

Disciplinary and Other NASD Actions

REPORTED FOR JUNE

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 May 2004.

Firms Fined, Individuals Sanctioned

Grayson Financial LLC (CRD #11764, Red Bank, New Jersey), Joseph LaRocca (CRD #1144173, Registered Principal, Locust Point, New Jersey), and Joseph William Hagan (CRD #1980623, Registered Principal, Colts Neck, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. LaRocca was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 30 business days. Hagan was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through LaRocca and Hagan, failed to enforce adequately its written supervisory procedures regarding the review of cancelled/rebilled transactions in public customer accounts. The findings also stated that LaRocca and Hagan failed to contact firm customers in sufficient numbers when a pattern of cancels/rebills appeared in customer accounts to determine if the trades had been properly authorized. NASD also found that the firm, acting through LaRocca and Hagan, failed to document properly the supervisory review of cancels/rebills and utilize "Cancel/Rebill Forms" as required by firm written supervisory procedures. In addition, NASD found that the firm failed to report complaints to NASD pursuant to NASD Conduct Rule 3070(c). Furthermore, NASD found that the firm, acting through LaRocca, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with NASD Conduct Rule 3070.

LaRocca's suspension began May 17, 2004, and will conclude at the close of business June 28, 2004. Hagan's suspension will begin July 5, 2004, and will conclude at the close of business July 16, 2004. (NASD Case #C9B040029)

MMS Securities, Inc. (CRD #43120, Troy, Michigan) and Michael Lawrence Garivaglia (CRD #2120445, Registered Principal, Bloomfield Hills, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$45,000. Garivaglia was fined \$5,000 and suspended from association with any NASD member in any managerial or supervisory capacity for 30 days. Without admitting or denying the allegations, the firm and Garivaglia consented to the described sanctions and to the entry of findings that Garavaglia, on behalf of his member firm, sent a letter to its customers informing them that the firm intended to cease its stock purchase program and was transferring its business to another firm, and that if the

customers wanted to transfer their securities accounts to another member firm they had to complete various forms. The letter further stated that, if they did not return the other firm's account forms or instruct the firm, in writing, to transfer their account to the other member firm, all of the customer's account holdings would be sold by the firm and a check would be mailed to the customer. The firm, acting through Garivaglia, executed sales transactions in the accounts of public customers who requested that the securities in their account be transferred to another firm, without the customers' knowledge, authorization, or consent. The findings stated that the firm failed to prepare and maintain an accurate securities record or ledger and also failed to evidence possession and control of customer fully paid securities based on the failure to maintain accurate records of the location of these securities in violation of Securities and Exchange Commission (SEC) and NASD rules. In addition, NASD found that Garavaglia, acting through the firm, failed to employ two general securities principals, in violation of NASD Membership and Registration Rule 1021. Furthermore, NASD found that the firm received complaints, expressing grievances involving the firm or persons associated with the firm from customers with whom the firm had engaged or had sought to engage in securities activities, and failed to report timely such customers grievances to NASD as statistical and summary information.

Garivaglia's suspension began May 17, 2004, and concluded at the close of business June 15, 2004. (NASD Case #C8A040019)

Firm and Individual Fined

Max International Broker/Dealer Corp. (CRD #46039, New York, New York) and Nigel Gilbert (CRD #2801498, Registered Principal, Montclair, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. The firm was fined an additional \$2,500. Without admitting or denying the allegations, the firm and Gilbert consented to the described sanctions and to the entry of findings that the firm, acting through Gilbert, permitted individuals to act in capacities that required registration while their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Gilbert failed to report settled arbitration cases to NASD and failed to report to NASD, pursuant to NASD Rule 3070, that an individual was terminated by the firm for failing to disclose outside trading accounts. In addition, NASD found that the firm, acting through Gilbert, failed to file with NASD statistical and summary information regarding customer complaints. (NASD Case #C10040039)

Firms Fined

Carlin Equities Corporation (CRD #31295, 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, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction Service (ACT) last sale reports of transactions in Over-the Counter (OTC) Equity securities and failed to designate through ACT last sale reports as late. The findings also stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. (NASD Case #CMS040056)

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to NASD inaccurate short interest position reports. The findings further stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short interest reporting. (NASD Case #CMS040065)

See also Deutsche Bank Securities, Inc., NASD Case #CMS040066, below.

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$225,000, and required to revise, within 30 business days, its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning short interest reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not include some short positions in the firm's calculations and its short interest reported to NASD was inaccurate. The findings also stated that the firm's short positions were incorrectly classified and the firm failed to make corrections in a timely and effective manner, such that short interest positions were reported to NASD prior to completion of procedures to review affiliate accounts and were reported to NASD inaccurately, and incorrectly netted short positions against long positions. In addition, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short interest reporting. (NASD Case #CMS040066)

See also Deutsche Bank Securities, Inc., NASD Case #CMS040065, above.

FFP Securities, Inc. (CRD #16337, Chesterfield, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file disclosure events and customer complaints with NASD. The findings also stated that the firm failed to file a written grievance in its quarterly statistical and summary information, and to file written customer grievances on a timely basis. NASD also found that the firm failed to file amended Forms U4 and U5 for individuals subject to amendments within 30 days of becoming aware of the facts or circumstances giving rise to the amendments. In addition, NASD found that the firm failed to establish and maintain an effective supervisory system to identify the firm's designated supervisory personnel and dates for which such designation is or was effective and to prevent and detect self-supervision by registered principals. **(NASD Case #C04040021)**

Fiserv Securities, Inc. (CRD #14285, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$18,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC Equity securities and failed to designate through ACT last sale reports as late. The findings also stated that the firm failed to report the correct time of execution through ACT in last sale reports of transactions in OTC Equity securities. Furthermore, NASD found that the firm submitted to the Order Audit Trail SystemSM (OATSSM) reports with respect to equity securities traded on The Nasdaq Stock Market, Inc. (NASDAQ) that were rejected by OATS for context or syntax errors and were repairable. The findings further stated that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace any of the reports. In addition, NASD found that the firm failed to follow written supervisory procedures and thus failed to enforce a supervisory system reasonably designed to achieve compliance with NASD rules. **(NASD Case #CMS040060)**

L.H. Ross & Company, Inc. (CRD #37920, Boca Raton, Florida) 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 filed reports required pursuant to NASD Rule 3070 in an untimely manner. The findings also stated that the firm filed Forms U4 and U5 and amended them in an untimely manner. **(NASD Case #C07040046)**

HMS Securities, Inc. (CRD #5940, Montvale, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or

denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit all required Reportable Order Events (ROEs) to OATS on 260 business days. **(NASD Case #CMS040051)**

Inter-Dealer Brokers LLC (CRD #45502, 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 it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC Equity securities, and failed to designate through ACT last sale reports as late. **(NASD Case #CMS040061)**

Jeffries & Company, Inc. (CRD #2347, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$27,500, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws and regulations concerning trade reporting (riskless principal transactions), best execution (three-quote rule), and limit order display. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NASDAQ National Market[®] (NNM[®]) securities and eligible securities, failed to designate through ACT such last sale reports as late, and failed to transmit the time of execution through ACT last sale reports of transactions in a NNM security and eligible securities for which it has recording and reporting obligations under NASD Marketplace Rules 6954 and 6955.

The findings stated that the firm failed to report to ACT a capacity indicator of riskless principal in last sale reports of transactions in NNM and eligible securities. The findings also stated that the firm failed to report through ACT last sale reports of transactions in OTC Equity securities, failed to report to ACT a capacity indicator of riskless principal in a last sale report of a transaction in an OTC Equity security, provided written notification disclosing to its customer an incorrect reported trade price and incorrect capacity in the transaction, and failed to provide written notification disclosing to its customer the amount of remuneration received by the firm in connection with the transactions. The firm failed to provide written notification disclosing to its customer that the transaction was executed at an average price and failed to show the terms and condition on the memorandum of brokerage orders. In addition, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning trade reporting (riskless principal transactions) and best execution (three-quote rule) and failed to enforce its written supervisory procedures with respect to limit order display. **(NASD Case #CMS040062)**

Knight Equity Markets, L.P. (CRD #38599, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designated as “.PRP,” through ACT, last sale reports of transactions in NNM securities; reported through ACT last sale reports of transactions in NNM securities it was not required to report; and incorrectly reported to ACT the second leg of four riskless principal transactions in NNM securities and incorrectly designated the capacity of each such transaction as principal. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities, and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. Furthermore, NASD found that the firm incorrectly reported to ACT the second leg of five riskless principal transactions in CQS securities, and incorrectly designated the capacity of each such transaction as principal and made available a report on the covered orders in National Market System (NMS) securities that it received for execution from any person. **(NASD Case #CMS040063)**

Liquidnet, Inc. (CRD #103987, 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 timely to OATS ROEs. NASD also found that the firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS040052)**

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 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 an adequate system to supervise and monitor activities in connection with the sale of variable life insurance products. **(NASD Case #C05040022)**

Millennium Brokerage, LLC (CRD #47728, Woodcliff Lake, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report timely to

OATS ROEs. The findings also stated that the firm submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD. In addition, NASD found that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace the reports. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS040053)**

Penson Financial Services, Inc. (CRD #25866, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$22,500, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning NASD 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 in ACT transactions in eligible securities within 20 minutes after execution. The findings also stated that the firm failed to report to ACT the reporting side executing broker as “give up” in transactions in eligible securities. In addition, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning NASD trade reporting. **(NASD Case #CMS040064)**

Samco Financial Service, Inc. (CRD #30108, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning OATS rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report ROEs to OATS in a timely manner. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS040067)**

Sands Brothers & Co., Ltd. (CRD #26816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make available a report on the covered orders in NMS securities that it received for execution from any person. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with

applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5. **(NASD Case #CMS040058)**

Track ECN/Track Data Securities Corp. (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning the registration of persons with NASD, Best Execution, the SEC's Limit Order Display Rule, trade reporting, recordkeeping, locked and/or crossed markets, OATS reporting, anti-competitive practices, "Chinese Walls" (or information barriers), general operating system/procedures, short sales, Regulation ATS, and SEC Rule 11Ac1-5. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to register with NASD, as limited representative equity traders, persons associated with the firm where such persons, with respect to transactions in equity, preferred, or convertible debt securities, were engaged in proprietary trading and the execution of transactions on an agency basis, and made available a report on the covered orders in NMS securities that it received for execution from any person that included incorrect and incomplete information as to classification of orders as covered or not covered. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the registration of persons with NASD, Best Execution, the SEC's Limit Order Display Rule, trade reporting, recordkeeping, locked and/or crossed markets, OATS reporting, anti-competitive practices, "Chinese Walls," general operating system/procedures, short sales, Regulation ATS, and SEC Rule 11Ac1-5. **(NASD Case #CMS040068)**

Washington Square Securities, Inc. (CRD #2882, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$50,000, and ordered to pay \$48,955.35 in partial restitution to public customers who purchased Class B shares. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through its agents, it effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in firm customer accounts. The findings also stated that the purchases were unsuitable because they deprived the customers of the benefit of sales charge breakpoints that they would have received had they purchased Class A shares, including those acquired through letters of intent or rights of accumulation. NASD also found that the purchases deprived the customers of lower 12b-1 fees that they would have received if they had purchased Class A shares, while also exposing the customers to potentially higher contingent deferred sales charges upon liquidation and to the costs of purchasing Class B

shares possibly exceeding the costs of purchase of Class A shares. In addition, NASD found that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system reasonably designed to enable the firm and its supervisors to scrutinize Class B share purchases with a view towards detecting and preventing unsuitably large Class B share purchases. **(NASD Case #C04040015)**

Individuals Barred or Suspended

Mauricio Acuna (CRD #3237599, Registered Representative, Garden City, 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, Acuna consented to the described sanction and to the entry of findings that he agreed to have an imposter take the Series 6 and Series 63 Qualification Examinations on his behalf. **(NASD Case #C10040032)**

Juan C. Alejos (CRD #4108723, Registered Representative, Elmsford, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Alejos consented to the described sanctions and to the entry of findings that he solicited a public customer to purchase a security and, during the solicitation, misrepresented material facts and made baseless price projections. The findings also stated that Alejos solicited a Utah resident to purchase securities even though he was not registered to sell securities in Utah and was not permitted to solicit Utah residents.

Alejos' suspension began June 7, 2004, and will conclude at June 26, 2004. **(NASD Case #C10040048)**

Louis John Appel, Jr. (CRD #1284856, Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Appel reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Appel consented to the described sanctions and to the entry of findings that he forged the signature of an insurance company officer on a company Request for Collateral Assignment/Discharge of Assignment form relating to a public customer's application for a term life insurance policy.

Appel's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. **(NASD Case #C07040045)**

James Ray Atrat (CRD #1438065, Registered Representative, Clovis, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Atrat created and provided to a public customer account summaries that contained false information. (NASD Case #C01030033)

Arnab Banerjee (CRD #4172393, Registered Representative, Hoboken, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Banerjee willfully failed to disclose material facts on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C10030091)

Alan Wayne Barksdale (CRD #4538369, Registered Representative, Little Rock, Arkansas) 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 31 days. Without admitting or denying the allegations, Barksdale consented to the described sanctions and to the entry of findings that he solicited an attorney to make contributions to public officials so that the attorney might receive favorable consideration as bond counsel on future issues of municipal securities while Barksdale's member firm was engaging in municipal securities business with the issuer.

Barksdale's suspension began May 17, 2004, and will conclude at the close of business June 16, 2004. (NASD Case #C05040019)

Damon Lee Barnes (CRD #4656593, Associated Person, Pembroke Pines, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barnes consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C07040032)

Randall Todd Becker (CRD #2706294, Registered Principal, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,200, including disgorgement of \$12,200 in financial benefits, and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before Becker reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, he entered into an agreement with an individual to open accounts for new customers at his firm in exchange for a \$100 payment for each account. The findings also stated that Becker received \$14,200 and opened the accounts, but subsequently repaid \$2,000 to the individual.

Becker's suspension began June 7, 2004, and will conclude at the close of business June 25, 2004. (NASD Case #C3B040012)

Darrill Samuel Beebe (CRD #2869508, Registered Representative, Arlington, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Beebe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Beebe consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose material information.

Beebe's suspension began May 17, 2004, and will conclude at the close of business November 16, 2004. (NASD Case #C06040010)

Orville Dale Bellamy (CRD #1204847, Registered Representative, Centerville, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bellamy consented to the described sanction and to the entry of findings that he misused funds from a public customer's life insurance policies by directing an insurance company to liquidate the customer's life insurance policies, and send the \$100,000 proceeds to his home which he used for his own benefit and without the customer's permission or knowledge. NASD also found that Bellamy entered into a settlement agreement with the customer, whereby he agreed to pay the customer \$75,000 in exchange for her signature on a "Release," and entered into this settlement agreement without his member firm's knowledge or consent. In addition, the findings stated that Bellamy failed to respond to NASD requests for information. (NASD Case #C8A040031)

Steven Robert Boccone (CRD #1995219, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Boccone consented to the described sanction and to the entry of findings that he prepared transfer application forms that directed the transfer of \$750,000 from a bank account held by his member firm to an entity Boccone owned and controlled by falsifying the forms with the purported signatures of authorized signatories for the firm's bank account. The findings also stated that Boccone caused the transfer of \$750,000 to the entity he owned and controlled for his own personal use without the authorization of his member firm. NASD also found that Boccone failed to respond to NASD requests to appear at on-the-record interviews. (NASD Case #C10020058)

Rick Lynn Burnett (CRD #2131056, Registered Representative, Decatur, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burnett consented to the described sanction and to the entry of findings that he converted assets of public customers by knowingly participating in a scheme to defraud and obtain money by material misrepresentations, concealments, and omissions. Furthermore, NASD found that Burnett sent forged requests to an insurance company for the withdrawal of \$175,000 from an annuity account of a public customer. The findings stated that Burnett received the \$175,000 checks and deposited the checks in his business account and used the entire amount for his own benefit or for other some benefit other than that of the customer. The findings further stated that Burnett failed to respond to NASD requests for information. **(NASD Case #C8A040022)**

Robin Carter Calvert (CRD #1185609, Registered Representative, Spartanburg, South Carolina) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Calvert consented to the described sanction and to the entry of findings that he made misrepresentations and material omissions of fact to public customers with the purchase or sale of a security. The findings also stated that Calvert made unsuitable recommendations to public customers. NASD also found that Calvert failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07040029)**

Thomas Paul Cappellino (CRD #2262349, Registered Representative, Irving, Texas) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Cappellino failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. **(NASD Case #C06030026)**

Thomas Joseph Castro (CRD #1610563, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 35 days. Without admitting or denying the allegations, Castro consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Castro engaged in private securities transactions and failed to provide prior written notification to, or obtain written approval from, his member firm.

Castro's suspension began June 7, 2004, and will

conclude July 11, 2004. **(NASD Case #C10040050)**

Terry Philip Cole, Jr. (CRD #2790843, Registered Principal, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Cole, no monetary sanction has been imposed. Without admitting or denying the allegations, Cole consented to the described sanctions and to the entry of findings that he failed to update timely his Form U4 to disclose a material fact.

Cole's suspension began June 7, 2004, and will conclude at the close of business September 6, 2004. **(NASD Case #C8A040026)**

Robert Williams Crowther, III (CRD #1035793, Registered Principal, Ocean Township, 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 principal or supervisory capacity for 30 business days. Without admitting or denying the allegations, Crowther consented to the described sanctions and to the entry of findings that he failed to reasonably and properly supervise a registered representative who made unsuitable recommendations to a public customer to purchase securities on margin.

Crowther's suspension began May 17, 2004, and will conclude at the close of business June 28, 2004. **(NASD Case #C9B040025)**

Raymond Louis Dirks (CRD #601699, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Dirks consented to the described sanctions and to the entry of findings that he wrote research reports that contained "Strong Buy" recommendations that did not define what was meant by a "Strong Buy," and did not disclose any risks that could impede the achievement of targets or estimates. The findings also stated that Dirks failed to disclose in a report that company auditors had issued a going concern on the company before the issuance of the report. NASD also found that in one report Dirks failed to disclose that his member firm was a market maker in the company's securities at the time the report was published. In addition, NASD found that reports omitted material facts and included price target projections and revenue estimates that were exaggerated, unwarranted, misleading, and without a legitimate basis, and forecast events that were unwarranted in light of the speculative nature of the company's business.

Dirks' suspension began May 17, 2004, and concluded at the close of business June 15, 2004. **(NASD Case #CAF030063)**

Ronald Raymond Dowling (CRD #1511055, Registered Representative, Mokena, Illinois) 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, Dowling 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.

Dowling's suspension began May 17, 2004, and concluded at the close of business June 14, 2004. **(NASD Case #C8A040018)**

James Michael Drew (CRD #2682083, Registered Principal, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$84,464, including disgorgement of \$74,464 in commissions received, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Drew reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Drew consented to the described sanctions and to the entry of findings that he engaged in excessive trading with the intent to defraud in the accounts of public customers. The findings also stated that Drew did not have reasonable grounds for believing that recommendations and resultant transactions were suitable for the customers on the basis of the customers' financial situation, investment objectives, and needs.

Drew's suspension began June 1, 2004, and will conclude at the close of business December 31, 2004. **(NASD Case #C05040018)**

Gregory Allen Eastman (CRD #2456282, Registered Principal, Tempe, Arizona) was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine is due and payable if and when Eastman returns to the securities industry. The sanctions were based on findings that Eastman falsely represented his commissions and assets under management at his member firm in order to obtain employment with another member firm.

Eastman's suspension began April 19, 2004, and will conclude at the close of business April 19, 2006. **(NASD Case #C3A030012)**

Scott Joseph English (CRD #4611147, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before English reassociates with any NASD member following the suspension or

before requesting relief from any statutory disqualification. Without admitting or denying the allegations, English consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

English's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. **(NASD Case #C3A040021)**

Mark Stanley Feuerberg (CRD #1156136, Registered Principal, Briarwood, 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 90 days. The fine must be paid before Feuerberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Feuerberg consented to the described sanctions and to the entry of findings that he sold a fixed term life insurance policy to a public customer and forged the customer's signature on a document without the customer's knowledge, authorization, or consent.

Feuerberg's suspension began May 17, 2004, and will conclude August 14, 2004. **(NASD Case #C10040040)**

Joseph M. Francis (CRD #4562148, Registered Representative, Charleston, Maine) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Francis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Francis consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Francis' suspension began June 7, 2004, and will conclude at the close of business July 21, 2004. **(NASD Case #C11040018)**

Alan Frankel (CRD #2735039, Registered Representative, Merrick, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$135,417.77 in partial restitution to public customers. Without admitting or denying the allegations, Frankel consented to the described sanctions and to the entry of findings that he exercised control over the accounts of public customers and effected numerous and excessive securities transactions in their accounts using unsuitable levels of margin in a manner that was inconsistent with the customers' investment objectives.

Frankel's suspension began June 7, 2004, and will conclude at the close of business June 6, 2005. **(NASD Case #C9B040030)**

Robert Emmett Gill (CRD #2715248, Registered Principal, Eatontown, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gill consented to the described sanctions and to the entry of findings that he purchased \$721 worth of shares of stock without customer approval while employed at a member firm.

Gill's suspension began May 3, 2004, and concluded at the close of business May 14, 2004. **(NASD Case #C9B040028)**

Gary Joseph Gordon (CRD #1710288, Registered Principal, Deerfield Beach, Florida) 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 Gordon reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gordon consented to the described sanctions and to the entry of findings that he failed to supervise adequately a registered representative in the sale of unregistered stock to the investing public. The findings also stated that Gordon failed to conduct adequately due diligence of the stock issuer that would have detected there were no registration statements filed or in effect, and that the stock issuer's auditors had placed a "going concern" statement in the issuer's public filings. NASD also found that Gordon failed to detect red flags, including a dramatic increase in the sales volume of unregistered shares and to contact the customers to verify the trading activity in their accounts.

Gordon's suspension began May 3, 2004, and will conclude at the close of business May 2, 2005. **(NASD Case #CAF040027)**

Dmitriy Gulkarov (CRD #4183984, Registered Representative, Corona, 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, Gulkarov consented to the described sanction and to the entry of findings that he posed as an impostor for individuals and took licensing examinations on their behalf. **(NASD Case #C10040029)**

Dawn Cherie Halligan (CRD #4430041, Registered Representative, Ankeny, Iowa) was barred from association with any NASD member in any capacity. The sanction was based on findings that Halligan wrote checks on, and made withdrawals from, the business account of a registered representative for her personal use and benefit without the customer's authorization, knowledge, or consent. The findings also stated that Halligan embezzled \$27,420.94 from the business account at the firm branch office where she was employed. **(NASD Case #C04030062)**

Bill Powell Hanson (CRD #2819083, Registered Representative, Beaverton, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hanson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hanson consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm.

Hanson's suspension began May 17, 2004, and will conclude at the close of business August 16, 2004. **(NASD Case #C3B040010)**

Antonio Harris (CRD #4524894, Registered Representative, Hiram, Georgia) 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, Harris consented to the described sanction and to the entry of findings that he falsified and submitted a life and disability insurance application for a fictitious customer to his employer with a copy of a falsified check purportedly written by the customer. **(NASD Case #C07040043)**

Howard Eugene Hustedt (CRD #253952, Registered Representative, Ideboct, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hustedt consented to the described sanction and to the entry of findings that he engaged in private securities transactions without notifying his member firm of the transactions, his proposed role therein, and without receiving prior written approval for these transactions from his member firm. The findings also stated that Hustedt participated in transactions that required registration as a general securities representative (Series 7) without qualifying and/or registering with NASD in that capacity. **(NASD Case #C04040018)**

Diane M. Janiec (CRD #2383100, Registered Representative, Rutherford, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. The sanction was based on findings that Janiec received \$1,751 from a public customer to pay for premiums on the customer's insurance policies, failed to deposit the funds with her firm and, instead, converted the funds for her own use and benefit without the customer's knowledge or consent. **(NASD Case #C9B040034)**

William Jacob Jaramillo (CRD #3157263, Registered Representative, Lyons, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jaramillo consented to the described sanction and to the entry of findings that he prepared

and submitted a customer information form, an application for life insurance or policy change, a mutual fund account application, an application for universal life policy, and money order applications bearing the falsified signatures of the customers without the knowledge or consent of the customers. The findings also stated that Jaramillo prepared and submitted documents bearing the falsified signatures of the customers without their knowledge or consent that included the acknowledgements of life insurance policies delivery. Furthermore, NASD found that the falsified documents represented that customers had received variable life insurance policies delivered by mail, which the customers had not requested or received and about which they had no knowledge. In addition, the findings stated that Jaramillo failed to respond to NASD written requests for information. (NASD Case #C8A040030)

Sheryl Anne Kaye (CRD #2267431, Registered Representative, Short Hills, New Jersey) 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 45 days. The fine must be paid before Kaye reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaye consented to the described sanctions and to the entry of findings that she created false documents when she photocopied customers' signatures from expired insurance replacement forms and affixed them to current insurance replacement forms without the customers' permission or knowledge.

Kaye's suspension began June 21, 2004, and will conclude at the close of business August 4, 2004. (NASD Case #C9B040026)

Gerald Nelson Kieft, II (CRD #2315539, Registered Principal, Carlisle, 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 30 days. The fine must be paid before Kieft reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kieft consented to the described sanctions and to the entry of findings that he prepared a Web site for an investment advisory firm he formed for the purpose of distributing research reports to investors and brokers, and it contained numerous references to his member firm and its brokerage services that presented exaggerated and unbalanced statements. NASD also found that Kieft prepared a research report on a company, which was released on the Web site, that was unbalanced and misleading because it failed to mention the company's auditors' reservations about the company's ability to survive as a going concern. In addition, NASD found that Kieft purchased and sold shares of securities in the discretionary accounts of public customers during a period

beginning 30 days before and ending five days after the publication of a research report on the company.

Kieft's suspension began May 17, 2004, and concluded at the close of business June 15, 2004. (NASD Case #CAF040029)

Gary David Kneller (CRD #1836439, Registered Principal, Marietta, Georgia) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kneller consented to the described sanction and to the entry of findings that he recommended an investment purported to be a secured loan with a guaranteed fixed rate of return to a public customer. The findings stated that, based on the recommendation, the customer caused \$500,000 to be wired to an account under the control of Kneller and his business partner. NASD found that the customer's funds were transferred out of the account and the customer's investment principal had been lost although she received payments totaling \$96,000 from the investment. Furthermore, NASD determined that Kneller entered into a settlement agreement in connection with legal action by the customer and failed to disclose the legal action and the settlement to his member firm. In addition, NASD found that Kneller failed to respond to NASD requests for documents and a written statement. (NASD Case #C07040024)

Jason Gerald Knight (CRD #2613450, Registered Representative, Holly, 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 30 days. The fine must be paid before Knight reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Knight consented to the described sanctions and to the entry of findings that he effected discretionary transactions in the securities account of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firms.

Knight's suspension began June 7, 2004, and will conclude at the close of business July 6, 2004. (NASD Case #C8A040023)

Kevin Michael Krisko (CRD #4142981, Registered Representative, Holland, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that he suggested that an individual forge the signature of a public customer on documents to purchase an annuity for the customer. The findings also stated that Krisko submitted the forged documents to purchase a \$750,000 annuity for the customer, without the customer's knowledge or consent, in order to earn more points toward the payment of bonuses for himself and his "team." (NASD Case #C8B030029)

Barbara J. Lowe (CRD #4603000, Registered Representative, Sugarland, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Lowe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lowe consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on her Form U4.

Lowe's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C06040011)

Richard Lewis Martin (CRD #2642814, Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martin consented to the described sanction and to the entry of findings that he improperly utilized the internal recordkeeping and disbursement system of his employer to request, receive, and deposit to his own bank account checks totaling \$55,400. The findings also stated that Martin accomplished this by representing to his firm that the amounts of surrender charges previously retained by the firm were excessive and by requesting that the purported excess surrender charges be remitted to him. (NASD Case #C3A040022)

Michael Mayweather (CRD #4605403, Registered Representative, Ballwin, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mayweather consented to the described sanction and to the entry of findings that he obtained a credit card from a bank by using a public customer's personal information without the knowledge, consent, or authorization of the customer. The findings also stated that Mayweather used the credit card to purchase merchandise and obtain cash advancements totaling \$4,667.15. (NASD Case #C04040017)

John Stevenson Miller (CRD #2139980, Registered Principal, New Rochelle, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Miller reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Miller consented to the described sanction and to the entry of findings that he improperly effected numerous securities transactions in his member firm's error account.

Miller's suspension began May 17, 2004, and will conclude at the close of business May 16, 2005. (NASD Case #C9B040031)

Paul Edward Mize (CRD #2206359, Registered Representative, Sedona, Arizona) was barred from association with any NASD member in any capacity and ordered to pay \$40,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Mize converted the funds of a public customer for his own use and benefit and failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07030072)

Michael Arthur Niebuhr (CRD #724449, Registered Principal, San Diego, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Niebuhr participated with others to evade the registration requirements of the Securities Act by selling unregistered and improperly registered common stock to investors. The findings also stated that Niebuhr purchased stock while participating in its distribution in violation of Regulation M. NASD also found that Niebuhr participated in a scheme to charge excessive and fraudulent markups of stock. (NASD Case #CAF020012)

Michael Sean O'Connell (CRD #2320720, Registered Representative, Basking Ridge, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, O'Connell consented to the described sanctions and to the entry of findings that he recommended, offered, and caused to be purchased residual income trust (REIT) shares in the individual retirement account (IRA) of a public customer without having reasonable grounds for believing that the investments were suitable for the customer. The findings also stated that O'Connell disregarded his customer's expressly stated investment objective to minimize risk and maintain liquidity in his IRA.

O'Connell's suspension began June 7, 2004, and will conclude at the close of business July 6, 2004. (NASD Case #CAF040032)

James Christopher Pangione (CRD #2315739, Registered Representative, Sterling, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 20 days. In light of the financial status of Pangione, no monetary sanction has been imposed. Without admitting or denying the allegations, Pangione consented to the described sanctions and to the entry of findings that he employed advertising, in the form of an internet Web site, to promote his investment business that failed to provide a sound basis for evaluating services being offered and included, among other things, exaggerated and unwarranted statements.

Pangione's suspension began May 17, 2004, and will conclude at the close of business June 5, 2004. (NASD Case #C11040012)

Ronald B. Pekarchik (CRD #1362535, Registered Principal, Farmingdale, 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, Pekarchik consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C9A040009)

Richard Lee Petersen (CRD #841120, Registered Principal, Kennewick, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Petersen consented to the described sanction and to the entry of findings that he provided public customers with account statements for their accounts with his member firms in which he overstated the value of the securities in their accounts. (NASD Case #C3B040011)

Timothy Angelo Rassias (CRD #2106648, Registered Representative, Holden, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 20 days. In light of the financial status of Rassias, no monetary sanction has been imposed. Without admitting or denying the allegations, Rassias consented to the described sanctions and to the entry of findings that he employed advertising, in the form of an internet Web site, to promote his investment business that failed to provide a sound basis for evaluating services being offered and included, among other things, exaggerated and unwarranted statements.

Rassias's suspension began May 17, 2004, and concluded June 5, 2004. (NASD Case #C11040013)

Louis Enrigve Rivadeneira (CRD #2826609, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rivadeneira converted to his own use at least \$56,000 belonging to public customers. The findings also stated that Rivadeneira forged the signature of a public customer on an IRA distribution form and a flexible payment annuity form. NASD also found that Rivadeneira failed to respond to NASD requests for information and documents and to appear for an on-the-record interview. (NASD Case #C10030107)

David Edward Robert, Sr. (CRD #2608638, Registered Representative, Holland Patent, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,465, including disgorgement of \$465 of commissions received, and suspended from association with any NASD

member in any capacity for 10 business days. The fine must be paid before Robert reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Robert consented to the described sanctions and to the entry of findings that he made recommendations to a public customer to surrender her deferred variable annuity and purchase Class B shares of various funds without having reasonable grounds for believing that the recommendations were suitable based upon the customer's investment objective, financial situation, and needs.

Robert's suspension began June 7, 2004, and will conclude at the close of business June 18, 2004. (NASD Case #C11040016)

Theodore Gerald Rothman (CRD #405741, Registered Principal, Philadelphia, Pennsylvania) and **David Lorin Rothman (CRD #1408470, Registered Principal, Richboro, Pennsylvania)** submitted a Notice of Acceptance, Waiver, and Consent in which T.G. Rothman was fined \$45,000 and suspended from association with any NASD member in any capacity for 30 days. D.L. Rothman 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, T.G. Rothman and D.L. Rothman consented to the described sanctions and to the entry of findings that they recommended and effected Class S shares of a mutual fund in the accounts of public customers without reasonable grounds to believe their recommendations were suitable because, in all instances, one or more of the other fund share classes was less costly and/or otherwise more advantageous to investors.

T.G. Rothman's suspension will begin June 21, 2004, and will conclude at the close of business July 20, 2004. D.L. Rothman's suspension began June 7, 2004, and will conclude at the close of business June 18, 2004. (NASD Case #C9A040012)

Carl Pestano Salazar (CRD #4445191, Registered Representative, Antelope, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salazar consented to the described sanction and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings also stated that Salazar failed to respond to NASD requests for information. (NASD Case #C01030029)

David Duane Samuelson (CRD #1288815, Registered Representative, Virginia, Minnesota) 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, Samuelson consented to the described sanction and to the entry of findings that he failed to disclose material information on his Form U4 and failed to

respond to NASD requests for information. (NASD Case #C04040019)

Robert Michael Seahorn, Sr. (CRD #1522325, Registered Representative, Collierville, Tennessee) 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, Seahorn consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. (NASD Case #C05040023)

Scott C. Stevens (CRD #4585274, Registered Representative, Wheaton, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stevens consented to the described sanction and to the entry of findings that he converted \$1,531 from his member firm's banking affiliate by preparing and submitting documents, including four general ledger debits and one cashier's check request, to obtain funds from certain of the affiliate's accounts without the knowledge or authority of the affiliate and he used the funds for his own personal benefit. The findings also stated that Stevens failed to respond to NASD request for information. (NASD Case #C8A040021)

Kentdolphus Lamont Talley (CRD #4658198, Registered Representative, Fort Worth, Texas) 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 Talley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Talley consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Talley's suspension began June 7, 2004, and will conclude at the close of business June 6, 2005. (NASD Case #C06040013)

Joseph Temkin (CRD #2231397, Registered Representative, Hyde Park, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Temkin consented to the described sanction and to the entry of findings that he converted \$430,000 of a public customer's fund for his own use and benefit. (NASD Case #C11040014)

Jason Kevin Walker (CRD #4644615, Associated Person, Covington, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any

capacity for 30 days. The fine must be paid before Walker reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Walker's suspension began June 7, 2004, and will conclude at the close of business July 6, 2004. (NASD Case #C05040020)

Samuel Kouchin Wang (CRD #3201292, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Wang reassociates with a member firm or before requesting 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 exercised discretionary transactions in the account of a public customer without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Wang sent electronic mail messages from public customers from a computer located in his personal residence without first submitting the correspondence for approval by a principal of the firm.

Wang's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C05040026)

Robert Wayne Wilson (CRD #2814879, Registered Representative, Thomson, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Wilson altered a firm document concerning the collateral assignment of an annuity and submitted the falsified document to a bank as part of a personal loan application.

Wilson's suspension began May 17, 2004, and will conclude at the close of business November 16, 2004. (NASD Case #C07040039)

Matthew Donald Wittschiebe (CRD #4222286, Registered Representative, Kent, Washington) 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 Wittschiebe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wittschiebe consented to the described sanctions and to the entry of findings that he affixed, or caused to be affixed, the signature

of a public customer to an Acknowledgement and Authorizations form without the customer's consent, and submitted the form to an insurance company in connection with the purchase of a life insurance policy.

Wittschiebe's suspension began June 7, 2004, and will conclude at the close of business August 5, 2004. (NASD Case #C3B040013)

Sally Ann Yanchus (CRD #2011984, Registered Representative, Woodstock, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$15,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Yanchus consented to the described sanctions and to the entry of findings that she wrote a research report on a company with a sell/sell short recommendation on the company's common stock that was distributed to customers of her member firm and other members of the public that contained substantive errors and statements that were exaggerated, unwarranted, or misleading. The findings also stated that Yanchus wrote a "morning note" about the company that repeated errors or misleading information even though the errors in the report had been brought to her attention. NASD also found that Yanchus failed to disclose in the "morning note" that her member firm made a market in the company's securities at the time the report was published.

Yanchus' suspension began May 3, 2004, and concluded May 16, 2004. (NASD Case #CAF040028)

Robert Terry Young (CRD #2738223, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Young consented to the described sanction and to the entry of findings that he requested that his member firm's clearing firm issue checks totaling \$418,826.37 from the account of a public customer without the authority of the customer or her representatives, and deposited the checks into the bank account of a company Young established for his personal use or for some purpose other than the benefit of the customer without permission or authority of the customer or her representatives. The findings also stated that Young completed and sent falsified financial statements to the executrix of a customer's estate and her attorney. NASD also found that Young failed to respond to NASD requests for information. (NASD Case #C8A040024)

Robert Young (CRD #2702774, Registered Representative, Houston, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Young used his discretion to effect transactions in the account of a public customer in disregard of his firm's denial of

Young's request that the firm accept the customer's account as discretionary. The findings also stated that Young effected transactions in the account of a public customer without his member firm's written acceptance of the account as discretionary. NASD also found that Young failed to respond to NASD requests for information. (NASD Case #C05030059)

Denis Gilmour Yuen (CRD #2891536, Registered Representative, East Moriches, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Yuen consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm.

Yuen's suspension began May 17, 2004, and concluded at the close of business May 31, 2004. (NASD Case #C10040031)

William Jay Zuehl (CRD #2393860, Registered Representative, Excelsior, Minnesota) 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, Zuehl consented to the described sanction and to the entry of findings that he participated in a process to circumvent Regulation 60, a New York State Insurance regulation that requires a financial adviser involved in an annuity replacement transaction to, among other things, meet with a customer on at least two separate occasions. The findings stated that Zuehl placed dates on Regulation 60 documents that gave the false impression that two meetings had occurred when, in fact, only one meeting had occurred. (NASD Case #C9B040037)

Individual Fined

Loretta Emanuele (CRD #1147761, Registered Principal, Kendall Park, New Jersey) was fined \$10,000 and ordered to requalify as a financial and operations principal prior to reassociating with a member firm. The fine must be paid before Emanuele reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Emanuele consented to the described sanctions and to the entry of findings that she prepared and filed inaccurate FOCUS reports and prepared inaccurate books and records including general ledgers on behalf of the firm. The findings also stated that Emanuele caused her member firm to conduct a securities business when the firm's net capital fell below the minimum required under the net capital rule. (NASD Case #C10040028)

Complaints Filed

The following complaints were issued by NASD. 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.

Thomas Anthony Burgo (CRD #3131830, Registered Representative, Depew, New York) was named as a respondent in an NASD complaint alleging that he received \$1,000 from a public customer to invest on behalf of her children and, instead, deposited the funds into his personal bank account rather than making the investments, thereby converting the funds for his own use and benefit without the authorization or consent of the customer. (NASD Case #C9B040035)

James Francis Flynn, Jr. (CRD #1776929, Registered Supervisor, Morristown, New Jersey) was named as a respondent in an NASD complaint alleging that he solicited, recommended, and effected mutual fund transactions totaling over \$1.1 million in Class B mutual funds in the account of a public customer without reasonable grounds for believing that the transactions were suitable for the customer's account given the amount of Class B shares purchased, the nature of the recommended transactions, and the customer's financial situation, investment objectives, circumstances, and needs. The complaint further alleges that Flynn's recommendations were unsuitable for the customer in that the customer would have received breakpoints, paid lower 12b-1 fees, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased. In addition, the complaint alleges that the customer would have avoided front-end sales charges if Flynn utilized a letter of intent or rights of accumulation, and invested the \$1.1 million in one fund family. The complaint also alleges that Flynn received approximately \$13,953 in commissions due to the unsuitable recommendations. (NASD Case #C9B040036)

Melissa Mae Humphreys (CRD #4474941, Registered Representative, Tampa, Florida) was named as a respondent in an NASD complaint alleging that she caused the issuance of new debit/ATM cards for bank customers without their knowledge or authorization, obtained temporary debit/ATM cards for the customers' accounts without their knowledge or authorization, and used the cards to make unauthorized cash withdrawals and purchases totaling \$9,096.21. The complaint also alleges that Humphreys failed to respond to NASD requests for information. (NASD Case #C07040036)

Gregory Adam Jurkiewicz (CRD #2582435, Registered Representative, Dunedin, Florida) was named as a respondent in an NASD case alleging that he made unsuitable recommendations to purchase Class B shares of mutual funds without reasonable grounds for believing that the recommendations were suitable for the customers. The complaint also alleges that Jurkiewicz omitted to disclose material information in his recommendations to public customers to purchase mutual funds. In addition, the complaint alleges that Jurkiewicz failed to respond to NASD requests for information. (NASD Case #C3A040020)

John David Kaweske (CRD #2309807, Registered Principal, Miami, Florida) was named as a respondent in an NASD complaint alleging that he failed to return investor funds, securities, or the proceeds from the sale of the securities after an offering closed without meeting the contingency. The complaint also alleges that Kaweske failed to establish an escrow account on behalf of a stock issuer as described in the subscription agreement. The complaint further alleges that Kaweske knowingly or recklessly failed to disclose and omitted material information in the sale of preferred stock. In addition, the complaint alleges that Kaweske willfully failed to disclose material information on his Form U4. (NASD Case #C07040042)

Ibrahim Ethem Kurtulus (CRD #2287372, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he opened accounts at his member firm for public customers without their prior knowledge, authorization, or consent. The complaint also alleges that Kurtulus effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10040030)

Ross McVey, Jr. (CRD #1418538, Registered Principal, Oshkosh, Wisconsin) was named as a respondent in an NASD complaint alleging that McVey prepared and submitted more than 50 documents, upon which the signatures of customers were affixed without their knowledge or consent in order for McVey to obtain payments for financial plans that were not provided and to increase the fees charged to customers' accounts totaling in excess of \$120,000, without the customers' knowledge and consent. The complaint also alleges that McVey obtained funds totaling in excess of \$120,000 by preparing and submitting documents bearing the signatures of public customers of his member firm, affixed without their knowledge or consent, to authorize payments from their accounts for financial plans that were not provided and to increase the fees charged to customers' accounts that were not authorized. The complaint further stated that the funds were paid to and used by McVey for his personal benefit and not for the benefit of the customers. In addition, the complaint alleges that McVey failed to respond to NASD's request to appear to give on-the-record testimony. (NASD Case #C8A040020)

Max J. Silberman (CRD #423803, Registered Representative, Orange Village, Ohio) was named as a respondent in an NASD complaint alleging that Silberman exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The complaint also alleges that Silberman sold, or caused to be sold, option call contracts without the knowledge or consent of the executor of a public customer's estate and in the absence of written or oral authorization to Silberman to exercise discretion in said account. **(NASD Case #C8A040028)**

Brian Thomas Slich (CRD #4025395, Registered Representative, Metairie, Louisiana) was named as a respondent in an NASD complaint alleging that he processed internal checking/savings account debit advices and withdrew \$10,514.19 from the accounts of public customers, thereby converting the funds to his own use and benefit without the customers' knowledge or consent. The complaint also alleges that Slich failed to respond to NASD requests for information. **(NASD Case #C05040025)**

Steven Lee Smith (CRD #2224721, Registered Representative, Alpharetta, Georgia) was named as a respondent in an NASD complaint alleging that he completed an application for the purchase of a variable annuity in an amount over \$650,000 in the IRA of a public customer by forging the signature of the customer, without the knowledge or authorization of the customer. The complaint also alleges that Smith failed to respond to an NASD request for information. **(NASD Case #C07040041)**

Danny Ray Talbott (CRD #1336628, Registered Principal, Hinsdale, Illinois) was named as a respondent in an NASD complaint alleging that Talbott purchased or caused the purchase of \$45,000 worth of mutual fund shares in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Talbott to exercise discretion in said accounts. **(NASD Case #C8A040035)**

Joseph M. Williams, Sr. (CRD #467974, Registered Representative, West Deal, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected the purchases and sales of securities to the account of a public customer without reasonable grounds to believe the purchases he recommended and effected were suitable based on the customer's financial needs and investment objectives, the risk characteristics of the securities, the dollar size of the purchases, the fact that he knew the purchases would be made on margin, losses the customer had sustained on prior purchases, and the existing margin debit in the account. The complaint also alleges that Williams did not have any reasonable grounds to believe that any use of margin to purchase stocks having the risk characteristics of the stocks he recommended was suitable for the customer. **(NASD Case #C9B040027)**

Firm Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

CGI Capital, Inc.
Mundelein, Illinois
(May 14, 2004)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership in 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 8221. 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.

BIO-IB, Inc.
New York, New York
(May 12, 2004)

Blake Barnett Investments, Inc.
Houston, Texas
(May 12, 2004)

DAV/Wetherly Financial, L.P.
Los Angeles, California
(May 12, 2004)

Harvest Capital Investments LLC
Vienna, Virginia
(April 19, 2004)

IICC – Tradeco, Inc.
Houston, Texas
(April 19, 2004)

International Capital Markets Group, Inc.
Los Angeles, California
(May 12, 2004)

May, Davis Group, Inc.
New York, New York
(April 19, 2004 – April 29, 2004)

Morgan Schiff & Co., Inc.
New York, New York
(May 12, 2004)

Perez & Associates, LLC
New York, New York
(April 19, 2004)

Supertrade Securities, Inc.
Houston, Texas
(April 19, 2004 – April 30, 2004)

Touchtrade.com, Inc.
Salt Lake City, Utah
(April 19, 2004)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the bar became effective is listed after the entry.)

Hall, Frank D.
Houston, Texas
(April 16, 2004)

Williams, Trenea Y.
Bakersfield, California
(April 14, 2004)

Lusk, Ron Alan
Bend, Oregon
(May 6, 2004)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210.

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

Adler, Wendy Lynn
North Hills, New York
(April 27, 2004)

Hall, Nutashia L.
Kennesaw, Georgia
(April 20, 2004)

Breier, Mitchell G.
Dallas, Texas
(April 27, 2004)

Hershberg, Elliot M.
Harrison, New York
(April 16, 2004)

Ferrigan, Peter B.
Amityville, New York
(May 4, 2004)

Ippolito, Anthony Edward
Stockton, California
(April 13, 2004)

Gupta, Arvind K.
Flushing, New York
(April 22, 2004)

Nortman, Jaime Alyson
New York, New York
(April 27, 2004)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement

Brandon, Christopher
Ormond Beach, Florida
(May 3, 2004)

Winick, Martin
Henderson, Nevada
(May 17, 2004)

Hemans, Wayne S.
Delray Beach, Florida
(April 21, 2004)

Breier, Mitchell G.
Dallas, Texas
(April 27, 2004)

Porter, Jr., Gerald B.
San Francisco, California
(April 30, 2004)

Individual Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Rooney, John R.
Jupiter, Florida
(May 14, 2004)

NASD Fines and Suspends Phua Young, Former Merrill Lynch Research Analyst;
Young Issued Research in Violation of NASD Rules, Selectively Disclosed Material Nonpublic Information, Gave Prohibited Gift to Tyco's Former CEO

NASD has fined Phua Young, a former managing director at Merrill Lynch, \$225,000 and suspended him from the industry for one year for a series of NASD rule violations relating to his activities as a research analyst.

The sanctions imposed stem from a complaint filed by NASD against Young in May 2003, focusing on his coverage of Tyco International Ltd. Today's settlement also resolves charges contained in an amended complaint filed by NASD in March 2004 relating to Young's coverage of Honeywell International Inc.

Young was the senior Merrill Lynch analyst providing research coverage of Tyco and Honeywell from 1999 through April 2002, when Merrill discharged him. During that time, he issued research on both companies that violated NASD rules, improperly shared research reports, and selectively disclosed material nonpublic information.

"The conduct of this analyst amounted to a betrayal of the objectivity and honesty in research that investors are entitled to," said Barry R. Goldsmith, NASD Executive Vice President for Enforcement. "We will continue to hold analysts to high professional standards and appropriately sanction them for misleading and skewed research."

Tyco

NASD found that Young issued a number of favorable Tyco research reports that violated NASD rules. In January 2002, Tyco announced that it would retire \$11 billion in debt and spin off its CIT Group, a large commercial lender that Tyco had purchased for \$10 billion. The sale of CIT was important for Tyco because the proceeds were to be used to repay some of Tyco's debt.

Young issued a series of favorable Tyco research reports assuming that Tyco would receive \$8 billion for its CIT unit and assigning its stock a target price of \$65.00 when it was trading in the \$30.00 range. None of these reports disclosed Young's privately held views that the CIT unit was not worth "anything near \$8B," that Tyco's fundamentals were weak because of its debt, and that Tyco's stock was overvalued. As early as February 26, 2002, Young noted his concern privately that CIT would be sold at a huge loss, writing in an e-mail:

"Dennis [Kozlowski] sounds down. He does not sound like he can sell CIT without a huge loss."

Young also privately expressed his negative view of Tyco's debt level, and that the stock would not reach its target price. For example, in another e-mail, Young stated:

"I am waiting for [a share price of] \$10 after Tyco [sic] announces the inability to sell CIT [sic] for anything near \$8B. Liquidity crunch, more distractions, the debt bomb starts to TICK, TICK, TICK . . ."

Young maintained a close relationship with Tyco, as evidenced by his own emails. For example, Young wrote to a senior employee in Tyco's Investor Relations Department, "I am indirectly paid by Tyco." The nature of Young's relationship with Tyco is also evident from favors he sought and/or received from the company. For example, at Young's request, Tyco retained a private investigator to prepare a background report on one of Young's personal friends and he subsequently received a comprehensive background report. For his part, Young improperly gave a gift — a case of wine, valued at over \$4,500 — to Dennis Kozlowski, Tyco's then-CEO. NASD's gifts and gratuities rules prohibit a registered person from giving gifts valued at over \$100 to any person where such payment is in relation to the business of the employer of the recipient.

Honeywell

On June 19, 2000, Honeywell announced lower than expected earnings. After this announcement, Young maintained 1-1- buy rating on Honeywell, the highest rating Merrill Lynch offered, and issued five favorable research reports on the company in June and July 2000. While Young continued to issue research recommending that investors buy the stock, NASD found that his research failed to reflect the negative views he expressed privately.

For example, in e-mails, Young characterized Honeywell as a "totally unmitigated disaster." Young derisively called Honeywell a "hondog" (sic) and described the shortfall as "the latest fiasco." Young further expressed his negative views, beliefs and opinion about the company in other emails, stating:

"[a] tough week today! No controls, no cushion, no credibility = no P/E. What a disaster!"

"[the former Honeywell CEO] sold us a lemon. It would look like the cupboards are bare and that there is a lack of controls."

Advance Notice of Research and Ratings to Tyco and Institutional Investors; Dissemination of Material Nonpublic Information

NASD also found that Young, on a number of occasions, gave Tyco advance notice of research reports and ratings before releasing them to the public, solicited Tyco to make changes in the reports and generally followed Tyco's suggested edits. For example, in one e-mail, Young forwarded a draft report and proposed rating to Tyco's chief financial officer, stating:

"PLEASE REVIEW ASAP. I WILL NOT SEND OUT UNTIL I HEAR FROM YOU FIRST!

LOYAL TYCO EMPLOYEE!"

Young agreed to the settlement without admitting or denying the allegations or findings.

NASD Disciplines Three Firms, Three Brokers for Variable Annuity Abuses; Total Fines Exceed \$500,000, with Two Brokers Permanently Barred

NASD fined three securities firms and one broker a total of \$503,000 for violations involving variable annuity transactions as part of its ongoing efforts to curb abuses in the sale of variable products. In addition, two brokers were barred from the industry.

NASD censured and fined Nationwide Investment Services Corporation of Columbus, OH and its affiliate, Nationwide Securities, Inc. of Dublin, OH a total of \$175,000 for having inadequate procedures and systems governing its sale of variable annuities, and for distributing advertising and sales literature that failed to make required disclosures regarding variable annuity investments. In addition, NASD censured and fined American Express Financial Advisors, Inc. \$300,000 for inadequate record keeping during a four-year period, which was discovered as a result of an investigation into unauthorized withdrawals from a customer's variable annuity account.

In the three separate enforcement actions against individual brokers, NASD announced that it barred one for converting funds from a variable annuity, barred another for forgery and misrepresentation in connection with variable annuity sales, and fined a third broker \$28,000 and suspended him for six months for unsuitable sales of deferred variables annuities.

"Variable annuities are complex products that are difficult for many investors to fully understand," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "The vast majority of our enforcement actions in this

area involve suitability, disclosure and supervision issues, which is why we are proposing tougher rules specifically governing variable annuity sales." (See www.nasdr.com/news/pr2004/release_04_027.html.)

Nationwide Investment Services Corporation and Nationwide Securities, Inc. distributed variable products advertising that contained deficiencies previously identified by NASD's Advertising Regulation Department. Among those deficiencies were failures to: prominently disclose the charges and fees associated with the product; explain that dollar cost averaging does not insure profit or protect against loss; clearly identify the product as a variable annuity and/or variable universal life insurance product, and provide a balanced presentation of the risks and benefits associated with investing in a variable annuity.

Nationwide Investment Services Corporation also failed to implement procedures to obtain customer information that is critical to evaluating the suitability of an investment in a variable annuity. In many instances, the firm failed to obtain information about tax bracket, prior investment experience, annual income, liquid net worth, risk tolerance, time horizon, investment objective, customer age or the details of the product being replaced by the variable annuity investment. The firm also failed to provide registered representatives with specific guidelines for evaluating the information obtained from a customer prior to making a recommendation to purchase a variable annuity.

American Express Financial Advisors, Inc. failed to preserve certain records in a non-rewriteable, non-erasable format as required by SEC rules. The records included copies of account statements, certain confirmations, and letters sent to customers confirming changes of address. These violations came to light as a result of NASD's investigation of the activities of a former registered representative of American Express who made unauthorized sales and cash withdrawals totaling \$124,900 from a customer's variable annuity and who then converted the funds. The representative avoided detection for almost two and one-half years because he had changed the customer's address on the records of American Express to the representative's own address.

NASD also took action against the following individuals in connection with variable annuity transactions:

- Daniel Karl Park, of Frisco, TX, formerly employed by Northwestern Mutual Investment Services, was barred from association with any NASD member in any capacity for signing the name of his wife to six different variable annuity withdrawal requests and then converting the funds without his wife's authorization.

- Debora A. Fruge, of Sulpher, LA, formerly employed by Banc One Securities Corporation, was barred for making misrepresentations to a customer regarding the balance of a variable annuity account, forging the customer's name to change of address forms, falsifying a confirmation relating to the variable annuity account, and failing to provide truthful information to the NASD. Fruge's course of misconduct began with a misunderstanding between Fruge and the customer regarding the nature of the annuity. The customer believed the annuity to be fixed; however, it was, in fact, a variable annuity. Rather than address the misunderstanding, Fruge misrepresented the balance and attempted to conceal her misrepresentations by creating a false confirmation and redirecting the customer's statements and confirmations for delivery to the branch office. Although the firm had procedures to ensure that change of address forms were not changed to post office boxes or branch office addresses, Fruge avoided detection by changing the address through the variable annuity company, rather than through her firm.
- Michael H. Tew, of Dothan, AL, formerly employed by A.G. Edwards & Sons, Inc., was suspended for six months and fined \$28,000 for the sale of three unsuitable variable annuities. The first unsuitable sale was to an elderly couple, both of whom were 76 years old at the time of the purchase. Tew knew that the customers were about to enter an assisted-living facility and had a need for liquidity. He also knew that the customers indicated income as their primary investment objective and wished to preserve the principal of their investment for their heir. Investment in the variable annuity accomplished none of these goals. The variable annuity did not allow the customers full access to their funds for seven years without incurring a surrender charge. The variable annuity purchase did not produce income, because Tew recommended investment in capital appreciation and growth sub accounts. In addition, the investment failed to preserve principal for their heir because the death benefit applied only if the customers died before the tenth contract year. Finally, Tew sold the customers a Retirement Income Guarantee Rider that was only available to contract owners 75 years old or younger. At age 76, the customers were ineligible for this rider. Because the variable annuity accomplished none of the investment goals identified by the customers, the customers could not financially benefit from the purchase, rendering the recommendation unsuitable. Tew also made unsuitable variable annuity recommendations in two other instances.

In settling these matters, the respondents neither admitted nor denied the allegations or findings.