions in NNM securities for which it had recording and reporting obligations, failed to transmit through ACT last-sale reports in NNM securities within 90 seconds after execution, and reported through ACT a last-sale report of a transaction in NNM securities it was not required to report. The findings also stated that the firm failed to report the correct price of a transaction through ACT in last-sale reports of transactions in eligible securities, failed to transmit through ACT one last-sale report of a transaction in eligible securities within 90 seconds after execution, and failed to report the time of execution through ACT in last-sale reports of transactions in eligible securities.

The NASD also found that the firm transmitted through ACT a last-sale report of a transaction in NNM securities and failed to designate through ACT that it was reflecting a price different from the current market when the execution was based on a prior reference point in time; transmitted a last-sale report in NNM securities that improperly designated through ACT a price different from the current market; and transmitted through ACT last-sale reports for the same transaction in a NNM security. In addition, the NASD determined that the firm failed to preserve for a period of not less than three years brokerage order memoranda. Furthermore, the NASD found that the firm failed to report to the

NASD customer complaints on a timely basis and failed to report to the NASD conditions requiring disclosure to the NASD within 10 business days. **(NASD Case #C8B010023)**

**Pond Equities, Incorporated (CRD #30934, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to compliance with the firm quote rule. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented to the firm 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 failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with applicable securities laws and regulations concerning firm quotations. **(NASD Case #CMS010128)**

**Samuel A. Ramirez & Co., Inc. (CRD #6963, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000—of which \$7,500 is jointly and severally with an individual—and ordered to disgorge \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals associated with the firm to act in a capacity that requires registration while their registration status was inactive for failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also

stated that the firm, acting through an individual, permitted another individual associated with the firm to act in a capacity requiring registration while not properly registered with the NASD. **(NASD Case #C10010106)**

**Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the 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. **(NASD Case #CMS010123)**

**Trade.com Online Securities, Inc. f/k/a Bluestone Capital Partners, L.P. and Bluestone Capital Securities, Inc. (CRD #36189, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000, which includes disgorgement of \$20,000 in commissions obtained by the firm. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to act as registered persons with the firm while their registration was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm failed to make, keep current, and/or maintain certain required books and records. In addition, the NASD found that the firm failed to establish, maintain, and enforce written supervisory

procedures reasonably designed to achieve compliance with the books and records provisions related to the maintenance and proper time stamping and marking of order memoranda as long or short. **(NASD Case #C10010102)**

**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 \$17,000, of which \$8,500 is jointly and severally with individuals. The firm has paid \$2,908.65, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through individuals, failed to report, or timely report, to the NASD statistical and summary information regarding written customer complaints received by the firm. The findings also stated that the firm, acting through an individual, failed to report to the NASD instances in which the firm was found to have violated state securities laws, and one instance in which the firm entered into a settlement agreement with a customer that exceeded \$25,000. The NASD also found that the firm, acting through an individual, failed to file an application with the NASD for approval of change in ownership at least 30 days prior to such a change. In addition, the NASD found that the firm failed to execute customer orders at the best available price; failed to show the time, or correct time, of execution on brokerage order memoranda; failed to show the time of entry on brokerage order memoranda; and failed to preserve for a period of not less than three years the memoranda of brokerage orders. Moreover, the NASD

found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with SEC and NASD rules. **(NASD Case #C10010113)**

**Vanguard Capital (CRD #22081, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures relating to transaction reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit to ACT last-sale reports of transactions in eligible securities and failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in NNM, Nasdaq SmallCap, and OTC Equity securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning transaction reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person(s) responsible at the firm to ensure compliance with applicable rules, a statement of the step(s) that such person(s) should take to ensure compliance therewith, a statement as to how often such person(s) should take such step(s), and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010130)**

## **Individuals Barred Or Suspended**

**Robert Baker Adams, III (CRD #2456626, Registered Representative, Germantown, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$31,900 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Adams reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he engaged in unauthorized transactions in the accounts of public customers without their prior knowledge or consent.

Adams' suspension began October 1, 2001, and will conclude at the close of business September 30, 2003. **(NASD Case #C05010040)**

**Gary Scott Barnhill, Sr. (CRD #3099928, Registered Representative, Friendswood, Texas)** was fined \$6,555.11 and suspended from association with any NASD member in any capacity for two weeks for purchasing a hot issue, and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid upon reentry into the securities industry. The sanctions are based on findings that Barnhill purchased securities in a public offering that traded at a premium in the secondary market, put the securities into the account of a family member, and falsely marked the account to indicate the customer was not related to him.

Barnhill's bar was effective August 17, 2001. **(NASD Case #C05010025)**

**Calvin Eugene Cheney (CRD #1139652, Registered Representative, Louisville, Colorado)** submitted an Offer of Settlement in which he was fined \$100,000, suspended from association with any NASD member in any capacity for two years, ordered to requalify by exam as a general securities representative, and ordered to qualify by exam as a general securities principal. Without admitting or denying the allegations, Cheney consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide prior written notice to, or receive prior written authorization from, his member firm before engaging in such activities.

Cheney's suspension began October 15, 2001, and will conclude at the close of business October 14, 2003. **(NASD Case #C8A000019)**

**Michael Henry Christ (CRD #1664410, Registered Principal, Lynbrook, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Christ failed to implement, maintain, and enforce an effective supervisory system at his member firm and failed to establish, maintain, and enforce written procedures pertaining to his member firm's underwriting and retail brokerage activities. **(NASD Case #C10000029)**

**Ronald Lloyd Copple (CRD #53935, Registered Representative, Auburn, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred

from association with any NASD member in any capacity. Without admitting or denying the allegations, Copple consented to the described sanction and to the entry of findings that he received \$30,000 from public customers to invest in securities, deposited the funds in his personal checking account, and failed to use the funds to purchase securities, thereby converting \$30,000 to his own use and benefit. **(NASD Case #C3B010013)**

**Perry Rick DeGeurin (CRD #1648847, Registered Representative, Houston, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeGeurin consented to the described sanction and to the entry of findings that he prepared and distributed to a public customer correspondence in the form of a letter that failed to provide a sound basis for evaluating the facts in regard to certain securities and included untrue statements of material fact that he knew, or should have known, were false or misleading. The findings also stated that DeGeurin did not have the letter approved by a principal at the firm prior to sending it to the customer. DeGeurin also failed to respond to NASD requests for information. **(NASD Case #C06010014)**

**Kris Joseph Destefano (CRD #2949180, Registered Principal, Bethpage, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Destefano consented to the described sanctions and to the

entry of findings that he purchased shares of stock for the account of a public customer without the customer's consent or authorization.

Destefano's suspension began October 1, 2001, and concluded at the close of business October 5, 2001. **(NASD Case #C9B010072)**

**Frederick Joseph Dirsh (CRD #4243703, Registered Representative, Philadelphia, 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 30 business days. The fine must be paid before Dirsh reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dirsh consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U-4.

Dirsh's suspension began October 1, 2001, and will conclude at the close of business November 9, 2001. **(NASD Case #C9B010071)**

**Thomas Leo Dooley, III (CRD #1426361, Registered Principal, Powell, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in a principal capacity for three months. Without admitting or denying the allegations, Dooley consented to the described sanctions and to the entry of findings that he failed to reasonably supervise the municipal securities trading activities of a representative including his sale of bonds to a member firm.

Dooley's suspension began September 17, 2001, and will conclude December 6, 2001. **(NASD Case #CAF010015)**

**Stephen Kyle Ehman (CRD #2636377, Registered Representative, Noblesville, 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, Ehman consented to the described sanction and to the entry of findings that he bought and sold securities in the form of shares of stock and options for his personal margin and cash account, though he knew that he did not have sufficient funds to pay for the shares and options, did not deposit the required margin, or did not make full cash payments for the shares in a prompt fashion or otherwise before selling the shares. The NASD also found that Ehman effected transactions in the account of a public customer on a discretionary basis without obtaining prior written authorization from the customer and prior written approval from his member firm. **(NASD Case #C8A010058)**

**Scott Douglas Flynn (CRD #2020872, Registered Principal, Highlands, New Jersey)** submitted an Offer of Settlement in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for three months, two months of which shall be deemed served by virtue of a two-month suspension imposed by his member firm. Without admitting or denying the allegations, Flynn consented to the described sanctions and to the entry of findings that he created and sent a fictitious monthly account statement to a public customer to give the false

appearance that a request made by the customer to transfer funds from one account to another had been fulfilled.

Flynn's suspension began September 4, 2001, and concluded at the close of business October 3, 2001. **(NASD Case #C9B010044)**

**Herman D. Fonseca (CRD #2367303, Registered Representative, Key Biscayne, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Fonseca consented to the described sanctions and to the entry of findings that he sold insurance products through a partnership arrangement with another representative, provided an insurance policy to a public customer for which his partner was the selling agent, and signed his partner's name to the delivery receipt without authorization. Subsequently, the NASD found that Fonseca completed an insurance policy application form listing his partner as the selling agent and signed his partner's name to the application without authorization.

Fonseca's suspension began September 17, 2001, and concluded at the close of business September 26, 2001. **(NASD Case #C07010058)**

**Jose Franco (CRD #4251466, Associated Person, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Franco reassociates with any NASD member following the suspension or before request-

ing relief from any statutory disqualification. Without admitting or denying the allegations, Franco consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4.

Franco's suspension began October 1, 2001, and will conclude at the close of business March 31, 2002. **(NASD Case #C9B010070)**

**Scott David Friedberg (CRD #2286270, Registered Representative, Briarcliff Manor, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and barred from association with any NASD member in any capacity with the right to re-apply after five years. The fine must be paid before Friedberg reassociates with any NASD member following the five-year period or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Friedberg consented to the described sanctions and to the entry of findings that he gave gifts and gratuities to clients to obtain and retain trading business from his clients, falsified employee reimbursement reports to his member firm, directed his assistant to falsify forms, and wrongfully diverted and misused firm funds. In addition, the NASD found that Friedberg caused his member firm to fail to maintain accurate and complete firm books and records and submitted a falsified employee reimbursement report to his member firm, causing the firm to reimburse him for tickets based on the falsified reports. **(NASD Case #CAF010017)**

**Sadell Garcia (CRD #4137987, Registered Principal, Aurora, Colorado)** 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. Without admitting or denying the allegations, Garcia consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Garcia's suspension began October 1, 2001, and will conclude at the close of business September 30, 2002. **(NASD Case #C3A010025)**

**James Parker Gardner (CRD #843375, Registered Principal, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, which includes disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gardner consented to the described sanctions and to the entry of findings that he executed transactions in the accounts under the control of a public customer without the customer's prior knowledge or consent.

Gardner's suspension began October 1, 2001, and will conclude at the close of business October 12, 2001. **(NASD Case #C05010037)**

**Thomas Greiwe Glaser (CRD #1266828, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for one year and required to requalify by exam as a general securities representative (Series 7) and a general securities principal (Series 24) prior to reassociation with a member firm in those capacities. Without admitting or denying the

allegations, Glaser consented to the described sanctions and to the entry of findings that he engaged in manipulative, deceptive and/or fraudulent conduct by intentionally and/or recklessly causing to be executed and reported to The Nasdaq Stock Market® last-sale reports of transactions in a security at or near the close of the market for the purpose of affecting the reported closing last sale price in the security. The NASD found that the transactions represented the closing last-sale price for the security on each of the dates and were reported at a price higher than the price of the last preceding trade in the stock reported to The Nasdaq Stock Market.

Glaser's suspension began October 1, 2001, and will conclude at the close of business September 30, 2002. **(NASD Case #CMS010136)**

**Cynthia Foote Goolsby (CRD #2517862, Registered Representative, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goolsby consented to the described sanction and to the entry of findings that, in connection with her employment with a bank affiliated with her member firm, Goolsby signed the names of bank clients to loan documents without their authorization. **(NASD Case #C07010065)**

**John Lawson Greer, III (CRD #860076, Registered Principal, Knoxville, Tennessee)** was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to complete the supervisory section of the Regulatory Element of the Continuing

Education Program within 180 days of the date this decision becomes final. The National Adjudicatory Council (NAC) imposed the sanctions following the call for review of an Office of Hearing Officers decision. The sanctions were based on findings that Greer submitted falsified documents to his member firm on behalf of a fictitious customer and placed a trade in the account using a cashier's check on which he changed the name of the purchaser to the fictitious customer. The NASD also found that Greer misrepresented to the NASD and the State of Tennessee that he had opened the account for his son.

Greer's suspension began October 1, 2001, and will conclude at the close of business March 29, 2002. **(NASD Case #C05990035)**

**Scott Hancey (CRD #4310217, Registered Representative, Pine, Colorado)** 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 10 business days. The fine must be paid before Hancey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hancey consented to the described sanctions and to the entry of findings that he submitted a Form U-4 that contained inaccurate information.

Hancey's suspension began October 1, 2001, and concluded at the close of business October 12, 2001. **(NASD Case #C3A010027)**

**Kevin Robert Hanson (CRD #2619189, Registered Representative, Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent

in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hanson consented to the described sanction and to the entry of findings that he received a \$10,000 cashier's check from a public customer to add to the customer's existing variable annuity and, instead, used the funds for his own benefit or some purpose other than for the benefit of the customer, without the customer's knowledge and authorization. **(NASD Case #C8A010053)**

**Sandra Jean Hassel (CRD #2418950, Registered Representative, Melbourne, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hassel consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. **(NASD Case #C07010059)**

**Terrell Edwin Harvey (CRD #1541683, Registered Representative, Ridley Park, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Harvey consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with prior written notice describing the proposed transactions, his proposed role therein, and to state whether he had received, or might receive, selling compensation in connection

with the transactions. **(NASD Case #C9A010031)**

**Edward Paul Haser, Jr. (CRD #3126540, Registered Representative, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 business days and ordered to disgorge \$10,000 representing commissions received. Satisfactory proof of payment of the disgorgement is required following the suspension before Haser reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Haser consented to the described sanctions and to the entry of findings that he sold alleged shares of initial public offerings (IPOs) to public customers and negligently misrepresented that a firm had agreements with member firms to acquire shares in the IPOs and that through these agreements acquired the shares. In fact, there were no agreements with these firms and the firms never acquired any shares in the IPOs.

Haser's suspension began October 1, 2001, and will conclude at the close of business November 9, 2001. **(NASD Case #C9A010034)**

**Wallace Thomas Holden (CRD #2949218, Registered Representative, Covington, Louisiana)** was fined \$11,500, ordered to pay \$15,000, plus interest, in restitution to a public customer, suspended from association with any NASD member in any capacity for six months for engaging in private securities transactions, and barred from association with any NASD

member in any capacity for failure to respond to NASD requests for information. The fine shall be due and payable upon Holden's re-entry into the securities business. The sanctions were based on findings that Holden engaged in private securities transactions and failed to provide written notice to his member firm describing the transactions, his role therein, and whether he had received, or might receive, selling compensation in connection with the transactions.

Holden's bar was effective September 3, 2001. **(NASD Case #C06010006)**

**Michael Bernard Jawitz (CRD #257703, Registered Principal, Hallandale Beach, Florida)** was fined \$50,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as an equity trader. The SEC affirmed the sanctions following appeal of a NAC decision. The sanctions were based on findings that Jawitz entered fictitious limit orders and prevented the execution of customer limit orders in violation of the NASD's limit order protection rule, and caused non-bonafide transactions to be reported to The Nasdaq Stock Market.

Jawitz's suspension began August 20, 2001, and will conclude at the close of business August 19, 2002. **(NASD Case #CMS960238)**

**Seth Jamal Jeffers (CRD #4266449, Associated Person, Clinton, 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 Jeffers requests relief from any

statutory disqualification. Without admitting or denying the allegations, Jeffers consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on a Form U-4, causing it to be materially inaccurate.

Jeffers' suspension began October 1, 2001, and will conclude at the close of business October 30, 2001. **(NASD Case #C9A010036)**

**James Lee Judd (CRD #2690192, Registered Representative, Fenton, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Judd reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Judd consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer on an application to open a securities account with his member firm and on a securities disclosure form without the customer's knowledge or consent. The NASD also found that Judd induced the purchase of the shares of reserves to public customers by making the misstatement of material fact that the investors could withdraw funds after one year from the date on which they invested when, in fact, the investors could not withdraw their funds until after four years from the date on which they invested.

Judd's suspension began October 1, 2001, and will conclude at the close of business September 30, 2002. **(NASD Case #C8A010051)**

**Russell Jon Jundt (CRD #2496393, Registered Principal, Andover, Minnesota)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jundt consented to the described sanction and to the entry of findings that he willfully failed to update his Form U-4 to disclose a material fact. The findings also stated that Jundt failed to respond to NASD requests for information. **(NASD Case #C04010011)**

**Patrick Joseph Kernick (CRD #3112594, Registered Representative, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 business days and ordered to disgorge \$10,000 representing commissions received. Without admitting or denying the allegations, Kernick consented to the described sanctions and to the entry of findings that he sold alleged shares of IPOs to public customers and negligently misrepresented that a firm had agreements with member firms to acquire shares in the IPOs and that through these agreements acquired the shares. In fact, there were no agreements with these firms and the firms never acquired any shares in the IPOs.

Kernick's suspension began October 1, 2001, and will conclude at the close of business November 9, 2001. **(NASD Case #C9A010024)**

**Joseph Patrick Klock (CRD #1339507, Registered Principal, Wayne, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was

suspended from association with any NASD member in any capacity for 10 business days and required to disgorge \$35,000 to a public customer. Without admitting or denying the allegations, Klock consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer and conducted excessive trading in the account.

Klock's suspension began September 17, 2001, and concluded at the close of business September 28, 2001. **(NASD Case #C9A010032)**

**Albert Henry Kocher (CRD #1768753, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Kocher consented to the described sanctions and to the entry of findings that he signed a guaranty of two signatures on letters of instruction to a broker/dealer authorizing the deposit of certified securities into an account for the benefit of the owner of the securities when he knew, or should have known, that one of the signatures on the letters was a forgery.

Kocher's suspension began September 17, 2001, and will conclude at the close of business October 16, 2001. **(NASD Case #C05010036)**

**Jack Allen Levy (CRD #2852171, Registered Representative, Paramus, 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 10 business days. Without admitting

or denying the allegations, Levy consented to the described sanctions and to the entry of findings that he conducted unauthorized transactions in the accounts of public customers.

Levy's suspension began October 1, 2001, and concluded at the close of business October 12, 2001. **(NASD Case #C11010026)**

**Donald William Maclean (CRD #2352765, Registered Representative, Tequesta, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$18,900, which includes disgorgement of \$14,400 in commissions, and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Maclean reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Maclean consented to the described sanctions and to the entry of findings that he engaged in sales of viatical settlements with public customers outside the scope of his employment with his member firm, and failed to provide prompt written notice to his member firm of his involvement in these transactions.

Maclean's suspension began October 1, 2001, and will conclude at the close of business December 28, 2001. **(NASD Case #C07010063)**

**Robert Edwin McBride (CRD #1195514, Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,500 and suspended from association with any NASD member firm in any capacity for 30 business days. The fine must be paid before McBride reassociates

with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McBride consented to the described sanctions and to the entry of findings that a member firm, acting through McBride, permitted the distribution of sales literature in the form of form letters containing solicitations for securities transactions that were not approved by the appropriate principal of the member firm or submitted to the NASD within 10 days of their first use, and failed to include the full address and telephone number of the member firm's registered branch office or Office of Supervisory Jurisdiction (OSJ) responsible for supervision of the proposed trading activity.

In addition, the findings stated that the sales literature omitted material facts and obscured essential information resulting in misleading presentation; contained exaggerated, unwarranted, or misleading statements or claims and failed to reflect the risks of a fluctuating market; failed to disclose in discussing dollar-cost averaging that the plan does not assure a profit or protect against loss in declining markets, and identified purchases of stock, which is improper in option educational material; failed to disclose that options might not be a suitable type of investment for the investor; and failed to contain a complete explanation of the risks of day trading, which include market volatility, potential delay in trade execution, and loss of capital. The NASD also found that a member firm, acting through McBride, permitted individuals to engage in the securities business, to function as representatives, and to place securities transactions while they were not effectively

registered with the member firm. Furthermore, the NASD found that the member firm, acting through McBride, failed to report to the NASD statistical and summary information relating to customer complaints against various representatives received by the firm.

McBride's suspension began October 1, 2001, and will conclude at the close of business November 9, 2001. **(NASD Case #C8A010059)**

**Michael Brent McCowan (CRD #2618030, Registered Representative, Oklahoma City, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, McCowan consented to the described sanction and to the entry of findings that he removed blank corporate checks from his member firm and made two of these checks payable to a hotel totaling \$507 without the firm's authorization, knowledge, or consent.

McCowan's suspension began September 17, 2001, and will conclude at the close of business September 16, 2003. **(NASD Case #C06010019)**

**Robert Melvin McCulley (CRD #725980, Registered Principal, Fort Collins, Colorado)** was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions are based on findings that McCulley engaged in outside business activity, for compensation, and failed to provide his member firm with prompt written notice.

McCulley's suspension began August 20, 2001, and concluded at

the close of business August 31, 2001. **(NASD Case #C3A000054)**

**Anthony Paul Minervini (CRD #2383553, Registered Representative, Secaucus, 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, Minervini consented to the described sanction and to the entry of findings that he provided false testimony during an NASD on-the-record interview. **(NASD Case #C9B010074)**

**Robert Edward Morris (CRD #2664262, Registered Representative, Portland, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$11,011, which includes the disgorgement of \$8,511 in transaction profits. The fine must be paid before Morris reassociates with any NASD member or requests relief from any statutory disqualification. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he purchased shares of stock during IPOs prior to the secondary trading of the shares when they traded at a premium in violation of the NASD's Free-Riding and Withholding Interpretation. **(NASD Case #C3B010015)**

**John Joseph Murphy a/k/a Jack Murphy (CRD #1069365, Registered Representative, Quogue, New York)** was fined \$2,500 for failing to notify his member firm of a securities account, fined \$5,000 and suspended from association with any NASD member in any capacity for one year for willful failure to disclose material information on a

Form U-4, and barred from association with any NASD member in any capacity for failure to respond to NASD requests for information. The sanctions are based on findings that Murphy failed to provide written notice to his member firm of a securities account he opened at another member firm.

Murphy's bar became effective September 6, 2001. **(NASD Case #C10010045)**

**Roger Ray Myatt (CRD #1204148, Registered Principal, Fort Collins, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Myatt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Myatt consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior written notice to his member firm.

Myatt's suspension began October 1, 2001, and will conclude at the close of business September 30, 2002. **(NASD Case #C3A010031)**

**Robert George Palmeiro (CRD #355533, Registered Principal, East Greenwich, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 days and barred from association with any NASD member in any principal or supervisory capacity. Without admitting or denying the allegations, Palmeiro consented to the described sanctions and to the entry of findings that he failed to

supervise his member firm's financial and operational principal and compliance officer upon finding out that he had misappropriated firm funds in excess of \$405,000. The NASD also found that Palmeiro failed to register with the NASD as a principal while functioning as his member firm's treasurer, division manager in charge of the firm's retail general securities business, and as a member of the firm's board of directors.

Palmeiro's suspension began October 1, 2001, and will conclude at the close of business October 30, 2001. **(NASD Case #C11010027)**

**Jeffrey Don Petersen (CRD # 3247559, Registered Representative, Roy, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Petersen consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on a Form U-4.

Petersen's suspension began October 1, 2001, and will conclude at the close of business September 30, 2002. **(NASD Case #C3A010028)**

**Berri Grove Powers (CRD #366851, Registered Representative, McMurray, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powers consented to the described sanction and to the entry of findings that he engaged in business activities, for compensation, outside the scope of his employment with a member firm

and failed to provide prompt written notice to the firm. The findings also stated that Powers failed to respond to NASD requests for information. **(NASD Case #C9A010030)**

**Alfred Salazar (CRD #1059427, Registered Representative, Littleton, Colorado)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Salazar consented to the described sanctions and to the entry of findings that he failed to cause the control relationship that existed between his member firm and a stock issuer to be disclosed and confirmed in writing to public customers. The findings also stated that Salazar failed to respond to NASD requests for documents and information and to appear to give testimony.

Salazar's suspension began September 17, 2001, and will conclude at the close of business March 16, 2002. **(NASD Case #CAF000048)**

**Robert Bruce Sando (CRD #1132151, Registered Principal, Baltimore, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sando consented to the described sanction and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm prior written notice describing the proposed transactions, his role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. The findings

also stated that Sando failed to respond to NASD requests for information and to provide sworn testimony. **(NASD Case #C9A010035)**

**Greg Dennis Sanfilippo (CRD #2628773, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Sanfilippo consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the prior knowledge or consent of the customer.

Sanfilippo's suspension began October 1, 2001, and will conclude at the close of business October 19, 2001. **(NASD Case #C05000065)**

**Darren Joseph Shasho (CRD #2097386, Registered Principal, Bellmore, 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 10 days. Without admitting or denying the allegations, Shasho consented to the described sanctions and to the entry of findings that he purchased, or caused to be purchased, a security on margin for the account of a public customer and thereafter sold, or caused to be sold, the same security without the knowledge or consent of the customer and in the absence of any written or oral authorization to exercise margin discretion in the account.

Shasho's suspension began September 17, 2001, and

concluded at the close of business September 26, 2001. **(NASD Case #C9B010068)**

**Douglas Dean Skinner (CRD #1553755, Registered Representative, Appalachin, 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 three months. The fine must be paid before Skinner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Skinner consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Skinner's suspension began October 1, 2001, and will conclude at the close of business December 31, 2001. **(NASD Case #C11010028)**

**Mitchell Harris Sloane (CRD #2166032, Registered Principal, Brightwaters, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$8,000, suspended from association with any NASD member in any capacity for 15 business days, and ordered to pay \$25,450, plus interest, in restitution to public customers. Without admitting or denying the allegations, Sloane consented to the described sanctions and to the entry of findings that he charged excessive markups on U.S. Government Securities transactions in the accounts of public customers.

Sloane's suspension will begin October 15, 2001, and will

conclude at the close of business November 2, 2001. **(NASD Case #C10010118)**

**Richard Joseph Sporrer, Jr. (CRD #2663139, Associated Person, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Sporrer consented to the described sanctions and to the entry of findings that he engaged in a deceptive act in connection with the sale of a security. According to the findings, Sporrer failed to prevent an individual from selling an issuer's stock in Sporrer's account after discussing whether they possessed material, non-public information about the issuer that had been conveyed in the course of their employment at a member firm.

Sporrer's suspension began October 1, 2001, and will conclude March 31, 2002. **(NASD Case #CMS010135)**

**Theresa Jane Stencil (CRD #1215453, Registered Representative, Amherst, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stencil consented to the described sanction and to the entry of findings that she engaged in private securities transactions and failed to provide her member firm with detailed written notice of the transactions, her role therein, and to receive permission from the firm to engage in the transactions. The NASD also found that Stencil failed to respond to NASD

requests for information. **(NASD Case #C8B010021)**

**Bradley David St. Myer (CRD #2630827, Registered Representative, Wexford, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 business days and ordered to disgorge \$25,000 representing commissions received. Satisfactory proof of payment of the disgorgement is required following the suspension before St. Myer reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, St. Myer consented to the described sanctions and to the entry of findings that he sold alleged shares of IPOs to public customers and negligently misrepresented that a firm had agreements with member firms to acquire shares in the IPOs and that through these agreements acquired the shares. In fact, there were no agreements with these firms and the firms never acquired any shares in the IPOs.

St. Myer's suspension began October 1, 2001, and will conclude at the close of business November 9, 2001. **(NASD Case #C9A010019)**

**Richard William Stopa (CRD #2368388, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 30 business days. In light of the financial status of Stopa, no monetary sanction has been imposed. Without admitting or denying the allegations, Stopa consented to the described sanction and to the entry of findings

that he executed unauthorized transactions in the accounts of public customers and improperly charged a five-percent markup by selling stock from a public customer's regular account and subsequently purchasing shares of the same stock into the customer's individual retirement account.

Stopa's suspension began September 4, 2001, and will conclude at the close of business October 15, 2001. **(NASD Case #C9B010040)**

**Jeffrey Scott Tatum (CRD #2761936, Registered Representative, McKinney, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tatum consented to the described sanction and to the entry of findings that he received checks totaling \$50,000 from the account of public customers, forged the endorsements, and deposited the checks into a bank account he controlled, thereby converting the funds to his own use and benefit without the customers' knowledge or consent. **(NASD Case #C05010035)**

**Vishram Vick Toolsie (CRD #3029954, Registered Representative, South Ozone Park, 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, Toolsie consented to the described sanction and to the entry of findings that he purchased on margin for his personal account shares of stock without the intent to pay for the trades. Toolsie's willful failure to pay for the trades

resulted in an unsecured debit of \$154,981.02. The findings also stated that Toolsie provided his member firm with a fabricated letter allegedly provided to the NASD as an explanation for his trading on margin. **(NASD Case #C10010099)**

**Robert David Trowbridge (CRD #1314808, Registered Principal, Sedro-Woolley, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Trowbridge reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Trowbridge consented to the described sanctions and to the entry of findings that, while acting as an investment adviser, he recommended and engaged in transactions in the managed accounts of public customers involving the purchase on margin of speculative, low-priced equity securities totaling \$616,108 without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. In connection with the managed accounts, the findings also stated that Trowbridge's purchase of individual equity securities did not comply with the mutual fund timing & asset allocation service agreements executed by the public customers that permitted him to purchase or sell individual equity securities for their managed accounts. Trowbridge did not receive commissions and was compensated through periodic fee payments.

Trowbridge's suspension began September 17, 2001, and will conclude at the close of business September 16, 2003. **(NASD Case #C3B010014)**

**Roberto Valoy, Jr. (CRD #1161451, Registered Representative, Millbrook, 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, Valoy consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on a Form U-4. **(NASD Case #C10010112)**

**Guy Anthony Zarrilli (CRD #2194074, Registered Principal, Brick, New Jersey)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Zarrilli reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zarrilli consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions for public customers and lacked reasonable grounds to believe that such recommendations were suitable for the customers in light of their ages, need for income, the speculative nature of the transactions, and the size of the transactions in comparison to the value of the accounts.

Zarrilli's suspension began September 17, 2001, and will conclude December 16, 2001. **(NASD Case #C9A010007)**

## 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 September 7, 2001. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**James Henry Bond, III (CRD #2001777, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bond executed unauthorized transactions in the accounts of public customers.

Bond has appealed this action to the NAC, and the sanction is not in effect pending consideration of the appeal. **(NASD Case #C10000210)**

## 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.

**George Anaya, Jr. (CRD #2830436, Registered Representative, Jupiter, Florida)** was named as a respondent in an NASD complaint alleging that he engaged in a course of unsuitable

and excessive trading in the accounts of a public customer and failed to obtain the customer's prior approval for trades in the account. The complaint further alleges that Anaya engaged in a course of trading that was inconsistent with the customer's financial situation, needs, and investment objectives. Furthermore, the NASD alleges that Anaya failed to respond to an NASD request to appear to give testimony. **(NASD Case #C07010064)**

**Castle Securities Corporation (CRD #16077, Freeport, New York), John Joseph Fisher (CRD #208642, Registered Representative, Wantagh, New York), and Victor Soare (CRD #2169051, Registered Principal, Merrick, New York)** were named as respondents in an NASD complaint alleging that they engaged in unsuitable trading in the account of a public customer resulting in churning. The complaint also alleges that the firm and Fisher used a margin guarantee agreement for a public customer that was not reasonable in light of the customer's age, mental condition, physical condition, financial situation, and lack of investment sophistication. **(NASD Case #C3A010036)**

**FAS Wealth Management Services, Inc. (CRD #10164, Sarasota, Florida) and Jack Asbury Alexander (CRD #2760, Registered Principal, Poway, California)** were named as respondents in an NASD complaint alleging that Alexander intentionally or recklessly caused the firm to act as a market maker in, and enter bids for, shares of stock on the Over-the-Counter Bulletin Board on a continuous basis when Alexander was aware that the firm was engaged in a distribution. The complaint also

alleges that Alexander caused the firm to purchase shares of stock from both public customers and other broker/dealers for the firm's proprietary account, and caused the firm's sales force to recommend the purchase of the stock to retail customers while the distribution was in progress. In addition, the complaint alleges that the firm and Alexander, directly or indirectly, employed devices, schemes, or artifices to defraud, engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors. The complaint also alleges that the firm, as directed and controlled by Alexander, intentionally or recklessly engaged in a series of activities designed to arbitrarily and artificially increase the price of the stock. Furthermore, the complaint alleges that the firm and Alexander made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading. In addition, the complaint alleges the firm and Alexander effected transactions in, or induced the purchase or sale of, any security by means of manipulative, deceptive, or other fraudulent devices or contrivances. **(NASD Case #CAF010016)**

**Bobby Joe Garrison, Jr. (CRD #1449625, Registered Representative, Studio City, California)** was named as a respondent in an NASD complaint alleging that he induced a public customer to replace an old variable annuity with a new variable annuity by falsely stating that the new annuity was not subject to contingent deferred sales charges. As a result of the alleged activities, Garrison directly, or indirectly, by the use of means or instrumentalities of interstate commerce, or of the mails, in

connection with the purchase or sale of securities employed devices, schemes, or artifices to defraud, made untrue statements of material fact, and engaged in acts, practices, or courses of business which operated as a fraud or deceit upon the customer. The NASD further alleges that Garrison provided the customer with a fabricated letter purportedly from an employee of an insurance company that falsely stated that surrender penalties would not apply to the new variable annuity. **(NASD Case #C02010045)**

#### **Firms Expelled For Failing to Pay Fines And/Or Costs In Accordance With NASD Rule 8320**

**Lexington Capital Corporation n/k/a Preston Langley Asset Management, Inc.,**  
New York, New York  
(September 5, 2001)

**The Minneapolis Company, Inc.,**  
Melville, New York  
(September 5, 2001)

**Tasin & Company, Inc.,**  
Ronkonkoma, New York  
(September 5, 2001)

#### **Firms Suspended For Failure To Supply Financial Information**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Bright Cove Securities, Inc.,**  
Virginia Beach, Virginia  
(September 4, 2001)

**Brokerage Administrators Corporation,**  
Englewood, Colorado  
(September 4, 2001)

**CI Investments, Inc.,**  
Lawrenceville, Georgia  
(September 4, 2001)

**Greenwich Partners, LLC,**  
Stamford, Connecticut  
(September 6, 2001)

**Marion Bass Securities Corporation,** Charlotte, North Carolina (September 4, 2001)

**Firm Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement**

**Centex Securities, Inc.,**  
La Jolla, California  
(August 16, 2001)

**Suspension Lifted**

The NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

**Travis Morgan Securities, Inc.,**  
Dallas, Texas  
(August 23, 2001)

**Individuals Barred Pursuant To NASD Rule 9544 For Failure To Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)**

**Clyde, Stephen B.,**  
Richwood, New Jersey  
(August 17, 2001)

**Dunlap, III, Arthur Lee,**  
Winchester, Virginia  
(August 14, 2001)

**Kuwata, Colburn Yoshitaka,**  
Honolulu, Hawaii  
(August 20, 2001)

**Mason, Christopher T.,**  
Glendale, Arizona  
(August 15, 2001)

**Monares, Ed J.,**  
Malibu, California  
(August 14, 2001)

**Phillips, Daniel John,**  
Stuart, Florida  
(August 14, 2001)

**Santucci, Joel M.,**  
Hallandale, Florida  
(August 14, 2001)

**Individuals Suspended Pursuant To NASD Rule 9541(b) For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)**

**Adkins, James R.,**  
Prescott Valley, Arizona  
(August 15, 2001)

**Farris, Lorette,**  
Hempstead, New York  
(August 20, 2001)

**Foster, Karl H.,**  
Toledo, Ohio  
(September 5, 2001)

**Garcia, Ruben,**  
Chappaqua, New York  
(August 21, 2001)

**Hubbard, George,**  
Virginia Beach, Virginia  
(August 16, 2001)

**Knopp, Brian D.,**  
Vacaville, California  
(August 14, 2001)

**Lam, Thach N.,**  
Westminster, California  
(August 16, 2001)

**Levin, Stephanie S.,**  
New York, New York  
(August 13, 2001)

**Nhekairo, Mabasha,**  
Alpharetta, Georgia  
(August 17, 2001)

**Yacapraro, Jr., Joseph-Anthony,**  
Coshocton, Ohio  
(September 4, 2001)

**Individuals Revoked For Failing To Pay Fines And/Or Costs In Accordance With NASD Rule 8320**

**Aylesworth, Alfred D.,**  
Batavia, Illinois  
(September 5, 2001)

**Cash, Robert Scott,**  
St. Petersburg, Florida  
(September 5, 2001)

**Desilets, Michelle A.,**  
Littleton, Colorado  
(September 5, 2001)

**Kraemer, Jr., Ernest O.,**  
New Orleans, Louisiana  
(September 5, 2001)

**Kurczodyna, Joseph E.,**  
Lake Bluff, Illinois  
(September 5, 2001)

**Montgomery, Jr., Russell,**  
Tampa, Florida  
(September 5, 2001)

**Penn, Susan G.,**  
Huntington Station, New York  
(September 5, 2001)

## INFORMATIONAL

# District Elections

## Nominees For District Committee And District Nominating Committee

## 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
- Registration
- Senior Management

## KEY TOPICS

- District Elections

## Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the District Committees and the District Nominating Committees. The individuals identified in this *Special Notice to Members* (see Attachment A) have been nominated for three-year terms on the District Committees and for one-year terms on the District Nominating Committees starting in January 2002. These nominees will be considered duly elected on **November 1, 2001**, unless an election is contested in accordance with the procedures summarized below.

We appreciate the interest shown by many of you in participating in the District Committees and thank everyone for their continuing support of the self-regulatory process. We look forward to your participation in the matters of the Districts during the coming year, as well as hope that those who were not selected this year may wish to revisit this process next year.

## Contested Election Procedures

If an officer, director, or employee of a National Association of Securities Dealers, Inc. (NASD®) member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the District Director by **October 31, 2001**. If an additional candidate(s) comes forward by that date, the candidate has until **December 3, 2001** to submit a petition to the District Nominating Committee with signatures from at least 10 percent of Executive Representatives of members eligible to vote in the District.

If no additional candidates submit petitions by **December 3, 2001**, then the candidates nominated by the District Nominating Committee shall be considered elected, and the District Committee shall certify the election to the Board of Directors of NASD Regulation.

Additional information pertaining to the District Election Procedures can be found in Article VIII of the By-Laws of NASD Regulation.

## Questions/Further Information

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

**ATTACHMENT A****District Committee And District Nominating Committee Nominees****District 1****Elisabeth P. Owens, District Director**

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

(415) 882-1200

*Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii*

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**2001 District Nominating Committee Chair**

Nicholas C. Cochran

American Investors Company

Dublin, CA

**District Committee Nominees**

Raymond J. Cyphers

UBS PaineWebber, Inc.

San Jose, CA

Allan L. Herzog

Prudential Securities, Inc.

San Francisco, CA

Robert A. Muh

Sutter Securities, Inc.

San Francisco, CA

**District Nominating Committee Nominees**

Stephen R. Adams

Wells Fargo Van Kasper

San Francisco, CA

Janet W. Campbell

Protected Investors of America

Walnut Creek, CA

Glenn M. Colacurci

Salomon Smith Barney

San Francisco, CA

John C. Helmer

Caldwell Securities, Inc.

Danville, CA

Jerry D. Phillips

Sutro &amp; Co.

San Francisco, CA

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# Special NASD Notice to Members 01-69

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## District Committee And District Nominating Committee Nominees

District 2

### Lani M. Woltmann, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071

(213) 627-2122

*Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories*

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### 2001 District Nominating Committee Chair

Jerry M. Gluck

Jefferies & Company, Inc.

Los Angeles, CA

### District Committee Nominees

Kevin J. Hart

Sentra Securities Corp.  
c/o SunAmerica Financial Network, Inc.

Woodland Hills, CA

Joan A. Payden

Payden & Rygel

Los Angeles, CA

Joel H. Ravitz

Quincy Cass Associates, Inc.

Los Angeles, CA

Guy W. Williams

Merrill Lynch Pierce Fenner & Smith, Inc.

Laguna Hills, CA

### District Nominating Committee Nominees

George H. Casey

Crowell Weedon & Co.

Los Angeles, CA

Murray L. Finebaum

Market Axess, Inc.

Santa Monica, CA

James B. Guillou

Tucker Anthony Sutro, Inc

La Jolla, CA

Dean A. Holmes

American General Financial Group

Anaheim, CA

Robert L. Winston

American Funds Distributors, Inc.

Los Angeles, CA

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## Special NASD Notice to Members 01-69

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### District Committee And District Nominating Committee Nominees

District 3

#### Frank J. Birgfeld, District Director

Republic Plaza Building, 370 17th Street, Suite 2900, Denver, CO 80202-5629

(303) 446-3100

*Arizona, Colorado, New Mexico, Utah, and Wyoming*

#### James G. Dawson, District Director

Two Union Square, 601 Union, Suite 1616, Seattle, WA 98101-2327

(206) 624-0790

*Alaska, Idaho, Montana, Oregon, and Washington*

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### 2001 District Nominating Committee Chair

Douglas Strand

Strand, Atkinson, Williams & York, Inc.

Portland, OR

### District Committee Nominees

Gregory R. Anderson

TIAA/CREF Individual & Institutional Services, Inc.

Denver, CO

Robert E. Frey, Jr.

KMS Financial Services, Inc.

Seattle, WA

John F. York

Strand, Atkinson, Williams & York, Inc.

Portland, OR

### District Nominating Committee Nominees

Thomas R. Hislop

Peacock, Hislop, Staley & Given, Inc.

Phoenix, AZ

John Morton

Morton Clarke Fu & Metcalf, Inc.

Seattle, WA

William G. Papesh

WM Fund Distributor, Inc.

Seattle, WA

Thomas Petrie

Petrie Parkman & Co., Inc.

Denver, CO

James E. Stark

Charles Schwab & Co., Inc.

Phoenix, AZ

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**Special NASD Notice to Members 01-69**

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**District Committee And District Nominating Committee Nominees****District 4****Thomas D. Clough, District Director**

120 W. 12th Street, Suite 900, Kansas City, MO 64105

(816) 421-5700

*Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota*

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**2001 District Nominating Committee Chair**

Wayne H. Pererson

USALLANZ Investor Services, LLC

Minneapolis, MN

**District Committee Nominees**

William R. Giovanni

Ameritas Investment Corp.

Lincoln, NE

Frank H. Kirk

First Union Securities, Inc.

Kansas City, MO

James H. Warner

The Warner Group, Inc.

Sioux City, IA

**District Nominating Committee Nominees**

Robert M. Chambers

Robert W. Baird &amp; Co. Incorporated

Des Moines, IA

Cheryl Cook-Schneider

Edward Jones

St. Louis, MO

Norman Frager

Flagstone Securities

St. Louis, MO

John R. Lepley

Princor Financial Services Corp.

Des Moines, IA

Brent M. Weisenborn

Security Investment Company of Kansas City

Kansas City, MO

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## Special NASD Notice to Members 01-69

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### District Committee And District Nominating Committee Nominees

District 5

#### Warren A. Butler, Jr., District Director

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

(504) 522-6527

*Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee*

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#### 2001 District Nominating Committee Chair

Jerry Roberts

Sterne, Agee & Leach, Inc.

Little Rock, AR

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#### District Committee Nominees

John J. Dardis

Jack Dardis & Associates, Ltd.

Metairie, LA

J. Timothy Rice

Rice, Voelker, LLC

Mandeville, LA

James T. Ritt

Morgan Keegan & Company, Inc.

Memphis, TN

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#### District Nominating Committee Nominees

Carl W. Busch

Prudential Securities Incorporated

Oklahoma City, OK

William T. Griggs, II

Dupree & Company, Inc.

Lexington, KY

V. Hugo Marx, III

Hugo Marx & Co., Inc.

Birmingham, AL

Dene R. Shipp

SunTrust Equitable Securities, Inc.

Nashville, TN

William L. Tedford, Jr.

Stephens Inc.

Little Rock, AR

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# Special NASD Notice to Members 01-69

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## District Committee And District Nominating Committee Nominees

District 6

### Bernerd E. Young, District Director

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

(972) 701-8554

Texas

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### 2001 District Nominating Committee Chair

|                     |  |                |
|---------------------|--|----------------|
| William D. Connally | Greenman Parker Connally, Greenman, Inc. | Fort Worth, TX |
|---------------------|--|----------------|

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### District Committee Nominees

|                       |                                      |                |
|-----------------------|--------------------------------------|----------------|
| Donaldson D. Frizzell | First Command Securities Corporation | Fort Worth, TX |
| Sennett Kirk, III     | Kirk Securities Corporation          | Denton, TX     |
| V. Keith Roberts      | American General Distributors, Inc.  | Houston, TX    |
| Daniel P. Son         | Penson Financial Services, Inc.      | Dallas, TX     |

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### District Nominating Committee Nominees

|                      |                                     |                |
|----------------------|-------------------------------------|----------------|
| Daniel C. Dooley     | Maplewood Investment Advisors, Inc. | Dallas, TX     |
| Kenneth R. Hanks     | SWS Securities, Inc.                | Dallas, TX     |
| William H. Lowell    | Lowell & Company, Inc.              | Lubbock, TX    |
| Fredrick W. McGinnis | UBS PaineWebber, Inc.               | Houston, TX    |
| Jim G. Rhodes        | Rhodes Securities, Inc.             | Fort Worth, TX |

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# Special NASD Notice to Members 01-69

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## District Committee And District Nominating Committee Nominees

District 7

### Alan M. Wolper, District Director

One Securities Centre, Suite 500, 3490 Piedmont Road, N.E., Atlanta, GA 30305

(404) 239-6100

*Florida, Georgia, North Carolina, South Carolina, Virginia, Puerto Rico, the Canal Zone,  
and the Virgin Islands*

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### 2001 District Nominating Committee Chair

R. Charles Shufeldt

SunTrust Banks, Inc.

Atlanta, GA

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### District Committee Nominees

Jeffrey P. Adams

Balentine & Company

Atlanta, GA

Richard G. Averitt, III

Raymond James Financial Services, Inc.

Atlanta, GA

Harold F. Corrigan

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Palm Beach, FL

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### District Nominating Committee Nominees

M. Anthony Greene

Raymond James Financial Services, Inc.

Atlanta, GA

James W. Hamilton, Jr.

Morgan Keegan & Co.

Atlanta, GA

Edward R. Hipp, III

Centura Securities, Inc.

Rocky Mount, NC

Raymond W. Snow

Merrill Lynch, Pierce, Fenner & Smith, Inc.

West Palm Beach, FL

Roark A. Young

Young, Stovall & Company

Miami, FL

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## Special NASD Notice to Members 01-69

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### District Committee And District Nominating Committee Nominees

District 8

#### Carlotta A. Romano, District Director

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

(312) 899-4400

*Illinois, Indiana, Michigan, and Wisconsin*

#### William H. Jackson, Jr., District Director

Renaissance on Playhouse Square, 1350 Euclid Avenue, Suite 650, Cleveland, OH 44115

(216) 592-2950

*Ohio and part of upstate New York (the counties of Monroe, Livingston, and Steuben, and the remainder of the state west of such counties)*

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### 2001 District Nominating Committee Chair

Leonard L. Anderson

Stifel Nicolaus & Company, Inc.

Grand Haven, MI

### District Committee Nominees

Bernard A. Breton

Carillon Investments, Inc.

Cincinnati, OH

Donald A. Carlson

B.C. Ziegler and Company

Chicago, IL

William K. Curtis

M & I Brokerage Services, Inc.

Milwaukee, WI

Gerald L. Oaks

Legg Mason Wood Walker, Inc.

Cincinnati, OH

Jill R. Powers

Oberlin Financial Corporation

Bryan, OH

### District Nominating Committee Nominees

Wallen L. Crane, Jr.

Salomon Smith Barney, Inc.

Toledo, OH

William L. Faulkner

Continental Capital Securities, Inc.

Sylvania, OH

Thomas Harenburg

Carl M. Hennig, Inc.

Oshkosh, WI

David Slavik

Pershing Division of Donaldson, Lufkin & Jenrette

Oak Brook, IL

L. Gene Tanner

NatCity Investments, Inc.

Indianapolis, IN

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## Special NASD Notice to Members 01-69

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### District Committee And District Nominating Committee Nominees

District 9

#### John P. Nocella, District Director

Eleven Penn Center, 1835 Market Street, Suite 1900, Philadelphia, PA 19103

(215) 665-1180

*Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and the southern part of New Jersey in the immediate Philadelphia vicinity*

#### Gary K. Liebowitz, District Director

581 Main Street, 7th Floor, Woodbridge, NJ 07905

(732) 596-2000

*New Jersey (except southern New Jersey in the immediate Philadelphia vicinity)*

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#### 2001 District Nominating Committee Chair

James J. Malespina

Herzog, Heine, Geduld, Inc.

Jersey City, NJ

#### District Committee Nominees

James E. Bickley

Cresap, Inc.

Radnor, PA

Michael B. Row

Donaldson, Lufkin & Jenrette Securities Corporation

Jersey City, NJ

Frank D. Ruscetti

Harvest Financial Corporation

Pittsburgh, PA

#### District Nominating Committee Nominees

Philip S. Cottone

Rutherford, Brown & Gatherwood, LLC

Philadelphia, PA

A. Louis Denton

Philadelphia Corporation for Investment Services

Philadelphia, PA

Jerome J. Murphy

Janney Montgomery Scott LLC

Philadelphia, PA

Joseph S. Rizzello

Pershing Trading Company, L.P.

Jersey City, NJ

Gregory R. Zappala

RRZ Public Markets, Inc.

Cranberry Township, PA

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## Special NASD Notice to Members 01-69

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### District Committee And District Nominating Committee Nominees

District 10

#### Cathleen Shine, District Director

33 Whitehall Street, New York, NY 10004

(646) 441-3000

*The five boroughs of New York City, and Long Island*

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#### 2001 District Nominating Committee Chair

|                    |                                 |              |
|--------------------|---------------------------------|--------------|
| Laurence H. Bertan | Sanford C. Bernstein & Co., LLC | New York, NY |
|--------------------|---------------------------------|--------------|

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#### District Committee Nominees

|                       |                                |              |
|-----------------------|--------------------------------|--------------|
| Jennifer A. Connors   | ITG Inc.                       | New York, NY |
| Joan E. Hoffman       | Deutsche Banc Alex. Brown Inc. | New York, NY |
| Nathalie P. Maio      | Bear, Stearns & Co. Inc.       | New York, NY |
| Bertram J. Riley, Sr. | Petersen Investments, Inc.     | New York, NY |
| Mark W. Ronda         | Prime Charter Ltd.             | New York, NY |

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#### District Nominating Committee Nominees

|                       |  |              |
|-----------------------|--|--------------|
| William P. Behrens    | Northeast Securities, Inc.                   | New York, NY |
| Laurence H. Bertan    | Sanford C. Bernstein & Co., LLC              | New York, NY |
| Philip V. Oppenheimer | Oppenheimer & Close, Inc.                    | New York, NY |
| Eugene A. Schlanger   | Nomura Securities International, Inc.        | New York, NY |
| Tom M. Wirtshafter    | American Portfolios Financial Services, Inc. | Holbrook, NY |

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## Special NASD Notice to Members 01-69

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### District Committee And District Nominating Committee Nominees

District 11

#### Frederick F. McDonald, District Director

260 Franklin Street, 16th Floor, Boston, MA 02110

(617) 261-0800

*Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont,  
and New York (except for the counties of Monroe, Livingston, and Steuben;  
the five boroughs of New York City; and Long Island)*

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#### 2001 District Nominating Committee Chair

|                 |                             |            |
|-----------------|-----------------------------|------------|
| Stephanie Brown | Linsco/Private Ledger Corp. | Boston, MA |
|-----------------|-----------------------------|------------|

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#### District Committee Nominees

|                    |                                     |            |
|--------------------|-------------------------------------|------------|
| Michael C. Braun   | Moors & Cabot, Inc.                 | Boston, MA |
| Andrew F. Detwiler | Fechtor, Detwiler & Co. Inc.        | Boston, MA |
| Thomas J. Horack   | John Hancock Life Insurance Company | Boston, MA |

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#### District Nominating Committee Nominees

|                   |                               |                 |
|-------------------|-------------------------------|-----------------|
| Harry Branning    | Linsco/Private Ledger Corp.   | Glastonbury, CT |
| Stephen O. Buff   | Fleet Securities, Inc.        | Boston, MA      |
| Sheldon Fechter   | Fechtor, Detwiler & Co., Inc. | Boston, MA      |
| Arthur F. Grant   | Cadaret, Grant & Co., Inc.    | Syracuse, NY    |
| Dennis Surprenant | Cantella & Co., Inc.          | Boston, MA      |

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