

# Disciplinary and Other NASD Actions

## REPORTED FOR JANUARY

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 2005.

### Firms Expelled, Individuals Sanctioned

**Delta Asset Management Company, LLC (CRD #39923, Mineola, New York) and Adam Robert Goldstein (CRD #2647994, Registered Principal, Lake Mary, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was expelled from NASD membership, and Goldstein was fined \$10,000 and suspended in all principal and supervisory capacities for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goldstein, failed to establish, maintain, and enforce an adequate supervisory system that included written procedures reasonably designed to achieve compliance with industry rules and regulations related to sales practices. The findings stated that the firm failed to ensure that disclosable events, such as customer complaints and securities related civil lawsuits and arbitration claims, were reported, or reported timely, through the Uniform Application of Securities Industry Registration (Form U4), the Uniform Termination Notices for Securities Industry Registration (Form U5) and amendments as appropriate. The findings also stated that the firm failed to report summary and statistical information for customer complaints, and reported some customer complaints late. NASD also found that the firm failed to develop and implement a written anti-money laundering program (AML) reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder.

Goldstein's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2007. (Case #E072003005104)

**Ryan & Company, LP (CRD #21669, West Conshohocken, Pennsylvania) and Scott William Ryan (CRD #408305, Registered Principal, Bryn Mawr, Pennsylvania)** submitted an Offer of Settlement in which Ryan was barred from association with any NASD member firm in any capacity, and the firm was expelled from NASD membership. Without admitting or denying the allegations, they consented to the described sanctions and to the entry of findings that they engaged in a scheme to create and maintain short positions in Over-the-Counter (OTC) equity securities on behalf of the firm's client hedge funds, in that they willfully and intentionally effected short sale transactions. The findings stated that the firm failed to report option positions to NASD, and failed to report transactions and reported incorrect information to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>). In addition, NASD found that the firm reported non-bona fide wash sale transactions to ACT, and failed to provide for supervision reasonably designed to detect and prevent NASD rule violations. (NASD Case #CLG050062/20041000024)

## Firms Fined, Individuals Sanctioned

**Leonard & Company (CRD #36527, Troy, Michigan) and James Sylvester Currier (CRD #2070654, Registered Principal, Bloomfield Hills, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Currier was fined \$5,000, suspended for 10 business days in a principal capacity, and required to re-qualify as a principal by taking and passing the Series 24 examination before undertaking activities in that capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Currier, received customer complaint notices, arbitration claims and settlements that were subject to NASD reporting requirements, but failed to report these events to NASD. The findings stated that the firm, acting through Currier, failed to timely file amendments to the Forms U4 and U5. The findings further stated that the firm, acting through Currier, failed to enforce its written supervisory procedures to ensure compliance with NASD rules.

Currier's suspension began January 3, 2006, and will conclude at the close of business on January 17, 2006. (NASD Case #E8A2003049501)

**Royal Alliance Associates, Inc. (CRD #23131, New York, New York) and Jeffrey Scott Drejza (CRD #1249668, Registered Principal, Birmingham, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000, and Drejza was fined \$5,000 and suspended from association with any NASD member in a supervisory capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Drejza, failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with the plan of supervisory procedures and operating restrictions, and failed to properly supervise the statutorily disqualified registered representative to ensure compliance with the heightened supervision that was specifically ordered in a notice.

Drejza's suspension began on January 3, 2006, and concluded on January 16, 2006. (NASD Case #E8A20010343)

## Firms and Individuals Fined

**Thieme Securities, Inc. (CRD #38286, New York, New York) and Heiko Helmut Thieme (CRD #828825, Registered Principal, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Thieme were censured and fined \$15,000 jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to

the entry of findings that the firm, acting through Thieme, operated without a registered Financial and Operations Principal (FINOP) from February 2002 to September 2004. NASD found that the firm, acting through Thieme, failed to develop an annual written training plan for Firm Element Continuing Education requirement from 2000 to 2004. NASD also found that the firm, acting through Thieme, failed to maintain monthly bank reconciliations. (NASD Case #E102004040401)

## Firms Fined

**B.C. Ziegler and Company (CRD #61, Milwaukee, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct trade execution time for transactions to the Trade Reporting and Compliance Engine (TRACE), and reported transactions in TRACE-eligible securities that it was not required to report. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning TRACE reporting. (NASD Case #20050001882-01)

**Bergen Capital, Inc. (CRD #46348, Hasbrouck Heights, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$115,000, and required to file all sales literature and advertisements with NASD at least 15 days prior to their first use for six months, or during the time period before the firm's form BDW becomes effective (whichever is longer). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it disseminated pieces of advertising and sales material relating to municipal, corporate and government bonds to the investing public that failed to comply with NASD's content standards for sales and advertising material. (NASD Case #EAF0401260002)

**Cabrera Capital Markets, Inc. (CRD #10081, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report municipal securities transactions, or inaccurately reported their execution times, to the MSRB. The findings stated that the firm failed to prepare adequate written supervisory procedures addressing the reporting requirements under MSRB G-14, and failed to implement an adequate supervisory system reasonably designed to monitor accurate reporting. In addition, NASD found that the firm failed to adopt and implement written

supervisory procedures reasonably designed to ensure its research activities were conducted in compliance with NASD rules. The findings also stated that the research reports the firm disseminated failed to include the required analyst certification from its research analyst. (NASD Case #E8A20040071-01)

**Chardan Capital Markets, LLC (CRD #120128, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct symbol indicating whether the transaction was a "sell short" or "sell short exempt" to the NASDAQ Market Center for transactions in eligible securities. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning short sales, trade reporting and record keeping. (NASD Case #20050002689-02)

**Credit Lyonnais Securities (USA), Inc. aka Calyon Securities (USA), Inc. (CRD #190, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000, and required to revise the firm's supervisory procedures with respect to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted reports to OATS that were not in the electronic form prescribed by NASD and did not correct or replace them. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning OATS. (NASD Case #20050000028-01)

**Fiserv Securities, Inc. aka NF Clearing, Inc. (CRD #14285, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise the firm's supervisory procedures with respect to TRACE trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it misreported transactions in TRACE-eligible securities through TRACE that it was not required to report. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning TRACE trade reporting. NASD found that the firm failed to accept or decline transactions in eligible securities in ACT within twenty minutes after execution. (NASD Case #20042000103-01)

**Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the yield on municipal securities transactions reported to the MSRB involving customer trades. The findings stated that the firm failed to timely report municipal securities transactions to the MSRB, and failed to adequately monitor its trade reporting to ensure compliance with MSRB Rule G-14. (NASD Case #E9B2004036701)

**Good Morning Shinhan Securities (USA) Inc. (CRD #31977, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to actively engage in the management of the firm's securities business without being properly registered in that capacity. NASD found that the firm operated a securities business without having at least two registered principals or without obtaining a waiver of the two-principal requirement, as NASD requires. The findings also stated that the firm failed to implement policies, procedures and internal controls reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. (NASD Case #E102004017701)

**Howe Barnes Investment, Inc. (CRD# 2240, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$58,077, which includes a \$48,077 disgorgement of financial benefits received. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make a bona fide public offering of 20,000 shares at the announced public offering price of \$15. The findings stated that the firm later sold the shares and realized a profit of \$48,077. The findings also stated that the firm failed to disclose, in four separate research reports, that it had received compensation for investment banking services from two subject companies in the past 12 months. (NASD Case #E8A2004017001)

**Instinet Clearing Services, Inc. (CRD #7897, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report reportable order events (ROEs) to OATS. (NASD Case #20042000114-01)

**Intercoastal Financial Services Corp. (CRD #45557, Jupiter, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$48,000 and required to revise its written supervisory procedures concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through NASDAQ, and failed to designate such last sale reports as late. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning trade reporting. NASD found that the firm failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross," and failed to report the correct symbol indicating whether the transaction was executed in a principal or agency capacity.

The findings also stated that the firm incorrectly reported the second leg of riskless principal transactions in securities to the media. In addition, NASD found that the firm failed to contemporaneously or partially execute a customer limit order in a NASDAQ security and OTC equity securities after it traded the subject security for its own market-making account at a price that would have satisfied the customer's limit order. The findings also stated that the firm failed to indicate whether the sale of a security was long or short on the brokerage orders memorandum, and failed to show the correct execution time and entry on the brokerage orders memorandum. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws, regulations and NASD rules. **(NASD Case #20042000090-01)**

**Investment Placement Group (CRD #14458, La Jolla, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the execution time of transactions in Eastern Standard Time to TRACE. The findings stated that the firm failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of the execution time. In addition, NASD found that the firm failed to report the correct trade execution time for transactions in TRACE-eligible securities to TRACE, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning TRACE. **(NASD Case #20050001875-01)**

**Joseph Gunnar & Co. L.L.C. (CRD #24795, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with a contingency private placement offering of securities, it violated the escrow agreement in that the offerings were amended, but the amendments were not done properly pursuant to Rule 10b-9. The findings stated that when the minimum offering was reached pursuant to the amended offering documents, the funds were released from the escrow account to the issuer, consistent with the terms of the amended offering. However, the original escrow agreement had never been amended to be consistent with the offering documents, so, pursuant to the escrow agreement in place, the funds were released early. NASD found that the firm amended the terms and conditions of a second offering to reduce the maximum from \$2.3 million to \$1.2 million (the minimum was \$1 million), and the termination date was extended from June 30 to July 19, 2002, but the escrow agreement was not amended, so when the funds were disbursed to the issuer on July 23, 2002, in accordance with the terms of the amended offering, it was inconsistent with the terms of the escrow agreement, under which the funds should have been returned to the customers when the minimum had not been met by June 30. The findings also stated that the firm failed to timely file or ensure the timely filing of amendments Forms U4 and U5 to report complaints received by the firm. In addition, NASD determined that while conducting a securities business, the firm failed to maintain the required minimum net capital required by SEC Rule 15c3-1. **(NASD Case #E102002034201)**

**J.P. Turner & Company, LLC (CRD #43177, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that its customer's resultant price was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to fully and promptly execute orders. **(NASD Case #20050000700-01)**

**Keating Securities, LLC (CRD #36402, Greenwood Village, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not enforce its Customer Identification Program (CIP) in that the firm did not follow its CIP procedures, the CIP was not implemented with respect to customers who purchased interests in a private placement

and a customer who participated in an income fund offering through the firm, and did not provide these customers prior to the establishment of their accounts, with the required written notice that the firm is requesting information in order to verify identity. The findings stated that the firm's written AML program was not reasonably designed to report suspicious activity because the procedures referred to prospective reporting rules, and had not been updated to reflect that such rules had become effective. The findings also stated that the firm's written AML program was not reasonably designed to cause the firm to comply with its obligation to review and respond to requests for information from the Financial Crimes Enforcement Network (FinCEN). NASD also found that the firm's customer account records did not include all of the information required by NASD and SEC books and records rules. (NASD Case #E3A20040024-01)

**Linsco / Private Ledger Corp. (CRD #6413, 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 allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain and enforce a reasonable system or written procedures to supervise the activities of registered persons in connection with their use of wire transfers. (NASD Case #E012002060302)

**MBSC, LLC (CRD #42430, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS. The findings stated that the firm failed to reasonably enforce its written supervisory procedures with respect to OATS compliance. (NASD Case #20042000083-01)

**McDonald Investments, Inc. (CRD #566, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" for transactions in eligible securities to NASDAQ, and failed to report the contra side executing broker in one transaction in eligible securities to NASDAQ. The findings stated that the firm failed to submit either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal" for the offsetting, "riskless" portion of "riskless" principal transactions in securities. The findings also stated that the firm made a report on covered orders in national market system securities available that included incorrect information as to average realized spreads,

the number of canceled shares and the total shares executed. (NASD Case #20050003048-01)

**Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and restitution in the amount of \$2,697.32, plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy and sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #20042000043-01)

**O'Keefe Shaw & Co., Inc. (CRD #40820, Amherst, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, implement and enforce written policies, procedures and internal controls that were reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #E9B2004011101)

**Pacific Growth Equities, LLC (CRD #24835, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,500 and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to, within 90 seconds after execution, transmit through last sale reports of transactions in securities to NASDAQ, and failed to designate them through last sale reports as late. The findings stated that the firm incorrectly designated last sale reports of transactions in securities reported to NASDAQ as ".SLD" within 90 seconds of execution. The findings also stated that the firm effected transactions in the firm's proprietary account and failed to make an affirmative determination that the firm could borrow or receive the securities, or otherwise provide for their delivery by the settlement date on a public customer's behalf. NASD also found that the firm failed to report transactions to NASDAQ with a short sale modifier, and failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross." In addition, NASD found that the firm failed to show the correct entry and execution times on the brokerage orders memoranda. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning order handling and execution, trade reporting, affirmative determinations and short sales. (NASD Case #20042000220-01)

**Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification informing its customers that a transaction was executed at an average price. The findings stated that the firm made a report on covered orders in national market system securities that it received for execution from a customer available that included incorrect information as to shares being reported as having been executed away when the shares were, in fact, executed at the market center and as to the actual average realized Spread, including the markup. In addition, NASD found that the firm failed to report the correct symbol indicating whether the transaction was a "buy," "sell," "sell short," "sell short exempt" or "cross" for transactions in eligible securities to NASDAQ, and incorrectly designated last sale reports of transactions in Nasdaq National Market securities (NNM) as ".W" and ".PRP" in ACT. The findings also stated that the firm incorrectly reported the second leg of "riskless" principal transactions in NNM securities to ACT, incorrectly designated the capacity of such transactions as principal, and incorrectly media-reported such transactions. NASD also found that the firm transmitted reports to OATS that contained a routed order ID number that failed to match a NASDAQ Market Center trade report. In addition, the findings stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer of each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. In addition, the findings stated that the firm failed to report the correct route time on OATS-reportable orders and the correct times of cancellation on OATS-reportable orders, as well as failed to transmit execution reports for OATS-reportable orders and a route for a routed order to OATS. **(NASD Case #20042000138-01)**

**Scott & Stringfellow, Inc. (CRD #6255, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$37,500 and required to revise its written supervisory procedures concerning limit order displays. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each such security. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning limit order display. The findings also stated that the firm incorrectly distributed or published reports of a purchase or sale of municipal bonds that did not require distribution. **(NASD Case #20042000064-01)**

**Symetra Investment Services, Inc. (CRD #19061, Bellevue, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to comply with the terms of its membership agreement by holding customer funds, failed to make deposits, and did not promptly transmit customer funds in an account established for the purpose of complying with requirements of SEC Rule 15c3-3(k)(2)(i). **(NASD Case #E3B20030059)**

**UBS Financial Services, Inc. (CRD #8174, Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$42,500 and required to revise its written supervisory procedures concerning trade reporting. 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 ACT within twenty minutes after execution. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities and regulations, and NASD rules concerning trade reporting. **(NASD Case #20050000995-01)**

## Individuals Barred or Suspended

**Taal Alexander Aviad (CRD #4192196, Registered Representative, Huntingdon Valley, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Aviad consented to the described sanction and to the entry of finding that he created fictitious customer retirement accounts and submitted these accounts to his member firm, therefore improperly obtaining approximately \$9,000 in commissions. (NASD Case #20050018218601)

**Joseph John Azzata (CRD #2446677, Registered Principal, Boca Raton, 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 allegations, Azzata consented to the described sanction and to the entry of findings that he engaged in the unregistered offer and sale of common stock to public customers. The findings stated that Azzata failed to appear to give sworn testimony that NASD requested. (NASD Case #E072003004202)

**Lawrence Bruce Bailey (CRD #2186901, Registered Representative, Belleville, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Bailey reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he borrowed \$3,000 from a public customer in violation of his member firm's written procedures prohibiting registered persons from borrowing money from customers.

Bailey's suspension began January 3, 2006, and will conclude at the close of business on January 31, 2006. (NASD Case #2005002220501)

**Robert Anthony Bellia, Jr. (CRD #2387955, Registered Principal, North Babylon, New York) and James Robert Brown (CRD #2515229, Registered Principal, Medford, New York)** submitted a Letter of Acceptance, Waiver and Consent in which Brown was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days, and Bellia was fined \$5,000 and suspended from association with any NASD member in a principal capacity for 30 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brown charged excessive mark-ups and mark-downs in connection with transactions in a public customers' account. NASD found

that Bellia failed to adequately supervise Brown in that he knew or should have known that Brown had charged excessive mark-ups and mark-downs in connection with the aforementioned transactions.

Brown's suspension began December 5, 2005, and concluded at the close of business on January 3, 2006. Bellia's suspension began January 4, 2006, and will conclude at the close of business on February 15, 2006. (NASD Case #ELI2002010504)

**Thomas Hart Benton (CRD #3085925, Registered Representative, Carlsbad, 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 45 days. Without admitting or denying the allegations, Benton consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Benton's suspension began December 19, 2005, and will conclude at the close of business on February 1, 2006. (NASD Case #2005001598701)

**Kenneth Anton Carlson (CRD #4038575, Registered Representative, Kalamazoo, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Carlson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Carlson consented to the described sanctions and to the entry of findings that he affixed a public customer's signature to money orders purchased with Carlson's personal funds without the customer's consent or authorization.

Carlson's suspension began January 3, 2006, and will conclude at the close of business on March 3, 2006. (NASD Case #E8A2004085301)

**Jay Frederick Cheesman (CRD #2800519, Registered Representative, Orem, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cheesman consented to the described sanction and to the entry of findings that he sought and accepted reimbursement from his member firm for inaccurate business expense claims. (NASD Case #2005000999801)

**Angel Chi (CRD #2053866, Associated Person, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chi consented to the described sanction and to the entry of findings that she participated in private

securities transactions for compensation, and failed to provide written notification or receive express written authority from her member firm to participate in these transactions. The findings stated that Chi failed to maintain documentation adequately evidencing how she invested \$550,000 received from public customers for investment purposes, and transferred portions of these funds into a bank account under her control, thereby co-mingling customer funds with her own. The findings also stated that Chi established brokerage accounts at two other broker-dealers, placed orders in a public customer's discretionary account at another broker-dealer, and failed to notify these broker-dealers in writing that she was associated with her member firm. The findings further stated that she did not notify her member firm in writing of the existence of these accounts. (NASD Case #E3A2003052301)

**William Leroy Clifton (CRD #48758, Registered Representative, Sayville, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Clifton consented to the described sanction and to the entry of findings that, in order to facilitate an unauthorized variable annuity purchase, Clifton signed a public customer's signature on a check and multiple documents without the customer's knowledge, authorization or consent. (NASD Case #2005001361901)

**Stephen James Congdon (CRD #711753, Registered Representative, Sandusky, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Congdon consented to the described sanctions and to the entry of findings that, while employed with a member firm, he engaged in outside business activities, in that he received a check from a public customer for "financial counsel services" without giving his firm prompt written notice of these outside business activities.

Congdon's suspension began December 19, 2005, and concluded at the close of business on January 3, 2006. (NASD Case #E8A2004075001)

**Ronald Charles Crockett, Jr. (CRD #1682593, Registered Representative, West Chester, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that he engaged in unauthorized transactions in public customers' IRA accounts and affixed, or caused to be affixed, a customer's purported signature to a brokerage account agreement without the customer's authorization or consent. The findings also stated that Crockett failed to respond to NASD requests for information. (NASD Case # C9A050034)

**Mark Ray Davis (CRD #1744957, Registered Supervisor, Highland, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 with material information.

Davis' suspension began January 3, 2006, and concludes at the close of business on January 17, 2006. (NASD Case #E3A20040340-01)

**Roger Martin Faulring (CRD #727976, Registered Supervisor, Lewiston, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in a principal or supervisory capacity for six months, and must requalify by examination as a principal or supervisor. Without admitting or denying the allegations, Faulring consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to prevent his violations and achieve compliance with applicable securities rules, regulations and NASD rules.

Faulring's suspension began December 19, 2005, and will conclude June 18, 2006. (NASD Case #E9B2004025801)

**William John Fitzgerald (CRD #2542748, Registered Principal, Bethpage, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any member of NASD in any capacity. Without admitting or denying the allegations, Fitzgerald consented to the described sanction and to the entry of findings that he failed to provide NASD requested testimony. (NASD Case #20050019388-01)

**Christina Wood Goodridge (CRD #1220305, Registered Representative, El Dorado Hills, California)** 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 15 business days. Without admitting or denying the allegations, Goodridge consented to the described sanctions and to the entry of findings that she began making deposits of her own money into a public customer's bank account on a quarterly basis, without the customer and her member firm's knowledge, when the investment she recommended became insolvent and stopped making quarterly dividends. The findings stated that Goodridge's actions prevented the customer from discovering that the preferred stock was worthless and potentially complaining to her firm. It also precluded a timely analysis of whether her initial recommendation was suitable for the customer.



Goodridge's suspension will begin January 17, 2006, and will conclude at the close of business on February 6, 2006. (NASD Case#E012004033902)

**Thomas Joseph Gorter (CRD #1008601, Registered Representative, Brandenburg, Kentucky)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Gorter consented to the described sanctions and to the entry of findings that he participated in private securities transactions in which he neglected to give written notice to his employing NASD member firm, and failed to receive written approval from his firm prior to engaging in such activity.

Gorter's suspension began December 19, 2005, and will conclude at the close of business on February 18, 2006. (NASD Case #C8A040114/E8A2002095903)

**Joseph Paul Guasconi (CRD #1779965, Registered Representative, Westfield, New Jersey)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for seven months. The fine must be paid before Guasconi reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Guasconi consented to the described sanction and to the entry of findings that he provided false information concerning a customer's brokerage account to another financial institution.

Guasconi's suspension began December 5, 2005, and will conclude on July 4, 2006. (NASD Case #E9B2004037702)

**Glen Niel Harding (CRD #4221841, Registered Principal, Lehigh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Harding 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 his member firm.

Harding's suspension began December 19, 2005, and will conclude on March 18, 2006. (NASD Case #E9A2004042901)

**Sherri Lynn Herrera (CRD #4491409, Registered Representative, Pueblo, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Herrera received \$718.44 from public customers for insurance premium payments, but deposited \$564.44 of the funds in a bank account under her control and used them to pay for her personal expenses.

The findings stated that Herrera failed to respond to NASD requests for information. (NASD Case #C3A050029/E3A20040324)

**Thomas Charles Hock (CRD #708167, Registered Principal, Schnecksville, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Hock consented to the described sanctions and to the entry of findings that he altered a variable life insurance application by changing a public customer's listed address from her actual residence to her parents' address, then submitted the altered application to the insurance company.

Hock's suspension began December 19, 2005, and will conclude at the close of business on January 18, 2006. (NASD Case #2005000537201)

**Wenge Hu (CRD #4575949, Registered Representative, San Jose, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hu consented to the described sanction and to the entry of findings that she signed public customers' names to life insurance replacement forms and to a comparison form without their knowledge or consent, and submitted the forms to her member firm for processing. The findings stated that Hu failed to respond to NASD requests for documents and information. (NASD Case #E0120040272-02)

**Anil Parbhubhai Kumar (CRD #2169544, Registered Representative, Oakland, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kumar consented to the described sanction and to the entry of findings that he received \$30,000 in gifts and gratuities for his efforts in facilitating the conversion of funds held by his member firm in its related suspense accounts to be improperly diverted to outside parties. The findings stated that Kumar failed to respond to NASD requests for documents and information. (NASD Case #2005001269401)

**Lawrence Michael LaBine (CRD #1279935, Registered Principal, Scottsdale, Arizona)** submitted an Offer of Settlement in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 15 business days, and must requalify as a general securities representative by examination. Without admitting or denying the allegations, LaBine consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in public customers' accounts without having a reasonable basis for believing that the

transactions were suitable, based on the customers' investment objectives, financial situation and needs.

LaBine's suspension began December 19, 2005, and concluded at the close of business on January 6, 2006. (NASD Case #C3A20040045/E0220020513)

**Marc Alan Levy (CRD #2369929, Registered Principal, Boynton Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$19,100, which includes disgorgement of \$14,100, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that he participated in the sale of promissory notes to public customers, but failed to provide his member firm with written notice of his intent to participate in the transactions, and had not received written approval from the firm.

Levy's suspension began December 19, 2005, and will conclude March 18, 2006. (NASD Case #E072004089201)

**William Sherman Lewis, III (CRD #4514016, Registered Representative, North Bergen, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Lewis reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he signed a public customer's name on a variable universal life insurance policy illustration without the customer's permission or knowledge.

Lewis' suspension began January 3, 2006, and will conclude at the close of business on January 2, 2007. (NASD Case #E9B2004032101)

**Kevin Allan Linton (CRD #711683, Registered Representative, Shamong, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Linton consented to the described sanction and to the entry of findings that he recommended and sold variable universal life insurance to public customers without having reasonable grounds to believe that the policies were suitable for them. The findings also stated that he failed to respond to NASD requests for information. (NASD Case #E9B2004019801)

**David Ernest Locklear (CRD #1881572, Registered Representative, Canton, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which Locklear was fined

\$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Locklear reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Locklear consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notification to, and receiving prior written approval from, his member firm.

Locklear's suspension began December 19, 2005 and will conclude at the close of business on June 18, 2006. (NASD Case #8A2004040901)

**Douglas Edward Loner (CRD #1648730, Registered Representative, Rockford, 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. The fine must be paid before Loner reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Loner consented to the described sanctions and to the entry of findings that he effected transactions in a public customer's securities account without the customer's knowledge or consent, and in the absence of written or oral authorization to exercise discretion in the account.

Loner's suspension began January 3, 2006, and will conclude at the close of business on January 17, 2006. (NASD Case #E8A2004078501)

**Mason David Newman (CRD #2174722, Registered Representative, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Newman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Newman consented to the described sanctions and to the entry of findings that he directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce or the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted 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 business courses of which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers.

Newman's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2006. (NASD Case #EAF0400220005)

**Philip John Nociforo (CRD #1482682, Registered Representative, Sound Beach, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that, in an attempt to deceive his member firm and evade state law, Nociforo falsified public customers' variable life insurance applications to indicate that they did not have other life insurance coverage, and completed the Definition of Replacement form to reflect that the new policies were not replacing existing life insurance coverage. NASD found that Nociforo received checks totaling \$16,050.46 from public customers to fund their variable life insurance policies, but deposited these checks into his personal bank account, made initial premium payments totaling \$6,020.75 and never forwarded the remaining funds to his member firm as the customers intended, nor did he return the money to the customers, thereby converting the remaining \$10,029.71 for his own personal use and benefit without the customers' authorization, knowledge or consent. (NASD Case C1020050027/E1020022662)

**Harrichand Persaud (CRD #1312629, Registered Representative, Mahwah, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$50,000, which includes a \$1,600 disgorgement of commissions received, and suspended from association with any NASD member firm in any capacity for two months. Without admitting or denying the allegations, Persaud consented to the described sanctions and to the entry of findings that he coordinated trading prices for a commission. The findings stated that Persaud received simultaneous buy and sell instructions from companies that instructed him to sell a total of two million shares for one company and purchase two million shares at \$0.05 a share above the initial transaction price for the other. NASD found that Persaud was also instructed not to cross the trades between the two accounts. Persaud offered an individual at another company an opportunity to purchase shares with the understanding that the individual would be able to sell those shares almost immediately at \$0.05 a share above his purchase price. Persaud subsequently sold two million shares for one of the companies, which were purchased by the individual and in turn re-sold to one of the companies at \$0.05 a share higher than the initial transaction price. The individual realized a profit of approximately \$100,000 from the trading activity in the shares (two million shares at \$0.05 a share).

Persaud's suspension began December 19, 2005, and will conclude on February 18, 2006. (NASD Case #20050000350-01)

**Daniel Morris Porter (CRD #2032112, Registered Representative, Copiague, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that he willfully failed to disclose material information on his Form U4. (NASD Case #C1020050041)

**James David Reisinger (CRD #1275258, Registered Principal, Dexter Michigan) and Scott Emil Wiard (CRD #1509365, Associated Person, Ypsilanti, Michigan)** were barred from associated with any NASD member in any capacity. The National Adjudicatory Council, following an appeal of an Office of Hearing Officers decision, imposed the sanctions. The sanctions were based on findings that Wiard and Reisinger engaged in unauthorized trading by failing to follow their clients' instructions. The findings also stated that the respondents recommended transactions to public customers that were unsuitable. NASD also found that Wiard exercised discretion over public customers' investment decisions even though his continued association with his member firm required that he not maintain discretionary accounts. In addition, NASD found that Wiard failed to update his Form U4 in a timely manner. (NASD Case #C8A030078)

**Loyde K. Robinson (CRD #4953417, Associated Person, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robinson consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. (NASD Case #2005002504101)

**Jared Bryce Roskelley (CRD #3139812, Registered Representative, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$22,713, which includes a \$17,713 disgorgement of commissions received, and suspended from association with any NASD member in any capacity for eight months. The fine must be paid before Roskelley reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Roskelley consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior written notice to his member firm describing, in detail, the proposed transaction and his proposed role therein, and without stating whether he had received, or might receive, selling compensation in connection with the transaction.

Roskelley's suspension began January 3, 2006, and will conclude on September 2, 2006. (NASD Case #E3A2004033701)

**Brian Jason Ross (CRD #3234817, Registered Representative, Tulsa, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for 10 months and required to pay public customers \$79,429.90 in restitution. The fine must be paid, and satisfactory proof of the restitution payment must be made, before Ross reassociates with any NASD member following the suspension or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to, and approval from, his member firm.

Ross' suspension began at the opening of business on December 19, 2005, and will conclude October 18, 2006. (NASD Case #2005000132001)

**Ravi Saini (CRD #2167064, Registered Representative, Jersey City, 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 one year. The fine must be paid before Saini reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Saini consented to the described sanctions and to the entry of findings that he signed a public customer's signature on a Designated Security Suitability Form used in connection with the purchase of a low-priced security without the customer's knowledge or consent.

Saini's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2006. (NASD Case #E9B2004058701)

**Matthew Traver Stromgren (CRD #4545753, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stromgren consented to the described sanction and to the entry of findings that he received \$31,000 from public customers for investment purposes, but used the funds for his own personal use and benefit without the customers' prior knowledge, authorization or consent. The findings also stated that Stromgren failed to respond to NASD requests for information. (NASD Case #E1020041081-02)

**Joseph T. Tancredi (CRD #4906986, Associated Person, Brooklyn, 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 six weeks. Without admitting or denying the

allegations, Tancredi consented to the described sanctions and to the entry of findings that he took the NASD Series 7 examination and received a failing grade, then altered the proctor's report to reflect that he had received a higher score than the one he had actually received. The findings further stated that Tancredi then presented the altered report to his member firm.

Tancredi's suspension began December 19, 2005, and will conclude on January 29, 2006. (NASD Case #2005002203801)

**William Lee Thompson (CRD# 1710409, Registered Representative, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that he affixed individuals' names to 401k enrollment forms and submitted them to his employer.

Thompson's suspension began December 1, 2005, and concluded at the close of business on December 30, 2005. (NASD Case #E072004091901)

**Peter Alfred Torino (CRD #1160360, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Torino consented to the described sanction and to the entry of findings that he knowingly prepared and submitted a falsified life insurance application and a false death claim to his member firm. The findings also stated that Torino failed to respond to an NASD request for information. (NASD Case #E1020040842-01)

**Isaac Vidomlanski (CRD #1450598, Registered Principal, Far Rockaway, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from acting in the capacity of a FINOP with any NASD member for 10 business days. Without admitting or denying the allegations, Vidomlanski consented to the described sanctions and to the entry of findings that he, acting on behalf of his member firm, conducted a securities business while failing to maintain required minimum net capital.

Vidomlanski's suspension began January 3, 2006, and will conclude at the close of business on January 17, 2006. (NASD Case #E102002299902)

**Michael Wang (CRD #4937485, Associated Person, San Jose, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Wang reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Wang's suspension began December 19, 2005, and will conclude at the close of business on December 18, 2006. (NASD Case #20050019334-02)

**Steven Victor Wershay (CRD #1285048, Registered Representative, Suxxex, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member firm in any capacity. Without admitting or denying the allegations, Wershay consented to the described sanction and to the entry of findings that he solicited and accepted customer funds totaling in excess of \$800,000 and used them for his personal expenses without the customers' knowledge or consent. The findings stated that he failed to respond to NASD requests for information. (NASD Case #E8A20040683-01)

**Doyle Mark White (CRD #2212634, Registered Representative, Irving, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that White attempted to mislead NASD staff. White was also found to have violated Rule 2110 for failing to register as a general securities principal. In light of the bar, no other sanctions were imposed. (NASD Case #C0620030035)

## Individual Sanctioned

**Roy Clifton Zentz (CRD #476313, Registered Principal, Cashiers, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$10,000, and required to cooperate with NASD in any further investigation and hearing relating to his former member firm and/or any current or former registered or associated persons of the firm, including but not limited to, meeting with and being interviewed by NASD, without the need of NASD to resort to Rule 8210, and testifying at any hearing. The fine must be paid before Zentz reassociates with any NASD member, prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. Without admitting or denying the allegations, Zentz consented to the described sanctions and to the entry of findings that he exercised

discretionary power in a public customer's account without customers' prior written authorization, or without written acceptance approval from his member firm. The findings also stated that he failed to reasonably supervise registered representatives with respect to discretionary trading. (NASD Case #EAF0300770002)

## Decisions Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as of November 29, 2005. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**Scott Michael Epstein (CRD #4268699, Registered Representative, Marlboro, New Jersey)** was barred from association with any NASD member in any capacity. The decision was based on findings that Epstein engaged in a pattern of unsuitable mutual fund switching in public customers' accounts without having reasonable grounds for believing that the transactions were suitable for them in view of the nature of the recommended transactions, and in light of their financial situations, investment objectives, circumstances and needs. NASD found that in addition to the switch transaction, Epstein recommended that customers invest in funds utilizing proceeds for other funds that were nearly identical, thereby incurring higher annual expenses and lower returns. The findings stated that Epstein also recommended that a customer invest in bond funds utilizing proceeds from an IRA account. The findings also included that, in connection with the mutual fund recommendations to customers, Epstein, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers by making untrue statements of material facts or omitting material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C9B040098)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the

complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Richard Phillip Ashton, Jr. (CRD #2070630, Registered Principal, Oldwick, New Jersey)** was named as a respondent in an NASD complaint alleging that he recommended and effected securities transactions in public customers' accounts without having reasonable grounds for believing that the transactions were suitable based on the customers' financial situations, investment objectives, circumstances and needs. The complaint also alleges that Ashton willfully failed to amend his Form U4 to disclose material information. (NASD Case #E9B2002055601)

**Carmine Depalma (CRD #1838261, Registered Principal, Mt. Kisco, New York)** was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in a public customer's account that were unsuitable based on the customer's financial situation, investment objectives and needs. The complaint alleges that Depalma engaged in private securities transactions and failed to provide written notice to, or receive written approval from, his member firm prior to engaging in such transactions. The complaint also alleges that Depalma participated in outside business activities for compensation without giving written notice to his member firm. The complaint further alleges that Depalma provided a customer with confirmations that purported to reflect the relevant terms of the customer's investments and that bore the corporate insignia of a company when, in fact, the company had no connection to these transactions, thereby creating a false record. (NASD Case #ELI20040233-01)

**Taihua Terry Ho (CRD #843618, Registered Representative, Fresh Meadows, New York)** was named as a respondent in an NASD complaint alleging that he, in connection with the purchase or sale of securities, and then by the use of means or instrumentalities of interstate commerce or by the mail, directly or indirectly, knowingly or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions to state material facts that were necessary to make the statement made, in light of circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or business courses which operate or would operate as a fraud or deceit upon any person. The complaint alleges that Ho substantially assisted this illegal conduct by setting in motion the critical initial stages of the fraudulent scheme or course of business. The complaint also alleges that by participating in, and failing to prevent, the illegal manipulative conduct related to the trading, Ho failed to maintain the high standards of commercial honor and just and equitable principles of trade that all associated persons and registered securities professionals are required to observe. In addition, Ho provided

false, misleading and incomplete sworn testimony before the NASD staff. Ho also failed to provide to his employer prompt written notice of his outside business activities and his compensation resulting from those activities. (NASD Case #20042000053-01)

**Robert Wade Johnson (CRD #2966137, Registered Representative, Fort Collins, Colorado)** was named as a respondent in an NASD complaint alleging that he received checks totaling \$157,000 from a public customer to be invested, but the money was not deposited into or reflected in the customer's securities account. The complaint alleges that Johnson was unable to provide any evidence or documentation showing that any of the customer's money was invested, and did not return any of the money to the customer. The complaint alleges that Johnson failed to respond to NASD requests for information and to questions posed to him during an on-the-record interview. (NASD Case #E3A2004027901)

**William Joseph Julian (CRD #2797249, Registered Representative, Huntington, New York)** was named as a respondent in an NASD complaint alleging that he prepared a falsified account statement for a public customer that misrepresented the account's net worth and securities position, then presented this falsified account statement to the customer's representative as if it was an actual account statement for the purpose of misleading the customer as to the actual value of customer's investments. (NASD Case #ELI20030464-01)

**Suk Ku Lim (CRD #2407363, Registered Representative, Arlington, Virginia)** was named as a respondent in an NASD complaint alleging that he paid \$35,000 to a public customer to reimburse for losses sustained in the customer's securities brokerage account with his member firm. The complaint alleges that Lim entered into settlement agreements with customers concerning complaints, and did not provide prior notification to his member firm of such settlements until a later date. (NASD Case #E072003075201)

**Timothy Merrill Martin (CRD #2250279, Registered Representative, Dayton, Ohio)** was named as a respondent in an NASD complaint alleging that he obtained funds from a public customer for his own use and benefit. The complaint alleges that he failed to adhere to the terms of a renegotiated promissory note. (NASD Case #E8A20040454-01)

**Keith Howard Medeck (CRD #3011429, Registered Representative, Bayport, New York)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of securities, he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, knowingly or recklessly; employed devices, schemes or artifices to defraud; made untrue

statements of material facts or omitted to state material facts necessary in the order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or business courses which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The complaint also alleges that he recommended transactions to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account and the customer's financial situation, objectives and needs. (NASD Case #E9B2003033701)

**John Bailey Partain (CRD #4610449, Registered Representative, Philadelphia, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he effected electronic transfers totaling \$6,000 from public customers' bank accounts to his personal bank account without the customers' authorization or consent, then converted the funds for his own personal use. The complaint also alleges that Partain failed to respond to NASD requests for information. (NASD Case #2005000961201)

**Maryann Gehringer Roeglin (CRD #2126129, Registered Representative, Rochester Hills, Michigan)** was named as a respondent in an NASD complaint alleging that she improperly used a public customer's funds without the customer's knowledge or consent. The complaint alleges that she failed to appear for an on-the-record interview. (NASD Case #E8A20040613-01)

**Epko Anthony Steele (CRD #2611651, Registered Representative, Laurelton, New York)** was named as a respondent in an NASD complaint alleging that he participated in a scheme to defraud mortgage lenders in that he assisted in obtaining a fraudulent mortgage by transporting and accompanying an imposter to a real estate closing, knowing that the purpose of the closing was for the imposter to forge the mortgage documents and obtain a mortgage under false pretenses. (NASD Case #ELI20040286-02)

**Kai Richardson Walker (CRD #4094767, Registered Representative, Winter Park, Florida)** was named as a respondent in an NASD complaint alleging that he changed the address on a public customer's account, then issued a debit card and checks to this new address. The complaint alleged that he made several purchases and drafted a check to himself forging the customer's signature for his personal benefit. The complaint also alleged that he deposited checks made payable to his member firm into his own personal account, and failed to respond to NASD requests for information. (NASD Case #2005000688601)

### **Firm Suspended for Failure to Supply Financial Information**

The following firm was suspended from membership with NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**HSC Securities Corporation**  
Dallas, Texas  
(December 2, 2005)

### **Individual Whose Registration was Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**Roger Parker May**  
Golden, Colorado  
(December 8, 2005)

### **Individuals Barred Pursuant to NASD Rule 9552(h)**

**Keith Merle Getty**  
Mechanicsburg, Pennsylvania  
(November 22, 2005)

**Robin C. Hunter**  
Mesa, Arizona  
(December 1, 2005)

**Allyne Riese Kendall, III**  
San Diego, California  
(November 16, 2005)

**Richard Kevin Motarjeme**  
Denver, Colorado  
(November 30, 2005)

**Jacques Tizabi**  
Los Angeles, California  
(October 31, 2005)

**Kenneth Scott Vesely**  
North Woodmere, New York  
(November 25, 2005)

**Individuals Suspended Pursuant to NASD Rule 9552(d)**

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

**John Delgado**

Staten Island, New York  
(November 7, 2005)

**Ronni Fine-Abramowitz**

Roselle, Illinois  
(November 7, 2005)

**Ernest James Waslkowski**

Carfield Heights, Ohio  
(November 21, 2005)

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

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

**Jessica Allison Berry**

San Francisco, California  
(December 19, 2005)

**David Bradley Brooks**

Greensboro, North Carolina  
(December 20, 2005)

**Carlos Alberto Calatayud**

Miami, Florida  
(December 7, 2005)

**Charles Thomas Campbell, III**

Washington, D.C.  
(December 6, 2005)

**John Sheldon Cotton**

Louisville, Kentucky  
(December 19, 2005)

**Charles Dwain Davis, Jr.**

Dallas, Texas  
(December 21, 2005)

**Carmine DePalma**

Mt. Kisco, New York  
(December 7, 2005)

**Jorge Guillermo Fernandez**

Mayfield Heights, Ohio  
(December 7, 2005)

**Mark Allen Futrell, Sr.**

Sugar Land, Texas  
(December 1, 2005)

**Steven Andrew Gilman**

San Francisco, California  
(December 15, 2005)

**Thurston Gene Gilman**

Newton, Massachusetts  
(December 15, 2005)

**Emily Jean Halsband**

Waukee, Iowa  
(December 6, 2005)

**Adam Chamroeurn Heng**

Brooklyn, New York  
(December 7, 2005)

**Lawrence Sherman Jay**

Camarillo, California  
(December 21, 2005)

**Robert Alan Lesser**

Portchester, New York  
(December 8, 2005)

**Adam Martin Makowka**

Lincolnwood, Illinois  
(December 19, 2005)

**Dimitry Alex Metelkin**

Brooklyn, New York  
(December 8, 2005)

**Franklyn Ross Michelin**

Boca Raton, Florida  
(December 7, 2005, NASD Arbitration Case #04-03742)  
(December 8, 2005, NASD Arbitration Case #04-06286)

**Jonathan Anhminh Nguyen**

North Hollywood, California  
(December 8, 2005)

**James Luke Patterson**

Houston, Texas  
(December 1, 2005)

**Jason Kenneth Pearce**

Martinez, California  
(December 1, 2005)



**Edmund Burke Pearson**

Dayton, Ohio  
(December 8, 2005)

**Theodore Angelo Pena**

Orandell, New Jersey  
(December 1, 2005 to December 13, 2005)

**Joseph Charles Quattrocchi**

Staten Island, New York  
(December 6, 2005, NASD Arbitration Case #04-04029)  
(December 8, 2005, NASD Arbitration Case #01-00303)

**Jimmie Duane Ross**

Sevierville, Tennessee  
(December 6, 2005)

**David William Svete**

Dayton, Ohio  
(December 8, 2005)

**Oron Joseph Unger**

Brooklyn, New York  
(December 6, 2005)

**Gary Charles Wayne, II**

Byron, New York  
(December 19, 2005)

**Craig Frank Wisbiski**

Williamston, Michigan  
(December 6, 2005)

## NASD Fines State Street Global Markets Record \$1.4 Million For Corporate and Municipal Bond Trade Reporting Violations

### Fine is Largest to Date for Fixed Income Trade Reporting Violations

NASD has fined State Street Global Markets, LLC of Boston, MA, \$1.4 million for violations relating to the reporting of corporate and municipal bond trades. State Street Global, which is a subsidiary of Boston-based State Street Corporation, was cited for failing to report thousands of corporate bond trades to NASD's Trade Reporting and Compliance Engine (TRACE) and hundreds of municipal bond trades to the Municipal Securities Rulemaking Board (MSRB) over a 17-month period. NASD also cited State Street Global for supervisory deficiencies relating to corporate and municipal bond trade reporting.

The \$1.4 million sanction represents the largest fine imposed to date by NASD against a single firm for fixed income trade reporting violations.

"Investors and dealers in municipal and corporate bonds rely upon TRACE and MSRB trade reporting to provide much-needed price transparency in these markets," said NASD Vice Chairman Mary L. Schapiro. "State Street Global's reporting failures deprived the markets, investors and regulators of critical information, and impaired the integrity of bond trading data that market participants rely upon to make informed investment decisions."

Since July 2002, brokerage firms have been required to report price and volume data on all corporate bond transactions to TRACE, initially within 75 minutes, and today within 15 minutes. NASD publicly disseminates that transaction data immediately on virtually 100 percent of over-the-counter corporate bond activity—approximately 22,000 transactions and \$18 billion in volume every day. That transaction data is available free of charge at [www.nasdbondinfo.com](http://www.nasdbondinfo.com).

Before Jan. 31, 2005, MSRB rules required all dealers to report municipal trades to the MSRB by midnight of the day of the trade, for public dissemination the following day. As of January 31, MSRB rules require that those transactions be reported within 15 minutes of trade execution. The MSRB now disseminates trade data about all reported municipal securities transactions almost immediately at [www.investinginbonds.com](http://www.investinginbonds.com). NASD is responsible for enforcing MSRB rules.

NASD found that from July 2003 through December 2004, State Street Global failed to report 14,073, or 89 percent, of its self-cleared corporate bond transactions to TRACE. The firm failed to report 380, or 79 percent, of its self-cleared municipal bond transactions to the MSRB during the same period. The total dollar amount of the unreported corporate and municipal bond transactions exceeded \$5 billion.

The trade reporting violations resulted from the failure of State Street Global personnel, when establishing new accounts, to take steps to ensure that all TRACE-eligible transactions would be automatically and electronically reported to the third party agency retained by the firm to report the transactions to TRACE. The trade reporting failures were also due in part to the departure from the firm of several key operations and fixed income trading employees. Thereafter, State Street Global lacked adequate institutional knowledge and internal controls to ensure proper trade reporting. Moreover, State Street Global failed to provide sufficient training for its remaining staff to ensure that the firm's TRACE and MSRB reporting requirements were met.

NASD also found that State Street Global lacked adequate written procedures to ensure proper TRACE and MSRB trade reporting. The firm failed to provide for effective follow-up and review or otherwise monitor its trade reporting to ensure compliance. Additionally, the firm's internal inspections, which are required under NASD rules to be comprehensive and conducted annually, were found to be deficient. State Street Global's parent bank personnel, who were generally not registered as securities professionals, conducted the inspections. The internal inspections were also not comprehensive in that they did not cover all the businesses that State Street Global engaged in, as required by NASD rules.

In connection with these settlements, State Street Global neither admitted nor denied the charges, but consented to the entry of NASD's findings.

## **NASD Charges Kirlin Securities, Two Individuals in Fraudulent Scheme To Avoid NASDAQ Delisting of Parent Company by Manipulating Stock Price**

### **Co-CEO Also Charged with Forgery to Facilitate Manipulation; Firm, Other Officers Charged with Best Execution Violations**

NASD announced charges against Kirlin Securities of Syosset, NY, (a wholly owned subsidiary of Kirlin Holding Corporation) and two Kirlin officials—Anthony Kirincic, the firms' co-CEO and Kirlin Holding's largest shareholder, and Andrew Israel, Kirlin's head trader—for their roles in a fraudulent scheme to artificially inflate the price of Kirlin Holding stock.

The purpose of the scheme was to increase the stock price to \$1.00 a share or higher for 10 consecutive trading days, thereby avoiding a threatened delisting of the stock from the NASDAQ National Market. NASD also charged that Kirincic forged his parents' signatures on stock certificates and other documents to generate funds to carry out the manipulation scheme. Additionally, NASD charged Kirlin Securities, Israel and David Lindner, then the co-CEO of Kirlin Holding and Kirlin Securities, with failing to obtain best execution on a customer order of Kirlin Holding stock during the same period.

According to NASD's Complaint, the NASDAQ National Market notified Kirlin Holding in February 2002 that the stock price of Kirlin Holding had dipped below \$1.00 a share for 30 days and that Kirlin Holding would be delisted unless, within 90 days, its stock price increased to, and remained above, \$1.00 per share for 10 consecutive trading days. Kirincic was the account executive for accounts held by his parents and his sister at Kirlin Securities. Soon after NASDAQ issued its delisting warning, Kirincic forged his parents' signatures on Kirlin Holding stock certificates and caused Kirlin Holding to repurchase those shares from his parents' account. He also forged his parents' signatures on letters of authorization to transfer funds generated from these repurchases to his sister's account.

NASD's Complaint charges that beginning on March 18, 2002, Kirincic and Israel began manipulating the stock price of Kirlin Holding by entering large and frequent purchase orders through Kirincic's sister's account at prices in excess of the inside bid. After placing orders, Kirincic often cancelled those that had been only partially filled and replaced them with other orders at higher prices in an effort to bid up the price

of the security. The size of these transactions often dwarfed the historic average daily volume for Kirlin Holding. In addition, Kirincic's trading through his sister's account constituted a significant majority of the trading volume and number of transactions in the stock, thereby dominating the market for Kirlin Holding stock throughout the manipulation.

Kirlin, Kirincic, and Israel successfully created an illusion that the demand for Kirlin Holding's common stock was increasing based on genuine customer demand. Their scheme succeeded in raising the price of Kirlin Holding's common stock from \$.64 per share on March 18, 2002, to more than \$1.00 per share on April 2, 2002, despite an absence of any news or other apparent reason for the company's stock price to increase.

After April 2, 2002, Kirlin, Kirincic and Israel successfully maintained Kirlin Holding's stock price at or over \$1.00 per share for at least 10 trading days, using the same manipulative methods. On April 18, 2002 NASDAQ informed Kirlin Holding that it had satisfied the market's listing requirements by having its stock price exceed \$1.00 for 10 consecutive trading days and therefore the stock would not be delisted.

NASD's Complaint charges Kirlin Securities, Kirincic, and Israel with fraud under the federal securities laws and NASD rules.

NASD's Complaint also charges that on April 22, 2002, while Kirlin Holding's stock was still trading at more than \$1.00 per share, Kirlin Securities, through Lindner and Israel, executed a sale of a customer's shares in Kirlin Holding at \$.80 per share in a transaction with Kirlin Holding. At the time of this trade, the inside bid for the stock was \$1.04 per share, and two of Kirincic's own relatives had sold their Kirlin Holding's stock for \$1.05 per share. This violates the obligation under NASD rules for the firm, Lindner, and Israel to achieve best execution for their customer's order.

In January of 2005, Kirlin Holding voluntarily ceased having its stock listed on NASDAQ Stock Market and ceased filing periodic reports under the federal securities laws. Its stock is currently quoted in the Pink Sheets (Other OTC:KILN.PK).

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.

## NASD Fines Merrill Lynch, Wells Fargo and Linsco \$19.4 Million For Improper Sales of Class B and C Mutual Fund Shares

### Firms to Offer Remediation for Nearly 140,000 Transactions

NASD has fined Merrill Lynch, Pierce, Fenner & Smith, Wells Fargo Investments and Linsco/Private Ledger Corporation a total of \$19.4 million for suitability and supervisory violations relating primarily to sales of Class B mutual fund shares as well as some Class C mutual fund shares. These cases are part of NASD's continuing investigation into mutual funds sales practices.

Merrill Lynch was fined \$14 million, while Wells Fargo was fined \$3 million and Linsco was fined \$2.4 million. The amount of the fines approximate the additional commissions the firms received by selling Class B shares rather than Class A mutual fund shares. In addition, each firm is implementing a remediation plan to compensate affected customers—collectively involving more than 29,000 households and nearly 140,000 transactions.

NASD's investigation examined transactions during an 18-month period between January 2002 and July 2003. Investigators focused on 23,000 households at Merrill Lynch with 105,000 Class B and C share transactions; 4,500 households at Wells Fargo with 12,000 Class B and C share trades; and approximately 2,000 households with 22,400 Class B and C share trades at Linsco.

During this period, the three firms recommended and sold Class B and/or Class C share mutual funds to their customers without considering or adequately disclosing on a consistent basis that an equal investment in Class A shares would generally have been more advantageous to those customers in view of all relevant considerations. Before recommending a share class, brokers must consider the customer's anticipated holding period and all costs associated with each share class including front-end sales charges, annual expenses and contingent deferred sales charges. The firms also had inadequate supervisory and compliance procedures relating to the manner in which the firms' sales personnel recommended and sold Class B and Class C shares.

"In recommending mutual funds with different share classes, brokers must understand, consider and disclose information about which particular share class would be most beneficial for the customer from an expense perspective," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The failure by these firms to do this resulted

in their customers purchasing Class B and C shares when they would have been better served with Class A shares. The firms have agreed to a remediation plan that will give affected customers the opportunity to convert their holdings to a more financially advantageous mutual fund share class."

Class A shares typically charge a front-end sales charge and also may be subject to an asset-based sales charge, but it generally is lower than the asset-based sales charge imposed by Class B or Class C shares. Mutual funds may offer discounts, called breakpoints, on the front-end sales charge for Class A shares if an investor makes a large purchase, already holds other mutual funds offered by the same fund family, or commits to regularly purchasing the mutual fund's shares. To determine the appropriate discounts, an investor is often allowed to aggregate his purchases with holdings of other family members. Class B shares typically do not charge a front-end sales charge, but they do impose asset-based sales charges that may be higher than those associated with Class A shares. Class B shares also normally impose a contingent deferred sales charge (CDSC) which the investor may pay at the time the investor sells the shares. While the investor holds the shares, the CDSC normally declines and eventually is eliminated after a certain number of years. After the CDSC is eliminated, Class B shares often "convert" into Class A shares. When they convert, they will be subject to the same, lower asset-based sales charge as the Class A shares.

Class C shares usually do not impose a front-end sales charge on the purchase but they are often subject to a CDSC if sold within a short time of purchase, usually one year. Class C shares also typically impose higher asset-based sales charges than Class A shares, and since their shares generally do not convert into Class A shares, their asset-based sales charge will not be reduced over time. So even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels.

In resolving this matter, the firms have agreed to a remediation plan that generally covers investors who, between January 1, 2002 and the dates of the settlement with each firm, purchased Class B shares totaling \$50,000 or more depending upon the expenses and charges of the fund and who under any ordinary circumstance would have been better off had they purchased A shares instead. The offer will also be extended to a limited number of Class C share investors who, during the same time frame, made purchases of \$500,000 or more and who, in view of all relevant circumstances, would have been better off had they purchases A shares instead. A number of mutual fund transaction exclusions from the plan also apply.

NASD has posted a special section on its Web site—Improper Sales of Mutual Fund Class B and Class C Shares—Remediation Information for Investors—to assist investors covered by the remediation plan.

The firms will contact affected customers within five months. Those customers will be given the opportunity to convert their Class B or Class C shares to Class A shares in a way that will restore the customers to the position they would have been in had they originally purchased Class A shares. Affected customers who have sold some or all of their Class B or Class C shares will be eligible to receive a cash payment in addition to, or instead of, receiving Class A shares.

Each firm will establish a response center to assist affected customers. The entire remediation process is expected to take approximately nine months to complete.

The three firms settled these actions without admitting or denying the allegations, but consented to the entry of NASD's findings.

## Hedge Fund Manager, Former Broker John F. Mangan, Jr. Barred, Fined \$125,000 To Resolve Charges in PIPE Shares Deal

### NASD Investigation into Other Individuals, Entities Continuing

NASD announced that John F. Mangan, Jr., a hedge fund manager formerly registered as a broker with Friedman, Billings, Ramsey & Co. (FBR) of Arlington, VA, has been permanently barred from associating with any NASD-registered firm and will pay a \$125,000 fine to settle charges that he deceptively obtained shares in a PIPE transaction, improperly sold the shares short, and shared in profits from the shares without obtaining permission from FBR.

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 SEC approves the PIPE shares' registration are investors free to sell them on the open market. PIPE shares can only be offered to "accredited" investors—for example, investors with assets of \$1 million or more. NASD found that in September 2001, Maryland-based Compudyne Corporation and its placement agent, FBR, offered accredited investors—on a confidential basis—a PIPE deal proposing to sell 2,450,000 shares of common stock, which raised more than \$29 million.

Not later than Sept. 28, 2001, Mangan learned through a firm-wide research call that FBR had an investment banking relationship with Compudyne. Within a few days, Mangan received copies of the Compudyne Private Placement Memo, a Purchase Agreement and a sales script that FBR brokers were to use to market the PIPE transaction to potential investors.

NASD found that Mangan wanted to invest in the PIPE through one of a group of hedge funds he managed with a partner. Mangan contacted senior FBR officials to inquire whether the hedge fund could invest in the PIPE. These officials told Mangan in substance that a person associated with FBR should not invest in the Compudyne PIPE and refused Mangan permission to buy shares in the PIPE. Nevertheless, Mangan arranged for HLM Securities LLC ("HLM"), an investment advisor owned by Mangan's partner, to buy 80,000 shares in the PIPE. The restricted stock was sold at the below-market price of \$12 per share. In fact, FBR paid Mangan a commission of about \$6,880 as the broker responsible for HLM's purchase of the Compudyne PIPE.

Mangan and his partner agreed that Mangan would personally provide all the funds necessary to buy the PIPE shares and that Mangan and his partner would share equally in all profits from the PIPE. Mangan's partner was the only signatory for HLM on the Purchase Agreement. Mangan failed to seek and obtain written permission from FBR to purchase an interest in the Compudyne PIPE and failed to disclose that he had arranged to acquire an interest in the Compudyne PIPE through HLM, or that he had agreed to share profits from the PIPE transaction with his partner.

On Oct. 9 and Oct. 12, 2001, Mangan caused HLM to place orders to sell 80,000 shares of Compudyne, and based on those orders, the executing broker and prime broker treated the sales as "long" sales. In fact, HLM was naked short selling the shares, and no affirmative determinations were made that HLM could locate shares to borrow in order to make delivery by settlement date. Mangan intended for HLM to profit by covering the naked short position in Compudyne with shares acquired in the PIPE once they became registered.

On Oct. 31, 2001, after the PIPE shares were registered, HLM covered its 80,000-share short position using the 80,000 shares of Compudyne that HLM had bought in the PIPE. As they had agreed, Mangan and his partner shared equally in HLM's profits from the sale and purchase of Compudyne shares. Mangan received a total profit of approximately \$87,000.

In settling this matter with NASD, Mangan neither admitted nor denied the charges, but consented to the entry of NASD's findings. NASD's investigation into other individuals and entities involved in the Compudyne PIPE is continuing. In May of 2005, Hilary Shane, a hedge fund manager formerly registered with First New York Securities, was barred and ordered to pay more than \$1.45 million in fines and restitution by NASD and the Securities and Exchange Commission, to settle fraud and insider trading charges arising from her purchase and sale of Compudyne PIPE shares.