

Disciplinary and Other NASD Actions

REPORTED FOR OCTOBER

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 September 2006.

Firm Expelled, Individual Sanctioned

The Truman Group Inc. (CRD #10764, Delray Beach, Florida) and Kenneth Jason Saluk (CRD #2470891, Registered Representative, Lighthouse Point, Florida) submitted an Offer of Settlement in which the firm was expelled from NASD membership and Saluk was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the firm and Saluk consented to the described sanctions and to the entry of findings that the firm, acting through Saluk, offered and sold shares of common stocks to public customers when there was no registration statement filed or in effect with the United States Securities and Exchange Commission (SEC) with respect to the common stocks, as Section 5 of the Securities Act of 1933 requires. The findings stated that the firm, acting through Saluk, made material misrepresentations or omitted material facts in the offer and sale of unregistered securities and failed to disclose the risks associated with investments in the stocks to customers. The findings also stated that the firm, acting through Saluk, failed to provide any prospectuses, offering memoranda, audited financial statements or other written materials regarding the securities because none existed. The findings also included that the firm, acting through Saluk, directed customers to send funds to the firm or another non-registered entity that they led customers to believe was the firm's clearing firm or bank, but the customers failed to receive any documentation that evidenced that stocks were purchased, and their funds were not returned. NASD found that the firm failed to register Saluk and others as General Securities Representatives while they were soliciting investors, and failed to register Saluk as a General Securities Principal while he was supervising the firm's operations and employees. NASD also found that Saluk failed to appear for an NASD on-the-record interview. (NASD Case #EFL2004000401)

Firms Fined, Individuals Sanctioned

Asensio Brokerage Services, Inc. nka Integral Securities, Inc. (CRD# 31742, New York, New York) and Manuel Peter Asensio (CRD #1148811, Registered Principal, Miami, Florida). The firm was fined \$20,000 and Asensio was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Asensio, issued research reports that failed to define the meaning of each rating and that failed to disclose the distribution of the firm's ratings. The findings stated that the firm, acting through Asensio, made statements in research reports that were unwarranted or misleading. The findings also stated that Asensio failed to fully respond to NASD requests for information during an on-the-record interview. **(NASD Case #CAF20030067)**

Tullett Liberty Brokerage, Inc. (CRD #19717, New York, New York), Richard Coppolino (CRD #2221016, Registered Principal, Holmdel, New Jersey) and Anthony S. Arcabascio (CRD #3248440, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000, \$20,000 of which was jointly and severally with Coppolino. Coppolino was suspended from association with any NASD member as a government securities principal for five business days, and Arcabascio was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the findings, the respondents consented to the described sanctions and to the entry of findings that the firm and Coppolino permitted Arcabascio, an associated person with the firm, to be engaged in trading activity involving government securities, which required registration, and the firm paid him transaction-based compensation even though he was not properly registered with NASD.

Coppolino's suspension in a government securities principal capacity was in effect from September 18, 2006 through September 22, 2006. Arcabascio's suspension in any capacity was in effect from September 18, 2006 through September 22, 2006. **(NASD Case E1020040416-01)**

Firms and Individuals Fined

Brighton Securities Corp. (CRD #3875, Rochester, New York) and George Thomas Conboy, (CRD #1283395, Registered Principal, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Conboy consented to the described sanctions and to the entry of findings that the firm, acting through Conboy, failed to ensure that it had a properly designated Limited Principal-Introducing Broker/Dealer Financial and Operations. The findings stated that the firm operated its business as an Introducing Firm and claimed an exemption under Section 15(c) of the Securities Exchange Act of 1934, and Rule 15c3-3(k)(2)(i) thereunder, which prohibits the receipt of customer funds and/or securities. The findings also stated that the firm, acting through Conboy, failed to comply with the claimed exemption in that it held public customers' funds in its general bank account. **(NASD Case #E9B2005001701)**

J.P.R. Capital Corp. (BD #38056, Syosset, New York) and Paul Jeffrey Umansky (CRD #1615489, Registered Principal, Rockville Centre, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Umansky consented to the described sanctions and to the entry of findings that the firm, acting through Umansky, conducted a securities business while under the minimum net capital requirement. **(NASD Case #ELI2004009201)**

MCL Financial Group, Inc. (CRD #41180, Littleton, Colorado) and Gary Lynn Flater (CRD #1049132, Registered Principal, Littleton, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the findings, the firm and Flater consented to the described sanctions and to the entry of findings that the firm, acting through Flater, utilized the instrumentalities of interstate commerce to engage in a securities business while failing to maintain the minimum required net capital. The findings stated that the firm, acting through Flater, failed to timely notify NASD regarding a 50 percent change in its ownership. **(NASD Case #E3A2005004701)**

Shelbourne Securities, LLC (CRD #132972, Westford, Massachusetts) and Paul Samuel Ehrenstein (CRD #76229, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the findings, the firm and Ehrenstein consented to the described sanctions and to the entry of findings that the firm, acting through Ehrenstein, failed to accurately and timely report, or properly report, reportable municipal securities transactions to the MSRB without the firm being identified as the executing broker-dealer. (NASD Case #E9B2005018601)

Shields & Company (CRD #11053, New York, New York) and John Patrick Hughes, Jr. (CRD #2486574, Registered Principal, Hasbrouck Heights, New Jersey) submitted an Offer of Settlement in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the firm and Hughes consented to the described sanctions and to the entry of findings that the firm, acting through Hughes, failed to have a properly registered municipal securities principal to supervise its municipal securities activities. The findings stated that Hughes was responsible for reviewing all municipal transactions the firm conducted, even though he was not registered as the municipal securities principal during that time. (NASD Case #E102004036901)

Springboard Securities, Inc. (CRD #104458, Newport Beach, California) and Jonathan McKee Hansen (CRD #2277769, Registered Principal, Dana Pointe, California) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Hansen consented to the described sanctions and to the entry of findings that the firm, acting under Hansen's direction and control, participated in a contingency offering and did not transmit investor funds it raised in the offering to an unaffiliated bank to hold in escrow for the investors until the contingency occurred, and instead, transmitted the funds directly to a business account for the issuer at a bank where Hansen acted as the sole control person and signatory on the account. The findings stated that the firm, acting under Hansen's direction and control, solicited investments in the contingency offering through the use of a private placement memorandum

(PPM) that represented that all subscription monies raised would be deposited into a separate bank account and not transferred to the issuer's trading account unless the contingency was met, but Hansen released the investor funds to the issuer's control before the contingency was satisfied, rendering the foregoing representations in the PPM false and misleading. (NASD Case #E0220050147-02)

Firms Fined

Banc of America Investment Services, Inc. (CRD #16361, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding accurate Trade Reporting and Compliance Engine (TRACE) reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 45 minutes of execution time. The findings stated that the firm reported transactions in TRACE-eligible securities to TRACE that it was not required to report. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning accurate TRACE reporting. (NASD Case #20050001870-01)

Banc of America Securities, LLC (CRD #26091, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$13,000 and ordered to certify in writing to NASD of its compliance with the filing requirements of MSRB Rule G-36, on a quarterly basis for one year, commencing with the third quarter of 2006. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it filed MSRB Forms G-36(OS) and (ARD) in an untimely manner, in that they were filed from one to five days late. The findings stated that the firm also failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the filing requirements of MSRB Rule G-36. (NASD Case #E072005014801)

BNP Paribas Investment Services, LLC (CRD# 44598, Miami, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it held customer checks without establishing a special reserve bank account for the exclusive benefit of customer funds, and failed to promptly deposit such checks with its clearing firm. The findings stated that the firm failed to prepare monthly reserve computations, which caused the firm to file inaccurate FOCUS reports. **(NASD Case #E072005007601)**

Cohen Bros. & Company, LLC (CRD #104002, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report transactions in TRACE-eligible securities. The findings stated that the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with its trade reporting obligations. **(NASD Case #E9A2005002501)**

Daiwa Securities America Inc. (CRD #1576, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted short interest reports to NASD that incorrectly reported that it held short positions in securities when it did not. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules related to short interest reporting under NASD Rule 3360. **(NASD Case #20041000237-01)**

Ehrendrantz King Nussbaum, Inc. (CRD #113525, Woodbury, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding the Order Audit Trail SystemSM (OATSSM). In light of the firm's financial status, the imposed fine was reduced to \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to

the entry of findings that it failed to submit required information to OATS and failed to preserve, for a period of not less than three years, the first two in an accessible place, data required to be reported to OATS. The findings 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 #20050000036-01)**

Garden State Securities, Inc. (CRD #10083, Wall, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, although it developed a written program of policies and procedures to comply with the customer identification program requirements of the Bank Secrecy Act, it failed to enforce those procedures. The findings stated that the firm had not conducted customer identification checks for the accounts it opened during a certain designated time period. **(NASD Case #E9B2005005701)**

Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, 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 ServiceSM (ACTSM) last sale reports in NASDAQ National Market (NNM) and SmallCap (SC) securities. The findings stated that the firm failed to report all required Reportable Order Events (ROEs) to OATS on behalf of corresponding member firms for which it had an obligation to report ROEs. **(NASD Case #20050000886-01)**

Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports to OATS regarding equity securities traded on the NASDAQ Stock Market that were not in the NASD-prescribed electronic form, and were repairable. The findings stated that OATS rejected the

reports, and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace many of the reports. The findings also stated that the firm submitted corrected reports to OATS without the required "Y" re-submit code. **(NASD Case #20050006507-01)**

Hibernia Investments L.L.C. nka Capital One Investments, LLC (CRD #17526, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it made payments to a bank for distribution to bank branch employees, who were not associated persons of the firm, as an incentive to employees who made referrals of potential customers to the firm during certain designated time periods. **(NASD Case #E052005004101)**

Intercoastal Financial Services Corp. (CRD #45557, Jupiter, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities that it was required to report through the NASDAQ Market Center, and failed to designate some of the reports as late. **(NASD Case #20050004902-01)**

J.P. Morgan Securities Inc. (CRD #18718, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities through ACT that it was required to report, and failed to designate some of them as late. The findings stated that the firm failed to report the correct execution time for last sale reports of transactions in NASDAQ National Market securities and NASDAQ SmallCap securities through the NASDAQ Market Center. The findings also stated that the firm transmitted last sale reports of transactions in NASDAQ securities through NASDAQ Market Center or Trade Reporting and Comparison Service (TRACS), and failed to designate them as reflecting a different price from

the current market, when the execution was based on a prior reference point in time and incorrectly designated these transactions as ".T." The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center or TRACS. NASD found that the firm made a report on the covered orders in national market system securities available that it received for execution from any person, and the report contained incorrect information as to the amount of total canceled shares. **(NASD Case #20050001137-01)**

Kious and Company, Inc. (CRD #7065, Albuquerque, New Mexico) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it acted as a self-clearing firm, although it had been operating as a fully disclosed firm and clearing through a broker-dealer under the exemptive provision of SEC Rule 15c3-3, and failed to seek a change in its exemptive status from NASD. The findings stated that the firm, in connection with bearer bond transactions, failed to send account statements reflecting the transactions to the public customers selling the bearer bonds. The findings also stated that the firm failed to report any of the bearer bond transactions to the MSRB transaction reporting system, and failed to report sampled inter-dealer trades. The findings also included that the firm, in connection with municipal securities transactions, failed to make and keep current certain records for all customers setting forth the information required by MSRB Rule G-8(a)(xi), and failed to maintain a record organized by municipal security showing all positions the firm carried for its account. NASD found that the firm's supervisory system and procedures were inadequate with respect to how it would review and supervise its business, supervision of municipal underwriting activities, record retention, customer information requirements, oversight of bearer bond purchases and municipal trade reporting. NASD also found that the firm failed to develop and implement a written anti-money laundering (AML) program reasonable designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. In addition, NASD determined that the firm did not enforce its customer identification program, did not provide AML training to its registered representatives

and did not conduct independent AML testing. Moreover, the firm did not administer its firm element continuing education program in accordance with its annual evaluation and written plan. **(NASD Case #E3A2005001401)**

Lehman Brothers Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted reports with respect to equity securities to OATS that were not in the NASD-prescribed electronic form, and were repairable. The findings stated that the OATS system rejected the reports, and rejection notices were made available to the firm on the OATS Web site, but the firm did not correct or replace numerous reports. **(NASD Case #20042000119-01)**

Merriman Curhan Ford & Co. (CRD #18296, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it issued research reports concerning companies for which the firm managed or co-managed public offerings, and failed to include the disclosures NASD required in the reports. The findings stated that the firm's supervisory procedures were not reasonably designed to achieve compliance with NASD rules concerning the allocation of required disclosures clearly and effectively, and did not include provisions for a retrospective review of previously issued reports to monitor the firm's compliance. **(NASD Case #E0120050054-01)**

Mony Securities Corporation (CRD #4386, 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 findings, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to act in a capacity requiring registration with NASD when they were not registered. The findings stated that the firm failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with NASD rules that require persons who function as representatives to be registered as such with NASD. **(NASD Case #E1020040703-01)**

Morgan Stanley DW Inc. (CRD #7556, Purchase, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$100,000 and required to provide a report describing the steps it has taken to enhance the operations of its Financial Advisor Heightened Supervision Review Committee to NASD. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its Financial Advisor Heightened Supervision Review Committee had failed to review financial advisors who met the criteria for heightened supervision. The findings stated that the committee did not review the firm's financial advisors until at least 100 days after meeting the review threshold. **(NASD Case #E9B20050107-02)**

Rafferty Capital Markets, LLC, (CRD #23682, Garden City, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report its TRACE-eligible inter-dealer transactions to TRACE. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to TRACE reporting. The findings also stated that the firm failed to preserve, for a period of not less than three years—with the first two in an accessible place—the memoranda of brokerage orders of a random sample of corporate bond transactions NASD reviewed. **(NASD Case #ELI20050038-01)**

Scottrade, Inc. (CRD #8206, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,500 and required to revise its written supervisory procedures regarding the One Percent Rule, anti-intimidation, OATS clock synchronization, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit a Combined Order/Route report for orders received and fully routed in the same day, and failed to submit a Route Report to OATS following customer modification of a previously electronically routed order. The findings stated that the firm incorrectly included a notation disclosing it was a market maker in the security on customer confirmations. The findings also stated that the firm failed to notify customers at least annually in writing that a written copy of the

quarterly report on the firm's routing of non-directed orders in covered securities would be furnished on request. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning the One Percent Rule, anti-intimidation, OATS clock synchronization, and books and records. (NASD Case #20050023240-01)

Shepherd Trading Limited (CRD #39591, Tortola, British Virgin Islands) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report municipal transactions to the MSRB. The findings stated that the firm effected transactions of debt securities that were reportable TRACE transactions, but failed to report them to TRACE. The findings also stated that the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules related to TRACE reporting. (NASD Case #E072005006501)

Sterne Agee Capital Markets, Inc. (CRD #23952, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report Reportable Order Events (ROEs) to OATS. The findings stated that the firm failed to enforce its written supervisory procedures dealing with OATS. (NASD Case #20050000227-01)

SunTrust Investment Services, Inc. (CRD #17499, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to retain emails in compliance with the three-year retention requirement of Section 17(a) of the Securities Exchange Act of 1934 and SEC rule 17a-4. (NASD Case #EAF0401290001)

Susquehanna Capital Group (CRD #29337, Bala Cynwyd, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$38,000. Without admitting or

denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities and eligible securities through ACT, and failed to designate some of them as late. The findings stated that the firm failed to report the correct prior reference point in time in last sale reports of transactions in NASDAQ securities designated as ".PRP" through ACT, and failed to report the correct execution time in late last sale reports of transactions in eligible securities through ACT. The findings also stated that the firm incorrectly designated last sale reports of transactions in eligible securities reported to NASDAQ Market Center within 90 seconds of execution as ".SLD". The findings also included that the firm failed to report the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in eligible securities to the NASDAQ Market Center; failed to report the time, or the correct time, of execution in late last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center; failed to report last sale reports of transactions in NASDAQ securities through the NASDAQ Market Center or TRACS; reported last sale reports of transactions in NASDAQ National Market or SmallCap securities through NASDAQ Market Center or TRACS that it was not required to report; and failed to submit a Route report for a portion of an order executed as agent to OATS. NASD found that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. NASD also found that the firm submitted reports with respect to equity securities traded on the NASDAQ Stock Market to OATS that were not in the NASD-prescribed electronic form, and were repairable. NASD also found that the OATS system rejected the reports, and notice of the rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace most of the reports. (NASD Case #20042000223-01)

US Trading LLC (CRD #37426, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in certain securities and, for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that

the firm could borrow the security on the customer's behalf for delivery by the settlement date. The findings stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade report input. (NASD Case #20050005327-01)

Vanguard Capital (CRD #22081, La Jolla, California) submitted an Offer of Settlement in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a system reasonably designed to supervise the activities of a registered representative and a branch office, and failed to maintain an appropriately registered principal in an Office of Supervisory Jurisdiction (OSJ) for a time period, in contravention of NASD Rule 3010(a)(4). (NASD Case #E052003017102)

Individuals Barred or Suspended

Humberto Daniel Advincula (CRD #4158129, Registered Representative, Midvale, Utah) was barred from association with any NASD member in any capacity. The sanction was based on findings that Advincula received \$20,000 from public customers for investment purposes, but failed to invest the customers' funds as intended or return the funds to the customers. The findings stated that Advincula engaged in outside business activities and failed to provide prompt written notice to his member firm. The findings also stated that Advincula failed to respond to NASD requests for information. (NASD Case #2005001178801)

Jeffrey Leonard Adell (CRD #2638760, Registered Representative, Fishers, Indiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Adell created false letters of instructions purportedly created and signed by a public customer directing his member firm to liquidate funds from the customer's securities account and to send the proceeds to a third-party address, which was actually Adell's home address. The findings stated that Adell falsely certified to his member firm that the forged signatures on the letters were authentic. The findings also stated that Adell converted \$29,460 from the customer's securities account through the use of the

forged letters of authorization and used the funds for his personal benefit without the customer's knowledge or consent. The findings also included that Adell failed to respond to NASD requests for information. (NASD Case #20050003867-01)

Bret Raab Bailey (CRD #5046471, Associated Person, Flossmoor, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Bailey reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Bailey consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

The suspension in any capacity is in effect from September 18, 2006 through September 17, 2007. (NASD Case #2006004274601)

Howard Brett Berger (CRD #2284367, Registered Principal, Roslyn Heights, New York) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Berger failed to appear for NASD on-the-record interviews.

Berger has appealed this action to the SEC. (NASD Case #C9B20040069)

Richard Craig Brief (CRD #1286384, Registered Representative, Warren, New Jersey) 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 findings, Brief consented to the described sanctions and to the entry of findings that he sold equity indexed annuities to a relative and received \$15,512.59 in commissions. The findings stated that Brief's member firm did not approve the transactions, and Brief failed to provide his firm with prompt written notice of the transactions and the compensation he received.

The suspension in any capacity was in effect from September 18, 2006 through September 29, 2006. (NASD Case #2005002268401)

Gregory Lloyd Burdett (CRD #4288895, Registered Principal, Naperville, 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 findings, Burdett consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. **(NASD Case #2006004208101)**

Wilfredo Arrabis Carbonquillo (CRD #4162709, Registered Representative, Westmont, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Carbonquillo reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Carbonquillo consented to the described sanctions and to the entry of findings that he affixed a public customer's signature on a bank signature card without the customer's knowledge or consent.

The suspension in any capacity will be in effect from September 18, 2006 through November 16, 2006. **(NASD Case #2005002032201)**

Christopher Sungho Choi (CRD #1944531, Registered Representative, North Wales, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Choi consented to the described sanction and to the entry of findings that he received \$192,000 from a public customer to purchase a certificate of deposit, but instead, deposited the funds into his personal bank account and converted them to his own use and purposes. **(NASD Case #2006005078901)**

Michael Lee Clofine (CRD #2410059, Registered Supervisor, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Clofine consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #20060041171-01)**

Kevin Edward Davis (CRD #1643435, Registered Principal, Baltimore, Maryland) submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in the capacity of financial and operations principal (FINOP) for 12 months and required to requalify as a FINOP within 90 days from the date his suspension ends. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that, while acting on his member firm's behalf, he conducted a securities business while the firm's net capital was below the minimum net capital requirement.

The suspension in a FINOP capacity will be in effect from September 5, 2006 through September 4, 2007. **(NASD Case #E1020050283-01)**

Robert Allen Dorman (CRD #2466337, Registered Representative, Indianapolis, Indiana) submitted an Offer of Settlement 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 Dorman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Dorman consented to the described sanctions and to the entry of findings that he completed and affixed a public customer's signature on a firm securities replacement form, even though his member firm's written supervisory procedures stated that registered representatives were not permitted to sign a customer's name or add the customer's initials to any document even pursuant to the customer's request.

The suspension in any capacity is in effect from September 5, 2006 through November 3, 2006. **(NASD Case #2005001091801)**

Kirk Glenn Eddy (CRD #2076401, Registered Representative, Grand Blanc, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Eddy consented to the described sanction and to the entry of findings that he accepted checks from public customers made payable to him for investment purposes and instead misused the funds by not investing them in the manner the customers intended. The findings stated that Eddy failed to respond to NASD requests for information. **(NASD Case #20050024945-01)**

Leonel Federico (CRD #2198659, Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Federico consented to the described sanction and to the entry of findings that he borrowed \$55,000 from public customers in contravention of his member firm's written procedures prohibiting registered representatives from borrowing money from customers. The findings stated that Federico failed to respond to NASD requests for information. **(NASD Case #20050018579-01)**

Craig Tyson Feltz (CRD #2447886, Registered Principal, Smithtown, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Feltz consented to the described sanction and to the entry of findings that he refused to appear and provide testimony to NASD. **(NASD Case #20050012141-02)**

David Matthew Garrity (CRD #1905680, Registered Principal, New York, 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 45 days. Without admitting or denying the findings, Garrity consented to the described sanctions and to the entry of findings that he purchased and/or sold securities of companies that he was covering as a research analyst within the time period NASD prescribed. The findings stated that Garrity failed to disclose in a research report that he had a financial interest in the securities of the company. The findings also stated that Garrity failed to notify his member firms, promptly and in writing, that he had opened accounts at other member firms and likewise, failed to notify these firms when he became associated with his member firms.

The suspension in any capacity is in effect from September 18, 2006 through November 1, 2006. **(NASD Case #20050017487-01)**

Ivan Cid Gonzalez (CRD #2598229, Registered Principal, Northridge, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,925.15, which includes \$2,925.12 in disgorgement of commissions, and suspended from association with any NASD member in any capacity for

30 days. The fine must be paid before Gonzalez reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Gonzalez consented to the described sanctions and to the entry of findings that he recommended securities transactions to public customers without having reasonable grounds for believing that the recommendations and resulting transactions were suitable for them based on their financial situation, investment objectives and needs.

The suspension in any capacity was in effect from September 5, 2006 through October 4, 2006. **(NASD Case #E0220040700-01)**

Michelle Holton (ID #11023370, Associated Person, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Holton consented to the described sanction and to the entry of findings that, without her member firm's knowledge or authorization, she prepared checks totaling \$13,500 made payable to herself that were drawn against the firm's checking account. The findings stated that Holton forged, or caused to be forged, the signature of a firm officer on the checks, negotiated the checks and used the funds for her own benefit. The findings also stated that Holton notified NASD that she would not respond to an NASD request for information. **(NASD Case #2006004691101)**

Richard Michael Hughes (CRD #2783806, Registered Principal, Lynbrook, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Hughes consented to the described sanction and to the entry of findings that he refused to appear and give testimony to NASD. **(NASD Case #20050012141-03)**

Bruce Paul Knopp (CRD #272570, Registered Representative, Naperville, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Knopp reassociates with any NASD member firm following the suspension, or before requesting relief from any statutory

disqualification. Without admitting or denying the findings, Knopp consented to the described sanctions and to the entry of findings that he participated in outside business activities and failed to provide prompt written notification to his member firm.

The suspension in any capacity will be in effect from September 5, 2006 through December 4, 2006. (NASD Case #2005000119301)

Carl David Maxwell (CRD #601141, Registered Principal, Lake Barrington, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Maxwell consented to the described sanctions and to the entry of findings that he executed transactions in the securities account of a public customer without the customer's knowledge or consent, and in the absence of written or oral authorization to exercise discretion in the account.

The suspension in any capacity was in effect from August 14, 2006 through August 25, 2006. (NASD Case #E8A2004065701)

Henry Paccelle Mendoza (CRD #4774325, Registered Representative, West New York, 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 findings, Mendoza consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #2006004173301)

Juan Carlos Murillo (CRD #2608646, Registered Representative, Hialeah, 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 30 days. Without admitting or denying the findings, Murillo 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 suspension in any capacity is in effect from September 18, 2006 through October 17, 2006. (NASD Case #2005001916001)

Matthew Robert Nall (CRD #2528568, Registered Principal, Indianapolis, Indiana) 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. Without admitting or denying the findings, Nall consented to the described sanctions and to the entry of findings that he completed Change of Broker/Dealer and/or Representative Authorization Forms by changing the broker of record for variable annuities owned by public customers from another broker Nall's member firm previously employed, to Nall. The findings stated that Nall affixed the customers' signatures on the forms without their knowledge or consent.

The suspension in any capacity is in effect from September 5, 2006 through November 3, 2006. (NASD Case #2005001028601)

Donald Jay Neil (CRD #1253671, Registered Representative, Amherst, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 30 days. In light of Neil's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Neil consented to the described sanction and to the entry of findings that he exercised discretion in public customers' accounts without obtaining written authorization from them, and his member firm's acceptance of the accounts as discretionary.

The suspension in any capacity will be in effect from September 18, 2006 through October 17, 2006. (NASD Case #20050026429-01)

Cesar Roel Perez (CRD #3091992, Registered Representative, Olmito, Texas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Perez consented to the described sanction and to the entry of findings that he converted \$125,000 from public customers by executing phony promissory notes and making withdrawals from their variable annuity accounts without their knowledge, authorization or consent. The findings stated that Perez failed to respond to NASD requests for information and to provide on-the-record testimony. (NASD Case #C0620050019)

Daniel Keith Poland (CRD #1230652, Registered Representative, Houston, Texas) 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 60 days. Without admitting or denying the findings, Poland 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.

The suspension in any capacity is in effect from September 18, 2006 through November 16, 2006. (NASD Case #2005003207201)

Arthur Daryll Pryor (CRD #1998728, Registered Representative, Highlands Ranch, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the findings, Pryor consented to the described sanctions and to the entry of findings that he engaged in an outside business activity and failed to provide prompt written notice to his member firm.

The suspension in any capacity is in effect from September 18, 2006 through November 1, 2006. (NASD Case #2005000553701)

Kathy Hurst Seyle (CRD# 4449187, Registered Representative, Bardstown, Kentucky) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Seyle reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Seyle consented to the described sanctions and to the entry of findings that she falsified a Rollover Election, Deposit and Certification Form in order to facilitate the opening of a client's rollover IRA account by copying the client's signature from another form and affixing it to the document.

The suspension in any capacity is in effect from September 5, 2006 through March 4, 2007. (NASD Case# 2005003297601)

Everett Haliburton Toms, Jr. (CRD #5123248, Associated Person, Richmond, Virginia) 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 Toms reassociates with any NASD member firm following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, Toms consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity will be in effect from September 5, 2006 through March 4, 2007. (NASD Case #2006005180501)

Stephen Jon Toussaint (CRD #2132990, Registered Representative, Wellesley, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Toussaint consented to the described sanction and to the entry of findings that he signed a public customer's signature on checks totaling \$365,000, cashed the checks, which were made payable to him, and subsequently misappropriated the funds. The findings stated that Toussaint failed to respond, or respond completely, to NASD requests for information, and failed to appear for an NASD on-the-record interview. (NASD Case #2005001088401)

Anthony Charles Troia (CRD #2592032, Registered Representative, Yorktown Heights, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Troia consented to the described sanction and to the entry of findings that he convinced a public customer to liquidate a fixed annuity, and then he took control of the proceeds and misused some of the customer's funds. The findings stated that Troia failed to respond to NASD requests for documents. (NASD Case #2005002250301)

Rebecca Denise Violette (CRD #1458577, Registered Representative, San Jose, California) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association

with any NASD member in any capacity for six months. The fine must be paid before Violette reassociates with any NASD member following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Violette consented to the described sanctions and to the entry of findings that she received \$2,000 from a public customer to open an investment account, but failed to open the account and deposit the funds into it. The findings stated that Violette misled the customer as to why the money had not appeared in his investment account and the status of the account, and forwarded the customer's funds on to her member firm to be deposited into the customer's investment account at a later date.

The suspension in any capacity is in effect from September 18, 2006 through March 17, 2007. (NASD Case #20050021474-01)

Jeffrey S. Weick (CRD #4293526, Registered Representative, Margate, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Weick executed unauthorized trades in multiple public customer accounts and overbought trades in a pattern of knowing misconduct without the customers' prior knowledge and authorization. (NASD Case #E072004078401)

Lawrence Michael Weinberg (CRD #461751, Registered Principal, Muttontown, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$47,999, which includes disgorgement of transaction profit of \$37,999, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Weinberg consented to the described sanctions and to the entry of findings that he opened or maintained accounts with other member firms without notifying, in writing, his member firm of the accounts, or the other member firms of his association. The findings stated that Weinberg purchased shares in "hot issue" initial public offerings for accounts in which he had a beneficial interest.

The suspension in any capacity was in effect from September 5, 2006 through September 18, 2006. (NASD Case #E1020040813-01)

Kevin John White (CRD #2219143, Registered Principal, Hudson, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months and ordered to disgorge \$32,000 in commissions in partial restitution to public customers. The fine and restitution amounts must be paid before White reassociates with any NASD member firm following the suspension, or before requesting relief from any statutory disqualification. Without admitting or denying the findings, White consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, or obtaining prior written approval from, his member firm.

The suspension in any capacity will be in effect from September 5, 2006 through March 4, 2007. (NASD Case #2005003211201)

Decisions Issued

The Office of Hearing Officers (OHO) has issued the following decisions, which have been appealed to or called for review by the NAC as of September 1, 2006. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decisions. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

John Douglas Audifferen (CRD #2053214, Registered Representative, Brooklyn, New York) was fined \$17,500 and barred from association with any NASD member in any capacity. The fine shall be paid before Audifferen seeks reinstatement in the securities industry. The sanction was based on findings that Audifferen caused his member firm to make an unlawful credit extension to a public customer and willfully received the beneficial use of such credit extension, in violation of Regulation T. The findings stated that Audifferen allowed "free-riding" by the customer and shared in profits from the customer's account. The findings also stated that Audifferen willfully caused his member firm to extend credit to himself and received the beneficial use of such extension in violations of Regulations T and X. The findings also included that Audifferen failed to disclose material information on his Form U4. (NASD Case #C1020030095)

James Wade Browne (CRD #1189996, Registered Representative, Dallas, Texas) and Kevin P. Calandro (CRD #1459109, Registered Representative, Dallas, Texas). Browne was fined \$25,000 and suspended from association with any NASD member in any capacity for six months, and Calandro was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The sanctions were based on findings that the respondents participated in private securities transactions, for compensation, and failed to provide written notice to, and obtain written approval from, their member firm.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C0520050015)

Daniel William Bukovcik (CRD #1684170, Registered Representative, Dewitt, Michigan) was fined \$50,000 and suspended from association with any NASD member in any capacity for 18 months. The sanctions were based on findings that Bukovcik affixed public customers' signatures on numerous account documents relating to the customers' purchases of mutual funds, variable products, annuities, and 529 plans without their prior written authorization.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C8A20050055)

Ronald Pellegrino (CRD #832857, Registered Principal, Spokane, Washington) was suspended from association with any NASD member in any capacity for six months. The sanction was based on findings that Pellegrino inadequately supervised registered representatives when he failed to sufficiently respond to a red flag indicating sales abuses by the representatives in the sale of unsuitable proprietary investment products. The findings stated that Pellegrino delegated responsibility for compliance and supervision to an individual who lacked experience and the tools to perform the job, but failed to replace the individual in a timely manner.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C3B20050012)

Douglas John Toth (CRD #2332079, Registered Principal, Skillman, New Jersey) was suspended from association with any NASD member in any capacity for one year. The sanction was based on findings that Toth willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. (NASD Case #E9A2004001901)

Complaints Filed

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

Mark Allen Borsky (CRD #2492069, Registered Principal, Medford, New Jersey) was named as a respondent in an NASD complaint alleging that he knowingly and falsely reported a transaction report to ACT indicating a fictitious trade. The complaint alleges that Borsky failed to provide, or caused the failure to provide, truthful information in writing to NASD in response to an NASD request for information. The complaint also alleges that Borsky intentionally provided false information to NASD during a telephone call. (NASD Case #2005000078501)

Carolyn Sue Everhard (CRD# 2344119, Registered Representative, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that she received \$6,400 from a public customer for investment purposes and converted the funds for her own use and benefit, or for the benefit of someone other than the customer, without the customer's knowledge or consent. The complaint alleges that Everhard failed to fully respond to NASD requests for documents and information. (NASD Case #20050025930-01)

Kathy Lynn Gallagher (CRD #2189903, Associated Person, Williams Air Force Base, Arizona) was named as a respondent in an NASD complaint alleging that she misused \$188,558 in public customers' funds intended to be invested on the customers' behalf, and rather than depositing the funds into the customers' accounts as instructed, Gallagher caused the funds to be deposited into a bank account she controlled, without the customers' knowledge, authorization or consent. The complaint alleges that Gallagher forged, or caused to be forged, the signatures of public customers and a registered representative on other customer investment distribution forms, causing \$57,933 to be wired from the customers' accounts to accounts under her control, without the customers' knowledge or authorization to conceal her misuse of funds. The complaint also alleges that Gallagher falsified books and records, and forged documents and customers' signatures in order to conceal her misuse. (NASD Case #2005000863701)

Michael Steven Thannert (CRD #4452543, Registered Representative, Richfield, Minnesota) was named as a respondent in an NASD complaint alleging that he received \$3,591.36 from public customers for payments on insurance policies and did not use the funds as instructed. The complaint alleges that Thannert failed to respond to NASD requests for information. (NASD Case #20050033391-01)

Public Securities, Inc. (CRD #15211, Spokane, Washington) was named as a respondent in a NASD complaint alleging that the firm, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The complaint also alleges that the firm, acting through one of its equity traders, rendered substantial assistance to an individual in the market manipulation of a stock in that the firm either knowingly or recklessly ignored the red flags or suspicious events associated with the trading of the stock that should have alerted the firm to the individual's improper conduct. The complaint also alleges that the firm, acting through its president, failed

to establish and implement AML policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions and manipulative trades, and reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations promulgated thereunder. The complaint further alleges that the firm failed to provide independent testing for AML compliance by firm personnel or by a qualified outside party. In addition, the complaint alleges that the firm, acting through its president, failed to establish and maintain a system reasonably designed to adequately supervise the trading and market making activity the firm conducted, and failed to establish, maintain and enforce written procedures reasonably designed to supervise the firm's wholesale trading and market making business, and its registered representatives' actions. (NASD Case #2005000094001)

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

Benson York Group, Inc.
Melville, New York
(September 27, 2006)

Sunstate Equity Trading, Inc.
Tampa, Florida
(September 27, 2006)

The Malachi Group, Inc.
Atlanta, Georgia
(September 7, 2006)

Firms Suspended for Failure to Supply Financial Information

The following firm was suspended from NASD membership for failing to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552.

(The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.)

Firm Suspended for Failure to Supply Financial Information

Financial Design, Inc.
Baton Rouge, Louisiana
(September 7, 2006)

Seaway Investment Company
Muskegon, Michigan
(September 7 - October 2, 2006)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

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

Amerifinancial fka Fareri Financial Services, Inc.
Boca Raton, Florida
(August 2, 2006)

Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

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

Kevin Kreig Herridge
Somerville, New Jersey
(September 7, 2006 to September 13, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Joseph John Bieniek
Chicago, Illinois
(September 12, 2006)

Stephane Jacques Coupleux
New York, New York
(September 12, 2006)

Lyn Jeanne Flanagan
San Diego, California
(September 8, 2006)

Anthony Graham Gilchrist
Providence, Rhode Island
(September 25, 2006)

Angel Ann Huzarski
Center Line, Michigan
(September 21, 2006)

Individual Suspended Pursuant to NASD Rule 9552(d)

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

Robert Lawrence Benton
Clearwater, Florida
(September 20, 2006)

Shannon Durham
Carrollton, Texas
(September 18, 2006)

Matthew Jason Hamm
Spartansburg, South Carolina
(September 20, 2006)

John M. Meyers
Coram, New York
(September 20, 2006)

Margie Emilia Minnalez
Seattle, Washington
(September 13, 2006)

Daniel Edward Schott-Bardol
Hickory, North Carolina
(September 11, 2006)

Seth Abraham Strader
Santa Cruz, California
(September 5, 2006)

Omar Rene Valqui
Pembroke Pines, Florida
(September 11, 2006)

Cass Lamar Weldon
Bossier City, Louisiana
(September 26, 2006)

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

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

Gerald Glenn Cobb
Hanahan, South Carolina
(September 28, 2006)

Will Cordery
Las Vegas, Nevada
(June 30, 2005 - September 11, 2006)

Christopher Jones
Chaska, Minnesota
(September 28, 2006)

Dimitry Metelkin
Brooklyn, New York
(December 8, 2005 - September 15, 2006)

Franklyn Ross Michelin
Boca Raton, Florida
(September 28, 2006)

Joseph F. Rudd, III
Arlington, Texas
(September 28, 2006)

Lary Lee Speakman
Lakewood, Colorado
(September 28, 2006)

Jeffrey S. Weick
Margate, Florida
(September 28, 2006)

NASD Fines Morgan Stanley Firms \$2.9 Million for Widespread Violations of NASD Rules

Number and Scope of Violations Indicate Extensive Reporting Problems at Both Firms

NASD imposed fines totaling \$2.9 million against Morgan Stanley & Co., Inc. (MSCO) and Morgan Stanley DW Inc. (MSDW) for extensive violations dealing with reporting obligations, best execution, short sales and a range of other NASD, Securities and Exchange Commission (SEC) and Municipal Securities Rulemaking Board (MSRB) rules.

In addition to the fines, both firms will provide reports to NASD detailing the corrective actions completed and the ongoing corrective actions being taken to ensure that each firm has adequate policies, procedures, systems and training necessary to ensure regulatory compliance.

"MSCO and MSDW had numerous types of reporting violations, and the scope of those violations indicated a failure to adequately address compliance needs of the firms," said NASD Executive Vice President Tom Gira. "But MSCO and MSDW also undertook independent, internal reviews to determine the causes and extent of their trade reporting problems, provided their findings to NASD, and were otherwise highly cooperative with NASD's investigation. The firms' cooperation is reflected in the sanctions."

NASD found that MSCO and MSDW each committed numerous violations of federal securities laws, NASD rules and MSRB rules during the seven-year period from 1999 to 2006. Among the most significant was a series of violations of OATS reporting requirements, which resulted from MSCO's pervasive inability to properly track and report OATS data. Additionally, MSDW had numerous regulatory violations involving the firm's failure to adequately price, sell and report corporate and municipal bond transactions, and will make nearly \$30,000 in restitution payments to affected customers. NASD also found that both MSCO and MSDW failed to implement effective supervisory systems and written supervisory procedures necessary to ensure compliance with federal securities laws, NASD rules and MSRB rules.

NASD also found a variety of other regulatory violations at both firms. NASD found that MSCO:

- failed to timely report or incorrectly reported thousands of transactions through the NASDAQ Market Center in NASDAQ National Market securities, OTC Equity securities and listed securities;
- executed thousands of short sales transactions without ensuring that the firm could deliver or arrange to borrow the securities by the settlement date;
- failed to execute hundreds of customer trades at the best available price, and will make nearly \$5,000 in restitution payments to affected customers;
- failed to report or incorrectly reported thousands of transactions in corporate bonds; and
- created locked and crossed market conditions in hundreds of instances.

NASD found that MSDW:

- failed to send, or failed to send in a timely manner, required documents to hundreds of customers in connection with municipal bond transactions;
- failed to report or incorrectly reported thousands of transactions in corporate and municipal bonds; and
- failed to enforce the firm's written supervisory procedures with respect to municipal bonds.

In settling these matters, MSCO and MSDW neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Charges NevWest Securities Corporation and Principals with Violating Anti-Money Laundering Rules

Firm Failed to File Suspicious Activity Reports Despite Suspicious Sales Of Hundreds of Billions of Shares of Sub-Penny Stock by Customer

NASD has charged NevWest Securities Corporation of Las Vegas and two of its top officers—President Sergey Rumyantsev and Vice President Antony M. Santos—with violating NASD's Anti-Money Laundering Rule.

In its complaint, NASD charges that the firm failed to adequately implement and enforce procedures to detect and report suspicious transactions that the firm had reason to suspect involved possible securities fraud. Specifically, the complaint charges that the firm failed to conduct adequate due diligence and file appropriate Suspicious Activity Reports (SARs) in connection with highly suspicious transactions by a customer of the firm. NASD alleges that, during the relevant period, the customer opened 32 accounts at NevWest and sold more than 250 billion shares of a sub-penny stock, which generated total sales proceeds of over \$53 million. NASD alleged that NevWest earned commission revenue on the sales totaling \$2.5 million—36 percent of the firm's total revenues during the relevant period.

"Suspicious Activity Reports provide law enforcement with information that's critical for investigating and prosecuting money laundering, terrorist financing and other financial crimes," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Broker-dealers have an obligation to investigate 'red flags' indicating suspicious activity and, where appropriate, to file SARs. Despite a multitude of very obvious red flags, NevWest chose to look the other way, earning millions for itself in the process."

NASD's complaint charges that between January 2003 and May 2005, NevWest, through Rumyantsev and Santos, failed to adequately perform due diligence, file SARs or cease trading in multiple accounts controlled by one of NevWest's customers in connection with more than 500 sale transactions. The transactions involved a sub-penny stock issued by CMKM Diamonds, Inc. (CMKM) that traded in the Pink Sheets until the Securities and Exchange Commission (SEC) revoked the stock's registration in 2005. The complaint further charges that the firm and its officers ignored numerous

red flags which reasonably should have caused them to suspect that the customer was violating federal securities laws. The complaint charges that the firm should have filed suspicious activity reports with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Those red flags included:

- the massive volume of CMKM stock that was being sold through NevWest by this customer, which constituted as much as 36.7% of CMKM's total outstanding shares;
- publicly available information about CMKM's financials indicated that CMKM had almost no assets. CMKM's last quarterly report, filed with the SEC on Nov. 18, 2002, showed that for the quarter ending September 2002, it had total assets of only \$344 cash and total liabilities of \$1,672;
- CMKM's failure to file annual reports with the SEC for the fiscal years 2002, 2003 and 2004;
- information showing a relationship between the NevWest customer engaging in the suspicious transactions and a former officer of CMKM; and
- the SEC's temporary suspension of over-the-counter trading in CMKM securities from March 3, 2005 through March 16, 2005 and the SEC's action on May 10, 2005 to revoke the registration of each class of CMKM stock. From March 17, 2005 until May 11, 2005, NevWest continued to sell at least 22 billion shares for its customer's account.

NASD also alleges that NevWest, through Santos, failed to comply with escrow account requirements and contingency offering terms, in violation of the federal securities laws and NASD rules; failed to timely report customer complaints and disclosure events pursuant to NASD rules, and failed to establish and maintain a supervisory system and procedures that were reasonably designed to detect and prevent these violations.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies

include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution. The 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 this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

NASD Fines Three MetLife Securities Firms \$5 Million for Providing Inaccurate, Misleading Information in Late Trading Inquiry

Firms Allowed Late Trading, Failed To Produce Emails in Timely Manner

NASD has imposed a \$5 million fine against MetLife Securities, Inc. (MSI) of New York, New England Securities, Inc. (NES) of Boston and Walnut Street Securities, Inc. (WSS) of St. Louis—all owned by MetLife, Inc.—for providing inaccurate and misleading information to NASD, allowing late trading of mutual funds, failing to produce emails in a timely fashion and other conduct that violates NASD's rules.

NASD found that in response to an NASD inquiry in September 2003 concerning late trading of mutual funds, MSI, NES and WSS (the MetLife Securities Firms) provided inaccurate and misleading responses despite having learned information raising serious questions about the accuracy of those responses. The responses were coordinated by a working group consisting of employees from the three firms, staff from various departments of MetLife Group, Inc., and an outside law firm. Further, the MetLife Securities Firms learned additional facts over the next several months that contradicted their original responses, but failed until December 2004—14 months after they had originally responded—to provide NASD with corrected information.

"NASD relies on firms to respond accurately and promptly to requests for information on matters of regulatory concern," said James S. Shorris, Executive Vice President and Head of Enforcement. "Part of the problem in this case stemmed from the decision by the MetLife firms to respond to a regulatory inquiry by

relying upon a committee without clear lines of authority or specifically identified individuals responsible for the adequacy and accuracy of information that was provided. The MetLife Securities Firms' subsequent failure to correct the inaccurate information about the firms' mutual fund trading practices and procedures—a failure that lasted for more than a year—compounded an already unacceptable situation. Ultimately, this case should send a strong message that NASD expects firms to provide accurate information to regulatory inquiries in a timely manner—and that failures to provide accurate information will draw severe sanctions.”

In October 2003, each of the MetLife Securities Firms responded to the NASD requests by stating that upon reasonable inquiry, the firms were not aware of any late trading transactions; that each firm had policies and procedures in place that required all orders placed by customers after 4 p.m. Eastern Time to be executed the following day, and that each firm's policies and procedures included “safeguards built-in to the computerized order-taking system utilized by [the firm] and its representatives.”

While the firms made these affirmative statements, the group had information that each of these statements was inaccurate or misleading.

NASD found that while the specially created working group was preparing the original responses, there was internal disagreement within the group about the level of inquiry that needed to be undertaken to respond to the regulatory inquiry. For instance, statements by the MetLife firms that upon reasonable inquiry they were not aware of any late trades were made even though the group had decided against obtaining a list of mutual fund transactions from the firm's clearing firm.

Although the MetLife Securities Firms did not know at the time they sent their responses whether late trading transactions had actually occurred, in April 2004, the firms' internal auditors learned of 19,000 potential late trades. Examining a subset of these trades, the auditors determined in June 2004 that some of the orders were in fact received and the trades executed after 4 p.m. with that day's closing price, a finding that was conveyed to the firms' legal department in mid-July. Rather than advise NASD, however, the MetLife Securities Firms retained an outside law firm and conducted a second audit. It was only after this second

audit, in December 2004, that NASD was advised that the prior responses were inaccurate. NASD investigators determined that approximately 800 late trades were allowed to take place.

The working group also learned that contrary to its original responses, the MetLife Securities Firms did not have procedures that would require all orders placed after 4 p.m. to be executed at the next day's closing price. In fact, the working group also knew that the firms did not have adequate procedures to monitor, detect or prevent late trading.

NASD also found that the MetLife Securities Firms failed to produce responsive e-mails in a timely fashion during NASD's investigation of this case. NASD found that the MetLife Securities Firms violated federal securities laws, Securities and Exchange Commission rules and NASD regulations by executing approximately 800 late trades; submitting inaccurate and misleading responses to regulatory inquiries; failing for many months to update, supplement or correct those responses; failing to establish and maintain adequate supervisory systems and written procedures to prevent or detect late trading; failing to capture the time of customer mutual fund orders; failing to produce responsive emails in a timely fashion, and failing to retain emails for the required three-year period. In settling these matters, the MetLife Securities Firms neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Fines Securities America \$2.5 Million, Orders \$13.8 Million in Restitution in Investment Scheme Aimed at Exxon Retirees

NASD Charges Broker David McFadden with Fraud

NASD has fined Securities America, Inc. of Omaha, NE, \$2.5 million for failing to adequately supervise a broker who NASD alleges lured long-term employees of Exxon Corporation into retiring prematurely with unreasonable and exaggerated promises of high returns from reinvested funds from their company retirement plans. Securities America must also pay \$13.8 million in restitution to 32 former Exxon employees. Securities America also agreed to hire a consultant who will conduct a comprehensive review of the firm's seminar presentations, advertising, and systems and procedures relating to retirement planning and investment recommendations for retirees.

The broker, David L. McFadden, has been charged by NASD in a separate complaint with securities fraud.

"Deciding when to retire is one of the most important and difficult decisions employees make, and it must be based on thoughtful advice and reasonable assumptions about the investment returns of one's retirement account," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "In this case, Securities America's lack of supervision resulted in Exxon employees being fraudulently induced into retiring early based upon false and misleading projections of future investment returns on their nest eggs. Together, these unsuspecting investors lost millions of dollars of life savings after following advice that benefited no one other than Securities America and its representative."

In connection with the announcement, NASD is releasing a new Investor Alert called *Look Before You Leave: Don't Be Misled By Early Retirement Pitches That Promise Too Much*.

As referenced in the settlement with Securities America, and as alleged in NASD's complaint against McFadden, NASD found that McFadden developed and presented seminars directed at long-term Exxon employees who were generally between the ages of 50 and 60. At those seminars, he told attendees that they could retire early by liquidating the assets of their company-sponsored 401(k) plans and pension plans, depositing those assets in accounts with Securities America, and making investments recommended by McFadden. Attendees were told that returns on those investments would allow them to replace their current salary income with systematic monthly withdrawals from the new accounts.

NASD found that McFadden recommended and sold variable annuities, Class B or Class C mutual fund shares and exchange-traded funds (ETFs) for his program. Most of the customers who opted to follow the program entrusted McFadden with the entire cash proceeds of their company-sponsored retirement accounts—and thus forfeited their right to receive a lifetime monthly benefit under their pension plan.

NASD found that McFadden's seminar materials included a slide showing projections of account values over 20 years with rates of return ranging from 5 percent to 18 percent—for a hypothetical customer having retirement savings of \$600,000 who made

annual withdrawals starting at \$58,000 per year (9.67 percent of the initial balance) after one year. Withdrawals were also shown as increasing by \$6,000 every five years. The slide depicted the investment compounding steadily over time and included no explanation that investments offering the potential for higher rates of return also involve a higher degree of risk to principal. McFadden referred to his own program as "managed money" for which he illustrated returns of 11 percent to 14 percent—rates that would be necessary to sustain the promised annual withdrawals.

In a letter to one customer and his wife, McFadden indicated that they could maintain annual withdrawals of \$60,000 per year, or 8.34 percent of their estimated \$718,600 in retirement savings:

"Since you indicated the need for \$60,000 in today's dollars to retire, we can conclude that everything is OK from a financial perspective if you retire at 55."

McFadden wrote to another customer suggesting that it might be advisable to make withdrawals greater than about 7.85 percent of his savings:

"Is your monthly income providing you enough cash to do the things you want? ... If the \$6,000 is enough, I would keep it there, but if things are tight, you should take more since we can't change for 5 years."

Customers who followed McFadden's program, however, could not maintain the recommended withdrawal amounts without depleting their retirement accounts to levels that threatened their incomes. NASD found that as account values declined due to withdrawals and market losses, McFadden continued to suggest to customers that he could achieve rates of return ranging in some cases from 11.5 percent to 18 percent, the minimum necessary to sustain the withdrawals he told the retirees they could take. In an effort to achieve these returns, McFadden engaged in discretionary, and in some cases unauthorized, variable annuity sub-account exchanges and mutual fund switches. The 32 customers at issue in this case deposited cash and securities totaling more than \$22.2 million for the purchase of variable annuities, mutual funds and ETFs for their retirement programs.

Under the settlement, Securities America will also pay the customers restitution of more than \$13.8 million—more than \$11.6 million to compensate for actual losses

and \$2.2 million in interest. This amount corresponds to the compensatory damage and interest component of a May 15, 2006 arbitration award that was challenged by Securities America and McFadden and upheld by a federal judge.

Securities America also agreed to hire a consultant who will conduct a comprehensive review of the firm's seminar presentations, advertising, and systems and procedures relating to retirement planning and investment recommendations for retirees.

In settling these matters, Securities America neither admitted nor denied the charges, but consented to the entry of NASD's findings.

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

The 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 this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.