

Disciplinary and Other NASD Actions

REPORTED FOR FEBRUARY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of December 2006.

Firms Fined, Individuals Sanctioned

Horace Mann Investors, Inc. (CRD #11643, Springfield, Illinois), Sherman Marc Bloom (CRD #2875366, Registered Representative, Curwensville, Pennsylvania) and Jerry Deamus Scott (CRD #1371721, Registered Representative, Afton, Tennessee) submitted Letters of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Bloom was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Scott was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that Bloom and Scott affixed public customers' signatures to forms without the customers' knowledge or consent. The findings stated that the firm failed to promptly and accurately file with NASD an amended Rule 3070 Report and failed to amend Scott's Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose a written complaint alleging forgery.

Bloom's suspension in any capacity was in effect from January 2, 2007, through January 31, 2007. Scott's suspension in any capacity is in effect from January 2, 2007, through March 2, 2007. (NASD Cases #E8A2005011501/E8A2005011502/E8A2005011503)

Prudential Equity Group, LLC fka Prudential Securities, Inc. (CRD #7471, New York, New York) and Gary Earl Evans (CRD #1148015, Registered Representative, Lubbock, Texas) submitted Letters of Acceptance, Waiver and Consent in which the firm was censured and fined \$125,000. Evans was fined \$7,500 and suspended from association with any NASD member in a principal capacity for 45 days. Without admitting or denying the findings, the firm and Evans consented to the described sanctions and to the entry of findings that a branch office of the firm failed to establish and maintain a system to supervise its registered representatives' activities reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules. The findings stated that the firm's supervisory system failed to detect the activities of a registered representative engaged

in an outside business activity, and Evans did not review correspondence the representative received and facsimile correspondence he sent. The findings also stated that the firm's supervisory system was deficient in that it had inadequate procedures regarding review of customer account statements to detect irregular activity in the representative's customer accounts, and failed to follow up on a "red flag" that might have uncovered the representative's Ponzi scheme. The findings also included that the firm, acting through Evans, failed to adequately investigate the nature of a business entity and to monitor the entity's account that would have revealed additional "red flags." NASD found that Evans failed to conduct any further investigation regarding the representative's outside business activities including calling customers, reviewing statements and verifying financial arrangements, but instead relied on the representative's statements.

The suspension in a principal capacity is in effect from January 16, 2007, through March 1, 2007. (NASD Cases #2005001720501/200500172 0502)

Firms and Individuals Fined

Aladdin Capital LLC (CRD #103766, Stamford, Connecticut) and George McMurray Marshman (CRD #2170808, Registered Principal, Darien, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$10,000, jointly and severally, and an additional \$5,000 fine was imposed against the firm. Without admitting or denying the findings, the firm and Marshman consented to the described sanctions and to the entry of findings that the firm, acting through Marshman, permitted an associated person of the firm to function as its chief compliance officer and perform various supervisory functions without being registered as a principal with NASD. The findings also stated that the firm failed to conduct independent testing for compliance with its anti-money laundering (AML) program and to provide for ongoing training for appropriate personnel. (NASD Case #2006003873401)

Firms Fined

AllianceBernstein Investments, Inc. (CRD #14549, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it provided non-cash compensation to associated persons of other NASD member firms in connection with the sale and distribution of investment company securities. The findings stated that the firm failed to have systems and procedures in place that were reasonably designed to ensure compliance with NASD Rule 2830(L)(5) concerning non-cash compensation in connection with the sale of investment company securities. (NASD Case #SAF2004016001)

Ameritrade, Inc. (CRD #5633, Bellevue, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system and written procedures designed to achieve compliance with the applicable securities laws, regulations and NASD rules regarding FDIC-insured products the firm offered through unregistered, non-member third party entities. (NASD Case #E0420040450-01)

Banc of America Investment Services, Inc., (CRD #16361, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$500,000 and required to pay \$89,625, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system and procedures reasonably designed to review and monitor its fee-based brokerage business. The findings stated that as a result of these deficiencies, the firm allowed customers to continue in fee-based accounts (the Portfolio Edge Accounts) without assessing whether those accounts remained appropriate for those customers, and did not have procedures in place requiring its brokers to determine whether a Portfolio Edge Account was appropriate for a customer before opening the account. The findings also stated that the firm used written communications with the public,

including advertising and sales literature, to market the account that omitted material information and failed to provide a sound basis for evaluating the facts in regard to the account. (NASD Case #EAF0401010002)

Block Orders Execution, LLC (CRD #134932, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to implement a system that allowed the firm to adequately retain and retrieve instant messages that registered representatives sent and received. The findings also stated that the firm failed to apply for the research analyst designation for a registered representative and for a supervisory designation for any of the firm's principals to supervise a registered representative's activity in his capacity as a research analyst. The findings also stated that the firm failed to adopt or implement written supervisory procedures reasonably designed to ensure compliance with research analyst rules. The findings also included that the firm permitted an associated person to act in a capacity requiring registration as a general securities representative without being properly registered in that capacity. (NASD Case #2006003890801)

Capital Portfolio Management, Inc. (CRD #29302, Hunt Valley, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$24,000, ordered to pay \$2,134, plus interest, in restitution to public customers and revise the firm's written supervisory procedures regarding fair pricing and markups. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it bought/sold securities for its own account from/to other broker-dealers and failed to buy/sell the securities to/from firm customers at a price that was fair, taking into consideration all relevant circumstances including market conditions with respect to the securities at the time of transaction, the expense involved and that the firm was entitled to a profit. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning fair pricing and markups. (NASD Case #20050022304-01)

Cowen and Company, LLC (CRD #7616, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected short sales in securities for the firm's proprietary account(s) and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by the settlement date. The findings stated that the firm failed to timely report Reportable Order Events to the Order Audit Trail SystemSM (OATSSM) and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also stated that the firm failed to submit required order information for an order to OATS and combined order/route reports for other orders. The findings also included that the firm made available on the covered orders in national market system securities that it received for execution from any person that included incorrect information as to order execution statistics for multiple categories and failed to correctly classify a covered limit order into the correct order type and size category. (NASD Case #20050002690-03)

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted an incorrect "order sent" timestamp for orders routed to its affiliates to OATS, and as a result, route reports failed to match to either of the affiliate's related new order reports. (NASD Case #20050014655-01)

DWS Scudder Distributors, Inc. (CRD #37306, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$425,000 and required to review its policies and procedures concerning non-cash compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it provided non-cash compensation to the associated persons of other NASD member firms in connection with the sale and distribution of investment company securities and variable annuities. The findings also stated that the firm failed to have adequate systems and procedures in place to ensure it complied

with NASD Rules 2830 and 2820 concerning non-cash compensation in connection with the sale of investment company securities and variable annuities. (NASD Case #EAF0401460001)

Evergreen Investment Services, Inc. (CRD #487, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$4,200,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it participated in yearly shelf space-revenue sharing arrangements with an affiliated firm. The findings stated that in order to pay for participation in the revenue sharing program, the firm arranged for the affiliate to receive \$25.6 million in directed brokerage commissions over a three-year period. The findings also stated that the firm sponsored a sales-recognition program for registered representatives of the affiliate who sold certain target amounts of funds set by the firm that constituted the payment of improper non-cash compensation. (NASD Case #EAF0400970003)

Finantia USA Ltd. (CRD #39120, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report TRACE-eligible transactions to the Trade Reporting and Compliance Engine (TRACE). The findings stated that the firm failed to indicate the contra MPID and instead inaccurately reported that the contra side was a customer as opposed to an inter-dealer, failed to report the yield for transactions, and erroneously reported one agency trade as a principal trade. The findings also stated that the firm's order tickets contained inaccurate information. The findings also included that the firm failed to establish, maintain and enforce written supervisory procedures addressing TRACE reporting. (NASD Case #20060037577-01)

First Montauk Securities Corporation (CRD #13755, Red Bank, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to enforce its written supervisory procedures regarding the review of customer addresses and customer address change requests by the firm's legal

and compliance departments. The findings stated that the firm failed to prevent a registered representative from having a back office clerk change customer addresses to post office boxes and to his home address in violation of firm written supervisory procedures. (NASD Case #2005001028302)

Legend Merchant Group, Inc. (CRD #5155, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to review its procedures regarding the preservation of electronic mail communications for compliance with NASD rules and federal securities laws and regulations. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to maintain and preserve electronic communications relating to its business. The findings stated that the firm utilized a vendor to maintain and preserve electronic communications, and while the vendor initially captured those communications, the vendor could not later retrieve them and the firm failed to retain those communications. The findings also stated that the firm's TRACE-eligible securities transactions were reported late. (NASD Case #E102004024201)

Linsco/Private Ledger Corp. (CRD #6413, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$300,000 and required to retain an independent consultant to conduct a review to determine whether improvements for reviewing variable annuity exchanges have been appropriately implemented, whether supervisory personnel are conducting the reviews as prescribed and documenting their efforts, and whether the systems and procedures are adequate. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain and enforce an adequate supervisory system, including written procedures, reasonably designed to review and monitor its variable annuity exchange business. (NASD Case #EAF0400610003)

McKim Capital, Inc. (CRD #103814, Pleasanton, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it engaged in a general

municipal securities business through the execution of unsolicited liquidating transactions in municipal securities for a public customer on a riskless principal basis. This activity comprised a material change in the firm's business for which it had not sought or obtained NASD's prior approval. The findings further stated that the firm conducted a municipal securities business without a qualified municipal securities principal and did not retain all electronic communications relating to its business. The findings also stated that the firm did not establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with the requirements of the SEC and MSRB rules with respect to the retention of electronic communications. (NASD Case #E0120050052-01)

Moors & Cabot, Inc. (CRD #594, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report corporate bond transactions to TRACE and failed to timely report municipal securities transactions to the MSRB. The findings stated that the firm's order tickets for municipal securities, corporate and government bond transactions did not indicate whether the transactions were solicited or unsolicited, and in what capacity the firm was acting. (NASD Case #E112005019101)

National Securities Corporation (CRD #7569, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 30 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. The findings also stated that the firm failed to report customer transactions in municipal securities to the MSRB within 15 minutes of the execution time. (NASD Case #20050004545-01)

Northland Securities, Inc. (CRD #40258, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to deposit investor funds in an appropriate escrow account for private offerings and released investor funds before the minimum contingency was met with *bona fide* investments. The findings further stated that the firm rendered false and misleading representations in a private placement memorandum that investor funds would be released to the issuer only after the minimum contingency was met. (NASD Case #E0420050078-01)

Pinnacle Capital Markets, LLC (CRD #119606, Raleigh, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf, for delivery by the settlement date. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning the execution and reporting of short sales. (NASD Case #20050008073-01)

Prudential Equity Group, LLC (CRD #7471, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000 and required to revise the firm's written supervisory procedures regarding SEC Rules 10a-1, 11Ac1-6, Automated Confirmation Transaction ServiceSM (ACTSM) reporting, affirmative determination, registration, best execution, three quote rule, trade reporting, sales transactions, trading halts, soft dollar accounts, books and records, and limit order protection. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification disclosing to its customers that transactions were executed at an average price; when it acted as principal for its own account, it failed to provide written notification disclosing to its customers that it was a market maker

in each security; and failed to provide written notification disclosing its correct capacity in transactions to its customers. The findings stated that the firm made available reports on covered orders in national market system securities that it received for execution from any person that included incomplete and incorrect information. The findings stated that the firm failed to correct a programming error found in its 2005 review that was brought to its attention as a result of the 2004 review. The findings included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning SEC Rule 10a-1, ACT reporting, registration, best execution, three quote rule, trade reporting, sales transactions and trading halts. NASD found that the firm failed to provide documentary evidence that it performed supervisory reviews set forth in its written supervisory procedures concerning the requirements of affirmative determination, SEC Rule 11Ac1-6, soft dollar accounts, books and records, and limit order protection. (NASD Case #20042000211-01)

Putnam Retail Management Limited Partnership (CRD #7325, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$175,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it provided non-cash compensation to associated persons of other NASD member firms in connection with the sale and distribution of investment company securities and variable annuity contracts. The findings stated that the firm failed to have adequate systems and procedures in place to ensure it complied with NASD rules 2820(g)(4) and 2830(L)(5) concerning non-cash compensation in connection with the sale of investment company securities and variable insurance contract. (NASD Case #SAF2004016601)

Redwood Brokerage, LLC (CRD #39416, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it distributed research reports prepared by an entity affiliated with the firm that were deficient. The findings stated that the reports failed to contain the required research analysts' certifications

attesting to the nature of the views contained in the reports and their compensation. (NASD Case #E1020050359-02)

Royal Alliance Associates, Inc. (CRD #23131, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding TRACE. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 30 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE. (NASD Case #20050014023-01)

Securities America, Inc. (CRD #10205, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$225,000 and required to retain an independent consultant to conduct a review to determine whether certain improvements for reviewing variable annuity transactions have been appropriately implemented, whether supervisory personnel are conducting the reviews as prescribed and documenting their efforts, and whether the system and procedures are reasonable. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain an adequate supervisory system, including written procedures, reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules with respect to its variable annuity exchange business. (NASD Case #EAF0400600003)

SG Americas Securities, LLC (CRD #128351, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected short sales in securities for the firm's proprietary account and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by the settlement date. (NASD Case #20041000051-01)

Stillpoint Wealth Management, LLC (CRD #119154, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report municipal securities transactions within the time period MSRB Rule G-14 prescribes. The findings stated that the firm failed to develop and implement a written training plan and needs analysis for continuing education. **(NASD Case #2006003967201)**

Stoeber, Glass & Company, Inc. (CRD #7031, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report public customer bond transactions to TRACE. **(NASD Case #E1020050409-01)**

Utendahl Capital Partners, L.P. (CRD #30115, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$240,000 and required to submit to NASD quarterly reports for calendar years 2007, 2008 and 2009 audited by an independent public accountant in accordance with generally accepted accounting principles. The firm is also required to revise the firm's written supervisory procedures to ensure that the firm maintains accurate financial books and records, maintains sufficient excess net capital to meet contractual commitments related to the firm's underwriting activities and other financial obligations, maintains minimum required net capital, and files accurate Financial and Operational Combined Uniform Single (FOCUS) reports.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm, acting through an individual, shared research reports prepared before their publication and published reports that did not disclose the valuation methods used to determine price targets. The findings also stated that the firm failed to preserve copies of all electronic mail for three years and/or maintain electronic mail for the first two years in an accessible location. The findings also stated that the firm permitted an individual to engage in securities business without being properly registered as a

principal, participated in municipal underwritings while not employing a qualified municipal securities principal, permitted an individual to take customer securities orders, cause orders to be executed and solicit transaction while not registered as general securities representatives. The findings also included that the firm did not comply with the Regulatory Element of the Continuing Education requirement and with the Firm Element of the Continuing Education requirement. NASD found that the firm provided inaccurate information to NASD staff. NASD also found that the firm failed to make adequate inquiries and conduct sufficient due diligence. In addition, NASD determined that the firm, acting through FINOPS, failed to establish and maintain ledgers and other records that accurately reflected all assets, liabilities and expenses, filed inaccurate FOCUS reports and while conducting a securities business, failed to maintain its minimum net capital requirements. The findings stated that the firm failed to give notice and/or timely notice under SEC Rule 17a-11 of material inadequacy, failed to timely file an annual audit report, failed to establish, maintain and enforce a supervisory system reasonably designed to insure its compliance with applicable laws, regulations and NASD rules regarding electronic correspondence, research and underwriting activities, and failed to properly update its supervisory procedures. **(NASD Case #E1020020590-03)**

Waddell & Reed, Inc. (CRD #866, Overland Park, Kansas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that a temporary employee was not engaging in activities requiring NASD registration. **(NASD Case #E062004029603)**

Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$150,000 and required to review its procedures regarding late trading and recordkeeping, and have systems in place reasonably designed to ensure compliance with the laws, regulations and rules including SEC Rule 22c-1(a) promulgated under the Investment Company Act of 1940. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that

it facilitated and permitted late trading, and failed to comply with the SEC "forward pricing rule." The findings stated that the firm failed to establish, maintain or enforce supervisory systems and written procedures reasonably designed to prevent and detect late trading. The findings also stated that the firm failed to create and maintain records that reflect the time of receipt of orders to purchase or sell mutual funds. **(NASD Case #E0220040229-01)**

Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California) submitted an Offer of Settlement in which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in eligible securities in the NASDAQ Market Center (NMC) within 20 minutes after execution that the firm, as the order entry firm, was required to accept or decline. The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC Equity securities through the NMC, and failed to designate some of them as late. The findings also stated that the firm submitted an inaccurate short interest position report to NASD. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning short interest reporting requirements contained in NASD Rule 3660. **(NASD Case #2004100023501)**

Individuals Barred or Suspended

Lionel H. Amron (CRD #4225665, Registered Representative, Beverly Hills, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Amron consented to the described sanctions and to the entry of findings that he effected discretionary transactions in a public customer's accounts without having obtained the customer's prior written authorization and his member firm's prior written acceptance of the accounts as discretionary.

The suspension in any capacity was in effect from January 16, 2007, through January 29, 2007. **(NASD Case #20050006470-01)**

Brandon C. Allsup (CRD #5092387, Registered Representative, Jacksonville, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Allsup consented to the described sanction and to the entry of findings that, while taking the Series 7 examination, he possessed and used unauthorized study aides related to the content of the exam. **(NASD Case #2006005269601)**

Francis Preston Mark Brighton (CRD #30579, Registered Representative, Ephrata, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Brighton consented to the described sanction and to the entry of findings that he borrowed \$14,800 from public customers without his member firm's approval. The findings stated that Brighton failed to repay the loan by the agreed upon date, and failed to fully repay the customer. The filings also stated that in inducing and obtaining the loans, Brighton failed to disclose to the customers that he had obtained loans from other customers in the past and had not yet repaid those customers in full. **(NASD Case #2006006045201)**

Mark Vernon Brown (CRD #2233771, Registered Representative, New Port Richey, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Brown forged public customers' signatures on letters of authorization to authorize liquidations and transfers in their accounts, and forged a customer's signature on an annuity application. The findings stated that Brown executed transactions in customers' accounts without their knowledge or consent. The findings also stated that Brown falsely represented to his member firm that the source of the funds for additional investments was being made with new funds rather than with partial liquidations from pre-existing investments. The findings also included that Brown misrepresented account values to customers and omitted to disclose that their accounts had incurred surrender charges in connection with the liquidation of annuities. NASD found that Brown made unsuitable recommendations to public customers concerning annuity switches. NASD also found that Brown failed to comply with an NASD request to provide sworn testimony. **(NASD Case #2005000931301)**

Vicki L. Callaghan (CRD #2882042, Registered Representative, Everett, Washington) 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. The fine must be paid before Callaghan reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Callaghan consented to the described sanctions and to the entry of findings that she discovered that errors had been made in calculating the required minimum distribution for public customers' IRA accounts, and in order to rectify the errors, altered and submitted disbursement request forms to her member firm without the customers' knowledge, authorization or consent.

The suspension in any capacity is in effect from January 16, 2007, through March 16, 2007. (NASD Case #2005003415301)

Daniel Cardoso (CRD #4942763, Associated Person, Deltona, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cardoso willfully failed to disclose material information on his Form U4 and failed to respond to NASD requests for information. (NASD Case #2005002564701)

Cynthia T. Carpenter (CRD #4571245, Registered Representative, Rustburg, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Carpenter consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. (NASD Case #2006004757401)

Charles Randall Cherry (CRD #716216, Registered Representative, Arden, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Cherry consented to the described sanctions and to the entry of findings that he sent a letter to a variable annuity issuer requesting that the issuer reallocate the sub-accounts in the variable annuities of many clients without his member firm's approval. The findings stated

that Cherry caused these changes to be effected based upon oral discretionary authority the clients gave him, although he had not obtained the clients' written discretionary authority, nor had he gotten his member firm to accept the accounts as discretionary accounts.

The suspension in any capacity was in effect from January 16, 2007, through January 29, 2007. (NASD Case #20060052299-01)

Jeffrey Robert Chicola (CRD #2686979, Registered Principal, Westfield, 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 two years. The fine must be paid before Chicola reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Chicola consented to the described sanctions and to the entry of findings that he effected unauthorized trades in public customers' accounts. The findings stated that Chicola failed to reasonably supervise an individual to prevent and/or detect unauthorized trades. The findings also stated that Chicola settled a customer complaint without his member firm's knowledge or consent.

The suspension in any capacity is in effect from January 2, 2007, through January 1, 2009. (NASD Case #20050022347-01)

David Lee Clark (CRD #3052085, Registered Representative, Fort Collins, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$14,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Clark reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Clark consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to, and receiving approval from, his member firm.

The suspension in any capacity is in effect from January 16, 2007, through July 15, 2007. (NASD Case #2006004838201)

Richard Crawford Clarke II (CRD #2306773, Registered Principal, Clive, Iowa) was barred from association with any NASD member in any capacity and ordered to pay \$38,000, plus interest, in restitution to public customers. The sanctions were based on findings that he borrowed \$38,000 from public customers even though his member firm's written supervisory procedures specifically prohibited registered representatives from borrowing money from customers except immediate family members. The findings stated that Clarke failed to respond to NASD requests for information. **(NASD Case #2005000336401)**

William R. Clemons (CRD #4985168, Associated Person, West Jordan, Utah) was barred from association with any NASD member in any capacity. The sanction was based on findings that Clemons willfully failed to disclose material information on his Form U4. The findings stated that Clemons failed to respond to NASD requests for information. **(NASD Case #2005002743601)**

Nancy Willinghurst Coppler (CRD #1630955, Registered Representative, Lexington, Kentucky) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Coppler reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Coppler consented to the described sanctions and to the entry of findings that she affixed a public customer's signature to a copy of a passport used as a secondary form of identification while attempting to open a money market account on the customer's behalf.

The suspension in any capacity was in effect from January 2, 2007, through January 31, 2007. **(NASD Case #2006005456501)**

Robert Anthony DeAngelis (CRD #63294, Registered Principal, East Northport, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, DeAngelis consented to the described sanctions and

to the entry of findings that he altered a universal life insurance application after receiving a signed copy from a public customer, creating the impression that the customer had made the alterations, then sent the altered final version to the customer.

The suspension in any capacity was in effect from January 16, 2007, through February 14, 2007. **(NASD Case #ELI20040402-01)**

Sergio Diego III (CRD #4812372, Registered Representative, Miami, 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 six months. The fine must be paid before Diego reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Diego consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from January 2, 2007, through July 1, 2007. **(NASD Case #2006005402701)**

Shane Robert Douglas (CRD #4651892, Registered Representative, Longwood, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$6,205, suspended from association with any NASD member in any capacity for five months and ordered to pay \$3,795, plus interest, in restitution. The fine and restitution amounts must be paid before Douglas reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Douglas consented to the described sanctions and to the entry of findings that he knowingly and intentionally used the "no/was" function in ACT to improperly improve the terms of executions in his and his member firm's favor. The findings stated that Douglas intentionally or recklessly miscalculated average price transactions with correspondents to clear transactions reported to ACT with a non-clearing report.

The suspension in any capacity is in effect from November 20, 2006, through April 19, 2007. **(NASD Case #20050000646-01)**

Patrick Earl Egan (CRD #724199, Registered Principal, Kansas City, Missouri) 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 principal or supervisory capacity for 15 business days. Without admitting or denying the findings, Egan consented to the described sanctions and to the entry of findings that he did not adequately supervise a registered representative, in that he failed to detect and prevent the trades resulting from the representative's unsuitable recommendations to a public customer.

The suspension in a principal capacity was in effect from January 2, 2007, through January 23, 2007. (NASD Case #20050020878-02)

Peter Francis Esposito III (CRD #3018087, Registered Principal, Ontario, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Esposito consented to the described sanction and to the entry of findings that in connection with his recommendation and sale of a variable annuity to a public customer, he submitted falsified information to his member firm. The findings stated that Esposito falsely represented that the source of funds to pay for the transaction did not involve the replacement of an existing annuity; however, the proceeds originated from Esposito's liquidation of another variable annuity that he had previously sold to the customer. The findings also stated that Esposito failed to appear for an NASD on-the-record interview. (NASD Case #2005002689601)

Robert Stewart Evans (CRD #712252, Registered Supervisor, Mt. Pleasant, South Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Evans consented to the described sanction and to the entry of findings that he effected securities transactions in public customers' accounts without their knowledge or consent. The findings stated that Evans failed to respond to NASD requests for information. (NASD Case #2005002257101)

Jacques Andre Frym (CRD #1940809, Registered Representative, Richmond Hill, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with

any NASD member in any capacity for six months. The fine must be paid before Frym reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Frym consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from January 2, 2007, through July 1, 2007. (NASD Case #2006003841601)

William Alan Gay (CRD #1829623, Registered Principal, Golden, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Gay consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving approval from, his member firm. The findings stated that Gay failed to provide complete testimony and to respond to NASD requests for documents and information. (NASD Case #2005003180901)

Paul Norman Germain (CRD #1351422, Registered Principal, Ankeny, Iowa) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Germain consented to the described sanction and to the entry of findings that, in his capacity as operations officer at his member firm, he converted shareholders' funds totaling \$184,337.96 by having mutual fund holdings liquidated and having the proceeds delivered to him by check or wired to his bank account. (NASD Case #20060041038-01)

Ronald Dwight Gooding (CRD #1136624, Registered Representative, Hamilton, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Gooding consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prior written notice to his member firm.

The suspension in any capacity was in effect from January 2, 2007, through January 16, 2007. (NASD Case #2005000979601)

Harvey Scott Grossman (CRD #2545583, Registered Representative, Blue Bell, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Grossman 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 #2006005578402)

Rocco Gerard Guidici Pietro (CRD #2489732, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$113,035, which includes disgorgement of commissions received, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Guidici Pietro reassociates with a member firm following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Guidici Pietro consented to the described sanctions and to the entry of findings that he engaged in a private placement offering through means of an offering memorandum that was false and misleading. The findings stated that the offering memorandum failed to disclose that Guidici Pietro would personally receive substantial commission payouts for all effected transactions and misrepresented the investment philosophy and trading strategy to be employed in the account, as well as the attendant risks.

The suspension in any capacity was in effect from January 16, 2007, through February 15, 2007. (NASD Case #E072003011203)

Norman Albert Harris (CRD #4309293, Registered Representative, Randallstown, Maryland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Harris failed to respond to NASD requests for information. The findings further stated that Harris failed to provide his member firm with prompt written notice of his outside business activities. (NASD Case #2005001824501)

Ross Owen Haugen (CRD #1286021, Registered Supervisor, Plymouth, Minnesota) 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. The fine must be paid before Haugen reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Haugen consented to the described sanctions and to the entry of findings that he recommended securities transactions to a public customer that were not suitable in light of the customer's age, risk tolerance and investment objectives.

The suspension in any capacity was in effect from January 2, 2007, through January 16, 2007. (NASD Case #2005001763701)

Jay McCormick Jensen (CRD #258313, Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Jensen 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 #20060057744-01)

Angela Shuhui Kao (CRD #3003099, Registered Representative, Diamond Bar, California) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any NASD member in any capacity for 40 business days. The fine must be paid before Kao reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Kao consented to the described sanctions and to the entry of findings that, while associated with a member firm, she maintained personal brokerage accounts at other member firms without giving prompt written notice to her member firm that she had accounts with those firms, and without notifying those firms of her association with her member firm. The findings stated that Kao participated in private securities transactions without giving prior written notice to her member firm.

The suspension in any capacity is in effect from January 16, 2007, through March 13, 2007. (NASD Case #20060041966-01)

Roger Angelo Kapsalis (CRD #2159293, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kapsalis participated in a private securities transaction, failed to provide written notification to his member firm and failed to respond to NASD requests for information. **(NASD Case #20060053714-01)**

Michael William Keffler (CRD #1754242, Registered Principal, Lolo, Montana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Keffler reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Keffler consented to the described sanctions and to the entry of findings that, while taking the Series 53 qualifications examination, he attempted to possess unauthorized materials for use during the examination.

The suspension in any capacity is in effect from January 16, 2007, through January 15, 2009. **(NASD Case #2006004480301)**

John Henry Kelly (CRD #2489408, Registered Representative, Cherry Hill, 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 six months. The fine must be paid before Kelly reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Kelly consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from January 2, 2007, through July 1, 2007. **(NASD Case #2006004716901)**

Michael John Kman Jr. (CRD #1928664, Registered Representative, Enola, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Kman consented to the described sanction and to the entry of findings that he received checks totaling

\$131,600 from a public customer intended to be used for the customers' benefit. The findings stated that Kman deposited the checks into a bank account he owned and used a substantial portion of the funds for his own benefit without the customers' knowledge or authorization. The findings also stated that Kman failed to respond to NASD requests for information and failed to appear to provide testimony. **(NASD Case #2006004281301)**

Mark Kovler (CRD #4485423, Registered Representative, Briarcliff, 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 business days. The fine must be paid before Kovler reassociates with a member firm following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Kovler consented to the described sanctions and to the entry of findings that he engaged in an outside business activity and failed to provide his member firm with prompt written notice of the transaction and the compensation he received.

The suspension in any capacity was in effect from December 18, 2006, through January 2, 2007. **(NASD Case #2006005195601)**

Myron Doyle Lester (CRD #3037832, Registered Representative, Upper Marlboro, Maryland) 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 Lester reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Lester consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, or receiving written approval from, his member firm. The findings stated that Lester made a recommendation to a public customer without having a reasonable basis for believing that the recommendation was suitable based upon customer's investment objectives, financial status and needs. The findings also stated that in connection with the recommendation, Lester signed the customer's name to withdrawal forms and submitted them to

his member firm without giving any notice or other indication on the withdrawal forms that he had signed them on the customer's behalf.

The suspension in any capacity will be in effect from January 2, 2007, through January 1, 2008. **(NASD Case #2005002365301)**

Caliope Makris (CRD #4182361, Registered Representative, Poland, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Makris failed to respond to NASD requests for information and that Makris affixed a public customer's signature to a disability application without noting that the application had been signed by someone other than the customer; thereby violating her member firm's prohibition against representatives signing documents on behalf of customers, even with the customer's consent. **(NASD Case #2005001405001)**

Scott Douglas Martis (CRD #1397512, Registered Representative, Charlotte, Michigan) 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. In light of Martis' financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Martis consented to the described sanction and to the entry of findings that he exercised discretion in a public customer's accounts without the customer's prior written authorization and his member firm's acceptance of the accounts as discretionary (in writing or otherwise).

The suspension in any capacity is in effect from January 16, 2007, through January 29, 2007. **(NASD Case #2005002502001)**

Jose Hernandez Manjarres (CRD #2718838, Registered Representative, Lincolnton, North Carolina) 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, Manjarres consented to the described sanction and to the entry of findings that he effected, or caused to be effected, transactions in the joint account of public customers without their authorization, knowledge or consent. The findings stated that Manjarres failed to appear for an NASD on-the-record interview. **(NASD Case #2005001663001)**

Toby Allen McKnight (CRD #3065552, Registered Representative, Connellsville, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that McKnight altered a Commission Override Form after signing it to reflect that he would receive 20 percent of future commissions rather than 10 percent, and he faxed the altered form to his member firm. The findings stated that McKnight failed to respond to NASD requests for information and failed to appear for an on-the-record interview. **(NASD Case #2005002806701)**

Rocco Anthony Mongelli (CRD #2746703, Registered Representative, Hillsdale, 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 60 days. Without admitting or denying the findings, Mongelli consented to the described sanctions and to the entry of findings that he induced a public customer to purchase a security by promising to place a stop loss order on the shares purchase, but failed to place the promised stop loss order and, as a result, the client suffered monetary losses. The findings stated that Mongelli transmitted an electronic mail message to a prospective customer that contained misleading statements that made unreasonable and baseless predictions regarding potential return on the customer's future investments.

The suspension in any capacity is in effect from January 2, 2007, through March 2, 2007. **(NASD Case #E102003200301)**

Theresa Jane Menz (CRD #4636567, Registered Representative, Columbus, 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 findings, Menz consented to the described sanction and to the entry of findings that, without a public customer's knowledge or consent, she withdrew \$4,327.78 funds from the customer's bank account for her own benefit. The findings stated that Menz converted funds from another customer's account in order to repay the funds she had previously taken from the other customer. **(NASD Case #2005003138901)**

Tony Seokoo Paik (CRD #2894154, Registered Representative, Suwanee, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Paik consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation and failed to provide prompt written notice to his member firm.

The suspension in any capacity was in effect from January 2, 2007, through January 31, 2007. (NASD Case #2005003466101)

Lamont Percell Parker (CRD #2946241, Registered Representative, Swarthmore, Pennsylvania) 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 three months. Without admitting or denying the findings, Parker consented to the described sanctions and to the entry of findings that he affixed public customers' signatures to his member firm's proprietary forms to replace lost original forms and placed them in the customers' records as authentic.

The suspension in any capacity is in effect from January 2, 2007, through April 1, 2007. (NASD Case #2005002097001)

James Anthony Parrelly (CRD #728368, Registered Principal, Dearborn, Michigan) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 20 days and ordered to pay a public customer the amount agreed upon pursuant to their written agreement. Without admitting or denying the allegations, Parrelly consented to the described sanctions and to the entry of findings that he recommended and effected transactions in Class B shares of mutual funds for a public customer without having reasonable grounds for believing the resultant transactions were suitable for the customer who would have benefited from owning Class A shares in the identical funds. The findings stated that Parrelly recommended the customer sell Class B shares and later recommended that she purchase additional Class B shares of the same funds so that she was subjected to contingent deferred sales charges (CDSCs) as well as a new CDSC period associated with the new purchases.

The findings also stated that Parelly engaged in short-term trading of Class B shares within one year of the initial purchase, thereby subjecting the customer to a 5 percent CDSC in connection with the sale. The findings further stated that Parelly recommended that the customer use cash distributions from mutual fund positions to purchase additional shares of the same fund, generating new commissionable sales instead of reinvesting the shares with the fund group.

The suspension in any capacity was in effect from December 18, 2006, through January 6, 2007. (NASD Case #E8A2003033801)

Derek Ryan Pines (CRD #4428120, Registered Principal, Hoboken, New Jersey), Enrique Aguilera (CRD #2762032, Registered Representative, Hazlet, New Jersey) and Christopher Scott Conductor (CRD #4531589, Registered Representative, Long Branch, New Jersey) submitted Letters of Acceptance, Waiver and Consent in which Aguilera was fined \$15,000, suspended from association with any NASD member in any capacity for two months and required to pay \$900, plus interest, in restitution to a market maker. Conductor was fined \$30,000, suspended from association with any NASD member in any capacity for three months and ordered to pay \$2,482, plus interest, in restitution to market makers. Pines was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days. The fines are due and payable before each respondent reassociates with a member firm following their suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the findings, Pines, Aguilera and Conductor consented to the described sanctions and to the entry of findings that they knowingly and intentionally entered through their member firm's proprietary trading account into NASDAQ's SuperMontage one-share or odd-lot orders to sell or buy NASDAQ securities from NASDAQ market makers that were utilizing an automated system to maintain a specific spread between its bid and offer for the securities. The findings stated that the respondents entered these one share or odd-lot sell or buy orders against the inside bid or offer when one of the market makers was quoting 100 shares at the NASDAQ Best Bid or Offer (QBBO) and received execution for these orders. The findings also stated that after the one-share or odd-lot orders were executed, the size of the market

maker's quote decremented to an odd lot of shares and the market maker's bid or offer moved to its next price level. The findings also included that after the QBBO changed, the respondents entered through the proprietary trading account into NASDAQ's SuperMontage an order on the opposite side of the market to buy or sell at least 100 shares of the security, and received an execution order at the new QBBO from the same market maker that executed their orders. NASD found that by knowingly and intentionally engaging in this course of conduct, the respondents were able, on behalf of the firm's proprietary account, to sell or buy shares of the securities at prices that were higher or lower than they would otherwise have been able to obtain but for their entry and execution of their orders.

Pines' suspension in any capacity is in effect from January 2, 2007, through February 15, 2007. Aguilera's suspension in any capacity is in effect from January 2, 2007, through March 1, 2007. Conductor's suspension in any capacity is in effect from January 2, 2007, through April 1, 2007. (NASD Cases # 2005000029101/2005000029102/2005000029103)

Donald Chapman Pratt (CRD #367121, Registered Principal, Glastonbury, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Pratt consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm.

The suspension in any capacity is in effect from February 5, 2007, through March 6, 2007. (NASD Case #2006004065001)

Robert Duane Ralston (CRD #801226, Registered Representative, Normal, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Ralston reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Ralston consented to the described sanctions and to the entry of findings that he made changes to insurance application forms a

public customer signed and affixed the customer's initials to the changes with the customer's knowledge and consent and submitted the forms to his member firm to purchase life insurance for the customer, in contravention of his firm's written supervisory procedures.

The suspension in any capacity is in effect from January 16, 2007, through March 16, 2007. (NASD Case #E8A2004108101)

Alexis Jose Rivera (CRD #1656738, Registered Principal, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Rivera consented to the described sanction and to the entry of findings that he engaged in a fraudulent trade allocation or "cherry picking" scheme, in that certain of his member firm's representatives aggregated retail customers' day trading orders and communicated an opening transaction to Rivera, who would work the order in a firm proprietary account to sometimes allocate a first profitable trade to a relative's personal account and the resulting loss to the customers' accounts. The findings stated that Rivera failed to give the affected customers best execution. (NASD Case #2005002440801)

Manuel Rose III (CRD #1424164, Registered Representative, Grand Rapids, Michigan) 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, Rose consented to the described sanction and to the entry of findings that he received \$22,000 from a public customer for investment, deposited the funds into his checking account and failed to make an investment on the customer's behalf. The findings also stated that Rose failed to respond to NASD requests for information. (NASD Case #2005000760301)

Soena Sahni (CRD #4514611, Registered Representative, Howell, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Sahni consented to the described sanction and to the entry of findings that she willfully failed to disclose material information on her Form U4. (NASD Case #2006004335701)

John Christopher Sanchez (CRD #3153473, Registered Representative, Mullica Hill, 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 three months. The fine must be paid before Sanchez reassociates with a member firm following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Sanchez consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose material information.

The suspension in any capacity is in effect from January 2, 2007, through April 1, 2007. **(NASD Case #2006004709801)**

Mark Jeffrey Sheehy (CRD #2224709, Registered Representative, Scottsdale, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sheehy received \$97,500 from a public customer to be invested, deposited the funds into his bank account and executed numerous transactions in the customer's account without the customer's authorization, knowledge or consent. The findings further stated that Sheehy caused the transfer of funds from the customer's securities account for the purpose of causing the customer to believe that the funds represented a return on investment. The findings also stated that Sheehy failed to respond to NASD requests for information. **(NASD Case #20050005544-01)**

Kathleen Patricia Smith (CRD #3078908, Associated Person, Cincinnati, Ohio) 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 30 days. Without admitting or denying the findings, Smith consented to the described sanctions and to the entry of findings that she failed to disclose a material fact on her Form U4.

The suspension in any capacity was in effect from January 16, 2007, through February 14, 2007. **(NASD Case #2005001983701)**

Thomas Avery Smith (CRD #1134969, Registered Principal, Owensboro, Kentucky) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$35,000, suspended from association with any

NASD member in any capacity for two years and ordered to requalify by exam in all capacities. The fine must be paid before Smith reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Smith consented to the described sanctions and to the entry of findings that he falsified public customers' addresses to circumvent state securities laws because he was not licensed to sell securities in the state in which the customers resided, and he used his personal email account to communicate with the customers. The findings stated that Smith caused his member firm's books and records to be inaccurate by causing account information for public customers to contain incorrect addresses for him to circumvent state securities laws. The findings also stated that Smith sent written communications to public customers that failed to provide a sound basis for evaluating the presented information and contained numerous false, exaggerated, unwarranted or misleading statements and claims regarding investments.

The suspension in any capacity is in effect from January 2, 2007, through January 1, 2009. **(NASD Case #2005001028301)**

Adam Michael Stafford (CRD #4332433, Registered Representative, Canby, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Stafford reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Stafford consented to the described sanctions and to the entry of findings that he settled customer complaints and did not notify his member firm regarding the settlements.

The suspension in any capacity was in effect from January 16, 2007, through February 14, 2007. **(NASD Case #2006004408901)**

Donald Joseph Tittle (CRD #4855119, Associated Person, Middletown, Connecticut) was barred from association with any NASD member in any capacity. The sanction was based on findings that Tittle received \$27,000 from public customers to purchase stock, and deposited the funds in a bank account he controlled without purchasing the stock. The findings stated that

Tintle falsely represented that he held various securities licenses and falsely assured a public customer that she owned the stock. The findings also stated that Tintle failed to respond to NASD requests for information and documents. (NASD Case #2005003330001)

John Christopher Trimmings (CRD #2257118, Registered Principal, Gansevoort, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Trimmings consented to the described sanction and to the entry of findings that he received \$60,821.89 from a public customer for investment. The findings stated that without the customer's knowledge or consent, Trimmings misappropriated at least \$56,000 of the funds for his own use and benefit. (NASD Case #2006006124001)

Michael Weinraub (CRD #864247, Registered Representative, Wyckoff, New Jersey) 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 60 days. Without admitting or denying the findings, Weinraub consented to the described sanctions and to the entry of findings that he failed to respond completely to NASD questions during a telephone interview.

The suspension in any capacity is in effect from December 20, 2006, through February 17, 2007. (NASD Case #20050027076-01)

Christopher Anderson Weinrich (CRD #1462725, Registered Representative, Kansas City, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$11,247.00, which includes \$1,247 in disgorgement, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Weinrich reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Weinrich consented to the described sanctions and to the entry of findings that he recommended securities transactions to a public customer without having reasonable grounds for believing that the recommendations were suitable in light of the customer's financial situation and needs.

The suspension in any capacity was in effect from January 2, 2007, through February 13, 2007. (NASD Case #20050020878-01)

Blain Anthony West (CRD #5004618, Registered Representative, Tillamook, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before West reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, West consented to the described sanctions and to the entry of findings that, during an internal audit, he was required to provide the file for a corporate customer and found that the Corporate Authorization to Open Account was missing a signature. The findings stated that, in order to avoid a problem with the bank's internal auditors, West made a copy of the missing individual's signature from another document and placed it on the Corporate Authorization without the individual's knowledge or consent.

The suspension in any capacity is in effect from January 16, 2007, through March 16, 2007. (NASD Case #2006005007801)

Monica Blair Yates (CRD #1999021, Registered Representative, Fincastle, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Yates consented to the described sanction and to the entry of findings that she obtained possession of two checks drawn against a public customer's credit union account totaling \$139,700 to be used to pay the customer's federal and state taxes he owed in connection with withdrawals from his 401k account. The findings stated that without the customer's knowledge or authorization, Yates deposited the checks into her personal account and used the funds for her own benefit. The findings also state that Yates failed to respond fully to NASD requests for information and documents. (NASD Case #2006005593501)

Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of December 31, 2006. The NAC may increase, decrease, modify, or reverse the findings and sanctions imposed in the decision. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

CMG Institutional Trading, LLC (CRD #47264, Chicago, Illinois) and Shawn Derrick Baldwin (CRD #4281564, Registered Principal, Chicago, Illinois). The firm was expelled from NASD membership and Baldwin was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Baldwin failed to respond to NASD requests for information and documents.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #E8A2005025201)

Complaints Filed

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

William George Gibson (CRD #2381501, Registered Representative, Myrtle Beach, South Carolina) was named as a respondent in an NASD complaint alleging that he received checks totaling \$22,025 from public customers for investment purposes but instead, deposited the funds in an account he controlled and did not make any investments on the customers' behalf. The complaint alleges that Gibson failed to appear for an NASD on-the-record interview to provide testimony. (NASD Case #2006004260001)

Kevin Guzman (CRD #4497415, Registered Principal, New York, New York) was named as a respondent in an NASD complaint alleging that Guzman's trading activity in the account of public customers was unsuitable and excessive in size and frequency in view of the customers' financial situation and needs. The complaint alleges that Guzman's pattern and level of trading activity considered in light of the customers' financial situation and needs demonstrated his purpose to derive a profit for himself at the customers' expense. The complaint also alleges that Guzman churned and excessively traded the account. The complaint further alleges that Guzman, by use of any means or instrumentality of interstate commerce or of the mails, intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. In addition, the complaint alleges that Guzman created documents that contained inaccurate and misleading information concerning the customers' financial profile and needs that the customers signed and submitted with their account applications. Furthermore, the complaint alleges that Guzman made misrepresentations to a public customer regarding his account. (NASD Case #20050000720-02)

Jason Charles Midgley (CRD #4623081, Registered Representative, Boynton Beach, Florida) was named as a respondent in an NASD complaint alleging that he participated in private securities transactions without providing any notice to his member firm describing in detail the transactions, his proposed role in the transactions and whether he had received, or might receive, compensation in connection with the transactions. The complaint alleges that Midgley recommended and effected unsuitable transactions in a public customer's account. The complaint also alleges that Midgley failed to respond to NASD requests for information and to appear for on-the-record testimony. (NASD Case #2005002411701)

Jonathan David Poland (CRD #4456200, Registered Representative, Fort Lauderdale, Florida) was named as a respondent in an NASD complaint alleging that he effected securities transactions in a public customer's account without the the customer's knowledge or consent to engage in the transactions.

The complaint alleges that Poland failed to appear for an NASD on-the-record interview and to provide information. (NASD Case #2005000895501)

S.G. Martin Securities LLC (CRD #46908, Jericho, New York), Paul Michael Giarmoleo (CRD #2096430, Registered Principal, Miller Place, New York), Emanuel Pantelakis (CRD #3074986, Registered Principal, Flushing, New York) and Keith Craig Baron (CRD #3231494, Registered Representative, Merrick, New York) were named as respondents in an NASD complaint alleging that Pantelakis, acting on his member firm's behalf, authorized the firm and Giarmoleo to recommend stocks to public customers without having a reasonable basis for doing so, and without having reviewed current financial statements and material business information for providing a reasonable basis for recommending the stocks. Giarmoleo, in recommending a stock, without a reasonable basis for doing so, made price predictions to customers, and Pantelakis and Giarmoleo omitted material information in the selling. The complaint alleges that the firm, Pantelakis, Giarmoleo and Baron, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce or by the mails, directly or indirectly, knowingly or recklessly employed devices, schemes or artifices to defraud; made untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business that operated, or would operate, as a fraud or deceit upon any person. The complaint also alleges that Pantelakis, acting on the firm's behalf, recommended that Baron solicit customers to buy a stock in a private placement without having a reasonable basis for recommending the stock or for believing it was suitable for public customers. In recommending the private placement, Baron made price predictions. The complaint also alleges that the firm and Baron caused one customer's account to buy a stock without the customer's authorization.

The complaint further alleges that Pantelakis and Baron recommended that customers buy the stock in the secondary market without a reasonable basis for the recommendations or for believing the stock was suitable, and omitted material information in their recommendations. In recommending the buy in the secondary market, Baron made price predictions to customers. In addition, the complaint alleges that Pantelakis, on the firm's behalf, falsified a new account form, causing his firm to make and keep a false record. Furthermore, the complaint alleges that the firm and Pantelakis failed to establish, maintain and enforce a system to supervise the activities of each representative and associated person that was reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules; failed to establish, maintain and enforce written procedures to supervise the types of businesses in which the firm engaged; and failed to supervise the sales practices of Pantelakis, Giarmoleo, Baron and others. The complaint alleges that Pantelakis testified falsely in an NASD on-the-record interview. (NASD Case #2005000191701)

Ronald Vaughn (CRD #453836, Registered Representative, Voorhees, New Jersey) was named as a respondent in an NASD complaint alleging that he falsely represented to an insurance company that a customer's liquidation of a fixed annuity check had never been received and requested that another check to be issued. The complaint alleges that Vaughn endorsed the liquidation check thereby converting \$74,240.41 to his own use and benefit without the permission or consent of the insurance company and the customer. The complaint also alleges that Vaughn failed to respond to NASD requests to appear for an on-the-record interview. The complaint further alleges that Vaughn willfully failed to amend his Form U4 to disclose material information. (NASD Case #2006004213401)

Tomy Vuksanaj (CRD #4267663, Registered Representative, New Rochelle, New York) was named as a respondent in an NASD complaint alleging that he converted \$83,600 from public customers' accounts by forging their signatures on falsified bank account withdrawal slips without their knowledge, authorization or consent. (NASD Case #20060042995-01)

Firms Expelled for Failure to Pay Fines and/or Costs

Beacon Global Advisors Inc.
North Bethesda, Maryland
(December 11, 2006)

Equity Planning Securities Corp. nka Draken Group, Inc.
Lawrenceville, Georgia
(December 11, 2006)

Firm Suspended for Failing to Pay Arbitration Awards

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

Trautman Wasserman & Company, Inc.
New York, New York
(December 19, 2006)

Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rules 8320

Khalid Abdul-Ghany
Philadelphia, Pennsylvania
(December 11, 2006)

Kevin Edward Davis
Baltimore, Maryland
(December 11, 2006)

Adam Robert Goldstein
Lake Mary, Florida
(December 11, 2006)

John Henry Groth
North Bethesda, Maryland
(December 11, 2006)

John F. Wilkinson
Birmingham, Michigan
(December 11, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Mohammed Kariuki Ali
Hackensack, New Jersey
(December 14, 2006)

Elliot M. Hershberg
Harrison, New York
(February 18, 2005)

David Lee McMillan
Bullhead City, Arizona
(December 27, 2006)

Barton Lee Richardson
Lebanon, Ohio
(December 4, 2006)

Omar Rodriguez
Perth Amboy, New Jersey
(December 27, 2006)

Individuals Suspended Pursuant to NASD Rule 9552(d)

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

Michael Joseph Fabiano
Yardley, Pennsylvania
(December 12, 2006)

Robert Thomas Maloney
Buffalo, New York
(December 11, 2006)

Thomas McGovern
New York, New York
(December 4, 2006)

William Earl Rice Jr.
Humble, Texas
(December 18, 2006)

Lewis Taylor Smith
Dallas, Texas
(December 6, 2006)

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

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

Adam R. Ayers
Columbus, Ohio
(December 27, 2006)

Heath Michael Barrett
Ocala, Florida
(December 28, 2006)

Jason Albertson Bishara
Massapequa Park, New York
(November 30, 2006, to December 28, 2006)

Timothy James Daly
Weston, Connecticut
(December 27, 2006)

Carlos Antonio Garceran
Mendham, New Jersey
(December 20, 2006)

Cheryl Diane Jimerson
Sayville, New York
(December 28, 2006)

Bernard Katz
Syosset, New York
(December 5, 2006)

Stuart Neal Kingoff
Monsey, New York
(December 28, 2006)

John Lewis McArdle Jr.
Austin, Texas
(December 6, 2006, to December 20, 2006)

John Patrick Murley
Weatherford, Texas
(December 6, 2006)

Allan Carlyle Murray
Brooklyn, New York
(December 20, 2006)

Samuel Edward Parsons
Rogersville, Missouri
(December 27, 2006)

William Jeffrey Reagan
Seaford, Virginia
(December 13, 2006)

John C. Rose
Copigogue, Wyoming
(December 28, 2006)

John Patrick Sullivan Jr.
Boston, Massachusetts
(December 28, 2006)

David John Williams III
Miami, Florida
(December 7, 2006)

Raymond C. Wu
Arcadia, California
(December 27, 2006)

NASD Fines Jefferies & Company \$5.5 Million for Providing Improper Gifts and Excessive Entertainment to Fidelity Traders

Former Jefferies Trader Kevin Quinn Barred, Supervisor Suspended and Fined

NASD has fined Jefferies & Company, Inc., of New York, \$5.5 million for providing more than \$1.6 million in improper gifts and entertainment to equity traders employed by FMR Co., Inc., an investment advisor to the Fidelity family of mutual funds, between Sept. 3, 2002, and Oct. 11, 2004. The improper gifts to those Fidelity traders exceeded \$600,000 and included private chartered air travel, non-promotional sports-related merchandise and expensive bottles of wine. The impermissible entertainment totaled more than \$1 million and included lavish trips, private chartered flights, expensive hotel accommodations, weekend golf outings and tickets to the 2004 Super Bowl.

NASD also permanently barred former Jefferies trader Kevin Quinn from associating with any NASD-registered firm in any capacity. In addition, it fined Scott W. Jones, Quinn's former supervisor, \$50,000 and suspended him for three months from associating with any NASD-registered firm in a supervisory capacity. Jones is also prohibited from supervising business entertainment, gifts or travel for the next two years. NASD also ordered Jefferies to retain an independent consultant to conduct a comprehensive review of the firm's policies, procedures and training relating to gifts and entertainment, and to adopt recommended improvements.

"The value of improper gifts and entertainment in this case is unprecedented," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "NASD's gift and gratuity rules were designed to prevent just the sort of conduct at issue here, which threatens the integrity of the relationship between a brokerage firm and its institutional customer. That this customer—a mutual fund manager—was itself a fiduciary only aggravates the already egregious circumstances in this case."

NASD found that in 2002, Jefferies hired Quinn as an institutional sales trader in its Equity Division and agreed to pay him an annual base salary of \$4 million in 2002 and 2003, and \$4.75 million in 2004. The firm also provided Quinn with an annual travel and entertainment budget of \$1.5 million to be used by Quinn and his team to entertain Fidelity traders to obtain order flow for the Jefferies Equity Division. Jefferies routinely and repeatedly reimbursed Quinn for gifts prohibited by NASD rules, which Quinn provided to Fidelity traders. NASD rules limit the value of gifts that firms and associated persons may give to customers of the firm—such as Fidelity and its traders—to \$100 per individual recipient per year. Examples of the types of gifts Jefferies, acting through Quinn, provided to Fidelity traders include:

- To one Fidelity trader, in 2002, a private chartered flight from Bedford, MA, to Bermuda at a cost exceeding \$17,000; in 2003, private chartered flights from Boston to Los Angeles and Florida, at a cost exceeding \$70,000 and \$31,000, respectively; and in 2004, golf clubs, for which Quinn paid more than \$500, and a private chartered flight from Bedford, MA, to Puerto Rico at a cost exceeding \$23,000.
- To another Fidelity trader, in 2002, tickets to the Wimbledon tennis tournament at a cost exceeding \$19,000, and eight bottles of wine at a cost of \$5,900; in 2003, tickets to the men's and women's Wimbledon tennis finals at a cost exceeding \$31,000, tickets to a Justin Timberlake/Christina Aguilera concert at a cost of \$1,200, tickets to the U.S. Open tennis tournament at a cost exceeding \$7,000 and 12 bottles of 1993 Chateau Petrus (Pomerol) wine at a cost exceeding \$7,500; and, in 2004, tickets to Wimbledon and hotel accommodations for the event at the Lanesborough Hotel in London, for which Quinn paid more than \$38,000 and \$12,000, respectively.
- To a third Fidelity trader, in 2002, a portable DVD player at a cost of approximately \$1,000; in 2003, six bottles of 1998 Opus One wine, at a cost exceeding \$2,600; and, in 2004, a private chartered flight from Bedford, MA, to Providenciales, Turks and Caicos Islands, at a cost exceeding \$47,000.

Quinn did not accompany any Fidelity trader on any of the gifted flights or to any of the events identified as a gift.

NASD also found that Jefferies, acting through Jones, routinely approved and reimbursed Quinn for entertainment that was inappropriate, excessive and that raised an issue of propriety. During the period Jefferies employed Quinn, it reimbursed Quinn for more than \$1 million for expenses he incurred while entertaining Fidelity traders. Examples of that entertainment include:

- In 2002, Quinn entertained several Fidelity traders by treating them to a four-day golf outing in various locations on the West Coast (the "Fall Classic"), including Las Vegas, and Cabo San Lucas, Mexico. Quinn paid more than \$225,000 for, among other things, private air charter flights between each destination and lodging for his guests, including as much as \$5,000 per night, per bungalow at the Bellagio Hotel in Las Vegas, and a similar amount for each of two villas he used at the Esperanza Resort in Cabo San Lucas. In 2003, Quinn again used the Fall Classic to entertain Fidelity traders at a cost exceeding \$140,000. Quinn flew his guests to Las Vegas and Scottsdale, AZ, by private air charter and paid for their lavish hotel accommodations.
- In 2003 and 2004, Quinn entertained one Fidelity trader by treating the trader and his family to a one-week vacation in Florida with Quinn and his family, for which Jefferies reimbursed Quinn more than \$93,000 and \$64,000, respectively. For each of the vacations, Quinn provided the Fidelity trader and his family with a roundtrip private charter flight between Florida and Massachusetts, as well as costly lodging, meals and various additional resort expenses at the Breakers Hotel in Palm Beach, Florida.
- In 2003, in connection with a bachelor party in Miami for a Fidelity trader, Quinn paid more than \$75,000 for a limousine service and private roundtrip chartered flights between Boston and Miami for several Fidelity traders, including the bachelor and other guests.

- In 2004, Quinn invited several Fidelity traders to join Quinn and another Jefferies trader at the Super Bowl in Houston, where Quinn paid more than \$125,000 for Super Bowl weekend-related expenses for the group. Weekend expenses included Maxim and Playboy pre-game parties, a car service, private round-trip chartered flights, lodging and tickets to the game.

NASD further found that despite the exceptional annual travel and expense allowance it gave Quinn, Jefferies failed to establish and maintain an adequate supervisory system, including adequate written supervisory procedures, to ensure reasonably that Quinn did not use the budget in violation of NASD rules. Moreover, Jefferies, acting through Jones, failed to supervise reasonably Quinn's use of the travel and expense budget.

Jefferies, Quinn and Jones settled the actions without admitting or denying the allegations, but consented to the entry of NASD's findings.

NASD Fines Four Firms for Supervisory Failures Relating to Mutual Fund Sales Charge Waivers

Edward Jones, RBC Dain Rauscher, Royal Alliance, and Morgan Stanley to Pay an Estimated \$43.8 Million in Remediation to Customers; Morgan Stanley Credited For Taking Remedial Measures

NASD has imposed fines totaling \$850,000 against four firms—Edward D. Jones & Co., L.P. of St. Louis (\$250,000), RBC Dain Rauscher Inc. of Minneapolis (\$250,000), Royal Alliance Associates, Inc. of New York (\$250,000) and Morgan Stanley DW Inc. of New York (\$100,000)—for failing to have adequate supervisory systems and procedures to identify opportunities for investors to purchase Class A mutual fund shares at net asset value (NAV), or without a front-end sales charge.

Each firm was ordered to provide remediation to thousands of eligible clients who qualified for, but did not receive, the benefit of available NAV transfer programs. Based on estimates provided by each firm, Edward Jones will pay \$25 million, plus interest; RBC Dain Rauscher will pay \$6.8 million, plus interest; Royal Alliance will pay \$1.6 million, plus interest; and Morgan Stanley will pay \$10.4 million, plus interest. Each firm is

required to retain a third-party examiner to oversee the remediation process.

“The failures on the part of Edward Jones, RBC Dain Rauscher, Royal Alliance, and Morgan Stanley to adequately supervise the identification and implementation of NAV transfer programs deprived their customers of substantial discounts on mutual fund purchases,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “Securities firms must learn all of the relevant pricing features of the fund shares they sell and ensure that eligible investors receive all available discounts and sales charge waivers, without exception.”

During 2002 - 2004, many mutual fund families offered NAV transfer programs that eliminated front-end mutual fund sales charges for certain customers. Under an NAV transfer program, customers who redeem fund shares for which they paid a sales charge are permitted to use those proceeds within prescribed time periods to purchase Class A shares of a new mutual fund at NAV—that is, without paying another sales charge.

NASD found that each firm during the relevant period failed to have systems reasonably designed to ensure that customers received NAV pricing when appropriate. As a result, certain investors purchased Class A shares and incurred front-end sales charges that they should not have paid, or purchased other mutual fund share classes that subjected them to higher fees and the potential of contingent deferred, or back-end, sales charges.

In sanctioning Morgan Stanley, NASD considered the firm’s prompt and comprehensive remedial actions. Subsequent to the commencement of NASD’s investigation, Morgan Stanley promptly assessed the extent of customer harm and began the process of identifying investors to make restitution. The firm’s remediation program included a review of purchases in 2001 as well as purchases during 2002 through January 2005.

In settling these matters, each firm neither admitted nor denied the charges, but consented to the entry of NASD’s findings.

NASD Fines USAllianz Securities \$5 Million for Widespread Supervisory, Recordkeeping Violations

Firm Also Precluded from Opening Any New Offices for 30 Days and from Hiring Any New Registered Representatives for 7 Days

NASD has fined USAllianz Securities \$5 million for widespread deficiencies in its supervisory system and for recordkeeping violations. As part of the settlement, USAllianz Securities may not open a new office for 30 calendar days, and may not hire new registered representatives for seven days.

USAllianz was also ordered to retain an independent consultant to verify that it has fully implemented recommended modifications and additions to its supervisory system and procedures.

NASD found that for almost five years, USAllianz failed to establish and maintain a reasonable supervisory system and written procedures designed to oversee the firm’s registered representatives and their activities. Resulting deficiencies included, among other things:

- Supervising principals who, in some instances, did not know which registered representatives they were responsible for supervising and in other instances registered representatives could not identify their supervising principals, both resulting in supervisory lapses.
- Supervisors who were not qualified to carry out their supervisory responsibilities because they lacked experience, education and training; and, in other instances, supervisory principals inappropriately delegating their day-to-day supervisory responsibilities to other, less experienced principals, often without notifying the firm.
- Inadequate staffing resources dedicated to compliance given the size and location of the firm’s sales force.
- An internal office inspection program that failed to provide adequate oversight, training and guidance, leading to substantial failures to properly identify deficiencies.

On Oct. 12, 2006, following the period of the conduct found by NASD, USAllianz was integrated with and assumed the name of Questar Capital Corporation.

“The severity of the sanctions in this case reflects the magnitude of USAllianz’s supervisory failures,” said James S. Shorris, NASD Executive Vice President and Head of Enforcement. “Firms must ensure that they have adequate systems in place, and well-trained and qualified supervisors, to conduct meaningful supervision of their sales staff. The failures of supervision at USAllianz’s individual offices were compounded by its wholly inadequate internal inspection program.”

Specifically, NASD found that from April 2001 through March 2006, USAllianz did not have an adequate system in place to ensure that principals with supervisory responsibilities knew which registered representatives they were responsible for supervising. Further, some representatives could not identify their supervising principal. As a result, for certain representatives, activities commonly associated with daily supervision such as trade blotter and correspondence review did not take place. During that period, the number of Allianz representatives ranged from as many as 3,000 to between 800 and 900.

NASD also found that many supervisors were not qualified to carry out their supervisory responsibilities because of a lack of experience, education and training. Further, some supervisory principals delegated their day-to-day responsibilities to other, less experienced principals, often without notifying the firm. In one particular office, a principal with supervisory responsibilities for about 150 registered representatives delegated supervisory responsibilities to an individual who had no principal training and no previous experience as a supervisor, and failed to conduct appropriate follow-up.

NASD also found that USAllianz’s compliance department was understaffed. For much of 2001 and 2002, it had just two compliance officers for a large field sales force that were working in numerous offices scattered throughout the United States. Although the size of the firm’s sales force declined in 2004, the firm was still inadequately staffed with only four compliance officers.

Additionally, NASD found that USAllianz failed to provide adequate oversight, training and guidance in its internal office inspection program. USAllianz did not provide inspectors with any objective standards for finding deficiencies or potential rule violations, which led to numerous instances where deficiencies were not appropriately identified. For instance, an inspector could determine that an entire office was fully compliant in an area simply because a single registered representative did not exhibit any deficiencies in that area. The firm failed to offer an adequate training program for inspectors and did not ensure that they had an appropriate level of experience before conducting inspections. For example, one inspector who conducted a 2004 audit of a USAllianz office had no training in how to conduct inspections or in securities compliance generally. This person had previously worked for USAllianz in a clerical position. NASD also found that, generally, USAllianz’s inspection program failed to properly identify deficiencies and was not carried out in a timely manner.

Finally, prior to March 2005, USAllianz did not have any system in place to capture, preserve and maintain email communications. The firm implemented an interim system in March 2005, but that system was not successful. The firm did not have an effective system in place to capture and retain all emails to and from its sales force until mid-December 2005.

In settling with NASD, USAllianz neither admitted nor denied the findings, but consented to NASD’s findings.

NASD Charges Morgan Stanley DW with Repeatedly Failing to Provide Emails to Arbitration Claimants and Regulators

Firm Also Charged with Falsely Claiming that Millions of Emails in its Possession Had Been Lost in 9-11 Terrorist Attacks

NASD has charged Morgan Stanley DW, Inc. with routinely failing to provide emails to claimants in arbitration proceedings as well as to regulators—and with falsely claiming that millions of emails it possessed had been lost in the Sept. 11, 2001, terrorist attacks on the World Trade Center in New York, where its email servers were housed.

In its complaint, NASD alleges that Morgan Stanley failed to provide pre-September 11 emails to arbitration claimants and regulators in numerous proceedings from October 2001 through March 2005. NASD also charged that Morgan Stanley falsely claimed in many of those proceedings that such email had been destroyed. In fact, according to the complaint, Morgan Stanley possessed millions of pre-September 11 emails that had been restored to its system shortly after September 11 using back-up tapes. Many other emails were maintained on individual users' computers and were therefore never affected by the attacks, yet Morgan Stanley often failed to search those computers when responding to requests.

NASD also charged that Morgan Stanley later destroyed many of the emails it did possess, in two ways—by overwriting backup tapes that had been used to restore the emails to the firm's system and by allowing users of the firm's email system to permanently delete the emails over an extended period of time. As a result, the complaint alleges that between September 2001 and March 2005, millions of the emails were destroyed.

"It is essential that firms comply with discovery obligations in arbitration proceedings and respond fully and truthfully to regulatory requests," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "In this case, we charge that Morgan Stanley's conduct fell far below those standards, with the firm repeatedly making false statements about the existence of important evidence, and failing to provide that evidence in numerous proceedings. The firm's actions undermined the integrity of the regulatory and arbitration processes potentially leaving in question the validity of the outcomes in hundreds of cases."

NASD's complaint charges Morgan Stanley with violating NASD rules by failing to produce email in its possession in numerous customer arbitration proceedings over the three-and-a-half year period, and by making misrepresentations that it did not have such email in numerous proceedings. The complaint also charges Morgan Stanley with violating NASD rules by failing to produce the email to a number of regulators, including NASD, and by falsely representing that the email had been destroyed. For instance, NASD charged that in an NASD investigation into the firm's fee-based brokerage practices, Morgan Stanley falsely claimed that it did not have pre-October 2001 email and failed to produce over 12,000 emails and attachments in response to an NASD request. By the time the firm conducted the search that led to the production of these emails, the firm had already deleted millions of other emails from its servers and the regulatory matter at issue had been settled (see the August 2005 NASD news release *NASD Orders Morgan Stanley to Pay Over \$6.1 Million for Fee-Based Account Violations; Firm's Customers to Receive \$4.6 Million in Restitution*).

NASD also charged that Morgan Stanley violated recordkeeping rules by destroying many of the emails it did possess, failed to implement procedures providing for the retention of email, and failed to adopt adequate procedures governing searches for email in response to requests by regulators and in arbitration proceedings.

FBR to Pay Regulators \$7.7 Million to Resolve Charges Related to Improper Short Selling of Compudyne PIPE Shares

Former FBR Chairman Emanuel Friedman Suspended as Supervisor, Fined \$1.2 Million, Former Chief Compliance Officer Censured, Fined \$110,000

Friedman, Billings, Ramsey & Co., Inc. (FBR), an investment banking and brokerage firm based in Arlington, VA, has agreed to pay more than \$7.7 million to NASD and the Securities and Exchange Commission (SEC) to resolve charges arising from FBR's improper trading in shares of Compudyne Corporation, in a PIPE deal it structured and managed for the Maryland-based security firm. The action is the fourth enforcement action NASD has taken arising from the Compudyne PIPE deal.

NASD imposed a fine of \$4 million on FBR. In a separate settlement with the SEC, FBR agreed to pay more than \$3.7 million in civil penalties, disgorgement and interest. FBR also agreed to hire an independent consultant acceptable to NASD and the SEC to review its procedures for safeguarding material, nonpublic information.

FBR's former chairman, Emanuel Friedman, and its former Chief Compliance Officer, Nicholas J. Nichols, also entered into settlement agreements with NASD and the SEC. NASD fined Friedman \$500,000 and suspended him from acting in a supervisory capacity with any NASD-registered firm for two years. Friedman will pay a civil penalty of more than \$750,000 to the SEC. Nichols will pay a \$50,000 fine to NASD and a civil penalty of \$60,000 to the SEC.

"This settlement furthers NASD's efforts to prevent and deter abuses in the rapidly-growing market for PIPEs," said Cameron K. Funkhouser, Senior Vice President of NASD's Department of Market Regulation.

A PIPE (Private Investment in a Public Equity) is a private offering in which accredited investors agree to purchase restricted, unregistered securities of public companies. Only after the PIPE shares registration is approved by the SEC are investors free to sell them on the open market. PIPE shares can only be offered to "accredited" investors—investors with assets of \$1 million or more.

NASD found that in September 2001, Compudyne Corporation and FBR, its placement agent, offered accredited investors—on a confidential basis—a PIPE deal proposing to sell 2.45 million shares of common stock, which raised more than \$29 million. The restricted stock was offered at the below-market price of \$12 per share. NASD found that FBR failed to maintain an information barrier to prevent trading by FBR personnel who were aware of this information.

As part of efforts to make a market in Compudyne, supply liquidity, and advertise FBR's capabilities, FBR's head trader, who was aware of material, nonpublic information about the PIPE, engaged in trading in Compudyne before the PIPE was announced to the public. By the time the PIPE was announced on Oct. 9, 2001, FBR had a net short position of approximately 179,495 shares.

FBR eventually covered its short position by buying shares of Compudyne after the shares that had been purchased in the private placement were registered and became tradable in the market. FBR made a profit of approximately \$343,773 on the short sales of Compudyne that were executed before the public announcement of the PIPE.

NASD also found that FBR failed to enforce its written supervisory procedures designed to protect confidential information, failed properly to locate stock to borrow in order to sell Compudyne shares short, and misinformed NASD about the departure from the firm of a broker involved in selling the Compudyne PIPE.

In settling this matter with NASD, FBR, Friedman and Nichols neither admitted nor denied the charges, but consented to the entry of NASD's findings. In the SEC proceeding, FBR, Friedman and Nichols consented to the entry of a final judgment by the U.S. District Court, and FBR and Friedman consented to an SEC administrative order, without admitting or denying the allegations in the SEC's complaint.