

## Disciplinary and Other NASD Actions

### REPORTED FOR JULY

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 2007.

### Firm Suspended, Individuals Sanctioned

**Investprivate, Inc. (CRD #103737, New York, New York), Donald Geraghty (CRD # 1659545, Registered Principal, Secaucus, New Jersey), Scott Lee Mathis (CRD #1362203, Registered Principal, New York, New York) and Ronald S. Robbins (CRD #400704, Registered Representative, Chestnut Hill, Massachusetts)** submitted an Offer of Settlement in which the firm was censured and fined \$205,000, of which \$67,500 was imposed jointly and severally with Mathis; \$40,000 was imposed jointly and severally with Mathis and Geraghty; and \$15,000 was imposed jointly and severally with Geraghty. The firm was suspended for 60 days from seeking or accepting new engagements to conduct or participate in the offer or sale of unregistered securities through any private offering, private placement or private investment in public equity (PIPE) transactions for 60 days. The firm was also required to retain an independent consultant to conduct a comprehensive review of the adequacy of the firm's policies, systems and procedures (written or otherwise) and training relating to the offer or sale of unregistered securities through any private offering, private placement or PIPE transactions. Mathis and Geraghty were suspended from association with any NASD member in any principal capacity for 30 days. Robbins was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days.

Without admitting or denying the allegations, the firm, Geraghty, Mathis and Robbins consented to the described sanctions and to the entry of findings that the firm, acting through Mathis, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, negligently made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading by (1) distributing, or causing to be distributed, to investors or potential investors, private placement memoranda (PPM) that contained material misrepresentations or omissions, and (2) failing to supplement or amend the PPMs during periods in which each remained in effect so that they did not contain material misrepresentations or omissions of fact that occurred after the PPMs were issued.

The findings stated that the firm, acting through Mathis, offered and sold securities without registration statements filed with the Securities and Exchange Commission (SEC). The findings also stated that the firm, acting through Geraghty, failed to report a written customer complaint; failed to timely report a written customer complaint; and failed to report the settlement of customer complaints to NASD that involved payments in excess of \$25,000. The findings further stated that the firm, acting through Robbins, Mathis and Geraghty, violated NASD Membership and Registration rules by permitting Robbins to engage in activity requiring registration as a general securities principal and a general securities representative without obtaining the required registrations. NASD also found that the firm failed to establish qualified escrow accounts on contingency offerings as required by SEC Rule 15c2-4 and failed to maintain its minimum net capital. NASD also found that the firm failed to preserve complete electronic mail communications by routinely deleting the contents of electronic mail folders of all employees who left the firm and deleted portions of the contents of current employees' electronic mail folders. NASD determined that the firm, acting through Geraghty, failed to implement, maintain and enforce an effective supervisory system that would have enabled the firm to comply with federal securities laws and NASD rules, and failed to implement, maintain and enforce reasonable systems and procedures to ensure that PPMs did not contain material misrepresentations and omissions; that the accounts used for deposit of contingency offerings the firm conducted complied with SEC Rule 15c2-4; and that the firm retained email records related to its business in compliance with Rule 17a-4 of the Securities Exchange Act and NASD Rule 3110.

Mathis' suspension in any principal capacity will be in effect from June 18, 2007, through July 17, 2007. Geraghty's suspension in any principal capacity will be in effect from July 23, 2007, through August 21, 2007. Robbins' suspension in any capacity was in effect from June 18, 2007, through June 29, 2007. **(NASD Case# C1020040052)**

## Firms and Individuals Fined

**First Citizens Financial Plus, Inc. (CRD #18591, Dyersburg, Tennessee) and James Thomas Hopper (CRD #2181853, Registered Principal, Dyersburg, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which the firm and Hopper were censured and fined \$10,000, jointly and severally. Without admitting or denying the findings, the firm and Hopper consented to the described sanctions and to the entry of findings that the firm, acting through Hopper, issued sales literature to its public customers that omitted material facts and failed to file the newsletters, which discussed registered investment companies, with NASD's Advertising Department 10 days prior to first use. **(NASD Case #2006003762801)**

**Pension Fund Evaluations, Inc. (CRD #10985, Centereach, New York) and Gregory George Philipps (CRD #1544670, Registered Principal, Lake Grove, New York)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$7,500, jointly and severally. The firm was fined an additional \$18,500 and Philipps was fined an additional \$2,500. Without admitting or denying the findings, the firm and Philipps consented to the described sanctions and to the entry of findings that the firm, acting through Philipps, permitted a registered person to continue to perform duties that require registration while his NASD registration was inactive due to his failure to satisfy the regulatory element of his continuing education requirements. The findings stated that the firm failed to develop an anti-money laundering (AML) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. The findings also stated that the firm, acting through Philipps, permitted an individual to park his registration with the firm. NASD also found that the firm failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning annual compliance meetings, customer complaint reporting, designation of titles, registration status and location of supervisory personnel, private securities transactions, outside business activities and review of correspondence. NASD found that the firm did not have a system to retain email communications relating to its business

that Philipps sent or received using his personal email account, and failed to preserve copies of such electronic communications. NASD also found that the firm, acting through Philipps, failed to maintain net capital, in the amount of \$5,000, and actually had negative net capital. (NASD Case #ELI2005005401)

## Firms Fined

**Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it had failed to deliver positions in threshold securities at a clearing agency for 13 consecutive settlement days, and failed to immediately close out the fail to deliver positions by purchasing securities of like kind and quantity, or failed to borrow the security or enter into a *bona fide* arrangement to borrow the security before executing proprietary short sales in connection with its market making activities. The findings also stated that the firm incorrectly reported to the NASDAQ Market Center (NMC) that customer sale transactions under SEC Rule 144 were long sales and proprietary sale transactions were exempt short sales. 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, NASD Rule 6130(d)(6), and SEC Rules 200(g)(Order Making), 203(a)(Long Sales), 203(b)(Locate Requirements), 203(b)(3) and 203(b)(3)(iii)(Pre-Borrow Requirements). (NASD Case #20060044708-01)

**America's Growth Capital, LLC (CRD #125958, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise the firm's written supervisory procedures concerning the Order Audit Trail System (OATS). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit route reports to OATS for orders it routed to other market participants for handling and/or execution, and failed to timely report Reportable Order Events (ROEs) to OATS. 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 OATS. (NASD Case #20050000181-01)

**Ameritrade, Inc. nka TD Ameritrade Clearing, Inc. (CRD #5633, Bellevue, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise the firm's written supervisory procedures concerning OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to repair ROEs that OATS rejected for context or syntax errors. 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 OATS. (NASD Case #20050002093-01)

**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 \$60,000 and required to revise the firm's written supervisory procedures concerning Trade Reporting and Compliance Engine (TRACE) reporting, order handling and soft dollar accounts and trading. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted execution reports to OATS that contained inaccurate, incomplete or improperly formatted data that the OATS system was unable to link to the related trade reports in an NASD trade reporting system; erroneously reported execution codes with the exception code of "R" to OATS for riskless principal trades it reported under the Alternative Approach and failed to repair rejected ROEs.

The findings stated that the firm submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the related order routed to the NASDAQ Exchange or link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data, and failed to timely report ROEs to OATS. The findings also stated that the firm failed, within 90 seconds after execution, to transmit to the last sale reports of transactions in designated securities to the Trade Reporting Facility and to transmit to the Over-the-Counter (OTC) Reporting Facility last sale reports of transactions in OTC equity securities and reported last sale reports of transactions in designated securities it was not required to report to the Trade Reporting

Facility. NASD found that the firm failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities to TRACE. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting, order handling and soft dollar accounts and trading. (NASD Case #20050000186-01)

**Basic Investors Inc. (CRD #1187, Melville, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures concerning compliance with disclosure of order execution information, riskless principal trade reporting, sales in threshold securities, books and records, and the quotation of non-exchange-listed securities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in listed securities in its public quotation when each order was at a price that would have improved the firm's bid or offer in each security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security; and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security.

The findings stated that the firm incorrectly reported to the NMC the second leg of: "riskless" principal transactions in NNM securities, SmallCap securities and OTC securities because it incorrectly designated the capacity of the transactions as "principal." The findings also stated that the firm published quotations for OTC equity securities or non-exchange-listed securities, or, directly or indirectly, submitted such quotations for publication in a quotation medium (the Pink Sheets) and did not have in its records the documentation SEC Rule 15c2-11(a) required and failed to file a Form 211 with NASD at least three business days before its quotations were published or displayed in a quotation medium. 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 compliance with disclosure of order execution information, riskless principal trade reporting, sales in threshold securities,

books and records, and the quotation of non-exchange-listed securities. NASD found that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the requirements of bid test compliance. (NASD Case #20050003265-01)

**Capital Growth Financial, LLC (CRD #41040, 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 findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE. The findings stated that the firm failed to show the correct execution time on brokerage order memoranda. The findings also stated that the firm failed to report to TRACE transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of the execution time. (NASD Case #20050002401-01)

**Casimir Capital L.P. (CRD# 105061, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. 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 statistical and summary information for customer complaints as NASD Rule 3070(c) requires. The findings stated that the firm and its associated persons made numerous calls to people who had previously requested to be placed on the firm's do-not-call list, and the firm failed to adequately train its personnel in the procedures it had established to avoid violations of do-not-call rules. (NASD Case #2005000863101)

**Charles Schwab & Company (CRD #5393, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information about transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) in the manner MSRB Rule G-14, RTRS Procedures and the RTRS Users Manual require. (NASD Case #20060040583-01)

**Chicago Investment Group, LLC (CRD #11853, Chicago, Illinois)** 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 to the OTC Reporting Facility, and failed to designate certain last sale reports as late. **(NASD Case #20060055601-01)**

**CIBC World Markets Corp. (CRD #630, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. 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 to the OTC Reporting Facility, and failed to designate certain last sale reports as late. The findings stated that the firm failed to enforce its written supervisory procedures relating to trade reporting that required the Head of Facilitation Trading to review trading data from the Equity Trading Compliance Group daily and document the reviews. The findings also stated that the firm failed to maintain or produce any documentation evidencing that these reviews were completed. **(NASD Case #20050004892-01)**

**Colonial Brokerage, Inc. (CRD #111668, Montgomery, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to perform an annual evaluation and prioritization of its training needs and failed to develop a written training plan. The findings stated that the firm failed to have a reasonable system for email review although it had established parameters through an automated system to flag emails that required review. The findings also stated that the firm actually reviewed only some of the emails that met the parameters. The findings also included that the firm failed to timely conduct branch office inspections for the branch offices that did not supervise non-branch locations. NASD found that the firm failed to report many of its municipal securities transactions to the MSRB. **(NASD Case #2006003761801)**

**Equity Services, Inc. (CRD #265, Montpelier, Vermont)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$350,000 and required to review its policies and procedures concerning non-cash compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to properly supervise non-cash compensation provided to its associated persons. The findings stated that the firm's supervisory system and written policies and procedures did not adequately ensure compliance with NASD rules relating to the payment or reimbursement of non-cash compensation. The findings also stated that the firm's associated persons received non-cash compensation from insurance companies in connection with the sale of variable annuities and investment company securities that violated NASD rules, but the firm approved or failed to detect non-cash compensation programs. The findings included that the firm failed to properly preserve emails in its home office and failed to properly journal email for custodians in its Office of Supervisory Jurisdiction (OSJ). **(NASD Case #2005002217001)**

**E\*Trade Capital Markets, LLC (CRD #111528, Chicago, Illinois)** 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 submitted reports with respect to equity securities traded on the NASDAQ Stock Market (NSM) to OATS that were not in the NASD-prescribed electronic form and were repairable. The findings stated that the OATS system rejected the subject reports, and notice of such rejection was made available to the firm on the OATS Web site, but the firm did not correct or replace some of the reports. **(NASD Case #20050026784-01)**

**First Clearing, LLC (CRD #17344, Richmond, Virginia)** 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 deliver a threshold security at a registered clearing agency for 13 consecutive days, and failed to immediately close out the fail to deliver position by purchasing securities of like kind and quantity. 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 Rule 203(b)(3) of Regulation SHO. (NASD Case #2005003150301)

**First Southwest Company (CRD #316, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to deliver positions in threshold securities at a clearing agency for 13 consecutive settlement days, and failed to immediately close out the fail to deliver positions by purchasing securities of like kind and quantity. (NASD Case #20050024943-01)

**Fred Alger & Company, Incorporated (CRD #5300, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures concerning trade report input. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in eligible securities in the NMC within 20 minutes after execution that the firm, as the order entry identifier (OEID), had an obligation to accept or decline in the NMC. 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 trade report input. (NASD Case #20050002664-01)

**Gregory, Zent & Swanson, Inc. (CRD #22590, Fort Wayne, Indiana)** 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 retain a copy of a discretionary authorization agreement for a customer's discretionary account and a customer complaint letter. The findings stated that, in connection with the firm's failure to maintain a copy of a customer's written complaint, the firm failed to adequately and properly supervise unregistered associated persons who were permitted to receive and direct the correspondence the firm received, and failed to provide training to properly identify customer complaints related to securities activities and to forward them to the firm's

appropriate registered principals so they could be properly reviewed, maintained and timely reported to NASD. (NASD Case #E8A2004095002)

**Griffin Securities, Inc. (CRD #43229, 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 held customer stock certificates in a safe on its premises, despite a provision in its membership agreement requiring that the firm not safe keep customer securities. The findings stated that, as a result of the firm holding customer securities, it conducted a securities business while failing to maintain its minimum net capital requirement. The findings also stated that the firm caused draft research reports containing price targets and/or ratings to be sent to companies that were the subjects of the reports when they should not have been sent. (NASD Case #2006003689401)

**Itau Securities Inc. (CRD #118817, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 15 minutes of the execution time. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. The findings also stated that the firm failed to report the lower of yield to call or yield to maturity for transactions in TRACE-eligible securities to TRACE. (NASD Case #20050032150-01)

**ITG Inc. (CRD #29299, 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 accepted short sale orders in equity securities from another person, or effected short sales in equity securities for its own account without borrowing the security, entering into a bona fide arrangement to borrow the security or without reasonable grounds to

believe that the security could be borrowed so that it could be delivered on the date delivery is due and documented compliance with SEC Rule 203(b)(1) of Regulation SHO. The findings stated that the firm accepted customer short sale orders in certain securities and failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by the settlement date. (NASD Case #20050036195-01)

**Joseph Gunnar & Co. LLC (CRD #24795, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to maintain his registration as a general securities representative through his purported association with the firm, when in fact he was not actively involved in the firm's securities or investment banking business, or otherwise functioning as a firm representative. The findings stated that certain communications with the public contained several deficiencies in that: the firm failed to provide evidence that a registered principal approved its Web site prior to use; the firm failed to file communications that contained discussions of options, mutual funds and U.S. government securities; pieces of the firm's promotional materials contained discussions of options without stating the name and address of the person from whom current options disclosure documents could be obtained; and the firm's communications made claims without supplying a sound basis for evaluating the statements. The findings also stated that the firm prepared and distributed research reports that failed to meet the disclosure and content requirements in NASD Conduct Rule 2711(h). (NASD Case #E102005022102)

**Legend Equities Corporation (CRD #30999, Palm Beach Gardens, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$110,000 and required to review its procedures regarding required disclosures to customers and the preservation of electronic mail communications for compliance with federal securities laws, regulations and NASD rules. Without admitting or denying the findings, the firm consented to the described sanctions

and to the entry of findings that the firm's system and procedures were not reasonably designed to ensure that all registered representatives used the firm's electronic server for business-related electronic communications. The findings stated that the firm failed to provide for reasonable follow-up and review on indications that some of its registered representatives were using external email accounts. The findings also stated that, as the result of the supervisory deficiencies, the firm failed to maintain and preserve certain of its electronic communications as SEC Rule 17a-4 requires. The findings also included that the firm failed to implement a reasonable supervisory system and written procedures for follow up and review to ensure that a registered representative conducting business at a bank location completed forms required in accordance with NASD Rule 2350(c)(3) and provided the forms to public customers. (NASD Case #2006003703501)

**Leonard & Company (CRD #36527, Troy, Michigan)** 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 executed customer transactions in municipal securities and failed to report them to the MSRB within 15 minutes of the execution time. The findings stated that the firm failed to enforce its written supervisory procedures to ensure compliance with MSRB Rule G-14 related to the timely reporting of transactions in municipal securities. (NASD Case #2006003858401)

**MB Trading (CRD #30330, El Segundo, California)** 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 accepted customer short sale orders in common stock, and, for each order, failed to make or annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by the settlement date. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning affirmative determination. (NASD Case #20050007851-01)

**McDonald Investments Inc. nka Keybank Capital Markets Inc. (CRD #566, Cleveland, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$44,250. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report TRACE-eligible transactions to TRACE. The findings stated that the firm failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5) with NASD. The findings also stated that the firm failed to establish, maintain and/or enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules regarding the timely filing of Forms U5. **(NASD Case #2006003844201)**

**Merrill Lynch Professional Clearing Corp. (CRD #16139, 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 failed to timely report ROEs to OATS and failed to submit required information concerning ROEs to OATS. **(NASD Case #20060042271-01)**

**Monex Securities, Inc. (CRD #30362, Houston, Texas)** 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 failed to execute a TRACE Participation Agreement prior to its participation in TRACE. The findings stated that the firm failed to report transactions in TRACE-eligible securities that it was required to report to TRACE. The findings also stated that the firm failed to report the correct reporting side executing brokers as "give-up" for transactions in TRACE-eligible securities to TRACE. 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 TRACE reporting. **(NASD Case #20050001841-01)**

**NYFIX Millennium, LLC (CRD #103843, New York, New York)** 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 concerning OATS. Without admitting or

denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported execution reports to OATS that contained inaccurate, incomplete or improperly formatted data. 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 OATS. **(NASD Case #20050000116-01)**

**Oscar Gruss & Son, Incorporated (CRD #2091, 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 transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and failed to submit order information to OATS. The findings stated that the firm failed to provide written notification disclosing to its customers in customer confirmations its correct capacity in a transaction, that the transaction was executed at an average price, and/or a correct description of its compensation. **(NASD Case #20060040590-01)**

**Piper Jaffray & Co. (CRD #665, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to make, for its algorithmic and program trading business, for each of the first, second, third and fourth calendar quarters of 2005, a report on its routing of non-directed orders in covered securities during that quarter. 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 SEC Rule 606. **(NASD Case #20060051663-01)**

**Pruco Securities, LLC (CRD #5685, Newark, New Jersey) and Prudential Investment Management Services LLC (CRD #18353, Newark, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured, fined \$525,000, jointly and severally, and required to conduct an audit and prepare written findings regarding their compliance with NASD rules relating to the filing, approval and recordkeeping requirements for advertisements and

sales literature. Without admitting or denying the findings, the firms consented to the described sanctions and to the entry of findings that they committed numerous separate violations of NASD rules, including failures to file advertisements and sales literature in a timely manner with NASD, failures to have a registered principal approve advertisements and sales literature prior to use with the public, and failures to comply with their recordkeeping obligations for communications with the public.

The findings stated that the firms failed to establish, maintain and enforce supervisory systems and procedures reasonably designed to achieve compliance with NASD rules governing filing, approval and recordkeeping with respect to advertising and sales literature. The findings also stated that the firms failed to file pieces in a timely manner with NASD, and lacked adequate systems and procedures to monitor the timeliness of NASD filings. The findings also included that the firms failed to take sufficient remedial actions in response to written warnings from NASD that its filings were not timely. NASD found that the firms used advertisements with the investing public before a registered principal approved the sales literature for use that went largely undetected by the firms, as they had no systems or procedures to record when advertisements were first used with the public, and their systems and procedures to detect when advertisements were used prior to the requisite internal approval were not adequate. NASD also found that the firms failed to create and maintain reliable records of when advertisements were approved by a principal, and a flaw in their computer system caused inaccurate approval date records to be created and maintained. In addition, NASD determined that the firms failed to retain records of filings with NASD's Advertising Department and filed inaccurate dates of principal approval with NASD. (NASD Case #EAF0401420002)

**Sandgrain Securities, Inc. (CRD #26004, Garden City, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to provide to NASD written certification and documentation that any filings required under NASD Rule 3070 and amendments to Uniform Applications for Securities Industry Registration or Transfer (Forms U4) or Forms U5 and are the subject of this NASD disciplinary action have been completed. Without admitting or denying the findings, the firm

consented to the described sanctions and to the entry of findings that it failed to preserve copies of internal and external electronic mail communications. The findings stated that the firm failed to timely report statistical and summary information regarding customer complaints; failed to timely report settlements in excess of \$25,000 of customer claims against the firm and people associated with the firm; and failed to timely report the settlement of a customer claim in excess of \$15,000 against people associated with the firm. The findings also stated that the firm failed to amend, or ensure the amendment of, Forms U4 and U5 to disclose customer complaints and the resolution of the complaints. (NASD Case #2006003887501)

**Securities America, Inc. (CRD #10205, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$250,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it neglected to establish a system reasonably designed to supervise the activities of a registered representative who effected unsuitable securities transactions in public customers' accounts. The findings also stated that in connection with the transactions the individual effected, the firm failed to review all discretionary accounts at frequent intervals to detect and prevent transactions that were excessive in size or frequency in view of the account's financial resources and character. (NASD Case #2005001520702)

**SG Americas Securities, LLC (CRD #128351, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in reportable securities in the NMC within 20 minutes after execution, when the firm had an obligation to accept or decline as the OEID. The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in designated securities and eligible securities to the NMC. The findings also stated that the firm failed to report to the NMC the correct symbol indicating whether the firm executed transactions in reportable securities in a principal or agency capacity. 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 compliance with the three quote rule, anti-intimidation, third-party trade reporting and soft dollars accounts and trading. NASD found that for a month, the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the requirements of short sales. (NASD Case #20050025872-01)

**Stephens Inc. (CRD #3496, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report municipal securities customer transactions and municipal securities inter-dealer transactions to the MSRB. (NASD Case #2006003799401)

**STG Secure Trading Group, Inc. (CRD #41216, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures concerning trade reporting. 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 to the NMC and failed to designate some of the last sale reports as late through the NMC. 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 trade reporting. (NASD Case #20050017947-01)

**Susquehanna Financial Group, LLP (CRD #35865, Bala Cynwyd, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price and failed on one occasion to reflect the correct execution venue on the confirmation. The findings also stated that the firm

failed to properly characterize not-held orders in a quarterly report as "other" on its routing of non-directed orders in covered securities during that quarter. (NASD Case #20050023531-01)

**Tejas Securities Group, Inc. (CRD #36705, Austin, Texas)** 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 failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the NMC. (NASD Case #20050005058-01)

**The Shemano Group, Inc. (CRD #35528, San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures concerning withdrawal from market-making activities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that one of its traders withdrew the posting of a portion of the firm's market-making quotations without properly submitting a prior written request for, and without properly obtaining approval of, an excused withdrawal of a portion of the firm's quotation for those days, and failed to provide complete information to NASDAQ regarding the reasons for the firm's withdrawal of a portion of its market-making quotations. 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 withdrawal from market-making activities. (NASD Case #20050017711-01)

**Track Data Securities Corporation (CRD #103802, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$185,000 and required to revise its written supervisory procedures concerning order execution, Electronic Communications Network (ECN) reporting requirements, protecting confidential information and employee trading. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm's Track Data Securities Electronic Communications Network (TRAC) transmitted reports to OATS that contained inaccurate, incomplete or improperly

formatted data. The findings stated that the firm and TRAC submitted reports with respect to equity securities traded on the NSM to OATS that were not in the NASD-prescribed electronic form and were repairable. The findings also stated that the OATS system rejected the subject reports and notice of such rejection was made available on the OATS Web site, but TRAC and the firm did not correct or replace most of the subject reports. The findings included that TRAC transmitted route reports that the OATS system was unable to link to the related order in SuperMontage or SelectNet due to inaccurate, incomplete or improperly formatted data. The findings also included that TRAC's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS, order execution, ECN reporting requirements, protecting confidential information and employee trading. NASD found that TRAC failed to execute orders that were presented at its published quote in an amount equal to, or less than, its published quotation size and therefore failed to honor its published quotation. NASD also found that TRAC failed to enforce its written supervisory procedures regarding honoring published quotations and SEC Rule 605. In addition, NASD determined that, during trading halts initiated by the New York Stock Exchange and the NSM in specific securities, TRAC published indications of interest in the securities. Moreover, NASD found that TRAC made available reports on the covered orders in national market system securities that it received for execution from any person and the reports included incorrect information as to average realized spread, classification of orders by size and publication of data with respect to limit orders. The findings stated that the firm failed to timely report ROEs to OATS. **(NASD Case #20050000197-02)**

**Tradition Asiel Securities, Inc. (CRD #28269, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it published quotations in OTC equity securities or, directly or indirectly, submitted the quotations for publication in a quotation medium and did not have in its records the documentation required by SEC Rule 15c2-11(a); did not have a reasonable basis for believing the

information was accurate in all material respects and did not have a reasonable basis for believing that the sources of the information were reliable. The findings stated that the quotations did not represent a customer's indication of unsolicited interest. The findings also stated that the firm failed to file a Form 211 with NASD at least three business days before its quotations were published or displayed in a quotation medium. The findings also 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 SEC Rule 15c2-11 and NASD Rule 6740. **(NASD Case #20050021086-01)**

**Viewtrade Securities, Inc. (CRD #46987, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000 and required to revise its written supervisory procedures concerning SEC Rule 11Ac1-5. 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 the NMC, and failed to designate some of the reports as late through the NMC. The findings stated that the firm incorrectly designated transactions in OTC equity securities reported to the NMC last sale reports as ".SLD" through the NMC within 90 seconds after execution. The findings also 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 SEC Rule 11Ac1-5. The findings also included that the firm failed to report to the NMC the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in eligible securities. NASD found that the firm failed to report to the NMC the correct symbol indicating whether the firm executed transactions in eligible securities in a principal, riskless principal or agency capacity. NASD also found that the firm failed to provide written notification disclosing to its customers its correct capacity in transactions, and made available a report on the covered orders in national market system securities that it received for execution from any person that included incorrect information. **(NASD Case #20050000647-01)**

**Wachovia Capital Markets, LLC (CRD #126292, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanction and to the entry of findings that it failed to ensure that all new employees promptly completed and returned forms disclosing whether they had interests in any outside brokerage accounts. **(NASD Case #20050001705-01)**

**White Mountain Capital, LLC (CRD #104123, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$100,000 and required to review its supervisory system and procedures concerning preservation of electronic communications, registration of representatives and pre-registration Web CRD searches for compliance with federal securities laws, regulations and NASD rules. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its written supervisory procedures were not reasonably designed to ensure that the firm obtained and retained the required written consent for pre-registration searches on Web CRD and because of its deficiencies, the firm failed to obtain and/or retain the required written consent in connection with Web CRD searches of at least eight individuals.

The findings stated that the firm's written supervisory procedures were not reasonably designed to ensure compliance with the email retention and review requirement, and that it failed to maintain and preserve all of its business-related electronic communications as SEC Rule 17a-4 requires. The findings also stated that it failed to implement a written AML program reasonably designed to achieve compliance with the requirements imposed by the Bank Secrecy Act and the regulations promulgated thereunder and specifically failed to establish and implement an adequate Customer Identification Program. The findings also included that the firm permitted associated persons to act in the capacity of research analysts without being properly registered with NASD, and issued several research reports the associated persons prepared. **(NASD Case #E9B2005016802)**

## **Individuals Barred or Suspended**

**Monica Nicole Anderson (CRD #5065346, Registered Representative, Walkertown, North Carolina)** 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, Anderson consented to the described sanction and to the entry of findings that she withdrew \$64,491.92 from public customers' bank accounts and converted the funds to her own use and benefit without the customers' knowledge, authorization or consent. **(NASD Case #2006006062601)**

**Flynn Lambert Andrew (CRD #2748728, Registered Principal, Macon, Georgia)** 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 10 business days. Without admitting or denying the findings, Andrew consented to the described sanctions and to the entry of findings that in letters and emails sent to the public, he used the phrase "guarantee" or "guaranteed" regarding specified rates of return without making the necessary commensurate disclosures about the issuer's claims-paying ability or that there might be holding periods to obtain the rates of return. The findings stated that Andrew's communications compared variable annuities and mutual funds without the necessary disclosures that there are numerous mutual funds available and other costs and restrictions associated with variable annuities that might not apply to mutual funds.

The suspension in any capacity was in effect from June 4, 2007, through June 15, 2007. **(NASD Case #E0420040369-05)**

**Ruben Francisco Augusta (CRD #2217612, Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000, suspended from association with any NASD member in any principal capacity for one year and suspended from association with any NASD member in any capacity for one month. The suspensions shall run concurrently. Without admitting or denying the findings, Augusta consented to the described sanctions and to the entry of findings that he performed Web CRD searches on individuals who were not seeking employment with his member firm and falsely affirmed

to Web CRD that he had obtained and would keep the required written consent in connection with those searches on file. The findings stated that Augusta failed to comply with his member firm's written supervisory procedures to retain hard copies of business-related email correspondence from outside email accounts in a file at his member firm. The findings also stated that Augusta permitted associated persons to act in the capacity of research analysts without being properly registered with NASD. The findings also included that Augusta failed to review registered representatives' business-related email correspondence when they used outside email accounts.

The suspension in any principal capacity is in effect from May 21, 2007, through May 20, 2008, and the suspension in any capacity was in effect from May 21, 2007, through June 20, 2007. **(NASD Case #E9B2005016801)**

**Timothy Behany (CRD #2878998, Registered Supervisor, Bernardsville, New Jersey)** was fined \$40,000, suspended from association with any NASD member in any capacity for two years and required to requalify by examination before acting in any registered capacity. The sanctions were based on findings that Behany improperly obtained contingent deferred sales charge (CDSC) waivers for public customers in connection with mutual fund redemptions by falsely representing on his member firm's electronic order entry system that the customers were disabled. The findings stated that as a result, several mutual fund companies were deprived of fees to which they were otherwise entitled. The findings also stated that Behany's actions caused his member firm's books and records relating to redemptions to contain false and misleading information regarding the customers.

The suspension in any capacity is in effect from May 21, 2007, through May 20, 2009. **(NASD Case #E9B2003026301)**

**Shawn Robert Blankenship (CRD #3153322, Registered Representative, Matthews, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Blankenship consented to the described sanction and to the entry of findings that he

misappropriated \$144,400 from public customers by effecting unauthorized withdrawals from the customers' variable annuities and wiring the funds to a bank account he controlled. The findings stated that Blankenship forged a customer's signature to a variable annuity funds withdrawal form. The findings also stated that Blankenship failed to respond to NASD requests for information. **(NASD Case #2006004848101)**

**Shannon Lynn Bremmer (CRD #4862090, Associated Person, Chesterfield, Michigan)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bremmer, while working in a branch bank affiliate of her member firm, removed \$7,800 in cash from the vault and her cash drawer without authority and converted the funds to her own use. **(NASD Case #2005003490501)**

**Anna Bruno (CRD #2805793, Registered Principal, Bronx, New York)** 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, Bruno consented to the described sanction and to the entry of findings that she improperly obtained \$193.50 from a bank at which she was employed by submitting expense reports that overstated her actual expenses. **(NASD Case #2006004927401)**

**Vincent Anthony Buchanan (CRD #34247, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any NASD member in any financial and operations principal (FINOP) capacity for three months and required to requalify by examination as a FINOP prior to reassociation with any NASD member firm in that capacity. Without admitting or denying the findings, Buchanan consented to the described sanctions and to the entry of findings that a member firm, acting through Buchanan, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital, and filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) reports.

The suspension in a FINOP capacity is in effect from June 4, 2007, through September 3, 2007. **(NASD Case #2005002458401)**

**Stephen Ennio Capella (CRD #5015108, Registered Representative, New Rochelle, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Capella reassociates with an NASD member firm following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Capella consented to the described sanctions and to the entry of findings that he received a completed application for an insurance policy from a public customer that was signed incorrectly. The findings stated that Capella crossed out the misplaced signature, signed the customer's name on the correct line of the application without the customer's authorization or consent and then submitted the application to the insurance company.

The suspension in any capacity is in effect from June 18, 2007, through September 17, 2007. (NASD Case #2007008076101)

**Eric Whetham Carlton (CRD #3078425, Registered Supervisor, Laguna Beach, 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, Carlton consented to the described sanction and to the entry of findings that he submitted forged and falsified documents to his member firm, causing its records to be falsified. The findings stated that Carlton misused \$33,000 of public customers' funds by causing unauthorized transfers from the customers family trust account to other customer accounts. The findings also stated that Carlton engaged in unauthorized trading in a public customer's account without the customer's knowledge, authorization or consent. The findings also included that Carlton forged, or caused to be forged, customers' signatures on a letter of authorization that directed transfer of \$5,250 out of the customers' family trust account. (NASD Case #2005000726801)

**Paul Jude Casella (CRD #2461957, Registered Principal, Woodbury, New York)** was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Casella caused his member firm to charge customer accounts a \$150 fee for the costs associated with his firm changing clearing firms,

although none of the firms actually incurred the costs. The findings stated that Casella's firm would not have met its net capital requirement but for the \$91,950 capital infusion obtained through the assessment of the \$150 fee.

The suspension in any capacity is in effect from May 21, 2007, through May 20, 2008. (NASD Case #ELI20040411-01)

**Seth William Chandler (CRD #2182871, Registered Representative, Larkspur, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Chandler consented to the described sanction and to the entry of findings that he participated in a private securities transaction and failed to provide prior written notice to, and obtain prior written permission from, his member firm. The findings stated that Chandler failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #20050007880-01)

**Ogden Lavelle Coody (CRD #52888, Registered Principal, Monroe, Louisiana)** 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, Coody consented to the described sanction and to the entry of findings that he recommended unsuitable mutual fund switches and exchanges to public customers without having a reasonable basis for the recommendations which resulted in payment by the customers of over \$75,600 in unnecessary fees and Coody's receipt of \$51,963 in commission charges that Coody received. The findings stated that Coody failed to disclose to the customers material information concerning the switches, in that he failed to offer the customers the opportunity to change funds within a fund family and avoid unnecessary front-end load fees. The findings also stated that Coody failed to provide the customers with switch letters disclosing the nature of the mutual fund exchanges as his member firm required. (NASD Case #E052004030101)

**Robert Scott Copeland (CRD #1402841, Registered Supervisor, Clinton, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$88,242 in restitution to public customers. Without

admitting or denying the findings, Copeland consented to the described sanctions and to the entry of findings that he effected trades in public customers' accounts pursuant to discretionary trading arrangements without obtaining written authorization from the customers and his member firm's acceptance of the accounts as discretionary. The findings stated that Copeland recommended unsuitable transactions in fee-based customer accounts and engaged in improper short-term trading in Class B shares of mutual funds and shares of new-issue, closed-end investment companies. The findings also stated that Copeland recommended the purchase of new-issue, closed-end fund shares to customers and then within two weeks or less, recommended their sale to purchase other securities which experienced immediate price declines. The findings also included that Copeland sold the funds before the price had a chance to recover, causing the customers to suffer losses from this unsuitable short-term buying and selling activity. NASD found that Copeland engaged in unsuitable short-term trading of Class B shares of mutual funds resulting in the customers having to pay CDSC. NASD also found that the customers suffered \$88,242 in losses from this unsuitable short-term buying and selling activity, while Copeland received net commissions of \$37,000.

The suspension in any capacity is in effect from June 18, 2007, through December 17, 2007. **(NASD Case #E9B2004057401)**

**James Russell Day (CRD #1850322, Registered Representative, Mt. Pleasant, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Day reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Day consented to the described sanctions and to the entry of findings that he engaged in outside business activities without prompt written notice to his member firm. The findings stated that Day accepted \$35,000 in loans from public customers without his member firm's approval.

The suspension in any capacity is in effect from June 18, 2007, through August 17, 2007. **(NASD Case #2006005543701)**

**Kayel Guy DeAngelis (CRD #3259050, Registered Principal, Bayside, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that DeAngelis failed to respond to NASD requests for information. The findings further stated that DeAngelis engaged in private securities transactions and maintained an outside securities account without prior written notice to his member firm. **(NASD Case #ELI2004032101)**

**Charles Lawrence Doraine (CRD #70411, Registered Representative, Corpus Christi, 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 five business days. Without admitting or denying the findings, Doraine consented to the described sanctions and to the entry of findings that he effected securities transactions in a public customer's account pursuant to instructions from a third party who, although verbally authorized to trade the account, was not authorized in writing to execute transactions in the account.

The suspension in any capacity was in effect from June 4, 2007, through June 8, 2007. **(NASD Case #2005002388201)**

**Carliss Donald Dykes (CRD #4103565, Registered Principal, Dallas, Texas)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Dykes reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Dykes consented to the described sanctions and to the entry of findings that, despite knowing an individual was not registered with NASD, he instructed the individual to contact public customers and discuss investments with them. The findings stated that when the individual gave Dykes an application and other documents for the transactions involving a public customer, Dykes assigned the accounts to other registered representatives who had no involvement with the transactions and instructed one of the registered representatives to give the unregistered individual a \$2,000 personal check as compensation for the sale of the annuities.

The suspension in any capacity is in effect from May 21, 2007, through August 20, 2007. (NASD Case #E062004029602)

**Garrett Richard Fischer (CRD #5083708, Associated Person, Des Moines, Iowa)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Fischer failed to respond to NASD requests for information. The findings stated that Fischer failed to disclose material information on his Form U4. (NASD Case #20060043797-01)

**Marlene Hall Foster (CRD #3167630, Registered Representative, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000, which includes disgorgement of \$2,459 in commissions, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Foster reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Foster consented to the described sanctions and to the entry of findings that by passively participating in a company's recruitment of new investors, opening new accounts for them, accepting customer funds and orders, and later complying with the stock promoter's instructions on when public customers were to purchase stock in the company, Foster negligently assisted the promoter in artificially increasing the company's stock price.

The suspension in any capacity is in effect from May 21, 2007, through November 20, 2007. (NASD Case #20050002644-02)

**Joseph Marshall Francis Jr. (CRD #2581897, Registered Representative, Chattanooga, 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 findings, Francis consented to the described sanction and to the entry of findings that he opened brokerage accounts on a foreign citizen's behalf without disclosing that the citizen was the accounts' true beneficial owner. The findings stated that Francis failed to disclose to the member firms at which the accounts were opened that he was a registered representative of another firm and lied to a representative of one firm about the source of the

funds he used to open the account. The findings also stated that Francis failed to properly notify his member firm of the existence of the outside securities accounts. The findings also included that Francis engaged in an outside business activity without notifying his member firm. (NASD Case #20060066655-01)

**Emmanuel Cahot Gallardo (CRD #1456616, Registered Principal, Wayne, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Gallardo failed to respond to NASD requests for information. The findings stated that Gallardo willfully failed to amend his Form U4 to disclose material information. (NASD Case #2006005194401)

**William George Gibson (CRD #2381501, Registered Representative, Myrtle Beach, South Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Gibson received \$22,025 from public customers to purchase stock and to invest in a private placement but failed to make the intended investments as directed. The findings also stated that Gibson failed to appear for an NASD on-the-record interview. (NASD Case #2006004260001)

**Robert Parry Gormly Jr. (CRD #1768255, Registered Principal, Flower Mound, Texas)** submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Gormly reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Gormly consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions for public customers without having a reasonable basis for believing the transactions were suitable for the customers in relation to their financial situations and needs. The findings stated that Gormly recommended that each of the customers designate his risk tolerance as "aggressive" on account application forms when Gormly knew that this did not represent the customers' actual tolerance of risk.

The suspension in any capacity is in effect from June 4, 2007, through December 3, 2008. (NASD Case #2005001520701)

**Peter Harvey Gugisberg (CRD #3146810, Registered Principal, Fargo, North Dakota)** 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, Gugisberg consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. **(NASD Case #20060053510-01)**

**Adeline Aguilon Guzman (CRD #2594384, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid when Guzman reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Guzman consented to the described sanctions and to the entry of findings that she borrowed \$3,000 from a public customer in violation of her member firm's written procedures that prohibited borrowing money from customers under any circumstances.

The suspension in any capacity was in effect from June 18, 2007, through June 29, 2007. **(NASD Case #20060064931-01)**

**Jose Hernandez (CRD #1976668, Registered Representative, Cary, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hernandez received \$4,100 from a public customer for investment purposes, but used the funds for his personal benefit and not for the customer's benefit. The findings stated that Hernandez created false account statements in order to conceal his conversion of the customer's funds. The findings also stated that Hernandez failed to respond to NASD requests for information. **(NASD Case #2005001945401)**

**Daniel Uhilamoelangi Herrera (CRD #4670630, Registered Principal, Newark, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Herrera reassociates

with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Herrera consented to the described sanctions and to the entry of findings that he received Independent Business Applications and \$199 processing fees from prospective insurance agents, forwarded the applications to his member firm's affiliated insurance agency and converted the fees to his own use.

The suspension in any capacity is in effect from June 4, 2007, through June 3, 2008. **(NASD Case #20060052290-01)**

**Kenneth Cecil Holtsclaw (CRD #1220860, Registered Principal, Tampa, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Holtsclaw consented to the described sanction and to the entry of findings that he falsified business expense reports, receiving \$282.72 to which he was not entitled, because he requested reimbursement for restaurant gift cards or meals for unauthorized guests in addition to reimbursement for actual meal expenses in violation of his member firm's written supervisory procedures. The findings stated that Holtsclaw failed to appear for an NASD on-the-record interview. **(NASD Case #2006006831001)**

**Andrew Rupert Humer (CRD #2377033, Registered Representative, Rock Hill, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Humer reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Humer consented to the described sanctions and to the entry of findings that he signed public customers' names to life insurance policy acknowledgement receipts and amendments changing the ownership of the policies without the customers' authorization to sign their names.

The suspension in any capacity is in effect from June 18, 2007, through September 17, 2007. **(NASD Case #2006004362901)**

**Christopher James Johnson (CRD #3211983, Registered Principal, Middletown, Connecticut)** 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, Johnson consented to the described sanction and to the entry of findings that he received \$7,837 from a public customer for investment in a mutual fund, inserted his name as the payee, negotiated the check and misappropriated the proceeds to his own use and benefit without the customer's knowledge or consent. The findings stated that Johnson failed to respond to NASD requests for information. (NASD Case #2006006507701)

**Harlan Henry Kappel (CRD #2844112, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the findings, Kappel consented to the described sanctions and to the entry of findings that he signed a public customer's name to a letter acknowledging that Kappel had completed financial planning services for the customer and presented the letter to his member firm as the customer's genuine signature.

The suspension in any capacity is in effect from June 18, 2007, through July 30, 2007. (NASD Case #2006004191101)

**John Francis Kavalec (CRD #1309961, Registered Representative, Batavia, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Kavalec failed to respond to NASD requests for information. The findings stated that Kavalec borrowed \$25,000 from a public customer in contravention of his member firm's written supervisory procedures specifically prohibiting borrowing money from customers. (NASD Cases #2005002707301/2006004842802 consolidated)

**Steven John Kesses (CRD #736577, Registered Representative, Woodbridge, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the findings, Kesses consented to the described sanctions and to the entry of findings that he executed transactions in a

public customer's account without the customer's authorization or consent.

The suspension in any capacity is in effect from June 18, 2007, through July 17, 2007. (NASD Case #2006007531601)

**Jeffrey John Kobak (CRD #2856529, Registered Representative, North Olmsted, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Kobak reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Kobak consented to the described sanctions and to the entry of findings that he participated in outside business activities, for compensation, without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from June 4, 2007, through September 1, 2007. (NASD Case #2006004470601)

**James Simon Kuri (CRD #4860052, Registered Representative, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Kuri reassociates with any NASD member following the suspension, or before his firm requests relief from any statutory disqualification. Without admitting or denying the findings, Kuri consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 with material information.

The suspension in any capacity is in effect from June 4, 2007, through July 18, 2007. (NASD Case #2006005591201)

**Jeffrey Tatios Malkasian (CRD #2668488, Registered Representative, Sacramento, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Malkasian 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 firms. The findings

stated that Malkasian received \$798,000 from public customers to invest in a money market fund but, instead, used the funds to invest in business opportunities related to his accountancy business. The findings also stated that Malkasian failed to provide investors with any documentation evidencing their investment. **(NASD Case #2006005240701)**

**Michael Emmett Morris (CRD #1887409, Registered Representative, Covington, Kentucky)** 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 five business days. Without admitting or denying the findings, Morris consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without prior authorization from the customers and his member firm's acceptance of the accounts as discretionary.

The suspension in any capacity was in effect from June 18, 2007, through June 22, 2007. **(NASD Case #20050034623-01)**

**Brendon Walter Myers (CRD #2140219, Registered Representative, Easton, 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, Myers consented to the described sanction and to the entry of findings that he informed a public customer that he sold shares of a security when in fact he failed to do so, and created and sent a false sales confirmation statement to the customer. The findings stated that Myers effected unauthorized transactions in customer accounts and falsified order tickets in connection with the purchase of securities in other customer accounts. The findings also stated that in order to evade his member firm's prohibition of soliciting the purchase of the securities, Myers falsely indicated on order tickets that the trades were "unsolicited." **(NASD Case #2006005657801)**

**Bryan Darrell Oliphant (CRD #2745180, Registered Representative, Middlebury, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Oliphant consented to the described sanction and to the entry of findings that he participated in private securities

transactions without prior written notice to, or prior written approval from, his member firm. The findings stated that Oliphant failed to respond to NASD requests for information. **(NASD Case #2006005401901)**

**Patricia Ann Palmer (CRD #2519451, Registered Representative, Fiskdale, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for one year. In light of Palmer's financial status, no monetary sanction was imposed. Without admitting or denying the findings, Palmer consented to the described sanction and to the entry of findings that she participated in private securities transactions without prior written notice to, or prior written approval from, her member firm.

The suspension in any capacity is in effect from June 18, 2007, through June 17, 2008. **(NASD Case #2006005654701)**

**Masajji Edward Patrick (CRD #4767451, Registered Representative, Chicago, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Patrick converted \$57,500 from a public customer's account without the customer's consent and deposited the funds into bank accounts he created in fictitious persons' names. The findings stated that Patrick consolidated the funds into one of the fictitious accounts and drafted a \$50,000 check drawn on the account payable to Patrick's relative. The findings stated that Patrick failed to respond to NASD requests for information. **(NASD Case #2006005120401)**

**Tyson Jermaine Pettiford (CRD #4531582, Registered Representative, Jamaica, 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 30 days. The fine must be paid before Pettiford reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Pettiford consented to the described sanctions and to the entry of findings that he made misrepresentations of material facts during cold calls to prospective customers to induce them to purchase securities.

The suspension in any capacity is in effect from June 18, 2007, through July 17, 2007. (NASD Case #2005001502701)

**Eric Richard Radez (CRD #4616939, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Radez consented to the described sanction and to the entry of findings that he engaged in an outside business activity, for compensation, without prompt written notice to his member firm. The findings stated that Radez provided false testimony during an NASD on-the-record interview. (NASD Case #20050000292-01)

**Mark Steven Ritchey (CRD #3011276, Registered Representative, Zanesville, Ohio)** was fined \$10,000, suspended from association with any NASD member in any capacity for two months and must requalify by examination in all capacities before returning to the industry. The fine must be paid before Ritchey reassociates with any NASD member when he returns to the industry. The sanctions were based on findings that Ritchey affixed a public customer's signature on a distribution request form without the customer's knowledge or consent.

The suspension in any capacity is in effect from June 4, 2007, through July 31, 2007. (NASD Case #2006004493301)

**Wilbert Kneeland Roberts (CRD #1745199, Registered Principal, Atlanta, 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 findings, Roberts consented to the described sanction and to the entry of findings that he borrowed \$3,500 from a public customer without providing notice to, or obtaining approval from, his member firm. The findings stated that Roberts refused to submit to an NASD on-the-record interview. (NASD Case #2006006198001)

**Jim Zabala Simbe (CRD #2317085, Registered Representative, Troy, 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, Simbe consented to the described sanction and to the entry of findings that he failed to timely disclose a

material fact on his Form U4. The findings stated that Simbe failed to respond to NASD requests for information. (NASD Case #2006005053901)

**Christopher David Solomon (CRD #4470012, Registered Representative, Treasure Island, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Solomon engaged in an outside business activity without prompt written notice to his member firm. The findings stated that Solomon received \$8,000 from a public customer for investment purposes, deposited the funds into a bank account he controlled but failed to invest the funds in accordance with the customer's instructions, thereby converting the customer's funds. The findings also stated that Solomon provided the customer with a fictitious account statement in an attempt to conceal his conversion of the customer's funds. The findings also included that Solomon failed to respond to NASD requests for information. (NASD Case #2006005220901)

**Michael Robert Taylor (CRD #820728, Registered Principal, Farmers Branch, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for nine months. In light of Taylor's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Taylor consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with any notice, written or otherwise, of these transactions, his proposed role therein and whether he would receive any compensation.

The suspension in any capacity is in effect from May 21, 2007, through February 20, 2008. (NASD Case #2006004423601)

**Eduardo M. Tejeda (CRD #4388070, Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Tejeda consented to the described sanction and to the entry of findings that he provided a company with letters on his member firm's letterhead that contained false and misleading representations confirming the company's credit line and funds availability, although he knew the company planned to use the letters in an

attempt to secure a loan, the company had no credit line at the firm and had not established an account with the firm. **(NASD Case #2005003386301)**

**Ronald Vaughn (CRD #453836, Registered Representative, Voorhees, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Vaughn falsely represented to an insurance company that a public customer had not received \$74,240.41 due to him from the liquidation of his fixed annuity when in fact, the customer had received the payment and used these proceeds to purchase a fixed annuity through another insurance company. The findings stated that the insurance company mailed a second check to Vaughn, who forged the customer's endorsement to the check and deposited the check to his personal bank account, thereby converting the funds to his own use and benefit. The findings also stated that Vaughn failed to respond to NASD requests to appear for an on-the-record interview. The findings also included that Vaughn willfully failed to amend his Form U4 to disclose material information. **(NASD Case #2006004213401)**

**Kelli Nichol Vernon (CRD #4010907, Associated Person, Detroit, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any NASD member in any capacity for 60 days. In light of Vernon's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Vernon consented to the described sanction and to the entry of findings that, without his knowledge or consent, Vernon signed the name of a branch office Cashiering Account Service Manager to letters of authorization for the firm to accept the incoming transfer of accounts for the customers' benefit.

The suspension in any capacity is in effect from May 21, 2007, through July 19, 2007. **(NASD Case #20060061530-01)**

**Steve Brian Westfall (CRD #3207286, Registered Representative, St. George, Utah)** 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 30 days. Without admitting or denying the findings, Westfall consented to the described sanctions and to the entry of findings

that he borrowed \$30,000 from a public customer in violation of his member firm's written procedures and failed to request an exception from his firm.

The suspension in any capacity is in effect from June 18, 2007, through July 17, 2007. **(NASD Case #2006005361201)**

**Anthony Rahama Whitter (CRD #2733252, Registered Representative, Mt. Vernon, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Whitter misrepresented and omitted material facts in connection with the sale of speculative stock to public customers. The findings stated that Whitter made unreasonable price predictions for the stock and acted recklessly by withholding information concerning the issuer's negative financial condition and performance. **(NASD Case #C0720050029)**

**Abigail Mann Whittle (CRD #4056487, Registered Representative, Roswell, Georgia)** 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 20 business days. Without admitting or denying the findings, Whittle consented to the described sanctions and to the entry of findings that in order to transfer a public customer's account to her member firm from another broker dealer, she contacted the other broker dealer and impersonated the customer over the telephone without the customer's knowledge or consent.

The suspension in any capacity was in effect from June 4, 2007, through June 29, 2007. **(NASD Case #2006006019001)**

**Asa Williams (CRD #2233649, Registered Principal, Kirkland, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000, which includes disgorgement of \$10,000 in benefits received, and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the findings, Williams consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior notice to, and approval from, his member firm. The findings stated that Williams engaged in outside business activities, for compensation, without prompt written notice to his member firm.

The suspension in any capacity is in effect from June 4, 2007, through October 3, 2007. (NASD Case #2005002812901)

**Martin Yura (CRD #4042431, Registered Principal, Atlanta, Georgia)** 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 Yura reassociates with any NASD member following the suspension, or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the findings, Yura consented to the described sanctions and to the entry of findings that he instructed another supervisory principal to create a document stating that a registered representative had been suspended for resolving an incident with a public customer by paying the customer money when he had not been suspended. The findings stated that the document was to be placed in the representative's file at a branch office. The findings also stated that Yura falsely advised his firm's chief compliance officer that the representative had been suspended.

The suspension in any capacity is in effect from May 21, 2007, through May 20, 2008. (NASD Case #E0420040369-03)

## Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of May 31, 2007. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed the decisions. Initial decisions whose time for appeal have not yet expired will be reported in the next *Notices to Members*.

**Kevin Mark Glodek (CRD #2419411, Registered Representative, New York, New York)** was fined \$25,000 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Glodek made material misrepresentations to public customers in connection with the sale of stock and/or to convince them not to sell stock they already owned.

This decision has been appealed to the National Adjudicatory Council (NAC) and the sanctions are not in effect pending consideration of the appeal. (NASD Case #E9B2002010501)

**Neal Anthony Impellizeri (CRD #1195207, Registered Principal, Plandome, New York), Michael Raymond Gimeli (CRD #2197242, Registered Representative, Babylon, New York), and Steven Richard Jaloza (CRD #1320831, Registered Representative, Muttontown, New York)** were barred from association with any NASD member in any capacity. The sanctions were based on findings that Impellizeri, Gimeli and Jaloza recommended OTC Bulletin Board (OTCBB) stocks without their member firm's affirmative determination that the issuers' current financial statements and material business information provided a reasonable basis for the recommendations. The findings stated that Impellizeri and Jaloza failed to disclose material facts in connection with their recommendations that public customers purchase shares of the speculative OTCBB stocks. The findings also stated that Impellizeri made unreasonable price predictions to customers who purchased the stock.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #2005000127502)

**Paul Douglas Paratore (CRD #2054004, Registered Representative, Webster, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Paratore converted a customer's monthly insurance premium payments to other, unrelated customers without the customer's knowledge, authorization or consent. The sanction was also based on findings that Paratore settled the complaints of four customers by diverting the insurance premium payments to the customers who complained, to reimburse them for surrender charges or to pay their premiums in order to reinstate their lapsed policies, without his member firm's permission.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. (NASD Case #2005002570601)

## 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.

**Michael Forrest Brinlee (CRD #852723, Registered Principal, Lexington, Kentucky)** was named as a respondent in an NASD complaint alleging that he misappropriated funds from a public customer's estate by writing a \$9,045 check against the customer's bank account in order to make a tuition payment for his family member's benefit. (NASD Case #2005001575201)

**Steven Gray (CRD #2665911, Registered Principal, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that by the use of means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, Gray did use and employ manipulative and deceptive devices and contrivances by employing devices, schemes and artifices to defraud; making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaging in acts, practices and courses of business which operated, and would operate, as a fraud and deceit upon persons in connection with the purchase and sale of promissory notes and stock. The complaint alleges that Gray failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #EFL2005001201)

**Steven Kenneth Maidlow (CRD #1831371, Registered Representative, Cincinnati, Ohio)** was named as a respondent in an NASD complaint alleging that he caused \$10,000 to be electronically transferred from a public customer's brokerage account and sent it to the customer's deceased mother's estate bank account without the customer's knowledge and consent. The complaint alleges that Maidlow removed the funds to resolve a shortfall in that account caused

by his failure to liquidate bonds the estate held in a timely fashion. The complaint also alleges that Maidlow prepared and sent to the customer documentation in the form of a Cash Flow Detail and an Asset Appraisal Report showing that the \$10,000 previously removed from her account had been returned, when in fact it had not. The complaint further alleges that Maidlow failed to respond to NASD requests for information. (NASD Case #2006005483001)

**Hitomi Tsuyuki (CRD #1550142, Registered Representative, Coto de Caza, California)** was named as a respondent in an NASD complaint alleging that he received \$188,957.82 from public customers to deposit into a money market account or to purchase municipal bonds and converted the funds to his own use and benefit. The complaint alleges that Tsuyuki gave the customers false account statements purporting to show their funds had been deposited or the municipal bonds had been purchased when they had not. The complaint also alleges that Tsuyuki failed to respond to NASD requests to appear for an on-the-record interview or to provide information and documents. (NASD Case #2005002253201)

## Firms Suspended for Failure to Supply Financial Information

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

**Doral Securities, Inc.**  
Puerto Nuevo, Puerto Rico  
(May 14, 2007)

**U-Trade Brokerage, LLC**  
Franklin Lakes, New Jersey  
(May 14, 2007)

**Firms Cancelled Pursuant to NASD Rule 9553  
for Failure to Pay Arbitration Fees**

Great Eastern Securities, Inc.  
New York, New York  
(May 21, 2007)

Greenwich Global, LLC  
Wilton, Connecticut  
(May 7, 2007)

Paul L. Forchheimer & Co., Inc.  
New York, New York  
(May 21, 2007)

**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.)

Sterling Financial Investment Group, Inc.  
Boca Raton, Florida  
(May 30, 2007)

**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.)

Edwin Nazaire  
Howell, New Jersey  
(January 2, 2007 – May 9, 2007)

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

Courtney Wayne Davis  
Huntsville, Texas  
(May 9, 2007)

Michael Joseph Fabiano  
Yardley, Pennsylvania  
(May 21, 2007)

Jordon Ernest Goodrich  
Las Vegas, Nevada  
(May 7, 2007)

Dante Foree Gray  
Indianapolis, Indiana  
(May 2, 2007)

Ryan Richard Henry  
Commerce City, Colorado  
(March 1, 2005 – May 21, 2007)

David Lobato  
Pueblo West, Colorado  
(May 1, 2007)

Janis Ann Logay  
Rochester Hills, Michigan  
(May 1, 2007)

Robert Thomas Maloney  
Buffalo, New York  
(May 21, 2007)

Thomas McGovern  
New York, New York  
(May 14, 2007)

Brian Lee McKnight  
Westchester, Ohio  
(May 9, 2007)

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

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

**Brian Lintag Fernando**  
Las Vegas, Nevada  
(May 21, 2007)

**Brian Frederick Ferraioli**  
West Orange, New Jersey  
(May 7, 2007)

**Kenneth A. Kuley**  
Cincinnati, Ohio  
(May 15, 2007)

**Erik Karl Penzin**  
Santa Monica, California  
(May 9, 2007)

**Robert Starace**  
Brooklyn, New York  
(May 7, 2007)

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

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

**Mckinley J. H. Armstrong II**  
Washington, DC  
(May 29, 2007)

**Edwin Nicholas Bastian**  
Sugarland, Texas  
(May 14, 2007)

**Hong Joon Chun**  
Forest Hills, New York  
(May 9, 2007)

**Todd Mitchell Eberhard**  
New York, New York  
(May 9, 2007)

**Jack Alan Frahmman**  
Fort Myers, Florida  
(May 9, 2007)

**Kerry Dee Gant**  
Madison, Tennessee  
(May 29, 2007)

**Theodore Angelo Pena**  
Orandell, New Jersey  
(May 9, 2007)

**Stephen Anthony Reynolds**  
Parrish, Florida  
(May 4, 2007)

**Edward Lee Sensor**  
Sterling, Illinois  
(May 29, 2007)

**Gerald Francis Stonehouse**  
Hingham, Massachusetts  
(May 14, 2007)

## **NASD Fines HSBC Brokerage for Failure to Supervise Government Securities Transactions for Best Execution**

### **Firm Routed Orders Internally for Over a Year Without Adequate Controls In Place**

NASD has fined New York's HSBC Brokerage (HBI) \$250,000 for failure to have adequate systems in place to supervise government securities transactions to ensure best execution.

In addition, the firm routed orders to HSBC Securities (HSI), an affiliated firm, without taking adequate steps to ensure that customers would not be harmed in the pricing of these securities. HBI's inability to provide documentary evidence of its supervisory review for best execution of trades inhibited NASD's ability to review transactions for best execution.

In April 2005, HBI merged with HSI. The combined firm retains the name HSBC Securities.

"All firms have a fundamental obligation to provide their clients with best execution of their securities orders" said James S. Shorris, NASD's Executive Vice President and Head of Enforcement. "HBI put its customers' orders at risk by failing to monitor these orders to ensure that it was getting best execution. That risk was heightened when the firm began routing orders internally to its affiliated broker-dealer, without being able to demonstrate any supervisory review to evaluate whether its affiliate provided the best execution."

HBI's retail brokerage business was largely located in HSBC bank branches. To support the retail business, HBI operated a trading desk to handle orders that were placed by brokers who had direct contact with HBI's clients. One desk was devoted to filling orders for fixed income products. When a client order was placed, HBI required traders on the fixed income desk to call several broker-dealers on the "street" in an effort to get the best price for a client's transaction.

Toward the end of 2003, there were discussions between HBI and HSI about increasing business between the two affiliated firms and efforts were undertaken by HBI to increase its order flow to its institutional affiliate. In late 2003, HBI began to increase its order flow to its then-affiliate, HSI, and in May 2004, HBI directed its fixed income traders to route all government securities orders to HSI for execution.

As a result, the dollar volume of U.S. Treasury transactions that HBI sent to HSI rose from approximately 24 percent in October 2003 to approximately 79 percent in April 2004, and to close to 100 percent from June through December 2004. While its traders were required to "shop" an order for a government securities transaction before placing it with the affiliate, HBI had inadequate systems to monitor this process by its traders.

NASD also found that while several HBI officers recognized the increased risk associated with directing all government securities orders to a single, affiliated broker-dealer, the firm failed to put reasonable policies and procedures in place to ensure that clients received best execution for these orders. The firm had minimal systems in place to supervise for best execution prior to May 2004, and no further steps were taken to monitor for best execution after the directive to send all customer orders to the affiliated firm.

HBI was unable to provide documentary evidence of supervisory review for best execution for any of the trades requested by NASD as part of its review. This, combined with the fact that the firm did not have a system for recording competitive bids, severely limited NASD's ability to review transactions for best execution. NASD identified several transactions in which the firm violated its best execution obligations, but the firm lacked the records needed for a thorough best execution review.

HBI settled this action without admitting or denying the charges, but consented to the entry of NASD's findings.

## **NASD Fines Two Fidelity Broker Dealers \$400,000 for Distributing Misleading Sales Literature About Systematic Investment Plans Sold to Military Personnel**

### **Fine to be Paid to NASD Investor Education Program for the Benefit of the Military Community**

NASD has fined two Fidelity broker-dealers \$400,000 for preparing and distributing misleading sales literature promoting Fidelity's Destiny I and II Systematic Investment Plans, which were sold primarily to U.S. military personnel. Issuance and sales of new systematic investment plans (also known as periodic payment plans), which typically require investors to make a fixed number of monthly payments over a 10- to 15-year

period, were prohibited by Congress last fall. Previously sold plans remain in force.

As part of the settlement, for the next five years, the two broker-dealers—Fidelity Investments Institutional Services Company, Inc. of Smithfield, RI and Fidelity Distributors Corporation of Boston—are required to notify Destiny Plan holders who want to increase their investments in existing Destiny Plans that additional shares of the underlying fund can be purchased outside the Destiny Plans without paying the additional creation and sales charges of up to 50 percent on the first year's payments.

"NASD's advertising rules are designed to protect investors by prohibiting misleading sales literature and other misleading communications," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "In this case, the Fidelity Destiny Plans were sold using various performance charts and data that presented a misleading picture of the plans' performance. These failures were aggravated by the fact that the plans were sold primarily to military personnel, who often have limited time to study the marketing materials for investment products. And these particular products involve complex or unique features that may not be fully understood by the customers to whom they are offered or by the brokers who recommend them."

NASD found that between January 2003 and January 2006, the two broker-dealers violated NASD advertising rules by preparing and distributing various pieces of misleading sales literature. For instance, from May 2003 through January 2006, the Fidelity broker-dealers prepared and distributed a brochure entitled "Time is Money" that included misleading performance claims about the Destiny Plans. According to "mountain charts" contained in the brochures, Destiny Plans significantly outperformed the S&P 500 Index over a 30-year period. But during the most recent 10- and 15-year periods—the time frame most relevant to current and prospective investors—Destiny Plans substantially underperformed the S&P 500 Index. The 30-year time period masked the underperformance of the Destiny Plans over the most recent 15 years.

The brochures also showed Destiny Plans' average annual total returns for 1, 5 and 10 years as well as the life of the Plan, without showing comparable returns for the S&P 500 Index. Again, this created the misleading impression that Destiny outperformed the S&P 500

Index throughout the periods shown. The comparable S&P 500 Index average annual total returns would have shown that the S&P 500 Index significantly outperformed Destiny during the more current time periods.

Finally, the broker-dealers used the performance of Destiny Plan Class O shares in these charts, when new Plan investors could only purchase Class N shares. Class N shares did not perform as well as Class O shares because of higher ongoing expenses. The broker-dealers prepared and sent over 10,000 copies of these brochures to Destiny retail brokers or their registered representatives to use them with both prospective investors as well as current Plan holders.

NASD also found that in May 2003, the Fidelity broker-dealers prepared and distributed a misleading Destiny newsletter to over 325,000 Destiny Plan holders. The newsletter included a mountain chart showing Destiny I Plan performance. While the chart showed Plan performance, Fidelity disclosed the average annual total returns for the underlying mutual fund portfolio, rather than for the Plan. Because Plan holders paid a 50 percent upfront sales charge on each of the first year's payments and a continuing sales charge on each additional payment until plan payments were completed, the average annual total returns for the Plans were significantly lower than that of the underlying funds. NASD further found that Fidelity did not adequately supervise the review of this Destiny sales literature in light of the unusual features of the Destiny products.

The \$400,000 fine will be paid to the NASD Investor Education Foundation (a tax-exempt, non-profit organization) to help fund its Military Financial Education Campaign, launched in February 2006. The NASD Investor Education Foundation will use the funds to support educational programs, materials and research to equip members of the United States military and their families with the knowledge and skills necessary to make informed financial decisions. More information about the ongoing, global campaign can be found at [www.SaveAndInvest.org](http://www.SaveAndInvest.org).

Fidelity Investments Institutional Services Company and Fidelity Distributors Corporation settled the action without admitting or denying the charges, but consented to the entry of NASD's findings.









