

Regulatory & Compliance Alert

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NASD Year 2000 Update

Recordkeeping Rule

The Securities and Exchange Commission (SEC) has adopted temporary Rule 17a-9T which requires certain broker/dealers to make a separate copy of their blotters and their securities record or ledger for the last three business days of 1999 (December 29-31).

The SEC adopted the recordkeeping rule to provide a safeguard against unforeseen Year 2000 problems. Should a Year 2000 problem disrupt a broker/dealer, its account positions and transactions must be reconstructed. It is crucial to assure that broker/dealers maintain all the necessary records to permit reconstruction in the event of a Year 2000-related failure.

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Millennium Transition Questionnaire

The SEC has developed a uniform questionnaire—the Millennium Transition Questionnaire—to gather specific information from broker/dealers during the Year 2000 transition. Selected firms will be required to respond to the Questionnaire under procedures established by their designated examining authority (DEA). The selected firms already have received notification that they must take part in this initiative. This Questionnaire is intended to identify any problems caused by the transition, provide updates of markets and market participants to regulators, and reinforce investor confidence.

Each DEA will collect information from selected members once per day beginning December 29, 1999, three times per day beginning January 3, 2000, and then two times per day beginning January 5, 2000. The Questionnaire is expected to be discontinued after the last report on January 7, 2000. The DEA will use the information reported in the Questionnaire to monitor its members' readiness over the millennium transition period, and will forward this information to the SEC. To minimize the reporting burden on firms, the Questionnaire will be submitted through the NASD® or NASDRSM Web Sites (www.nasdr.com and www.nasd.com). If a firm is a member of more than one self-regulatory organization (SRO), the DEA will share relevant data with the other SROs where the firm is a member, thereby eliminating multiple reporting obligations for the firms. Neither the SEC nor the SROs will release firm-specific information reported in the Questionnaire to the public or the media.

Firms reporting to the NASD are advised that this request for information is made pursuant to NASD Rule 8210. In this regard, failure to provide the information may constitute grounds for disciplinary or other actions by the NASD.

NASD Business Continuity Planning (BCP)

The NASD Year 2000 Program Office has developed a Year 2000 Business Continuity Planning (BCP) Information Kit for members that is now available on the NASD and NASDR Web Sites (www.nasd.com or www.nasdr.com). The BCP Kit contains general information about the NASD's Business Continuity Planning Program and specific business continuity information about NASD Regulation and Nasdaq applications. If you have any questions about the information provided in the Kit, call the Year 2000 Program Office at (888) 227-1330.

SIA And Securities Industry Contingency Planning Information

The Securities Industry Association (SIA) Contingency Planning Web Site is a central resource dedicated to the dissemination and communication of information pertinent to contingency and business continuity planning in the financial services industry. The Web Site, which is managed by the SIA Financial Services Coordination and Communication Center (FSCCC), is intended to provide financial services industry participants with timely and pertinent information that will assist them in preparing for the century date roll-over weekend. The Web Site is comprised of a public area and a private area. The public area is intended for

non-registered users to access general information, documents, and other relevant information. The private area is intended for registered users to gain access to the FSCCC services. The SIA FSCCC document is available in the general area and is intended for use as a reference in understanding how the financial services industry is planning its communication strategy and how it expects to handle the flow of information during the transition to the Year 2000.

To access all areas of the SIA's Year 2000 Contingency Planning Web Site, firms must first register as a user of this Web Site. To register, follow these steps:

- ❖ Go to the SIA Year 2000 Contingency Planning Web Site (www.sia2k.com/contingency).
- ❖ Under registration, click on Information.
- ❖ Scroll down to New Registrants, click on Registration Request.
- ❖ Complete steps 1, 2, and 3, as instructed on the Web Site.
- ❖ The SIA will then contact firms with their registration information.

For help registering, call the SIA at (888) Y2K-4SIA.

For more information about the NASD Year 2000 Program, call (888) 227-1330, or send an e-mail to y2k@nasd.com.

NASDR To Launch Additional Form Filing Regulation Applications

With the new Web-Based FOCUS system recently implemented, NASD Regulation will now phase in four additional Web-based form filing regulation applications: Bluesheets (NASD Procedural Rules 8210, 8211, and 8213), Customer Complaints (NASD Conduct Rule 3070), Extension Requests (Reg T/15c3-3), and Shorts Interest Reporting (NASD Conduct Rule 3360). These applications will be available beginning February 7, 2000.

These regulatory applications will allow firms to use the same entitlement user account and password used to access Web-Based FOCUS—

the first of the form filing applications launched last Fall. Like Web-Based FOCUS, firms will no longer need to load software or file via Sprint Telenet or SIAC, but instead can access all of the form filing applications with one Internet address: **<https://regulationformfiling.nasdr.com>**.

Following are questions and answers about the new Web-based applications.

Who would be required to file using these form filing applications?

If your firm is designated to NASD Regulation for regulatory oversight, then your firm is required to

file Customer Complaints, Reg T/15c3-3 Extension Requests, and Shorts Interest Reporting to the NASD using these applications. The Bluesheets application can be used by all NASD members that receive Bluesheet requests from the NASD pursuant to NASD Procedural Rules 8210, 8211, and 8213.

How do I prepare for the new form filing regulation applications?

Your firm must be entitled to use any of the new form filing regulation applications. Contact your firm's NASD Web Applications Entitlement Account Administrator to request the additional entitlements needed to use the new form filing applications. The Account Administrator—who would have been identified through the Web-Based FOCUS entitlement process—can request additional user entitlements online via the Entitlement Administration Tool of the Web-Based FOCUS application.

What if I am a Web-Based FOCUS Account Administrator and want to also be the Account Administrator for the other new form filing regulation applications?

A few months ago, each firm received forms to submit entitlement information to the NASD for use of Web-Based FOCUS and these new applications. If your firm's Account Administrator requested entitlement to use these additional systems, that Account Administrator will be able

to access the new form filing applications. If your firm's Account Administrator did not request these additional entitlement privileges, please resubmit a Regulation Applications Administrator Entitlement Form. To obtain a copy of this form, call (800) 321-NASD, or send an e-mail to nasdregformfiling@nasd.com.

What if my firm would like to have a separate Account Administrator for each form filing application?

The member firm has the option to appoint separate Account Administrators for each application. It is recommended that each Account Administrator have a backup or alternate. For a new Account Administrator, firms must submit a Regulation Applications User Accounts Acknowledgment Form (UAAF) and Regulation Applications Administrator Entitlement Form. Firms received copies of these forms from NASD Regulation during the Web-Based FOCUS entitlement process. To obtain another copy of these forms, call (800) 321-NASD, or send an e-mail to nasdregformfiling@nasd.com.

Are the system requirements for these new applications different than for Web-Based FOCUS?

The system requirements for form filing regulation applications are the same as Web-Based FOCUS. See system requirements on following page.

Web-Based Form Filing Applications System Requirements:

Minimum Client Required		Recommended Client	
Hardware:	Pentium x90MHz 16MB	Hardware:	Pentium x133MHz 32MB
Operating System:	Windows 95 or Windows NT 4.0	Operating System:	Windows 95/98 or Windows NT 4.0
Modem:	28.8KB	Modem:	56KB
Web Browser:	Internet Explorer 4.01 SP2, Netscape 4.07	Web Browser:	Internet Explorer 4.01 SP2, Netscape 4.07
Web Browser Specifics:	Javascript enabled (this is usually the default setting)*	Web Browser Specifics:	Javascript enabled (this is usually the default setting)*
Screen Resolution:	800 x 600	Screen Resolution:	1024 x 768

* The system will not function without Javascript enabled.

For further information or if you have questions about the new Web-based form filing applications, call (800) 321-NASD, or send an e-mail to nasdregformfiling@nasd.com.

NASD Regulation Hosts Phone-In Workshops For Member Firms

In mid-December NASD Regulation conducted a phone-in workshop for member firms. During this first workshop, almost 300 members listened to presentations from NASDR senior staff, including NASDR President Mary L. Schapiro. A question and answer period was held after the presentations. A transcript of this workshop will be available on the NASDR Web Site (www.nasdr.com) in early 2000.

NASDR's next set of phone-in workshops—to be held in 2000—will focus more specifically on certain topics, such as continuing education, qualifications, the examination program, corporate financing, and others.

Please visit the NASDR Web Site to find out about upcoming events, and go to the "Feedback" function from the Web Site's Home Page where members can suggest topics to be addressed in future workshops.

NASDR Holds Open Forum With District Directors

At the October 20-22, 1999, NASD Regulation Fall Securities Conference held in Seattle, an open forum was conducted with NASD Regulation District Office Directors and home office executives. Conference attendees, primarily representatives of NASD members, asked a number of questions encompassing a variety of subjects. This article is the first in a two-part series to capture many of the questions and the answers provided during this session. Part 2 will appear in the Spring 2000 issue of the *Regulatory & Compliance Alert*. The forum was moderated by Daniel M. Sibears, Senior Vice President and Deputy, Member Regulation, and the District Directors participating in the forum were: James Dawson, Seattle District Office; Carla Romano, Chicago District Office; Jack Rosenfield, Kansas City District Office; Beth Owens, San Francisco District Office; Lani Woltmann, Los Angeles District Office; Bernie Young, Dallas District Office.

Note that questions and answers have been edited for clarity and length. Considering the forum in which the answers were provided, readers should not rely on this article as definitive guidance or formal interpretive advice. Written requests for interpretive advice may be directed to the NASD Regulation Office of General Counsel at (202) 728-8071.

The Spring and Fall 2000 Securities Conferences will be held April 25-27 at the JW Marriott Hotel in Washington, DC; and November 15-17 at the Sheraton Palace Hotel in San Francisco.

Q. Can something be done to ensure that NASDR examination staff's requests for information focus on necessary, relevant information?

A. One of the reasons we focus each examination is to make sure that NASDR's examiners are looking at relevant information and documentation. If a firm experiences what it views as unusual requests, District Office management should be contacted. Also, if a firm believes that it can more readily produce documents in a different format (e.g., a disc or through an exception report), the examiner should be alerted to this potential alternative.

Q. What do you foresee as the 'hot button' issues for 2000?

A. As is always the case, NASDR will look closely at firms with a history of regulatory problems. For example, Letters of Caution that a firm previously received will be folded into the examination to ensure that corrective action has been taken. Other areas are suitability, sales practices, fair dealing with customers, variable products activities, day trading, and internal controls, among others. Of course, Year 2000 issues will be of interest for the rest of this year and early next year.

Q. NASD Rule 3070 requires the reporting of all customer complaints, everything from 'I didn't get the check and certificates' through 'I didn't authorize that trade.' A broker/dealer has 300 retail registered representatives. What number of filings raises red flags with the NASD? Are there any specific ratios that raise red flags? Also, is the NASD thinking about creating some kind of numeric break point that would trigger an investigation?

A. Although there are no magic formulas, the District Offices review all of 3070 reporting and focus on particular patterns and trends. We also consider the specific type of complaint. As patterns evolve or serious allegations arise, investigations are opened or expanded. We also receive thousands of complaints in the District Offices directly from investors. Each of these complaints are reviewed.

Q. What is NASD Regulation doing to retain and train its examiners?

A. We are doing quite a bit on that front. Through "INSITE," which is our acronym for a new approach to examinations, NASDR will be enhancing its examiner training and development programs. So not only will INSITE change how NASDR conducts exams, but will add to examiners' knowledge by having them focus on the important areas in an examination and on firms where there really is a fair amount of activity. The approach to exams will be different, therefore, the approach to training will be different. NASDR is not only conducting specific training to be able to conduct only INSITE exams. NASDR will continue with ongoing development and a career

path for examiners—one of which we believe will help with retention of our best examiners.

NASDR has also made some changes in its internal compensation areas to best ensure appropriate recognition or superior performance. Nevertheless, retention presents a challenge for NASDR, because we are viewed by many member firms as a training ground for compliance departments.

Q. On a related note, are you hiring more examiners, and if so, is there formalized new hire training?

A. We have been hiring more examiners nationwide. At the beginning of this year, we received additional allocations to increase the number of examiners within the Districts. And even when we are not hiring more—meaning increasing the total—we are hiring to replace people who leave. There is also a formalized training program called CornerStone, which involves paper-based and computer-based training with tests that must be completed and passed at a certain level for the examiner to continue. It also involves an elaborate set of on-the-job-training requirements. Another key element of CornerStone is the mentor relationship. It is usually another—more senior examiner—who is assigned to monitor and help that new examiner through the training program.

Q. Are examiners rewarded by how many fines they can lodge against broker/dealers?

A. Definitely not. While NASDR has a number of different compensation and incentive programs in place, it is crystal clear that the

quality of the job is not measured by the number of disciplinary actions. In fact, the struggle that we have had over the years is to define what a high-quality job is in terms of an exam, no matter what the outcome. We want a high-quality examination conducted, even if the matter is filed without action.

Q. How can the new member process be eased?

A. In the membership process, NASDR implements a package of rules that are designed to provide fairness in the processing of new member applications and modifications. The process is highly structured with designated intervals of time that must be complied with. For example, there is the so-called "180-day clock," by the end of which a decision must be rendered. And, there are intervals within that 180 days that must be met. Before an applicant begins this activity, it is a good idea to talk with the District Office representative whose primary job is to process member applications and modifications. A key item in this process is the development of a business plan. Firms should focus on their business plans and on specific business intentions and what procedures would be in place for implementation.

Q. How should the mail be reviewed or handled in outlying, non-registered branch offices or, for example, in someone's home? Does that mail need to be reviewed?

A. The general rule for this is, all correspondence, whether electronic or in hard copy, needs to be reviewed; and firms need a supervisory system that will enable that

review. It is not dependent on where your person is or the type of office. It can be a registered or non-registered office. Your firm will need a process in its supervisory procedures to indicate that you know how you are going to review the correspondence of a particular location.

Q. How does one get on a District Committee?

A. The District Committees are always looking for qualified people to serve; people who are dedicated and willing to volunteer their time to address various policy and other issues that affect the industry and that may come before the Board. The process usually begins with the issuing of a *Notice to Members*. The *Notice* announces the opening of the election process and lists the names and affiliations of current members of the various committees across the country, as well as the nominating committees.

It announces the fact that nominations may be submitted to the nominating committees for consideration in the upcoming elections. The District Nominating Committee then meets and the slate of candidates is published in a subsequent *Notice to Members*. After the stated time period, unless there is a contested election, those individuals become the final slate and are subsequently elected.

There is probably no other point in the history of NASDR where it is more important that we get good candidates coming forward on the District Committees. Every conference we go to, there is discussion about the changing

roles of the District Committees. Also you should know that District Committee members are involved as hearing panelists. The hearing panelists are drawn from the District Committees and every disciplinary action has three hearing panelists. One panelist is a Hearing Officer, and the other two are industry representatives. So the majority vote is the industry vote on any disciplinary action that is litigated.

There are also other ways of getting involved within the NASD. There are numerous standing committees. Each one of the standing committees has a very specific function. If you or someone you know at a member firm is qualified for one of those standing committees, contact your District Director for the process to follow.

Q. My firm was subjected to a routine exam and we still have not received the written response from the NASD. Does the NASD have guidelines in place to set a time limit on responses to the firm?

A. We close out most examinations within six to 12 months of when we start the field work. All of the District Directors and District management, as well as the home office, monitor examination progress very closely to ensure that we are promptly processing and addressing issues with firms post examination. We would encourage member firms, if you feel that the examination has been open an unusually long period of time, or just a period

of time that perhaps you are not comfortable with, to contact the District Office, and talk to a District Office manager. NASDR is very interested and very committed to closing out examinations as quickly as possible.

Q. The broker/dealer is not always informed that an inquiry regarding a complaint is closed. Or, sometimes an investigation may be initiated, but our firm never receives notice.

A. NASD Regulation's standard practice is to notify the member firm when an investigation has been completed. If for some reason you have not heard from the District regarding status, then again, you should contact the District Office.

Q. If you are grandfathered on the Series 7 and you become a principal, are you part of the Regulatory Element for the supervisory program?

A. Yes.

Q. How does a firm know when a registered person is up for Regulatory Element sessions?

A. Basically, the trigger is the individual's anniversary date from initial registration. Continuing Education Regulatory Element requirements may be obtained through accessing the Web CRD system.

Q. If a registered representative with a Series 6 license discusses with clients investment risk tolerance issues, in order to recommend certain asset allocation model products that are comprised exclusively of investment company shares, is a Series 7 license needed?

A. To the extent that the only securities product that is being discussed and recommended is the investment company's shares, then the Series 7 is not required. If it involves discussing risk tolerance and making recommendations, it would be NASDR's view that a Series 7 would be required.

Q. If NASDR receives a complaint from a client, what are NASDR's policies concerning notifying the firm that it has received the complaint, and then determining if NASDR will research the complaint or provide the complaint to the firm?

A. When we receive a customer's complaint we notify the firm and seek information and documents to help us resolve the customer's complaint. There are a number of complaints and matters that we receive in the District Offices where we use a "30-day letter." Under this process, we enclose the customer complaint, send it to the firm, and ask the firm to address the customer's concern directly, and then copy us on its response within 30 days.

questions

ADVERTISING REGULATION

Ask The Analyst

This "Ask the Analyst" features questions and answers of general interest raised during the Advertising Regulation Seminars held in Washington, DC on October 14-15, 1999, and in Seattle, Washington on October 20, 1999. The seminars covered a variety of topics relating to communications with the public including electronic media, mutual funds, variable products, and general brokerage. If you have any questions or comments about this column, or suggestions for topics to be covered in future "Ask the Analyst" columns, please contact the Advertising/Investment Companies Regulation Department (Department) at (202) 728-8330.

Electronic Communications

Q. What standards under NASD Conduct Rule 2210 should registered individuals participating in public forums such as chat rooms follow?

A. NASD Conduct Rule 2210(d)(1)(C) requires that when participating in a public forum, member firms and associated persons shall follow the General and Specific Standards of the Rule as well as those applying to the use and disclosure of member firms' names.

Bank Broker/Dealers

Q. Does the requirement in NASD Conduct Rule 2350 to disclose "Not FDIC Insured, No Bank Guarantee, May Lose Value" apply to letterhead, envelopes, and business cards?

A. The Rule requires this disclosure in NASD member firms' advertisements and sales literature that announce the location of a financial institution where broker/dealer services are provided or that are distributed by member firms on the premises of financial institutions. The Rule exempts certain communications, such as electronic signs or radio broadcasts of 30 seconds or less, where the omission of these disclosures would not cause the advertisement or sales literature to be misleading in light of the context in which it is presented. The NASD Regulation staff has extended this exception to letterhead, envelopes, and business cards that do not reference investments or securities products. However, if a letter references investments or securities products, then it would have to include the disclosures mandated by NASD Rule 2350.

General

Q. Is an NASD member firm responsible for reviewing and approving advertisements and sales literature its representatives may use regarding fixed annuities?

A. The member firm would not be required to approve communications about fixed annuities sold through a non-member entity. Nevertheless, registered individuals must recognize that they have a responsibility under NASD Conduct Rule 2210 to ensure that all of their communications regarding financial

products and services are fair and not misleading, regardless of whether the product is sold through an NASD member firm or not. In addition, registered individuals must provide prompt written notice to their member firms of this type of outside business activity as required by NASD Conduct Rule 3030.

Mutual Funds

Q. If a mutual fund distributor sponsors a public radio or television show, must the firm include disclosure beyond a statement that the program "was sponsored by XYZ Fund Distributors, Inc."?

A. No further disclosure would be needed if the identification of the fund company was limited to the language included in the question. However, if the communication went on to describe mutual funds or their features or benefits, even in generic terms, then the member firm would be required to file the advertisement as required by NASD Conduct Rule 2210(c)(1).

Q. Must a member firm file literature sent to mutual fund shareholders that is not used to sell funds such as brochures about taxes, how to read an account statement, or how to access information about an account?

A. A communication does not have to sell overtly a particular mutual fund, or be used in a direct sales effort, in order to require filing pursuant to NASD Conduct Rule 2201(c)(1). This Rule covers, "Advertisements and sales literature concerning registered investment companies..." (emphasis added). Accordingly, if the types of communications mentioned in

the question described mutual funds or their features or benefits, a member firm would have to file them.

Q. Suppose a member firm provides mutual funds to an employer-sponsored retirement program. What responsibility, if any, does the member firm have under NASD Conduct Rule 2210 with respect to communications, such as performance reports or descriptions of the funds, sent by the employer or the plan administrator to plan participants?

A. If the employer or plan administrator is solely responsible for the creation, content, and approval of the communications without any involvement of the NASD member firm, then the member firm is not responsible for filing the material or ensuring that it complies with NASD Conduct Rule 2210. However, the member firm does have responsibility for ensuring that all information provided to its clients is accurate and consistent with applicable standards.

Q. If a member firm files a Web site with the Department and receives a letter stating that it appears consistent with applicable standards, must the firm re-file the site if it is translated into a language other than English?

A. The member firm would not have to re-file the non-English version of the Web site, provided it includes the same information as the English language version and that the only change is to translate text. However, the firm must ensure that the new version of the site receives internal approval as required by NASD Conduct Rule 2210(b)(1). In addition, the SEC staff has indicated that if a firm advertises a mutual fund in a language other than English, then the firm must offer, and be able to provide, a prospectus that has been translated into that same language.¹

Closed End Investment Companies

Q. Is advertising and sales literature for a closed end investment company subject to NASD review?

A. Yes. Member firms must file within 10 days of first use advertisements and sales literature about closed end funds distributed during the fund's public offering period. Once a closed end fund is trading on an exchange, member firms do not have to file advertisements or sales literature about the fund. However, member firms must continue to file within 10 days of first use all advertisements and sales literature about continuously offered closed end funds (sometimes called "interval" funds).

¹ See, *American Funds Distributors, Inc.*, SEC No-Action Letter (available October 16, 1989).

Stocks/Research Reports

Q. If a member firm properly discloses how the ranking was calculated and the source of the data, can the firm produce a ranking sheet listing broker/dealers and how they rank in terms of the dollar amount of money raised in Initial Public Offerings (IPOs) or the number of IPOs and secondary offerings conducted?

A. This type of communication would be difficult to fairly create and present in light of the risks of bias. Unlike rankings of investment company performance,² the NASD Conduct Rules do not have specific standards for ranking performance of member firms' underwriting activities. Instead, this type of communication must comply with the general standards of NASD Rule 2210 which prohibit false or misleading communications and require the disclosure of material facts necessary to make member firms' communications fair and not misleading.

While the compliance of a communication like the one described in the question would have to be judged on a case-by-case basis, members must consider several factors in cre-

ating such material. First, the ranking methodology must be fair and not misleading. For example, it would be misleading for the member firm that created the ranking to omit other broker/dealers from the assessment simply because they outperformed the member firm that created the ranking. Similarly, the time period used for the assessment should be based on objective criteria such as year-end or calendar-quarter end results; it would be misleading to select a time period that exaggerated the performance of the firm preparing the ranking.

Any such communication would need to include clear explanations regarding: the ranking methodology; the source of any underlying data; factors such as costs that might effect the ranking; the time period upon which the data is based; the fact that the ranking was created by the member firm sponsoring the communication and that past performance cannot guarantee future results; and any other material information necessary to make the ranking presentation fair and not misleading.

² See IM-2210-3 titled, "Use of Rankings in Investment Company Advertisements and Sales Literature."

Part-Time FINOPs

NASD Regulation reminds NASD members that all registered Financial and Operations Principals (FINOPs)—whether they are full-time or part-time—are fully responsible for each duty outlined in NASD Rule 1022(b). Part-time FINOPs are not relieved of these responsibilities because they are part-time, registered with multiple members, or operate off-site.

Firms are obligated to comply with the applicable financial reporting and net capital requirements. Members that employ a part-time FINOP are urged to establish procedures that describe the FINOP's duties and thoroughly outline the part-time FINOP's responsibilities so that the firm will properly and timely maintain its financial books and records. Firms are also encouraged to develop a financial and operations procedures manual for use by all employees who work in the financial and operations area of the firm.

It is imperative that members make sure that their part-time FINOPs understand and stay current with the federal, state, and self-regulatory securities laws and regulations relating to financial and operational responsibility. Firms should require their part-time FINOPs to thoroughly review *NASD Notices to Members* and other publications that relate to their financial and operational work.

NASD Regulation also wants to remind members that it may take disciplinary action when it finds violations of the net capital rule, the customer

protection rule, and the recordkeeping provisions. In these disciplinary proceedings, NASD Regulation has rejected the defense that a respondent is only a part-time FINOP, and this has been affirmed by the SEC. See, for example, In re Gilad J. Gevanyahu, Securities Exchange Act Release No. 33038 (October 12, 1993). Moreover, a disciplinary action against a FINOP for misconduct at one firm could have serious consequences for other firms that engage the same FINOP if the FINOP is barred, suspended, or required to requalify by examination.

As stated in NASD Rule 1022(b)(2), the FINOP is responsible for:

- ❖ final approval and responsibility for the accuracy of financial reports submitted to any securities industry regulatory body;
- ❖ final preparation of such reports;
- ❖ supervision of individuals who assist in the preparation of such reports;
- ❖ supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which the reports are derived;
- ❖ supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Securities Exchange Act of 1934;

- ❖ overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; and
- ❖ any other matters involving the financial and operational management of the member.

Questions regarding the responsibilities of FINOPs may be directed to Samuel Luque, Jr., or Susan DeMando of Member Regulation Financial Operations at (202) 728-8221.

High-Yield Investments And Suitability

NASD Regulation wishes to take this opportunity to remind member firms that careful attention should be given to applicable suitability requirements whenever high-yield bonds are recommended to retail customers. Bonds rated at less than investment grade may have speculative characteristics and carry a risk premium in the form of a higher current yield that can be attractive to investors yet present significant risks and suitability issues that must be addressed by member firms for compliance with NASD Conduct Rule 2310. Member firms with registered persons that recommend high-yield bonds to customers need to be mindful that high-yield bonds must be compatible with the investment situation and needs of each individual customer.

Many customers, particularly elderly investors, place considerable reliance upon their registered representatives. It is particularly important that customers be informed about the risks associated with these security recommendations.

Frontline supervisors and compliance personnel are reminded of their responsibility to detect inappropriate and unsuitable concentrations of high-yield bonds during periodic customer account reviews conducted pursuant to NASD

Rule 3010. Such reviews should take into consideration the customer account information recorded by the firm and used as a basis for its security recommendations. This information should be reasonably current and at a minimum, should contain all of the information required under NASD Conduct Rule 2310. Firms must ensure that all customer accounts are reviewed for suitability. This is especially critical in instances where a large percentage of account assets are invested in high-yield bonds at the recommendation of the firm. Such reviews should include reaching a reasonable determination that customers understand the special risks presented by high-yield bonds and possess the risk tolerance to justify these investments.

The failure of a firm to establish and enforce procedures to detect and prevent unsuitable recommendations could call into question the overall adequacy of a firm's supervisory system. Member firms are also encouraged to address other high-yield investments such as high-yield mutual funds and real estate investment trusts for suitability during supervisory reviews.

Questions about this topic may be directed to the Member Regulation Department at (202) 728-8221.

Special Supervisory Plans

Each member must establish, maintain, and enforce written procedures to supervise its business and the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and the NASD rules. NASD Regulation takes this opportunity to remind members of the importance of implementing *heightened* supervisory controls in certain situations. It is particularly important for a member to develop special supervisory plans when a member firm intends to sponsor the association of a person who is subject to statutory disqualification (SD). Special supervisory plans also are appropriate to monitor the conduct of registered representatives with a history of regulatory issues, customer complaints, or arbitrations.¹

The SD process requires a sponsoring member to obtain approval from the NASD and SEC (through an eligibility proceeding pursuant to the NASD Procedural Rule 9520 Series) before employing a person subject to an SD. The member must first file an application and propose a specific supervisory plan for the SD. NASD Regulation's Member Regulation Department (Member Regulation) considers the application and other relevant documentation and makes a recommendation to the National Adjudicatory Council (NAC) of NASD Regulation, which then issues a decision on behalf of the NASD. It is important to note that the quality of the proposed heightened supervisory procedures is an important determining factor in many cases.

As the Member Regulation staff prepares its recommendation for the NAC's consideration, we discuss with member firms the value of heightened supervisory procedures to govern the activities of the SD. While there is no one prescription for an appropriate supervisory plan, most plans should include the following features:

- ❖ The supervisor will review and approve all of the SD's order tickets, incoming and outgoing correspondence, and new account forms for suitability.
- ❖ The supervisor will keep a written record evidencing review and approval of all of the SD's transactions, the opening of new accounts, and all correspondence.
- ❖ The supervisor will meet with the SD on a quarterly basis (or other appropriate, periodic basis) to review his/her transactions with clients. This will entail a review of the distribution of customer funds. A log shall be kept by the firm of these meetings.
- ❖ All customer complaints pertaining to the SD, whether verbal or written, will be immediately referred to the supervisor for review, and then to the Director of Compliance. The supervisor will prepare a memorandum to the file as to what measures he/she took to investigate the merits of the complaint and the resolution of the matter. Documents pertaining to these complaints should be segregated for ease of review.

1 See *NASD Notice to Members 97-19*, entitled "NASD Regulation and New York Stock Exchange Memorandum Discusses Sweep Report and Provides Guidance on Heightened Supervision Recommendations."

- ❖ The supervisory procedures of the firm will be amended to clearly specify the responsible supervisor of the SD. The firm is advised to notify the supervisor that he/she is responsible for discharging these heightened supervisory conditions, and that the supervisor is subject to appropriate disciplinary action by the NASD if the supervisor neglects to do so.
- ❖ The supervisor must certify quarterly to the Director of Compliance that all of the above conditions of heightened supervision have been met.

These conditions are generally representative of the supervisory controls Member Regulation will suggest during an SD proceeding. At times, Member Regulation will propose other or additional conditions or limitations to address and account for the unique facts and circumstances of the particular case.

SD matters aside, member firms are encouraged to consider the adoption of heightened supervision

for any employee who has a history of regulatory issues, customer complaints, or arbitrations. In *NASD Notice to Members 97-19*, NASD Regulation set forth “best hiring practices” to aid members in the identification of registered representatives with a history of misconduct, whether or not the person is statutorily disqualified. Among other things, the *Notice* urged members to address with job applicants prior or pending customer complaints, arbitrations, and regulatory actions. When a decision to hire a person with a regulatory history is made, the firm should determine whether its existing supervisory procedures and educational programs are sufficient to address the circumstances surrounding the employment or whether it should develop and implement special supervisory procedures to assure compliance with its responsibilities under NASD Rule 3010.

Direct any questions about this subject to Brad Ali, at (202) 728-8402, or Jeff Holik, at (202) 728-8387, in the Department of Member Regulation.

Underwriter Disclosure Practices

Recent news reports of bond market activities indicate that some municipal securities underwriters may be disavowing their disclosure obligations to municipal securities investors in contravention of the requirements of Rule 15c2-12 under the Securities Exchange Act of 1934 (Exchange Act). When underwriting a municipal security, Rule 15c2-12 requires that a member firm have a reasonable basis for belief in the accuracy of statements directly made by the issuer concerning the offering. Contrary to this requirement, some underwriters have included disclosure statements in official documents that suggest the underwriters are not responsible for ensuring that an issuer's disclosures are complete and accurate.

Members should be aware that the SEC specifically addressed this issue in a March 9, 1994, interpretive release, Securities Exchange Act Release No. 33741 (Interpretive Release), which states that an underwriter has an obligation to "review the official statement and to have a reasonable basis for its belief in the accuracy and completeness of the official statement's key representations..." The Interpretive Release states, moreover, that "disclaimers by underwriters of responsibility for information provided by the issuer or other parties, without further clarification

regarding the underwriter's belief as to the accuracy, and the basis therefore, are misleading and should not be included in official statements."

The SEC Interpretive Release also affirms that the antifraud provisions of the Exchange Act are applicable to municipal securities transactions and thus prohibit any person from making a false or misleading statement of material fact, or omitting any material facts necessary to prevent statements made by that person from being misleading, in connection with the offer, purchase, or sale of a municipal security.

NASD Regulation is therefore reminding its members that underwriters of municipal securities have legal responsibilities under Rule 15c2-12, as well as the antifraud provisions of the Exchange Act. Members are encouraged to review underwriter disclosures currently included in official statements to confirm that the disclosure statements are in compliance with Rule 15c2-12 and SEC interpretive releases relating to the Rule.

Questions regarding this reminder should be directed to NASD Regulation's Office of Fixed Income Regulation at (202) 728-8221.

Principal Registration

The NASD has noted instances in which member firms have failed to ensure that individuals actively engaged in the management of the firm are appropriately registered as Series 24 principals as required by NASD Rule 1021. Any person who supervises an area of the firm's business or is actively engaged in the day-to-day management of the firm's business is required to be registered as a principal, including an individual who may not have contact with the investing public, but who otherwise is responsible for management of some aspect of the firm's business.

Persons involved in the firm's management are not exempt from principal registration requirements because they have delegated supervisory responsibilities to other principals. In those cases, the individual supervising other registered principals, or delegating responsibilities to other principals, is required to be registered as a principal.

Member firms are reminded that in the event that an individual employee's duties change to include management responsibilities, that person should be promptly notified and required to register as a principal. The member firm's written supervisory procedures should clearly designate the person responsible for ensuring compliance with the NASD's registration rules, and the means employed by the firm to monitor and enforce these rules. Failure to ensure that individuals are appropriately registered may result in formal disciplinary action against the firm, the unregistered individual, or the principal responsible for ensuring that registration requirements are met.

Further clarification and guidance on the requirement to register as a principal is set forth in *NASD Notice to Members 99-49*.

Questions about this topic may be directed to the Member Regulation Department at (202) 728-8221.

Use Of Error Accounts

The NASD is concerned that member firms operating pursuant to minimum net capital requirements of less than \$100,000, including members that are typically subject to a \$5,000 requirement, may be engaging in activity that could cause them to be considered dealers under the net capital rule and therefore be subject to a \$100,000 minimum net capital requirement.

The NASD has noticed several firms engaged in the practice of removing transactions, that were apparently executed in violation of certain NASD rules, from customer accounts, and placing them in a firm "error account." Typically, the transactions were executed in apparent violation of either the SOES rules, the affirmative determination provisions of NASD Rule 3370, or the short sale rule (NASD Rule 3350). The firm may be

moving a “round trip”—a buy and sell of the same securities—from the customer’s account to the error account, or may be moving one transaction resulting in a long or short securities position being carried in the error account for a period of time. To the extent that one-sided transactions and securities positions are placed in the member’s error account, the member’s capital is subjected to market risk.

The net capital rule requires that dealers maintain minimum net capital of \$100,000. Dealers include those firms that engage in more than 10 proprietary transactions in a calendar year. (It should be noted that bona fide corrections, cancellations, and errors are generally not included in the 10-transaction total.)

Transactions that are transferred, by any means, from a customer account to a firm “error account”

due to the fact the transaction may have violated one or more rules would **not** be considered bona fide corrections, cancellations, or errors. The NASD has noticed that such actions are typically taken as an attempt by the firm to comply with certain rules, and not to correct legitimate errors on the part of the firm or associated persons. In addition, to the extent such transactions cause the member to carry any security position in the “error account” for any period of time, either overnight or intra-day, such transactions would be considered when determining if the firm transacted more than 10 trades and could cause the member to be subject to a \$100,000 minimum net capital requirement.

If you have any questions, please contact your local District Office, or the Member Regulation Department at (202) 728-8221.

Prime Bank Fraud

NASD Regulation is again alerting its members to trading programs based on fraudulent financial instruments. This scheme, known as prime bank fraud, involves the issuance, trading, or use of “prime” bank, “prime” European bank, or “prime” world bank financial instruments. More specifically, the fraud consists of the purchase and sale of bank instruments characterized as debt obligations of large, well-known domestic and foreign banks, appearing in the form of medium term notes, standby letters of credit, or bank guarantees. The named institutions are unaware of the use of their name and maintain no connection with this activity.

Both institutional and private investors are being asked to invest money in bank debenture trading programs described as investment vehicles commonly used by the very wealthy. The typical offer is said to be fully secured by an offering bank, with the promise or guarantee of unrealistic rates of return, i.e., 150 percent annualized rate of return on the investment. Potential investors are told these investment opportunities are by invitation only, and that their investment will be kept strictly confidential. For this reason, no client references would be made available.

The SEC previously issued an alert describing prime bank fraud. You may review the publication via the SEC Web Site at www.sec.gov/enforce/prime.txt. The SEC alert is also available in the March 1994 NASD *Notice to Members*, "For Your Information" section.

If you have any information regarding prime bank fraud or similar investment schemes, contact your local NASD Regulation District Office,

regional SEC office, and your state securities administrator. Links to the various SEC locations, state securities regulators, and the National Fraud Information Center are available on the NASD Regulation Web Site, www.nasdr.com.

Questions about this topic may be directed to the Member Regulation Department at (202) 728-8221.

NASD OMBUDSMAN

Ombudsman's Office Provides Confidential And Neutral Assistance

The NASD Office of the Ombudsman provides a forum for member firms and their associated persons, public investors, staff members of the NASD and its subsidiaries, and issuers on The Nasdaq Stock Market, the Bulletin Board, and the American Stock Exchange to voice their concerns of unfair practices or disparate treatment. The objective of the Ombudsman's Office as an independent, neutral, and confidential source of assistance, is to receive and address concerns and complaints from any source concerning the operations, enforcement, or other activities of the NASD, NASD Regulation, The Nasdaq Stock Market, and the American Stock Exchange. Where established procedures exist currently regarding the application of rules, policies, procedures, or interpretations, the Ombudsman will direct the matter to the appropriate office, department, or company. The function of the Ombudsman's Office is not intended to be an

appeals forum for unpopular decisions made in other forums, or an arbitrary alternative to a program that already exists. The Ombudsman will always attempt to assist you in identifying the appropriate method of resolving your problem or complaint, even if the Office does not become directly involved in the matter.

The Ombudsman's Office was created in response to a recommendation from the NASD Select Committee on Structure and Governance and ratified by the NASD Board of Governors Audit Committee, as an alternative channel of communication—complementing, but not replacing, the NASD's comprehensive program of formal resolution channels that include adjudication and dispute resolution. It takes objective action to resolve matters that fall outside the established forums and procedures. It has unrestricted access to all company functions, records, and

personnel. The Ombudsman's Office does not have direct authority over NASD personnel or the departments it reviews. The Ombudsman will take all reasonable steps to protect any records or files pertaining to confidential discussion from inspection by all other persons, including management.

The Office is staffed with several Ombudsmen—men and women who are trained and have experience in handling a variety of matters.

The Ombudsman, as a designated neutral party, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention unless given explicit permission to do otherwise. The only exception, at the sole discretion of the Ombudsman, is where a threat of serious physical harm to individuals appears imminent or a critical breach of security is probable.

For more information, contact the Office of the Ombudsman at:

NASD Office of the Ombudsman

PO Box 9492

Gaithersburg, Maryland 20898-9492

Phone: (301) 212-2515

Toll-Free Number: (888) 700-0028

E-Mail: ombuds@nasd.com

You may also find out about and contact the NASD Ombudsman's Office via its Web Pages on the NASD's various Web Sites:

www.nasd.com

www.nasdr.com

www.nasdaq.com

QUALIFICATIONS/TESTING/CONTINUING EDUCATION

Testing Update

Excellence In Service Award For Sylvan Centers

NASD Regulation has established a Sylvan Technology Center (STC) Excellence In Service Award Program in 1999 for those STCs that consistently achieve excellence in the areas of customer service and performance. The awards are made in April, July, October, and January for the previous calendar quarter.

The Excellence In Service Award winners for third quarter 1999 are:

★ Consecutive Quarter Winners

★ Phoenix, AZ	Cincinnati, OH	Spokane, WA
★ Memphis, TN	Puyallup, WA	La Mesa, CA
★ Pittsburgh (North Hills), PA	Redlands, CA	Bossier City, LA
★ Indianapolis, IN	Niles, OH	Charlotte, NC
★ Hamden, CT	Gastonia, NC	Lansing, MI
★ Dothan, AL	Utica, MI	Albany, NY
★ Fox Point, WI	Hato Rey, PR	St. Louis, MO
★ Melville, NY		
★ Maitland, FL		

NASD Regulation Begins International Delivery For Testing

NASD Regulation has begun full delivery of computerized testing at its NASDR Testing Centre in London, England. The center has been expanded, and is equipped to deliver all securities industry tests. NASDR has been delivering Securities Industry Continuing Education in London for nearly three years and began

delivery of testing in September after a brief pilot period. Additional international locations are being planned.

The London Centre was recently relocated to the Nasdaq International facility at:

*8/13 Chiswell Street
The Durant House - 4th Floor
EC2, London*

To schedule an appointment, contact the London Centre staff at (011-44)171-374-2666. As in all international delivery, there is an additional charge of \$25 per session.

Certification Testing Announces “Scheduling And Delivery System Status” Information On The NASD Regulation Web Site

Certification Testing is committed to providing timely and accurate reporting on the operational status of the systems used to deliver its computer-based testing and continuing education programs. Effective December 1999 Certification

Testing began publishing system status information for both the appointment scheduling and test/continuing education delivery systems.

System status information will be communicated through the Web Site for any problem that occurs that is expected to affect normal system performance. The announcement will include an estimated time for system repair, and will continue to provide status updates until the problem has been resolved. System status information can be obtained by checking the NASD Regulation Web Site (www.nasdr.com) and selecting: “Members Check Here” then “Exam Information & Locations.”

Certification Testing & Continuing Education Delivery Location List

Current as of December 1999

Alabama

Birmingham	205-871-7444
Decatur	205-350-8324
Dothan	334-677-6334
Mobile	334-344-6284
Montgomery	334-262-0043

Alaska

Anchorage	907-563-6601
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Arizona

Goodyear	623-932-7800
Phoenix (N. 35th Ave.)	602-548-8220
Tucson	520-531-0431

Arkansas

Fort Smith	501-484-0702
Little Rock	501-663-8280

California

Anaheim	714-637-7894
Atascadero	805-462-8308

Brea	714-255-1141
Culver City (5601 W. Slausen)	310-337-6696
Culver City (5731 W. Slausen)	310-337-6696
Diamond Bar	909-861-1146
Fremont	510-745-8192
Gardena	310-329-1844
Glendale	818-545-7383
Irvine	949-552-0563
LaJolla	619-454-4384
La Mesa	619-668-2121
Palm Desert	760-836-1510
Piedmont	510-428-4123
Rancho Cucamonga	909-944-9763
Redlands	909-792-2145
Riverside	909-353-8600
Sacramento (Fair Oaks)	916-961-7323
San Diego	619-481-3648
San Francisco (Market St.)	415-882-1212
San Francisco (W. Portal St.)	415-681-3769

San Jose 408-257-7699
Santa Rosa 707-528-6000
Walnut Creek 925-934-3099
Westlake Village 805-495-6367

Canada

Calgary 403-777-1365
Etobicoke, ON 416-236-2629, Ext.221
Halifax 902-422-7323
Montreal 514-876-8818
Richmond BC 604-231-1966
Saskatoon, SK 306-978-7323
Whitby 905-404-1818
Windsor 519-974-8747
Winnipeg 204-988-5050

Colorado

Boulder 303-449-1700
Colorado Springs 719-593-1272
Denver 303-692-8745
Littleton 303-972-7276
Pueblo 719-545-0838

Connecticut

Glastonbury 860-659-0400
Hamden 203-287-9677
Norwalk 203-847-0031

Delaware

Dover 302-741-0412
Wilmington 302-998-3817

District of Columbia

Washington 202-955-5887

Florida

Davie 954-423-0782
Ft. Myers 941-275-1130
Gainesville 352-371-6891
Hollywood 954-967-0443
Jacksonville 904-739-3000
Maitland/Orlando 407-875-8118
Miami 305-825-2708
Sarasota 941-923-9399
Tallahassee 850-386-8707
Tampa 813-289-1246
Temple Terrace (Tampa) 813-989-9988
Winter Park 407-671-2332

Georgia

Atlanta 404-255-9957
Augusta 706-868-1888
Jonesboro 770-478-5356
Macon 912-474-5909

Marietta 770-980-1117
Savannah 912-354-2660
Valdosta 912-245-1069

Hawaii

Honolulu County 808-263-6656

Idaho

Boise 208-322-3555

Illinois

Carbondale 618-529-4664
Carpentersville 847-836-2031
Chicago (LaSalle St.) 312-609-2525
Chicago (S. Wabash) 312-663-5632
Homewood 708-798-0238
Northbrook 847-559-2461
Peoria 309-682-0825
Springfield 217-546-0381
Westchester 708-947-2800

Indiana

Evansville 812-479-6855
Ft. Wayne 219-436-2710
Indianapolis (E. 86th St.) 317-257-7546
Indianapolis (Girl's School Rd) 317-247-7664
Lafayette 765-447-5996
Merrillville 219-736-1113
Mishawaka 219-254-1055

Iowa

Bettendorf 319-359-1001
Des Moines 515-223-6650

Kansas

Overland Park 913-338-1441
Topeka 785-272-7500
Wichita 316-651-5350

Kentucky

Lexington 606-269-3933
Louisville 502-423-0340

Louisiana

Baton Rouge 225-293-8489
Bossier City 318-742-7349
New Orleans 504-245-2600

Maine

Orono 207-581-1708
Portland 207-775-5812

Maryland

Baltimore 410-843-6401
Bethesda 301-718-9893
Columbia 410-740-8137

Lanham	301-552-3400	Toms River	732-349-4609
Pikesville	410-486-9045	Union	908-964-2862
Salisbury	410-341-4100		
Massachusetts		New Mexico	
Boston	617-345-8980	Albuquerque	505-296-0609
E. Longmeadow	413-525-4901		
Lexington	781-861-0723	New York	
Waltham	781-890-0466	Albany	518-869-6119
Worcester	508-853-7250	Amherst/Buffalo	716-565-0570
		Brooklyn Heights	718-222-1277
		East Syracuse	315-433-9038
		Garden City	516-746-7367
		Ithaca	607-277-4821
		Manhasset	516-869-1236
		Melville	516-845-9063
		NYC Manhattan Area	212-760-1137
		NYC Midtown Area	212-809-5509
		NYC Wall Street Area	212-809-5509
		Rego Park	718-997-6356
		Rochester	716-385-4810
		Staten Island	718-980-3079
		Vestal	607-798-1715
		Wappingers Falls	914-298-8378
		Watertown	315-788-2588
		White Plains	914-289-0437
		North Carolina	
		Asheville	828-253-4224
		Charlotte	704-364-7758
		Gastonia	704-853-2038
		Greensboro	336-288-1311
		Greenville	252-756-0342
		Raleigh	919-846-1933
		North Dakota	
		Bismarck	701-224-1171
		Fargo	701-293-1234
		Ohio	
		Cincinnati	513-671-7030
		Columbus	614-451-4131
		Cuyahoga Falls (Akron)	330-922-5587
		Dayton	937-435-8417
		Hilliard	614-529-4232
		Lima	419-331-7323
		Mentor	440-255-0055
		Niles	330-652-1886
		Reynoldsburg	614-864-4090
		Strongsville	440-238-0530
		Oklahoma	
		Oklahoma City	405-843-8378
		Tulsa	918-249-0820

Oregon

Eugene	541-485-4589
Milwaukie	503-659-9575
Portland	503-254-2009
Salem	503-363-2996

Pennsylvania

Allentown	610-791-5320
Clark Summit	717-586-4362
Erie	814-864-6100
Harrisburg	717-652-0646
Lancaster	717-391-6519
North Wales	215-412-7822
Philadelphia	215-238-8380
Pittsburgh (North Hills)	412-367-4620
Pittsburgh (Braddock Ave.)	412-247-4463
Plymouth Meeting	610-941-6284
York	717-755-7471

Puerto Rico

Hato Rey	787-753-6394
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Rhode Island

Cranston	401-942-8552
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South Carolina

Charleston	803-766-5599
Greenville	864-676-1506
Irmo	803-749-0356

South Dakota

Sioux Falls	605-362-4875
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Tennessee

Chattanooga	423-894-6249
Clarksville	931-647-2003
Franklin	615-790-5018
Knoxville	423-690-0671
Madison (Nashville)	615-860-0376
Memphis	901-266-4606

Texas

Abilene	915-698-7858
Amarillo	806-359-1037
Arlington	817-572-6690
Austin	512-441-1978
Baumont	409-899-9798

Corpus Cristi	512-993-3793
Dallas	972-385-1181
El Paso	915-587-7323
Houston (Saturn Ln)	281-488-6144
Lubbock	806-785-4400
Mesquite	972-686-3310
Midland	915-520-9418
San Antonio	210-494-7263
Sugar Land	281-491-9200
Waco	254-772-2467

Utah

Orem	801-226-5544
Salt Lake City	800-578-6273

United Kingdom

London	(011-44) 171-374-2666
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Vermont

Williston	802-872-0845
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Virgin Islands

St. Croix	340-773-5751
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Virginia

Arlington/DC Area	703-807-5813
Lynchburg	804-832-0778
Mechanicsville	804-730-5844
Newport News	757-873-0208
Roanoke	540-344-3688

Washington

Lynnwood	425-774-3922
Puyallup	253-848-0771
Spokane	509-467-8715

West Virginia

Morgantown	304-293-0699
South Charleston	304-744-4144

Wisconsin

Fox Point	414-540-2223
Madison	608-231-6270
New Berlin	414-796-0836
Racine	414-554-9009

Wyoming

Casper	307-235-0070
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NASD DISCIPLINARY ACTIONS

NASD Disciplinary Actions

In September, October, November, and December 1999, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result. This information is current as of Monday, December 20, 1999.

District 1 - Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

September Actions

Gary Anthony Familathe, Jr. (CRD #2665609, Registered Representative, San Francisco, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Familathe failed to respond to NASD requests for information. (NASD Case #C01990003)

Alberto Gonzalez (CRD #2770755, Registered Representative, South San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$12,684.85 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that he received a total of \$536.97 from a public customer and a fellow registered representative and misappropriated the funds to his own use and benefit. (NASD Case #C01990011)

Gregory Alan Hartnett (CRD #2368837, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hartnett consented to the described sanctions and to the entry of findings that he executed a note in the amount of \$21,500 in favor of a public customer to settle a complaint from the customer without disclosing the settlement to his member firm. The findings also stated that Hartnett provided false and misleading information in response to an NASD request for information. (NASD Case #C01980020)

October Actions

Leslie Rhodes Koonce (CRD #1131758, Registered Representative, South San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Koonce consented to the described sanctions and to the entry of findings that he signed the name of a public customer to an authorization to release medical information and submitted the authorization to an insurance company and signed another public customer's name to an Authorization to Transfer Retirement account form and submitted it to a member firm.

Koonce's suspension began with the opening of business on October 1, 1999, and concluded at the close of business on November 29, 1999. (NASD Case #C01990015)

Gregory Paul Maggipinto (CRD #1042789, Registered Representative, San Jose, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities prior to association with a member firm. The National Adjudicatory Council (NAC) imposed the sanctions following the review of an appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The decision became final following Maggipinto's dismissed appeal to the Securities and Exchange Commission (SEC). The sanctions were based on findings that Maggipinto effected unauthorized transactions in a public customer's account. (NASD Case #C01970025)

Joel Dean Moore (CRD #2025699, Registered Principal, Redding, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. The NAC imposed the sanctions following review of a San Francisco DBCC decision. The sanctions were based on findings that Moore made unsuitable recommendations to public customers in that he failed to understand the risks associated with a security he recommended and failed to make a customer-specific suitability determination prior to making recommendations. (NASD Case #C01970001)

November Actions

Tsuihua Cathy Chen (CRD #2034887, Registered Representative, Cotati, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chen consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests to provide information and documentation concerning her termination by a member firm. (NASD Case #C01990021)

Delio Pereira Da Silva (CRD #1726594, Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was fined \$14,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Da Silva consented to the described sanctions and to the entry of findings that he effected an \$11,813.75 sale and an \$11,813.95 purchase of funds in the account of public customers without their knowledge and consent, thereby misusing \$11,813.95 belonging to the customers. The findings also stated that Da Silva provided a business card to another public customer that falsely represented himself as a principal in a member firm. In addition, Da Silva failed to respond to NASD requests for documentation. (NASD Case #C01980014)

December Actions

Clyde Joseph Bruff (CRD #824940, Registered Principal, Oakland, California) was censured and barred from association with any NASD member in any capacity. The United States Court of Appeals for the Ninth Circuit denied Bruff's petition for review of a 1998 SEC decision affirming NASD's findings that he engaged in unsuitably excessive trading in the account of a public customer. (NASD Case #C01960005)

District 2 - Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

September Actions

Global Strategies Group, Inc. (CRD #27414, New York, New York) and Kurt Douglas Fethke (CRD #2565653, Registered Representative, Los Angeles, California). The firm was fined \$25,000 and expelled from NASD membership, and Fethke was fined \$45,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fethke executed unauthorized transactions in the accounts of public customers and failed to respond to NASD requests to provide information and testimony. In addition, the firm failed to properly supervise its Beverly Hills branch office in that its supervisory system was not reasonably designed to achieve compliance with federal securities laws and NASD rules. (NASD Case #C02980018)

Gordon Kerr (CRD #268444, Registered Representative, Walnut, California) was barred from the NASD in all capacities. The sanctions were based on findings that Kerr functioned as a securities principal while he was ineligible to act in that capacity. (NASD Case #C02980051)

October Actions

Gary Paul Johnson (CRD #1607866, Registered Representative, Calabasas, California) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the findings that he failed to respond to NASD requests for information and testimony. (NASD Case #C02990041)

Charles Sheldon Lichter (CRD #1331488, Registered Principal, Woodland Hills, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Lichter consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm describing the proposed transactions and his proposed role therein. (NASD Case #C02990048)

Edward Michael McKeown (CRD #1808724, Registered Representative, Santa Ana, California) was fined \$10,000, suspended from association with any NASD member in any capacity for 60 days, ordered to disgorge \$236.94 in ill-gotten gains, and ordered to requalify by exam as a general securities representative. The sanctions were based on findings that McKeown effected transactions in a public customer's account without the customer's knowledge, authorization, or consent and without the customer's oral or written discretionary authority. (NASD Case #C02990015)

Raymond Alvarez Valentino, II (CRD #2474078, Registered Representative, Los Angeles, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Valentino failed to respond to NASD requests for information. (NASD Case #C02980086)

November Actions

Stephen Jay Gluckman (CRD #1139571, Registered Representative, Los Angeles, California) was censured, fined \$55,000, and barred from association with any NASD member in any capacity. The SEC sustained the sanctions following appeal of a January 1998 NAC decision. The findings stated that Gluckman engaged in private securities transactions without providing prior written notice to his member firm. (NASD Case #C02960042)

Noble Bradford Trenham (CRD #449157, Registered Principal, Pasadena, California) and George Edward Hall (CRD #2876326, Registered Principal, Alhambra, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were fined \$2,000, jointly and severally, with a member firm. Trenham was fined an

additional \$3,000, jointly and severally, with the firm and suspended from association with any NASD member in any principal capacity for 10 business days. Hall was fined an additional \$1,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Hall and Trenham consented to the described sanctions and to the entry of findings that a member firm, acting through Trenham, failed to have and maintain sufficient minimum net capital as required by the SEC. The deficiencies were variously attributable to a misclassification of a significant portion of a \$94,955 concessions receivable as an allowable asset and inaccurate haircut deductions on certain of the firm's proprietary positions. The findings also stated that the firm, acting through Trenham, failed to designate a qualified financial and operations principal to carry out the firm's financial and operational responsibilities and permitted Hall to function as the firm's financial and operations principal without the benefit of proper registration. (NASD Case #C02990054)

December Actions

Jeffrey Daniel Hsu (CRD #2158258, Registered Representative, Pasadena, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hsu failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C02990006)

McLaughlin, Piven, Vogel Securities, Inc. (CRD #7404, New York, New York) was censured, fined \$10,000, and ordered to pay \$1,414, plus pre-judgment interest, in restitution to public customers. The sanctions were based on findings that the firm, acting through an individual, charged retail customers excessive markdowns on transactions involving the purchase of municipal bonds. (NASD Case #C02980073)

Jose Parra (CRD #1159572, Registered Representative, Moreno Valley, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Parra failed to respond to NASD requests for information. (NASD Case #C02990014)

Thomas Carter Ronk (CRD #2293671, Registered Representative, Corona Del Mar, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Ronk consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm describing the proposed transactions and his proposed role therein. (NASD Case #C02990057)

District 3 - Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming

District 3A - Denver

September Actions

Daniel Sebastian Hellen (CRD #2339553, Registered Representative, Centereach, New York) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam in all capacities prior to associating with any member firm. In addition, Hellen was required to pay \$18,000 in restitution. The NAC imposed the sanctions following appeal of a New York DBCC decision and a call for review by the NAC. The sanctions were based on findings that Hellen effected unauthorized transactions in the accounts of public customers.

Hellen's suspension commenced with the opening of business on July 15, 1999, and will conclude at the close of business on July 13, 2001. (NASD Case #C3A970031)

Glen William Hilker (CRD #245646, Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was censured, fined \$17,500, and suspended from association with any NASD member in any capacity for seven months. Without admitting or denying the allegations, Hilker consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Hilker failed to respond to NASD requests for information in a timely manner. (NASD Cases #C3A970034 and C3A970053)

Kunz & Cline Investment Management, Inc. (CRD #37196, Salt Lake City, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Principal, Fruit Heights, Utah) were censured and fined \$20,000, jointly and severally, and Kunz was fined \$5,000, individually. In addition, Kunz was suspended from association with any NASD member in any capacity for 30 days and in a principal capacity for one year, such suspensions to run concurrently. Moreover, Kunz must requalify in a representative capacity within 90 days of the conclusion of his suspension as a representative or cease to function in such capacity until he requalifies, and to requalify in a principal capacity before functioning in such capacity after the conclusion of his principal suspension. Furthermore, the firm was suspended from participation in any public or private offering of a security in the capacities of lead underwriter, primary placement, or sales agent until such time as it retains an independent consultant to review the adequacy and completeness of the firm's operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities and the firm demonstrates to the NASD that it has implemented any recommendations of the consultant. The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda containing material misrepresentations and omissions, and sold securities that were neither registered with the SEC nor exempt from registration, and Kunz compensated an unregistered person in connection with the sale of securities.

The firm and Kunz appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.(NASD Case #C3A960029)

Alex Ezell Neely (CRD #1240671, Registered Principal, Casper, Wyoming) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$676,930 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neely consented to the described sanctions and to the entry of findings that he received checks from a public customer totaling \$115,386 to be used for the purchase of securities. The findings also stated that Neely deposited the checks into his personal bank account, converted the funds to his own use, and failed to invest the proceeds as directed by the customer. (NASD Case #C3A990047)

Glenn Gerald Opfer (CRD #1049487, Registered Representative, Littleton, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Opfer consented to the described sanctions and to the entry of findings that he opened a securities account in his name at a member firm and failed to notify the firm, in writing, that he was employed with another member firm. The findings also stated that Opfer failed to notify his employing firm that he had opened the account. In addition, Opfer failed to respond to NASD requests for information and documentation. (NASD Case #C3A990037)

Brian Prendergast (CRD #825814, Registered Principal, Englewood, Colorado) was censured and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Prendergast invested funds from the sale of securities offered pursuant to a private placement memorandum in a manner that was inconsistent with representations in the memorandum and solicited certain securities transactions using a private placement memorandum that contained material misrepresentations and omissions, and distributed communications to purchasers that failed to conform to NASD general and specific standards for sales literature. In addition, Prendergast caused an advertisement to be placed in a newspaper that constituted a general solicitation prohibited by the SEC and the NASD. Prendergast also failed to provide proper notice to his member firm that he had opened an account with another firm and failed to inform the executing member firm that he was associated with another firm. Moreover, Prendergast failed to respond to NASD requests for information and to provide on-the-record testimony.

Prendergast has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.(NASD Case #C3A960033)

David Leland Sagers (CRD #1013621, Registered Principal, Sandy, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$7,500, jointly and severally, with a member firm, and

suspended from association with any NASD member in the capacity of financial and operations principal for three business days. Without admitting or denying the allegations, Sagers consented to the described sanctions and to the entry of findings that a member firm, acting through Sagers, conducted a securities business while failing to maintain the minimum required net capital. The findings also stated that the firm, acting through Sagers, filed NASD FOCUS Part II Reports that materially misstated the firm's net capital. (NASD Case #C3A990045)

James Mitchell Vaughn (CRD #2680249, Registered Representative, Bellport, New York) submitted an Offer of Settlement pursuant to which he was fined \$40,000, suspended from association with any NASD member in any capacity for 21 months, and required to pay \$121,202 in restitution to public customers. Without admitting or denying the allegations, Vaughn consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, predicted the future prices of speculative securities in connection with the offer and sale of securities, effected a transaction in a customer account without having obtained the customer's prior authorization, and failed to follow customer instructions to sell securities. (NASD Case #C3A990004)

October Actions

David Alvarado (CRD #2560284, Registered Principal, Setauket, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and required to pay \$213,906 in restitution to public customers. Without admitting or denying the allegations, Alvarado consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future prices of speculative securities in connection with the offer and sale of securities. The findings also stated that Alvarado effected transactions in customer accounts without having obtained the customers' prior authorization, and in connection with an unauthorized transaction, represented that he would sell the purchased securities if the price declined to a specified price but failed to do so.

Alvarado's suspension began October 1, 1999, and will conclude at the close of business on September 29, 2000. (NASD Case #C3A990012)

The Minneapolis Company, Inc. (CRD #38859, Melville, New York) and Susan Georgette Penn (CRD #1104422, Registered Principal, Huntington Station, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined \$29,789, jointly and severally, and required to demonstrate that an offer of rescission had been made to purchasers of securities. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Penn, effected transactions in a penny stock

without complying with requirements of the SEC penny stock rules. In addition, the firm, acting through Penn, violated the terms of its NASD Membership Agreement and NASD rules by effecting penny stock transactions. (NASD Case #C3A990051)

November Actions

ACAP Financial, Inc. (CRD #7731, Salt Lake City, Utah) and Kirk Lynn Ferguson (CRD #1307741, Registered Principal, Centerville, Utah) submitted an Offer of Settlement pursuant to which they were censured, fined \$24,000, jointly and severally, and required to pay \$800, jointly and severally, in restitution to a public customer. The firm was fined \$5,000 individually and Ferguson was fined \$2,000 individually. The firm and Ferguson were also required to retain an independent consultant acceptable to the NASD to review the firm's supervisory and compliance procedures and to provide written recommendations for modifications and additions to its procedures. The consultant's written recommendations shall be provided to the NASD with the procedures the firm and Ferguson have modified or adopted as a result of the recommendations. Without admitting or denying the allegations, the firm and Ferguson consented to the described sanctions and to the entry of findings that the firm, acting through Ferguson, reported transactions to the Automated Confirmation Transaction ServiceSM (ACT SM) as agency transactions when they should have been reported as principal transactions, reported short-sale transactions with the incorrect short-sale modifier, and executed an order for the sale of securities in a principal capacity at a price that was unfair when taking into account all relevant circumstances. The findings also stated that the firm, acting through Ferguson, bid for the common stock of the issuer for which it was a distribution participant; failed to file any reports of customer complaints with the NASD; and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with all applicable laws, rules, and regulations. In addition, Ferguson functioned in the capacity of a registered principal while his Continuing Education status was inactive. (NASD Case #C3A990044)

Jeffrey Lee Barber (CRD #1912907, Registered Representative, Casper, Wyoming) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$265,000, barred from association with any NASD member in any capacity, and required to pay \$13,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Barber consented to the described sanctions and to the entry of findings that he received \$48,000 from a public customer for investment, failed to invest the funds, and used the funds instead for his own benefit. The findings also stated that Barber failed to provide prompt notification to his member firm of his involvement in an outside business activity. (NASD Case #C3A990056)

Mark Gene McKernan (CRD #3102326, Associated

Person, Denver, Colorado) submitted a Letter of Authorization, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, McKernan consented to the described sanctions and to the entry of findings that he failed to disclose on a Form U-4 that he had been charged with second degree burglary and theft. (NASD Case #C3A990052)

John Richard Russell (CRD #1320693, Registered Representative, Albuquerque, New Mexico) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that he failed to promptly invest the proceeds that he received from the liquidation of a public customer's mutual funds or to place the proceeds in an account in the name of the customer, and retained possession and control of the funds until a later date. The findings also stated that Russell failed to respond completely to NASD requests for information and documentation. (NASD Case #C3A990039)

Darrin Patrick Sullivan (CRD #2629796, Registered Representative, Holbrook, New York) was fined \$127,500, barred from association with any NASD member in any capacity, and ordered to pay \$373,068.57, plus interest, in restitution to public customers. The sanctions were based on findings that Sullivan made material misrepresentations and omissions of fact to induce public customers to purchase securities. The findings also stated that Sullivan made baseless price predictions in his sale of securities. In addition, Sullivan engaged in abusive conduct directed towards a customer and failed to respond to an NASD request for an on-the-record interview. (NASD Case #C3A980050)

Rickie Owen Troxel (CRD #1266232, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$15,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Troxel consented to the described sanctions and to the entry of findings that he obtained \$15,000 from a public customer by representing that the funds would be used in connection with a purchase of real estate to be jointly owned by the customer and Troxel. Contrary to his representations, Troxel used the funds for personal expenses and in partial payment of an obligation to a third party. (NASD Case #C3A990053)

December Actions

D.E. Frey & Company, Inc. (CRD #23595, Denver, Colorado) and Dale Edward Frey (CRD #214216, Registered Principal, Englewood, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$37,500, jointly and severally. The firm was fined an additional \$12,500 and required to provide to the NASD periodic written reports detailing the changes to the firm's written supervisory, operations, and compliance procedures that have been implemented. Frey was also suspended from association with any NASD member in any principal capacity for one month. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through its former financial and operations principal and through Frey, received funds intended for investment in private placements of securities and failed to promptly deposit the funds in an escrow account until a minimum sales contingency had been satisfied. The firm, acting through Frey, permitted persons to function at various times in principal capacities with the firm prior to qualifying by exam to function in principal capacities. The findings also stated that the firm, acting through a person formerly associated with a branch office and its former president, failed to establish a qualifying account to receive and hold investor funds in connection with private placements of securities that were subject to a minimum sales contingency, permitted the funds to be deposited to an account controlled by the issuer of the securities, and failed to return promptly investor funds when the minimum sales contingency had not been met. In addition, the firm, acting through various associated persons and Frey, failed to properly supervise a person in a manner reasonably designed to achieve compliance with applicable laws, rules, and regulations. The firm, acting through persons responsible for compliance, also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with all applicable securities laws, rules, and regulations. (NASD Case #C3A990062)

Richard Frank Dambakly (CRD #2397176, Registered Principal, Brooklyn, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and barred from association in any principal capacity. The sanctions were based on findings that Dambakly participated in the issuance of promissory notes without giving his member firm prior written notification. (NASD Case #C3A980077)

Bryan Patrick Higgins (CRD #2521437, Registered Principal, Long Island City, New York) was fined \$9,725 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Higgins failed to complete the Regulatory Element of the Continuing Education Program and conducted a securities business while his registration was inactive. (NASD Case #C3A990025)

Gary Patrick Honodel (CRD #1478456, Registered Principal, Colorado Springs, Colorado) was fined \$111,100, suspended from association with any NASD member in any capacity for six months for engaging in private

securities transactions, barred from association with any NASD member in any capacity for misuse of customer funds, and ordered to pay \$15,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Honodel solicited a public customer to invest \$15,000 in a purported fund or partnership. The customer submitted a check to Honodel's member firm with instructions that it be deposited into a particular account for which the number was for a personal account belonging to Honodel. Thereafter, the customer's funds deposited in Honodel's personal account were commingled with other funds and used by Honodel for his own benefit. The findings also stated that Honodel received compensation for soliciting customers to invest in securities outside of the regular course of his employment with member firms with which he was registered. In addition, Honodel failed to provide prior written notice to his firms of his intent to participate in private securities transactions or to obtain permission from the firms to engage in the transactions. (NASD Case #C3A990020)

John Jay Kersey (CRD #1480524, Registered Representative, Wilmington, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Kersey consented to the described sanctions and to the entry of findings that he mishandled a customer's funds. (NASD Case #C3A990061)

Michael John Lazar (CRD #2268590, Registered Representative, Scottsdale, Arizona) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lazar consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C3A980075)

Rodney Morris McConkie (CRD #2638123, Associated Person, Ogden, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, McConkie consented to the described sanctions and to the entry of findings that he failed to disclose on a Form U-4 his arrest and guilty plea to a misdemeanor theft charge. (NASD Case #C3A990060)

Scott Jason Siegel (CRD #2371400, Registered Representative, Dix Hills, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 15 months. Without admitting or denying the allegations, Siegel consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future prices of speculative securities in connection with the offer and sale of securities. The findings also stated that Siegel failed to follow a public customer's instructions to sell securities from the customer's account. (NASD Case #C3A990017)

Merle Gene Walter (CRD #851987, Registered Representative, Golden, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Walter consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. (NASD Case #C3A990059)

District 3B - Seattle

September Actions

Harpel Wood Keller (CRD #2047489, Registered Representative, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$12,000. Without admitting or denying the allegations, Keller consented to the described sanctions and to the entry of findings that, while registered with a member firm, he accepted powers of attorney from clients and prospective clients of his member firm, in connection with accounts these individuals had opened with another member firm. The NASD determined that, pursuant to these powers of attorney, Keller recommended and gave orders for trades in these accounts, and engaged in this activity without providing oral or written notice to his member firm. (NASD Case #C3B990027)

October Actions

LT Lawrence & Co., Inc. (CRD #31956, New York, New York), Lawrence Principato (CRD #1676061, Registered Principal, New York, New York), and Todd Edward Roberti (CRD #1693023, Registered Principal, Florham Park, New Jersey) submitted an Offer of Settlement pursuant to which the firm was fined \$23,000, and Principato and Roberti were each fined \$25,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, the firm, Principato, and Roberti consented to the described sanctions and to the entry of findings that the firm failed to file, or to file in a timely manner, complaints required to be reported on Form U-4 or Form U-5 and failed to report disclosure event items and quarterly reported complaints. In addition, the firm failed to develop a written training plan aligned with the business activities of the firm, failed to ensure that covered registered representatives participated in the training program, and exceeded its inventory limitations to which it was obligated in a Restrictive Agreement. The findings also stated that Roberti failed to create either written supervisory procedures or a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Roberti also failed to prepare and maintain procedures setting forth the titles, registration statuses, dates, and responsibilities of supervisory personnel relating to the business lines of the firm. Principato failed to supervise individu-

als who were named and/or functioned as chief compliance officers of the firm to ensure that they properly carried out their responsibilities and should have known that his delegation of supervisory responsibility to these individuals was unreasonable based upon the nature of the firm's business, the short tenure of each chief compliance officer, the limited staff available to each officer, and the number of customer complaints that were received by the firm in connection with the firm's sales activities. By his failure to supervise the firm's chief compliance officers, Principato failed to ensure that customer complaints alleging unauthorized trading were timely investigated and that appropriate action was taken against the registered persons involved in the trades at issue. (NASD Case #C3B990014)

Daniel Mathew Skjonsberg (CRD #1590579, Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skjonsberg consented to the described sanctions and to the entry of findings that he obtained a total of \$437,967 from public customers, a portion of which was intended for eventual investment in security products and the remainder to be held for the benefit of the customers. The findings stated that Skjonsberg deposited \$411,141 of the funds into his checking account, thereby commingling customer funds with his own. (NASD Case #C3B990028)

November Actions

Michael Ray Floyd (CRD #210276, Registered Principal, Issaquah, Washington) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Floyd failed to respond to NASD requests for information. (NASD Case #C3B980025)

December Actions

None

District 4 - Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

September Actions

Bradford Lee Brinton (CRD #2572055, Registered Representative, St. Joseph, Missouri) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Brinton forged the signature of a public customer on a dividend check for \$1,695.23 payable to the customer and deposited the funds into his personal bank account, converting the funds to his own use and benefit. (NASD Case #C04990005)

Delmer D. Harvey (CRD #1284998, Registered Principal, Mitchell, South Dakota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from registration with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Harvey consented to the described sanctions and to the entry of findings that he engaged in an outside business activity and received compensation for such activity without providing prompt written notification to his member firm. (NASD Case #C04990033)

Tullett & Tokyo Securities, Inc. (CRD #19595, New York, New York) and James Michael Avena (CRD #1073158, Registered Principal, Manhasset, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$20,000, jointly and severally. In addition, the firm was required to undertake to pay the NASD \$130,000 which represents a portion of the financial benefit the firm derived by allowing registered representatives to conduct a securities business while their registrations were inactive. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Avena, permitted registered representatives to conduct a securities business while their registrations were inactive due to failure to satisfy the Regulatory Element of the Continuing Education requirements. (NASD Case #C04990030)

October Actions

Gregory Alan Casady (CRD #2029799, Registered Principal, Kansas City, Missouri) was fined \$80,000, suspended from association with any NASD member in any capacity for 30 days for free-riding in his personal account, and barred from association with any NASD member in any capacity for unauthorized trading and for failing to respond to NASD requests for information. The sanctions were based on findings that Casady purchased and sold securities for public customers without their approval or consent, engaged in free-riding in his personal securities account, and failed to respond to NASD requests for information. (NASD Case #C04980047)

Dirk Paul Hausauer (CRD #1529323, Registered Representative, Bismarck, North Dakota) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hausauer failed to respond to NASD requests for information. (NASD Case #C04990021)

Dean Llewellyn Kroenke (CRD #2192632, Registered Representative, Rochester, Minnesota) was fined \$62,200 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kroenke persuaded a public customer to cancel one or more life insurance policies and apply the cash surrender value to the purchase of a new variable life insurance policy. Kroenke instructed the customer to issue a check payable to him in the amount of \$1,440 to be applied to the new policy, and,

instead, deposited the check in his own account, converting the funds to his own use. In addition, Kroenke failed to respond to NASD requests for information. (NASD Case #C04990012)

Paul Matthew Lulic (CRD #2464573, Registered Representative, South St. Paul, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lulic consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers to documents authorizing the transfer of the customers' accounts to another member firm, without the customers' knowledge or consent. (NASD Case #C04990039)

November Actions

Teri Annette Dupre (CRD #2396791, Associated Person, North Branch, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$206,750 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dupre consented to the described sanctions and to the entry of findings that she converted \$41,350 to her own use and benefit without the knowledge or consent of her member firm. (NASD Case #C04990041)

James Orval Holton (CRD #2589553, Registered Representative, Gravois Mills, Missouri) was fined \$445,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Holton redeemed income fund and mutual fund shares totaling \$74,000 from the account of public customers and deposited proceeds into an account that he co-owned, thereby converting the customers' funds to his own use. Holton also failed to respond to NASD requests for information. (NASD Case #C04990016)

Michael Ray Pope (CRD #871535, Registered Representative, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pope consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information relating to his conduct while associated with a member firm. (NASD Case #C04990040)

December Actions

Jay Steven Robinson (CRD #833292, Registered Principal, Wichita, Kansas) submitted an Offer of Settlement pursuant to which he was fined \$105,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robinson consented to the described sanctions and to the

entry of findings that he received checks totaling \$20,000 from a public customer for investment, failed to invest the monies as instructed, converted the proceeds to his own use and benefit, and later returned only \$1,473.45 to the customer. (NASD Case #C04990036)

Michael Sean Stone (CRD #2370650, Registered Representative, Eagan, Minnesota) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Stone consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to a Margin Agreement for a securities account without the customer's knowledge or consent. The findings also stated that Stone placed a good-till-cancel limit order to purchase shares in the customer's account without the customer's knowledge or consent. (NASD Case #C04990037)

District 5 - Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee

September Actions

Ronald Kerr Helton (CRD #1822240, Registered Representative, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$6,878.17 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Helton consented to the described sanctions and to the entry of findings that he effected securities purchase transactions, on margin, for the account of a public customer that resulted in monthly margin balances ranging up to \$13,701.04. These transactions and resulting margin balances were unsuitable for the customer on the basis of her financial situation, investment objectives, and needs. The findings also stated that Helton shared in a loss in the customer's account by paying her \$3,000 without obtaining prior written authorization from his member firm. (NASD Case #C05990032)

Robert Albert Skulman (CRD #1670270, Registered Representative, Ft. Smith, Arkansas) was censured, fined \$114,131.62, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Skulman effected unauthorized transactions in the accounts of public customers, made unsuitable recommendations to the customers, and submitted false new account forms for the customers, without their knowledge or consent. (NASD Case #C05980048)

October Actions

Thomas Owen Combs (CRD #51651, Registered Representative, Memphis, Tennessee) was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$4,229.04, plus interest, in restitution to a member firm. The sanctions are based on findings

that Combs received checks totaling \$4,000 from a public customer for investment in variable annuity contracts, failed to follow her instructions, deposited the checks in his own account, and failed to secure the variable annuity contracts, thereby converting the customer's funds to his own use. The findings also stated that Combs effected unauthorized transactions on behalf of another public customer and misused her funds in purchasing a variable life insurance policy. Combs also failed to respond to NASD requests for information. (NASD Case #C05980043)

Ronald Mark Harris (CRD #1907496, Registered Principal, Mooreland, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$250,000, barred from association with any NASD member in any capacity, and ordered to pay \$259,143.20, plus interest, in restitution. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he received funds totaling \$259,143.20 from public customers for investment purposes, failed to execute purchases of securities on the customers' behalf, and instead, deposited the funds in an account that he controlled, thereby converting the funds to his own use and benefit, without the customers' knowledge or consent. (NASD Case #C05990036)

Patrick John McVicar (CRD #2182305, Registered Representative, Jersey City, New Jersey) was fined \$65,560.61, suspended from association with any NASD member in any capacity for four years for unauthorized trading and for sending unapproved correspondence to a customer, barred from association with any NASD member in any capacity for failing to respond to NASD requests for information, and ordered to pay \$15,000 in restitution to a member firm. The sanctions were based on findings that McVicar executed unauthorized purchase transactions in the account of a public customer, sent correspondence to the customer without the prior review or approval of his supervisor, and failed to respond to NASD requests for information. (NASD Case #C05990011)

Dolores Ann Stamps (CRD #1394755, Registered Representative, Fayetteville, Arkansas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$15,727.25 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stamps consented to the described sanctions and to the entry of findings that she received \$1,998 in monthly installments from a public customer, deposited the payments in an account she controlled, and was to draw on the account in six-month intervals to pay semi-annual premiums on a life insurance policy that she had sold to the customer. The findings stated that Stamps failed and neglected to pay the premiums, allowed the customer's insurance policy to lapse, and retained \$1,145.45 until a later date, thereby converting that amount to her own use and benefit without the knowledge or consent of the customer. (NASD Case #C05990037)

November Actions

William Daniel Brett, Jr. (CRD #30090, Registered Principal, Hattiesburg, Mississippi) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$214,169.98, plus interest, in restitution to public customers. Without admitting or denying the allegations, Brett consented to the described sanctions and to the entry of findings that he received funds totaling \$214,169.98 from public customers intended for the purchase of securities and converted the funds to his own use and benefit without the customers' knowledge or consent. (NASD Case #C05990044)

Keith Taylor Hamilton (CRD #1281968, Registered Representative, Tallahassee, Florida) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hamilton consented to the described sanctions and to the entry of findings that he caused \$14,033.97 in proceeds to be withdrawn from a public customer's IRA account without her knowledge or consent, misrepresented to the customer that these funds would be deposited in an IRA rollover account, and neglected to effect the rollover, thereby misusing the \$14,033.97. The findings also stated that Hamilton received \$31,352.27 from other public customers to establish, and later to contribute to, individual IRA rollover accounts. Hamilton neglected to either establish the accounts on behalf of the customers or to deposit the funds appropriately, thereby misusing funds totaling \$31,352.27. (NASD Case #C05990017)

Mary Ann Hampton (CRD #2753505, Registered Representative, Harlan, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$260,000, barred from association with any NASD member in any capacity, and required to pay \$52,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Hampton consented to the described sanctions and to the entry of findings that she received a \$52,000 check from a public customer to purchase a fixed annuity policy, neglected to purchase the policy on the customer's behalf, and, instead, converted the funds to her own use and benefit without the customer's knowledge or consent. (NASD Case #C05990046)

Richard Case Miller (CRD #2067123, Registered Representative, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$273,532.26 in restitution to public customers. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he diverted funds totaling approximately \$440,000 from public customers intended for the purchase of securities, failed and neglected to execute the purchases of securities on the customers' behalf, and, instead, converted the funds to his own use and benefit, without the customers' knowledge or con-

sent. The findings also stated that Miller failed to respond to NASD requests for information. (NASD Case #C05990045)

Ronald Franklin Sivak (CRD #2778560, Registered Representative, Mobile, Alabama) was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sivak misused customer funds by effecting an unauthorized transfer of funds. Sivak forged a public customer's signature on an Authorization to Journal Securities or Funds and transferred \$9,000 from the customer's account to the account of other customers. Sivak also failed to respond to NASD requests for information. (NASD Case #C05990003)

Wei John Wang (CRD #2549111, Registered Representative, Nashville, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he forged the signature of a public customer to a form which effected a change of broker/dealer for the customer's account, without the customer's knowledge or consent. The findings also stated that Wang provided the NASD with a copy of a letter purportedly written and signed by the customer representing that he was satisfied with the manner in which his account had been handled by Wang. Wang knew, or should have known, that the letter was not written by the customer and that the purported signature was a forgery. In addition, the findings stated that Wang exercised discretion in another public customer's account without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. Wang also provided the NASD with a copy of a letter purportedly written and signed by the customer retracting a complaint against Wang when Wang knew, or should have known, that the letter was not written by the customer and the purported signature was a forgery. (NASD Case #C05990014)

December Actions

Advantage Capital Corporation (CRD #146, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce proper supervisory procedures governing on-site examinations of branch offices. The findings also stated that the firm failed to conduct branch office inspections according to specific cycles. (NASD Case #C05990040)

Cowen & Company n.k.a. Financial Square Partners (CRD #1541, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanc-

tions and to the entry of findings that it failed to properly report transactions involving high yield corporate debt securities in accordance with the reporting requirements for Fixed Income Pricing SystemSM (FIPS[®]) broker/dealers. The findings also stated that the firm, in its capacity as lead underwriter, failed to timely settle syndicate accounts following the syndicate settlement date. In response to NASD requests for information, the firm failed to complete Free-Riding and Withholding Questionnaires in a timely manner and failed to establish, maintain, and enforce proper supervisory procedures governing the reporting of FIPS transactions, the timely settlement of syndicate expenses, and the completion of Free-Riding and Withholding Questionnaires. (NASD Case #C05990050)

Donald Ray Gates (CRD #1233902, Registered Representative, Cabot, Arkansas) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify in any capacity. The SEC modified the NASD sanctions following appeal of a November 1998 NAC decision. The findings stated that Gates engaged in transactions while not registered with the NASD or with the state where the customer resided. (NASD Case #C05930020)

Clyde Wayne Gregory (CRD #1221352, Registered Representative, Madison, Alabama) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$660,384.35, plus interest, in restitution. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he received checks from public customers totaling \$660,384.35 for the purpose of investing in securities, failed to invest the funds, and instead purchased securities or life insurance policies on the lives of the customers with a portion of the funds, and placed the difference into a money market bank account or into other businesses he owned or controlled without the customers' knowledge or consent. The findings also stated that, in an effort to conceal his failure to follow customer instructions, Gregory provided false and misleading account statements to the customers. In one instance, Gregory also provided a false and misleading Certificate of Application. Gregory also failed to respond timely and completely to NASD requests for information and documents. (NASD Case #C05990048)

Laidlaw Global Securities, Inc. (CRD #19018, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed and neglected to process order tickets properly, to report transactions through ACT properly, and to record or adequately match execution times with each execution on order tickets. The findings also stated that the firm failed and neglected to record that it had made an affirmative determination that it would receive delivery of the security or that it could borrow the stock for customer short-sale transactions and failed to denote "short sale" on order tickets for

transactions executed by the firm. The firm also failed to denote on customer confirmations that the net price to the customer was an "average price." (NASD Case #C05990049)

Wilson Claude Tate, Jr. (CRD #1159282, Registered Representative, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$66,215.85, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Tate consented to the described sanctions and to the entry of findings that he misappropriated funds totaling \$66,215.85 belonging to a public customer by effecting a loan against and redeeming a variable life insurance policy owned by the customer and depositing the funds into an account that he controlled, thereby converting the funds to his own use and benefit, without the customer's knowledge or consent. (NASD Case #C05990051)

District 6 - Texas

September Actions

Michael Kemp Murphy (CRD #603386, Registered Principal, Spring, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he engaged in an outside business activity in that he solicited individuals to invest funds with a non-registered entity and failed to provide written notice of these business activities to his member firm. (NASD Case #C06990010)

Neuberger Berman, LLC (CRD #2908, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately to the NASD the total of "short" positions in all customer and proprietary firm accounts in securities included in The Nasdaq Stock Market, Inc.; inaccurately reported short sales as long sales; and failed to have adequate written procedures in place to identify the nature and frequency of the reviews that were to occur to ensure accurate reporting of short positions. (NASD Case #C06990012)

October Actions

Toney Lee Reed (CRD #372632, Registered Principal, Miami, Florida) was censured, fined \$25,000, suspended from association with any NASD member as a principal for one year, and required to requalify by examination as a principal. In addition, Reed was required to pay \$36,746.60 in restitution to public customers. This remand proceeding resulted from an order entered in November 1997 by the

SEC denying the request of the NASD for reconsideration of the SEC's August 1996 order vacating the restitution order imposed on Reed and remanding the proceeding for a determination of Reed's financial ability to pay restitution to the NASD. The sanctions were based on findings that a former member firm, acting through Reed, failed to comply with the NASD's Mark-Up Policy in that it effected corporate securities transactions as principal with retail customers at prices that were unfair and unreasonable. In addition, the firm, acting through Reed, allowed individuals to function as representatives of the firm before the effective date of their registration with the NASD, and understated the assessable income on its 1989 Assessment Report. Also, the firm, acting through Reed, failed to comply with the NASD's Rules of Fair Practice relating to supervision in that a principal had not approved in writing certain correspondence and transactions in private direct participation programs. Furthermore, the firm, acting through Reed, failed to maintain inventory account statements, a principal trade blotter, and principal transaction order tickets. In addition, the firm, acting through Reed, failed to fully perform due diligence in connection with direct participation programs sold by the firm, maintained principal registrations for individuals who were not acting in a principal capacity, and permitted another individual to engage in the securities business of the firm and to receive commissions without being registered in any states.

Reed's suspension commenced with the opening of business June 20, 1994, and concluded at the close of business June 20, 1995. (NASD Case #C06910024)

Tri-Star Financial (CRD #32458, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that certain persons actively engaged in the firm's investment banking or securities business were properly registered as general securities representatives with the NASD and permitted a registered person to continue to perform duties as a registered person when such person was deemed inactive for failing to complete the Regulatory Element of the Continuing Education requirement. The findings also stated that the firm failed to designate to the NASD a properly registered limited financial and operations principal. (NASD Case #C06990014)

November Actions

Katherine Joan Grady (CRD #2218371, Registered Representative, Carrollton, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grady consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to provide written notice to her member firm describing the proposed transactions, her role therein, and whether she had received, or might receive, sell-

ing compensation in connection with the transactions. (NASD Case #C06990015)

December Actions

Kaufman Bros., L.P. (CRD #37909, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely file with the NASD completed Free-Riding Questionnaires associated with securities offerings and failed to have current information on file when it sold shares of IPOs in accordance with the NASD Board of Governors Free-Riding and Withholding Interpretation. The findings also stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when the customer's orders were at prices that would have improved the bid or offer of the firm in the securities or when the full size of the orders were priced equal to the bid or offer of the firm and the national best bid or offer for the securities and represented more than a de minimus change in relation to the size associated with the bid or offer of the firm in the securities. The firm failed to disclose the reported trade price on written notifications of securities transactions and also incorrectly reported transactions in securities in that the firm failed to include a symbol indicating that the transaction constituted a short sale. In addition, the firm failed to have written procedures in place to address compliance with the Free-Riding and Withholding Interpretation of the NASD Board of Governors. (NASD Case #C06990019)

Sunpoint Securities, Inc. (CRD #25442, Longview, Texas) and Van Roberson Lewis III (CRD #1562328, Registered Principal, Henderson, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured; fined \$7,500, jointly and severally; and ordered to disgorge \$6,400, jointly and severally. Without admitting or denying the allegations, the firm and Lewis consented to the described sanctions and to the entry of findings that the firm, acting by and through Lewis, effected the sale of securities even though the sale violated the terms of the private placement memorandum under which they were sold in that they caused the maximum offering amount set forth in the private placement memorandum to be exceeded. (NASD Case #C06990018)

District 7 - Florida, Georgia, North Carolina, South Carolina, Virginia, Puerto Rico, the Canal Zone, and the Virgin Islands

September Actions

Paul Michael Acosta (CRD #1455279, Registered Representative, Naples, Florida) was fined \$3,655,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Acosta received \$904,000 from public customers to invest on their behalf, failed to invest the funds as directed, provided one

customer with periodic false account statements purporting to show activity in her account, and consistently represented to other customers that their funds had been invested in mutual funds and other products. Instead, Acosta used the funds in connection with his own business activities. In addition, Acosta failed to disclose to his member firms that he was engaged in outside activities and failed to respond to NASD requests for information and documentation. (NASD Case #C07980076)

Joann Camille Dodd (CRD #2073552, Registered Representative, Tampa, Florida) was fined \$34,500, suspended from association with any NASD member in any capacity for three months, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dodd received checks totaling \$9,459.67 from a public customer to set up a 401(k) plan for himself and his employees, failed to cash the checks and to set up the plan, resulting in potential tax penalties and taxes of as much as \$20,000 for the customer. Dodd also failed to respond to NASD requests for information. (NASD Case #C07980062)

Kodjo Gumeke Gassou (CRD #2254196, Registered Representative, Hillsboro, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gassou failed to respond to NASD requests for information. (NASD Case #C07980075)

Donald Kenneth Kozlowski (CRD #1002822, Registered Principal, Ft. Myers, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$3,500, suspended from association with any NASD member in any capacity for five business days, and required to disgorge \$3,945.15 as restitution to public customers. Without admitting or denying the allegations, Kozlowski consented to the described sanctions and to the entry of findings that he sent a written communication via facsimile to a public customer regarding the future prospects of a security after the customer and his wife had purchased shares in Kozlowski's recommendation, made a misleading statement in the facsimile, and failed to have it approved prior to use by a registered principal of his member firm. (NASD Case #C07990048)

Damon Todd Lazar (CRD #2295614, Registered Representative, Plainview, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,000, suspended from association with any NASD member in any capacity for 10 weeks, and suspended thereafter until he requalifies by exam for any capacity in which he seeks to become registered with the NASD. Without admitting or denying the allegations, Lazar consented to the described sanctions and to the entry of findings that he knowingly or recklessly made numerous material misrepresentations of fact to a public customer concerning, and in connection with, his recommendations to purchase common stock. (NASD Case #C07980087)

John Louis Lembo, III (CRD #1920358, Registered Representative, Ft. Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lembo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C07990015)

John Patrick Nichols (CRD #2188710, Registered Representative, Fort Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Nichols consented to the described sanctions and to the entry of findings that he effected transactions in the securities account of a public customer, without the customer's prior knowledge or authorization. (NASD Case #C07990025)

Angel L. Ocasio-Velez (CRD #2455345, Registered Principal, San Juan, Puerto Rico) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ocasio-Velez consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on "Policy Change Applications," without their authorization and consent. (NASD Case #C07980061)

October Actions

David Joseph Gariano (CRD #1559378, Registered Representative, Burlington, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gariano consented to the described sanctions and to the entry of findings that he failed to amend properly his Form U-4 as required to disclose the existence of tax liens that had been placed against him. The findings also stated that Gariano failed to respond to NASD requests for information. (NASD Case #C07990058)

John David Morgan (CRD #1593396, Registered Representative, Dunedin, Florida) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The NAC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Morgan effected unauthorized transactions in the account of a public customer.

Morgan's suspension commenced at the beginning of business on September 13, 1999, and concluded at the close of business on September 24, 1999. (NASD Case #C07980019)

Allen Harvey Watford (CRD #1574596, Registered Representative, Charleston, South Carolina) was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$55,260.08 in restitution to his former member firm. The sanctions were based on findings that Watford effected unauthorized transactions in the accounts of public customers and failed to respond to NASD requests for information. (NASD Case #C07980065)

November Actions

James Oakley Baxter, Jr. (CRD #1176297, Registered Representative, Norfolk, Virginia) was fined \$45,000 and suspended from association with any NASD member in any capacity for 90 business days for unauthorized transactions, sharing in a customer account, and engaging in private securities transactions. Baxter was barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The sanctions were based on findings that Baxter effected unauthorized transactions for public customers, shared in a customer's account without the prior written approval of his member firm, and engaged in private securities transactions without prior written notice to his firm describing in detail the proposed transactions, his proposed role therein, and without receiving prior approval from his firm. The findings also stated that Baxter failed to respond to NASD requests for information.

Baxter has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07990016)

Luis Rafael Torres (CRD #1253590, Registered Representative, Miami, Florida) was fined \$442,250, barred from association with any NASD member in any capacity, and ordered to pay \$3,500, plus interest, in restitution to a public customer. The sanctions were based on findings that Torres converted \$63,450 of public customer funds for his own use and failed to respond to NASD requests for information. (NASD Case #C07980043)

Michael Ashby Willis (CRD #2268680, Registered Representative, Elkin, North Carolina) was fined \$280,730 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Willis deceived a public customer into withdrawing a total of \$42,959 from his account and converted \$30,146 of the funds to his own use and benefit. The findings also stated that Willis provided false responses to an NASD request for information. (NASD Case #C07990020)

December Actions

Alberto Enrique Argomaniz (CRD #2518033, Registered Representative, Miami, Florida) was fined \$62,500 and barred from association with any NASD member in any capacity. The findings were based on findings that Argomaniz endorsed a public customer's signature to a \$7,500 refund

check issued to the customer without his authorization and converted the proceeds.

Argomaniz has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07990013)

Philip Campbell (CRD #3005745, Associated Person, Seffner, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanctions and to the entry of findings that he caused \$40,000 to be redeemed from a public customer's mutual fund account and transferred to a personal bank account over which he maintained control without obtaining authorization from the customer. (NASD Case #C07990064)

Herbert Feinman (CRD #205702, Registered Representative, Jacksonville, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Feinman consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C07990069)

Saeed Akbar Khalif (CRD #1917575, Registered Representative, Stone Mountain, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Khalif consented to the described sanctions and to the entry of findings that he misused a public customer's funds and settled an investment-related issue with a public customer without involving his member firm in the settlement. The findings also stated that Khalif engaged in an outside business activity without giving prompt written notification to his firm. (NASD Case #C07990065)

Steven Jon Kline (CRD #2299624, Registered Representative, Manalapan, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Kline consented to the described sanctions and to the entry of findings that he maintained personal brokerage accounts, or accounts over which he had control, and failed to disclose these accounts to his member firm. (NASD Case #C07990071)

Darren J. Schiff (CRD #1914018, Registered Representative, Alpharetta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$102,500, barred from association with any NASD member in any capacity with the right to reapply in three years, and required to pay \$35,402.06, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Schiff consented to the described sanctions and the entry of findings that he entered into a settlement and

release agreement with a public customer to settle the customer's complaint without informing or obtaining approval from his member firm. The findings also stated that Schiff effected unauthorized transactions in the accounts of a public customer, prepared and delivered false account statements to the customer that misrepresented account balances and trading activity, and in the exercise of oral discretion given him by a public customer, placed the customer in an overly concentrated and unsuitable position in a speculative security. Schiff also exercised discretionary authority in public customer accounts pursuant to oral discretion from the customers, without obtaining written discretion from the customers or the written acceptance of the accounts as discretionary by his member firm. (NASD Case #C07990072)

Pablo Manuel Tasso (CRD #3032263, Associated Person, Buenos Aires, Argentina) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tasso caused an impostor to sit for and complete the Series 7 exam on his behalf and failed to respond to an NASD request for information. (NASD Case #C07990017)

The Robinson-Humphrey Company, LLC (CRD #723, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with new stock issues, the firm failed to obtain, in writing, required information concerning the beneficial owners of investment partnership accounts, corporate accounts, or money manager accounts. (NASD Case #C07990073)

John Mark Wallach (CRD #1971522, Registered Representative, Lake Worth, Florida) was fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$34,564, plus interest, in restitution to a public customer. The sanctions were based on findings that Wallach engaged in unsuitable and excessive trading in the customer's account. The findings also stated that Wallach failed to respond to NASD requests for information. (NASD Case #C07980067)

District 8 - Illinois, Indiana, Michigan, part of upstate New York (the counties of Monroe, Livingston, and Steuben, and the remainder of the state west of such counties) Ohio, and Wisconsin

District 8A - Chicago

September Actions

Reginald Bernard Cunningham (CRD #1236085, Registered Representative, Chicago, Illinois) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham received \$154.20 from public customers to restate their life insurance policies, issued a receipt for the funds, and failed to apply the funds to the policies because

he had "lost" the money. The findings also stated that Cunningham failed to respond to NASD requests for information. (NASD Case #C8A990030)

Kevin Lee Otto (CRD #1929973, Registered Representative, Milwaukee, Wisconsin) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Otto received \$22,000 from a public customer and used the funds for some purpose other than for the benefit of the customer, without the customer's knowledge or authorization, until he returned the funds to the customer at a later date.

Otto has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal. (NASD Case #C8A970015)

Erwin Allen Porges (CRD #1222183, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Porges consented to the described sanctions and to the entry of findings that he caused securities to be purchased in a joint account of public customers even though such purchase had not been authorized by the customers and he failed to respond to NASD requests to provide testimony. (NASD Case #C8A990056)

Dennis Anthony Wallot (CRD #1592875, Registered Representative, Westland, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,960, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wallot consented to the described sanctions and to the entry of findings that he engaged in private securities transactions for compensation and failed and neglected to give prior written notice to, or receive prior written approval from, his member firm. (NASD Case #C8A990062)

October Actions

Clifford Wayne Bernstein (CRD #1871597, Registered Representative, Paramus, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Bernstein consented to the described sanctions and to the entry of findings that he participated in the execution of unauthorized purchases of securities in public customer accounts. The findings also stated that the gross amount of the purchases in one customer account exceeded \$217,000. (NASD Case #C8A970017)

Louis Richard Facchini, Jr. (CRD #2372533, Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in

any capacity for 30 days. Without admitting or denying the allegations, Facchini consented to the described sanctions and to the entry of findings that he participated in the execution of unauthorized purchases of securities in the account of a public customer. The findings also stated that the gross amount of purchases in the customer's account exceeded \$87,000. (NASD Case #C8A970017)

Michael Anthony Iavarone, Sr. (CRD #2377723, Registered Representative, Holbrook, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Iavarone consented to the described sanctions and to the entry of findings that he executed unauthorized transactions which exceeded \$22,000 in the accounts of public customers. (NASD Case #C8A970017)

Martin R. Linzmaier (CRD #3072427, Registered Representative, Garden City, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member. Without admitting or denying the allegations, Linzmaier consented to the described sanctions and to the entry of findings that he failed to disclose on his Form U-4 that he had been convicted of a felony. (NASD Case #C8A990064)

Lewis Liu (CRD #2491191, Registered Representative, Chicago, Illinois) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Liu received \$6,036.50 in cash from public customers as premium payments for life insurance policies, failed to apply \$2,448.61 toward premium payments, and, instead, misused the \$2,448.61, thereby commingling policyholder funds with his personal funds. Liu also failed to respond to NASD requests for information. (NASD Case #C8A990031)

Shirley Ann McKinney (CRD #1731628, Registered Principal, Naperville, Illinois) submitted an Offer of Settlement pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McKinney consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information and documentation. (NASD Case #C8A990022)

Brian Keith Taylor (CRD #2079960, Registered Representative, Rockford, Illinois) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Taylor failed to respond to NASD requests for information and documents relating to his termination and allegations of private security transactions. (NASD Case #C8A990034)

November Actions

James William Byrd (CRD #1702339, Registered Representative, Lynn, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay restitution to appropriate parties. Without admitting or denying the allegations, Byrd consented to the described sanctions and to the entry of findings that he failed to negotiate a \$50,000 check from a public customer intended for the purchase of a mutual fund, and, instead, cashed the check, and used the funds for purposes other than for the benefit of the customer. (NASD Case #C8A990068)

James David DeLong (CRD #1962282, Registered Representative, Freeland, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeLong consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm or to receive written approval from the firm prior to engaging in such activities. The findings also stated that DeLong failed to respond to NASD requests for documents and information. (NASD Case #C8A990040)

Jonathan Hudson Webb (CRD #1408674, Registered Principal, Evanston, Illinois) and Nicholas Thomas Avello (CRD #1488144, Registered Principal, Addison, Illinois). Webb was fined \$250,000, barred from association with any NASD member in any principal or owner capacity, suspended from association with any NASD member in any capacity for two years, and required to requalify as a general securities representative. Avello was fined \$5,000 and suspended from association with any NASD member in any financial and operations principal capacity for 30 days. The findings stated that a member firm, acting through Webb and Avello failed to maintain the minimum required net capital while effecting securities transactions, prepared inaccurate general ledgers, trial balances, and net capital computations, and filed inaccurate FOCUS IIA Reports as a result. In addition, the firm, acting through Webb, conducted a municipal securities business while failing to employ a properly qualified and registered municipal securities principal and financial and operations principal and properly qualified and registered general securities principals. The findings also stated that Webb violated his firm's Restrictive Agreement that required the firm to maintain minimum net capital, acted in the capacity of a municipal securities principal even though he was not properly qualified and registered, and failed to respond completely to NASD requests for information and documents. Webb also failed to disclose on Forms U-5 and U-4 that he was the subject of an NASD investigation.

Webb has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. The decision has been called for review as to Avello. The sanctions are not in effect pending consideration of the review. (NASD Case #C8A980059)

December Actions

Richard Michael Eisenmenger (CRD #76637, Registered Principal, McHenry, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eisenmenger consented to the described sanctions and to the entry of findings that he declined to testify in an NASD investigation. (NASD Case #C8A990077)

Thomas Allen Homan (CRD #2906822, Registered Representative, Muskegon, Michigan) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Homan failed to respond to NASD requests for information. (NASD Case #C8A990047)

Ben T. Magistro (CRD #2987477, Registered Representative, Avon, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Magistro consented to the described sanctions and to the entry of findings that he filed a Form U-4 with the NASD that failed to disclose his Ohio murder conviction. (NASD Case #C8A990072)

Ravindranath Yanamadula (CRD #1903157, Registered Principal, Hyderabad, India) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Yanamadula consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents. (NASD Case #C8A990057)

District 8B - Cleveland

September Actions

David Len Mitchell (CRD #2508455, Registered Representative, Orrville, Ohio) was fined \$25,000 and barred from association with the NASD in any capacity. The sanctions were based on findings that Mitchell failed to respond to NASD requests for information relating to his termination. (NASD Case #C8B990006)

Gregory John Shultis (CRD #1934789, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$11,340, barred from association with any NASD member in any capacity, and required to pay \$268 in restitution to his former member firm. Without admitting or denying the allegations, Shultis consented to the described sanctions and to the entry of findings that he received a \$400 check from a public customer for financial planning services, failed to give the check to his member firm, and, instead, deposited the check in his personal bank account, using the full amount for his own benefit. (NASD Case #C8B990024)

October Actions

Eric Douglas Miltsch (CRD #2252444, Registered Representative, Pittsford, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Miltsch consented to the described sanctions and to the entry of findings that he caused \$13,000 to be wired from his grandmother's savings account to his personal bank account and used the funds for his own benefit, without his grandmother's knowledge or consent. (NASD Case #C8B990025)

November Actions

Andrew Antonucci (CRD #2418788, Registered Principal, Hilton, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$3,400 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Antonucci consented to the described sanctions and to the entry of findings that he sold shares of a security to public customers, received compensation from the sales, and failed to provide prior written notice to his member firm detailing the proposed transactions and his role therein. Antonucci also failed to receive written approval from his member firm to participate in the transactions. (NASD Case #C8B990031)

Matthew John Beaulieu (CRD #2233143, Registered Principal, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,626 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Beaulieu consented to the described sanctions and to the entry of findings that he sold shares of a security to public customers, received compensation from the sales, and failed to provide prior written notice to his member firm detailing the proposed transactions and his role therein. Beaulieu also failed to receive written approval from his member firm to participate in the transactions. (NASD Case #C8B990032)

Richard David Dearcop (CRD #2397152, Registered Principal, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,806 and suspended from association with any NASD member in any capacity for four business days. Without admitting or denying the allegations, Dearcop consented to the described sanctions and to the entry of findings that he engaged in private securities transactions for compensation and failed to provide prior written notice to his member firm detailing the proposed transactions and his role therein. The findings also stated that Dearcop failed to receive written approval from his firm to participate in the transactions. (NASD Case #C8B990030)

Musbah A. Kammourie (CRD #2526085, Registered Representative, Broadview Heights, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kammourie consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents. (NASD Case #C8B990023)

Bret Lee Sander (CRD #2187325, Registered Principal, Middletown, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$51,136.65 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sander consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide written notice to his member firms detailing the private transactions and his role therein and failed to receive written approval from his firms to participate in the transactions. The findings also stated that Sander failed to promptly amend his Form U-4 to disclose an Ohio investigation of his sales activity while registered with a member firm. In addition, Sander failed to respond truthfully and/or completely to NASD requests for information. (NASD Case #C8B990034)

Serdrick Lee Thomas (CRD #2054286, Registered Representative, Rochester, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomas failed to respond to NASD requests for information concerning a customer complaint. (NASD Case #C8B990005)

December Actions

Deborah Jean Harvey (CRD #3071808, Associated Person, Huber Heights, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Harvey consented to the described sanctions and to the entry of findings that she submitted to her member firm a materially false or inaccurate Form U-4 that failed to disclose her previous conviction for passing counterfeit currency. (NASD Case #C8B990033)

District 9 - Delaware, Pennsylvania, West Virginia,
District of Columbia, Maryland, and New Jersey

District 9A - Philadelphia

September Actions

David Raymond Carroll (CRD #2689306, Registered Representative, Washington, D.C.) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carroll failed to respond to NASD requests for information. (NASD Case #C9A990002)

Charles M. Funk, Jr. (CRD #1392152, Registered Representative, Ardmore, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Funk failed to respond to NASD requests for information. (NASD Case #C9A990003)

Quaker Securities, Inc. (CRD #27263, Valley Forge, Pennsylvania) and Jeffrey Howard King, Sr. (CRD #1570133, Registered Principal, New Hope, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. The firm was also fined an additional \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through King, failed to establish, maintain, and enforce adequate supervisory procedures involving the activities of registered representatives; failed to supervise these individuals adequately by allowing them to participate in private securities transactions; and failed to record all the details of such transactions on its books and records. The findings also stated that the firm failed to accept or decline securities transactions within 20 minutes of execution, and effected transactions of Nasdaq National Market® securities while failing to report the transactions timely and accurately. In addition, the NASD determined that the firm, acting through King, failed to obtain the complete participation of all eligible personnel in its Firm Element training program. (NASD Case #C9A990037)

October Actions

Janice Sue Borth (CRD #2828975, Registered Representative, Monaville, West Virginia) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Borth failed to respond to NASD requests for information concerning misappropriation. (NASD Case #C9A990013)

David Stanley Callan (CRD #1747734, Registered Representative, Chalfont, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Callan consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of public customers and did not have reasonable grounds for believing his recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. The findings also stated that Callan caused false information regarding a customer's net worth to be entered on her New Account Form and pursuant to verbal authority, exercised discretion in the customer's account without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. (NASD Case #C9A990036)

Leonard Charles Hotkowski (CRD #2631855, Registered Representative, Sarver, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hotkowski consented to the described sanctions and to the entry of findings that he signed the names of public customers to applications for variable life insurance without the customers' knowledge or consent. (NASD Case #C9A990043)

David Macks Hutchinson (CRD #2923655, Registered Representative, Baltimore, Maryland) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hutchinson failed to respond to NASD requests for information. (NASD Case #C9A990014)

Benjamin Dewayne Pitts (CRD #1861540, Registered Representative, Baltimore, Maryland) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pitts consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C9A990018)

Susan Michelle Pribik (CRD #3073767, Registered Representative, Pittsburgh, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pribik failed to respond to NASD requests for information regarding possible conversion of customer funds. (NASD Case #C9A990001)

Joseph Timothy Sword (CRD #1312600, Registered Principal, Conyngham, Pennsylvania) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two years and required to requalify by exam for any capacity in which he is to be registered after the end of the suspension period. Without admitting or denying the allegations, Sword consented to the described sanctions and to the entry of findings that he engaged in the sale of debt securities outside of the regular course or scope of his association with his member firms and failed to provide prior written notice to, or to receive the approval of, his member firms. (NASD Case #C9A990019)

Thomas Edward Wadding (CRD #1340445, Registered Representative, Butler, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wadding consented to the described sanctions and to the entry of findings that he submitted documents to his member firm purporting to be copies of a premium check for \$2,840.67 issued by a policyholder. Such documents were false in that the policyholder had not issued a check in that amount, or on that date, in payment of a premium. (NASD Case #C9A990044)

November Actions

David Scott Eli (CRD #1717625, Registered Representative, Clarksburg, West Virginia) submitted an Offer of Settlement pursuant to which he was fined \$325,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eli consented to the described sanctions and to the entry of findings that he received \$53,259.16 from public customers for payments on variable and non-variable life insurance policies and for investment in interest-bearing investments, negotiated the checks, and failed to remit the proceeds for their intended purposes. Eli also failed to respond to NASD requests for information concerning matters disclosed in an amended Form U-5. (NASD Case #C9A990035)

Edward Michael Gabbert (CRD #2798883, Registered Representative, Wilmington, Delaware) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gabbert failed to respond to NASD requests for information. (NASD Case #C9A980044)

Constantine Theodore Georgiades (CRD #1567476, Associated Person, Cranberry Township, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$160,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Georgiades consented to the described sanctions and to the entry of findings that he improperly caused a total of \$29,948.83 to be transferred from proprietary accounts of his member firm to his own account at the firm. (NASD Case #C9A990049)

Rhett Howard Kirchhoff, Sr. (CRD #1693172, Registered Principal, Beesleys Point, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirchhoff consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. (NASD Case #C9A990045)

Robert Newton Koch, II (CRD #2379707, Registered Principal, New Tripoli, Pennsylvania) submitted an Offer of Settlement pursuant to 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 allegations, Koch consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4 in a timely manner to disclose his indictment on felony counts. The findings also stated that he failed to reasonably supervise an individual in that he failed to cause her to file amendments to her Form U-4 to disclose her indictment and subsequently, her felony conviction within 10 calendar days after the date of conviction. (NASD Case #C9A990041)

Timothy Joseph Rieu (CRD #1535954, Registered Representative, West Friendship, Maryland) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rieu gave false or misleading testimony in an NASD investigation.

Rieu has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9A980032)

Walter Mark Wolff (CRD #1579100, Registered Representative, Wilmington, Delaware) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Wolff consented to the described sanctions and to the entry of findings that he effected the sale and purchase of shares in a public customer's IRA securities account without her prior authorization. (NASD Case #C9A990038)

Benjamin Michael Zabriski (CRD #1163856, Registered Representative, Hudson, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zabriski consented to the described allegations and to the entry of findings that he received \$9,500 from public customers for the purpose of purchasing life insurance policies, failed to use all of the funds to purchase the policies, and instead converted \$4,700 to his own use and benefit without the customers' knowledge or consent. (NASD Case #C9A990051)

December Actions

Hussein Otham Ali (CRD #2777826, Registered Representative, Crofton, Maryland) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ali failed to respond to NASD requests for information. (NASD Case #C9A990027)

Jan Hagenfrederiksen (CRD #732392, Registered Representative, Harrisburg, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$300,000, barred from association with any NASD member in any capacity, and required to pay \$58,900, plus interest, in restitution to public customers. Without admitting or denying the allegations, Hagenfrederiksen consented to the described sanctions and to the entry of findings that he participated in private securities transactions consisting of promissory notes and failed to provide his member firm prior written notice of the proposed transactions and his proposed role therein. The findings also stated that Hagenfrederiksen made untrue statements of material fact, failed to disclose material facts to the purchasers of the securities, and used at least \$40,000 of the funds raised from the sale of promissory notes for his exclusive benefit. (NASD Case #C9A990053)

Steven Lester Schippel (CRD #1225164, Registered Principal, Frederick, Maryland) submitted an Offer of Settlement pursuant to 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 allegations, Schippel consented to the described sanctions and to the entry of findings that he affixed signatures purporting to be those of public customers to documents without the customers' prior authorization. (NASD Case #C9A990047)

District 9B - New Jersey

September Actions

Richard John Berg (CRD #1830892, Registered Principal, White Plains, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berg consented to the described sanctions and the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of public customers and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. The findings also stated that Berg, by use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud the customers by making untrue statements of material facts or omitted to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. In addition, Berg repeatedly caused false information regarding customers' investment objectives to be entered on new account forms and collected and destroyed or hid documents from regulators to impede their examinations. (NASD Case #C9B990014)

Jerry S. Kim (CRD #2316516, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Kim consented to the described sanctions and to the entry of findings that he accepted \$20,000 in cash from public customers for investment, invested \$5,000 at the customers' wishes, personally held on to the remaining funds, and then returned \$15,000 to the customers at a later date. The findings also stated that Kim never notified his member firm of the receipt of the cash, disregarded the firm's internal policy prohibiting representatives from accepting cash from a customer, and failed to follow his firm's procedures for recording and processing customer transactions. By failing to record the receipt of the cash on the branch office trade blotter, Kim caused his firm to fail to maintain accurate books and records as required by the SEC. (NASD Case #C9B990020)

Anthony Joseph Maglietta (CRD #2919710, Registered Representative, Parlin, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maglietta consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on annuity applications, annuity disclosure statements, and a "Confidential Investor Profile," enabling him to purchase an annuity on behalf of the customer without her consent and authority. (NASD Case #C9B990021)

Edward Andrew Perez (CRD #1690751, Registered Representative, Boynton Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he knowingly sold stolen laptop computers to co-workers while on the premises of his member firm. (NASD Case #C9B990016)

October Actions

Marc Andrew Varricchone (CRD #2262533, Registered Principal, Elmsford, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Varricchone consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the account of a public customer and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of his financial situation, investment objectives, and needs. The findings also stated that in connection with sales to numerous public customers, Varricchone intentionally or recklessly employed devices to defraud the customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. In addition, Varricchone destroyed or hid documents from regulators so as to impede their compliance examinations at his member firm and made false statements to the regulators with respect to the use of sales scripts by the firm's employees. (NASD Case #C9B990026)

November Actions

William Max DeMarco (CRD #2986374, Registered Representative, Flushing, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, DeMarco consented to the described sanctions and to the entry of findings that he failed

to disclose on a Form U-4 his recent conviction in Illinois for arson involving damage to personal property, a felony offense under state law. (NASD Case #C9B990023)

December Actions

Cosmo C. Giancaspro (CRD #2215961, Registered Representative, Bridgewater, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity with the right to reapply for association in four years. Without admitting or denying the allegations, Giancaspro consented to the described sanctions and to the entry of findings that he signed a public customer's name to annuity policies, their corresponding disclosure statements, and an investor profile form, enabling Giancaspro to purchase fixed annuities for the customer, without her knowledge or consent. Giancaspro received approximately \$433 in commissions based on the unauthorized fixed annuity purchases. (NASD Case #C9B990024)

James Mirven Hinderliter, III (CRD #2573867, Registered Representative, Shirley, New York) was fined \$50,913.15 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hinderliter received cash payments totaling \$182.63 from a public customer as premium payments for life insurance policies, failed to apply the funds towards the premiums, and converted the funds for his personal benefit. The findings also stated that Hinderliter failed to respond to NASD requests for information. (NASD Case #C9B990003)

District 10 - The five boroughs of New York City

September Actions

James Michael Amira (CRD #2777512, Registered Representative, Melville, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Amira consented to the described sanctions and to the entry of findings that he submitted a falsified Form U-4 to his member firm that failed to indicate that he had been charged with a felony and that he was the subject of a complaint, investigation, or proceeding. (NASD Case #C10990127)

Jon Thomas Brainard (CRD #1973269, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brainard consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. (NASD Case #C10990036)

Joseph Capolino, Jr. (CRD #1963136, Registered Representative, Elmhurst, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Capolino failed to respond to NASD requests for information concerning a customer complaint. (NASD Case #C10990047)

James Emil Cioffi (CRD #2514915, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cioffi consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 exam on his behalf. The findings also stated that Cioffi failed to provide the NASD with documents and to appear for an on-the-record interview. (NASD Case #C10990042)

Robert Louis Giardina (CRD #2554997, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to pay restitution of \$15,000 to a public customer. Without admitting or denying the allegations, Giardina consented to the described sanctions and to the entry of findings that he defrauded a public customer by misrepresenting to the customer that several companies would be signing an agreement to purchase shares of stock and that the customer should "get in" on the deal before the stock price went up, when, in actuality, there was no agreement. When the customer instructed Giardina to sell his holdings due to declining stock prices, Giardina persuaded the customer not to sell because of the "deal." The findings also stated that Giardina failed to timely respond to NASD requests to provide a written statement concerning allegations contained in customer complaints and to appear for an on-the-record interview. (NASD Case #C10990012)

Paul Gorr (CRD #2613773, Registered Representative, Brooklyn, New York) was fined \$25,000 and barred from association with any NASD member. The sanctions were based on findings that Gorr failed to respond to NASD requests for information concerning an amended Form U-5 filed by his former member firm and an arbitration proceeding instituted by a public customer disclosed therein. (NASD Case #C10980096)

Peter Steven Haynes (CRD #1312640, Registered Representative, Boonton, New Jersey) was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$28,617. The sanctions were based on findings that Haynes conducted a securities business while employed at a member firm without being registered with the NASD. (NASD Case #C10970176)

Ezzat Tom Ishak (CRD #2160770, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity with the right to reapply after two years.

Without admitting or denying the allegations, Ishak consented to the described sanctions and to the entry of findings that he executed the purchase and sale of warrants in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The findings also stated that Ishak failed to execute the sale of warrants in the account of a public customer despite receiving an order from the customer. (NASD Case #C10990112)

Ladenburg, Thalmann & Co., Inc. (CRD #505, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it improperly permitted a statutorily disqualified individual to become and remain an assistant trader prior to receiving NASD and SEC approval for such employment. (NASD Case #C10990136)

John Joseph Lee (CRD #1264054, Registered Principal, West Babylon, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in all capacities. The sanctions were based on findings that Lee failed to respond to NASD requests for information. (NASD Case #C10980070)

AnnMarie Noel (CRD #2416716, Registered Representative, Astoria, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Noel consented to the described sanctions and to the entry of findings that she fraudulently accepted compensation in the form of cash or free or deeply discounted stock or stock warrants from or on behalf of various companies in return for recommending stocks to her brokerage firm customers without informing the customers of such compensation. The findings also stated that her knowing failure to disclose the compensation was a material omission made with the intent to deceive her customers. In addition, on several occasions, Noel misrepresented who she was when she spoke to customers over the telephone. (NASD Case #C10990118)

Domingos Alexander Noya (CRD #1398190, Registered Representative, Islip Terrace, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam as an investment representative. If Noya fails to requalify within 90 days, he will be suspended from association with any member firm in that capacity until the exam is successfully completed. Without admitting or denying the allegations, Noya consented to the described sanctions and to the entry of findings that he guaranteed public customers against loss in a variable annuity account although no payment or transactions resulted. (NASD Case #C10990105)

John David Roman (CRD #2251851, Registered Principal, Bridgeport, Connecticut) was ordered to disgorge \$8,500, plus interest, and barred from association with any NASD member capacity with the right to re-apply after one year provided that any such application be accompanied by credible evidence that he has satisfied certain conditions. The sanctions were based on findings that Roman "parked" his registrations as a general securities principal and general securities representative at a member firm. (NASD Case #C10980128)

Steven Richard Rosenblueth a.k.a Steven Rosen (CRD #2418678, Registered Representative, Manhasset Hills, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 business days. Without admitting or denying the allegations, Rosenblueth consented to the described sanctions and to the entry of findings that he executed the purchase of warrants in a public customer's account without the customer's knowledge, authorization, or consent and failed to respond timely to NASD requests for information. (NASD Case #C10990083)

Stephen Kevin Sides (CRD #2376287, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and barred from association with any NASD member in a principal capacity. Without admitting or denying the allegations, Sides consented to the described sanctions and to the entry of findings that he acted in the capacity of a general securities principal while unregistered with the NASD. (NASD Case #C10990116)

Dila D. Skrelja, Jr. (CRD #1819198, Registered Principal, Glen Oaks, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$5,000, and suspended from association with any NASD member in any supervisory capacity for 10 business days. Without admitting or denying the allegations, Skrelja consented to the described sanctions and the entry of findings that she failed to properly enforce her supervisory responsibilities concerning her member firm's registered representatives. (NASD Case #C10990109)

Cary Steven Sprung (CRD #1526858, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sprung consented to the described sanctions and to the entry of findings that, without the consent of his member firm and his member firm's clearing firm, he utilized the clearing firm's stationery and an account statement to fraudulently depict assets in an account bearing Sprung's name in order to collateralize a loan. (NASD Case #C10990122)

The Harriman Group, Inc. a.k.a, HGI, Inc. (CRD #14079, Jericho, New York) was fined \$12,300,000, and expelled from membership in the NASD. The sanctions were based on findings that the firm failed to disclose to its customers, by prospectus delivery or otherwise, certain material information relating to secondary public offerings and distributions of common stock. In addition, the firm failed to file certain documents and information pertaining to the terms, conditions, and arrangements of the firm's participation as an underwriter and received undisclosed and excessive underwriting compensation in connection with the firm's participation as an underwriter in secondary public offerings and distributions of common stock. Furthermore, the firm failed to deliver to investors prospectuses that contained all of the information set forth in the registration agreement, and delivered to investors stock offered in public offerings without the accompaniment of post-effective amended or supplemented prospectuses. Also, the firm failed to establish, maintain, and enforce written procedures to supervise the firm's corporate financing and underwriting activities that were reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. (NASD Case #C10970189)

October Actions

Peter Anthony Babajko (CRD #2018182, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Babajko consented to the described sanctions and to the entry of findings that he employed an impostor to take the Series 7 exam on his behalf. The findings also stated that Babajko failed to respond to NASD requests to appear for a staff interview and to produce documents. (NASD Case #C10980063)

Baird, Patrick & Co., Inc. (CRD #1149, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported securities transactions in violation of applicable securities laws, regulations, and NASD rules regarding trade reporting, and reported transactions in Nasdaq National Market securities, Nasdaq SmallCap® securities, eligible securities, and OTC equity securities as late to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm prepared order tickets with inaccurate time stamps and failed to maintain the order tickets for other transactions. In addition, the NASD determined that the firm failed to establish, maintain, and enforce adequate written supervisory procedures with respect to quality of markets and order handling rules. (NASD Case #C10990137)

Richard Irwin Balber (CRD #1507939, Registered Principal, Hollywood, Florida) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Balber consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to appear and give testimony. (NASD Case #C10990076)

Christian William Blake (CRD #2216784, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify as a general securities representative. If Blake fails to requalify, he will be suspended from acting in such capacity until the exam is completed. Without admitting or denying the allegations, Blake consented to the described sanctions and to the entry of findings that he purchased shares of a security in the account of public customers without their prior knowledge or consent. (NASD Case #C10990134)

Sameer Yousuf Butt (CRD #2693405, Registered Representative, New York, New York) was fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to requalify by exam in all capacities before re-associating with any member firm. The sanctions were based on the findings that Butt executed an unauthorized transaction for the account of a public customer. (NASD Case #C10990039)

Cambridge Capital, L.L.C. (CRD #41464, Garden City, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to identify an aggregated transaction report in Nasdaq National Market securities by including the appropriate "B" modifier, failed to properly report Nasdaq National Market, Nasdaq SmallCap, and Consolidated Quotation SystemSM (CQSSM) transactions through ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm executed transactions for the firm's proprietary account and a transaction for a restricted account through the Small Order Execution SystemSM (SOESSM); failed to report riskless principal transactions in FIPS securities; and failed to establish, maintain, and enforce adequate written supervisory procedures that included the Bank Secrecy Act, SOES, transaction and volume reporting, front running, telemarketing activities, customer communications, and MSRB rules. In addition, the NASD determined that the firm, in connection with the Firm Element of the Continuing Education requirement, failed to maintain adequate records documenting the content of the training and completion of the program by the firm's covered registered persons. (NASD Case #C10990149)

Alvaro Fabian Dumancella (CRD #2489579, Registered Principal, Baldwin, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was

censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Dumancella consented to the described sanctions and to the entry of findings that he intervened in a conversation between a cold calling representative and a prospective client and gave the name of the supervising registered representative when the prospective client asked for the name of the cold caller. (NASD Case #C10990132)

Adam Goldman (CRD #1492830, Registered Representative, Brooklyn, New York) was fined \$75,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Goldman stole company checks from his member firm, wrote checks payable to himself in the total amount of \$4,100, forged the signature of an official of the firm on each of the checks, and cashed them, thereby converting \$4,100 from his member firm. In addition, Goldman failed to respond to NASD requests for information. (NASD Case #C10990040)

Hannibal Kwewe Hosang (CRD #2570874, Associated Person, Staten Island, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hosang failed to respond to NASD requests for information and to appear for testimony. (NASD Case #C10980085)

Charles Paul Kateridge (CRD #2481595, Registered Representative, Huntington Square, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to requalify as a general securities representative. If Kateridge fails to requalify, he will be suspended until such examination is successfully completed. In addition, Kateridge is ordered to pay restitution in the amount of \$20,000 to a public customer under terms negotiated with, and acceptable to, the customer. Without admitting or denying the allegations, Kateridge consented to the described sanctions and to the entry of findings that he engaged in trading in the account of a public customer that was excessive in light of the customer's financial situation and investment objectives. Kateridge also misrepresented the significance of an activity letter when he told the customer that he had to sign the letter in order to make money. (NASD Case #C10990131)

Alan Jerry Mandel (CRD #2044942, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$1,000, suspended from association with any NASD member as a general securities principal for six months, and required to requalify by exam as a general securities principal. If Mandel fails to requalify, he will be suspended from acting as a general securities principal until the exam is successfully completed. Without admitting or denying the allegations, Mandel consented to the described sanctions and to the entry of findings that, while acting as a sales supervisor, he received customer complaints about the sales practices of certain registered representatives at his member firm, reported this information to his superiors, but

failed to follow up to ascertain what, if any, measures were taken by these senior managers to address the issues he had raised. (NASD Case #C10970143)

Elie Mellul (CRD #2126020, Registered Principal, Great Neck, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$39,192 in restitution to public customers. Without admitting or denying the allegations, Mellul consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without their knowledge, consent, or authorization. The findings also stated that Mellul refused to cooperate with the NASD's request for information and/or documentation. (NASD Case #C10990143)

Frank Virgilio Mollo (CRD #2342435, Registered Representative, Long Beach, New York) submitted an Offer of Settlement pursuant to which he was fined \$135,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mollo consented to the described sanctions and to the entry of findings that he allowed an impostor to take the Series 7 exam on his behalf and permitted the passing score to be entered into the NASD Central Registration Depository (CRDSM) as his exam record. The findings also stated that Mollo failed to appear and give testimony in connection with the NASD investigation that led to the issuance of the complaint in this case. In addition, Mollo effected unauthorized transactions in public customer accounts. (NASD Case #C10990085)

Pasquale Morello (CRD #2469753, Registered Representative, Lynbrook, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$278,717.38 to the NASD. Without admitting or denying the allegations, Morello consented to the described sanctions and to the entry of findings that he had an impostor take and complete the Series 7 exam on his behalf. (NASD Case #C10990145)

Charles Christopher Ocera, Jr. (CRD #2690022, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for one year, and ordered to provide testimony as previously requested by the NASD in connection with an investigation. Without admitting or denying the allegations, Ocera consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to provide testimony. (NASD Case #C10990075)

Rafael Pinchas (CRD #1233899, Registered Representative, Hillcrest, New York) was censured, fined \$199,821, and barred from association with any NASD member in any capacity. The SEC sustained the foregoing sanctions following appeal of a June 1998 NAC decision. The findings stated that Pinchas made unsuitable recommendations to public customers and engaged in excessive trading in the customers' accounts. (NASD Case #C10930017)

Francis Emile Renner (CRD #2664117, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Renner consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information. (NASD Case #C10990068)

Simuel Emanuel Stevenson, Jr. (CRD #1944019, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stevenson consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf and permitted the passing score to be entered into CRD as his exam record. Stevenson also failed to appear and give investigative testimony that had been requested by the NASD. (NASD Case #C10990066)

Marlowe Robert Walker, III (CRD #1328130, Registered Representative, Hauppauge, New York) was fined \$200,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$11,250. The sanctions were based on findings that Walker associated with a member firm while subject to statutory disqualification, and submitted false, misleading, and inaccurate information to the NASD on his MC-400 application and Form U-4. In addition, Walker caused his member firm to make commission payments to him, a person subject to statutory disqualification, through a company he owned. Walker also made false statements during his on-the-record interview.

Walker has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10970141)

Maurice Dana Wise (CRD #737189, Registered Principal, Hauppauge, New York) was fined \$330,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wise permitted a statutorily disqualified person to be associated with and participate in the management of his member firm without obtaining proper regulatory approvals, and failed to disclose on Form U-4 and MC-400 applications the person's business or financial activity with a non-member firm within 10 business days. In addition, Wise was found to have permitted non-exempt sales of a penny stock to public customers to be effected without the necessary suitability determinations and disclosures. He also failed to inquire and determine the applicability of the penny stock rules to sales of a common stock during the selling period, and failed to adequately supervise his member firm's sales staff to ensure adherence to requirements. Furthermore, Wise executed sales of a penny stock on behalf of public customers in violation of his member firm's restriction agreement with the NASD. Wise also engaged in an unregistered public distribution of a common stock, and effected and induced others to effect transactions at unfair and fraudulently excessive prices while failing to disclose on customers' confirmations that his member firm

was acting as principal and the amount of remuneration it received. Wise also falsified his member firm's records to reflect that certain transactions were executed by a registered individual when, in fact, such transactions were executed by an unregistered individual. Wise also failed to adopt written supervisory procedures and systems that would have enabled his member firm to achieve compliance with the Regulatory and Firm Elements of the NASD's Continuing Education rules. (NASD Case #C10970141)

November Actions

Jeffrey Joseph Barron (CRD #2108213, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$55,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barron consented to the described sanctions and to the entry of findings that he executed the purchase of shares and warrants in the accounts of public customers without their prior knowledge, authorization, or consent and failed to report transactions to ACT in ACT eligible securities. The findings also stated that Barron failed to testify accurately and truthfully during an NASD on-the-record interview. (NASD Case #C10990171)

Thomas John Cox, Jr. (CRD #2235172, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a public customer's allegations that he had engaged in violative conduct. (NASD Case #C10990077)

John Mike Dabal (CRD #1585467, Registered Principal, Smithtown, New York) submitted an Offer of Settlement pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for five months, required to pay \$32,500 in restitution to a public customer, and required to requalify by passing the Series 7 exam before functioning in that capacity with any NASD member following his suspension. Without admitting or denying the allegations, Dabal consented to the described sanctions and to the entry of findings that he made recommendations to public customers when he did not have reasonable grounds to believe that his recommendations were suitable. The findings also stated that Dabal made materially false or misleading statements to customers for which there was no reasonable basis in fact including statements which, in substance and effect, constituted unwarranted predictions or assurances that purchases would quickly result in substantial profits and failed to disclose material facts including the risks associated with purchases. In addition, Dabal effected purchases in the accounts of the customers without their knowledge or authorization. (NASD Case #C10990028)

Steven Fishman (CRD #2428781, Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member as a general securities principal for six months, and ordered to requalify by exam as a general securities principal. If Fishman fails to requalify, he will be suspended in such capacity until the exam is successfully completed. The NAC accepted the Offer following Fishman's appeal of a New York DBCC decision. Without admitting or denying the allegations, Fishman consented to the described sanctions and to the entry of findings that a member firm, acting through Fishman, operated a securities business without a financial and operations limited principal and conducted a securities business while it failed to maintain the minimum net capital requirement. The findings also stated that the member firm, acting through Fishman, failed to establish, maintain, and enforce written supervisory procedures addressing the receipt of customer checks made payable to the firm. (NASD Case #C10960032)

Edwin Leslie Lawrence, Jr. (CRD #2282684, Registered Representative, Dix Hills, New York) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay restitution of \$76,639.75, plus interest, to public customers. The sanctions were based on findings that Lawrence executed transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in the accounts. (NASD Case #C10980088)

Ronald David Luczak, Jr. (CRD #2626188, Registered Representative, West Caldwell, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Luczak consented to the described sanctions and to the entry of findings that he testified untruthfully and evasively during an NASD interview. The findings also stated that he failed to respond to further NASD requests for on-the-record interviews. (NASD Case #C10990097)

Fred Richard Luthy (CRD #727391, Registered Principal, Basking Ridge, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 15 business days and suspended from association with any NASD member in any principal capacity for one year during which time he shall not directly or indirectly supervise any registered persons. The two suspensions shall run consecutively, starting with the 15 business-day suspension in all capacities. In addition, Luthy is required to demonstrate, in writing, to the NASD that he has successfully completed at least 20 hours of Continuing Education course work covering compliance, broker/dealer supervision, underwriting, and/or Regulation M before he can seek to become registered, or to act in a principal or supervisory capacity, following his suspensions. Without admitting or denying the allegations, Luthy consented to the described sanctions and to the entry of findings that he failed to remedy fraudulent sales practices in

connection with his firm's sale of low-priced, highly speculative securities. The findings also stated that Luthy failed to undertake an investigation concerning the inordinate number of purchase transaction cancellations, failed to determine what, if any, remedial measures were needed, and failed to undertake an investigation to determine the adequacy of the firm's supervisory infrastructure and written supervisory procedures to effectively address issues raised in customer complaints. In addition, Luthy took no disciplinary action and failed to disclose possible wrongdoing to regulatory authorities. (NASD Case #C10970143)

Willis White, III (CRD #1854757, Registered Representative, Hempstead, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that White failed to respond to NASD requests for information. (NASD Case #C10980138)

Christopher William Yoder (CRD #2095608, Registered Representative, Islip, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Yoder failed to respond to NASD requests for information. (NASD Case #C10990049)

Jason Eric Zwilling (CRD #2473750, Registered Representative, Queens, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zwilling consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. (NASD Case #C10990101)

December Actions

Joseph Anthony Ballard (CRD #2609456, Registered Principal, Flushing, New York) was fined \$35,000, suspended from association with any NASD member in any capacity for six months for failing to prevent unregistered persons from conducting a securities business, and barred from association with any NASD member in any capacity for failing to appear for an NASD interview. The sanctions were based on findings that Ballard allowed unregistered persons to solicit or conduct business in securities at the branch at which he was manager. The findings also stated that Ballard failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10990084)

William Marco Birch (CRD #2388464, Registered Representative, London, England) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Birch consented to the described sanctions and to the entry of findings that he falsified firm records by effecting improper entries in his proprietary trading book and in a fellow associated person's propri-

etary trading book, without the knowledge or consent of the person. (NASD Case #C10990182)

Robert John Brancatella (CRD #1988805, Registered Representative, Westfield, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by passing either the Series 7 or Series 55 exam. If Brancatella fails to pass either of the exams, he cannot function in any registered capacity or engage in any activities that require registration in any capacity. Without admitting or denying the allegations, Brancatella consented to the described sanctions and to the entry of findings that he caused purported orders that did not constitute valid or legitimate transactions to be entered into his member firm's internal trading systems in an effort to conceal unrealized losses he had incurred through trading in a security that had declined precipitously in price. (NASD Case #C10990174)

Robert Steven Calavetta (CRD #2399753, Registered Representative, Staten Island, New York) was fined \$30,000, suspended from association with any NASD member in any capacity for 10 business days for an unauthorized transaction, and barred from association with any NASD member in any capacity for failure to appear. The sanctions were based on findings that Calavetta executed an unauthorized purchase of stock in the account of a public customer and failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10990054)

Robert Joseph Capolino, Jr. (CRD #2336156, Registered Representative, Pembroke, Florida) was fined \$50,000, barred from association with any NASD member, in any capacity, and ordered to disgorge \$81,055.25 in ill-gotten earnings. The sanctions were based on findings that Capolino used an impostor to take the Series 7 exam on his behalf and failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10990017)

Michael Daniel Cleary (CRD #2692653, Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$2,500, plus interest, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$8,591 in restitution to public customers. In the event Cleary becomes associated with a member firm after his suspension, he shall not be permitted to continue such association unless the firm has adopted and implemented for a 12-month period compliance programs and procedures which include monitoring Cleary's conversations and correspondence with public customers, providing the phone number of the compliance department to Cleary's customers in the event of any questions or problems, and reviewing his order tickets and account documentation. Without admitting or denying the allegations, Cleary consented to the described sanctions and to the entry of findings that he effected transactions in customer accounts without the knowledge or consent of the customers, failed to follow customer instructions to sell securities, and made false or misleading statements to a customer concerning his account. The findings also stated that Cleary

allowed an individual to use his account executive number to effect securities transactions when he knew, or should have known, that the individual was not registered with the NASD. In addition, Cleary entered false or misleading information on his Form U-4 and failed to timely respond to NASD requests for information and to appear for an on-the-record interview. (NASD Case #C10990056)

Michael Allen Cohen (CRD #2227316, Registered Representative, Parsippany, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he falsely advised public customers that they would be required to pay him application or contract fees to process insurance policy applications or to purchase annuities and, instead, put the fee payments to his personal use. (NASD Case #C10970077)

EGS Securities Corporation (CRD #28347, New York, New York) and Arthur L. Goetchius (CRD #1374251, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$12,500, jointly and severally. The firm was also fined an additional \$2,500, jointly and severally, with another individual. Without admitting or denying the allegations, the firm and Goetchius consented to the described sanctions and to the entry of findings that the firm, acting through Goetchius, violated the terms of its Restriction Agreement in that the firm opened and operated a branch office in addition to another branch office at a different location without providing prior written notification to the NASD. The findings also stated that the firm, acting through Goetchius, failed to file a response to the NASD with respect to an inquiry regarding its sale of securities in an IPO that traded at a premium in the immediate aftermarket and failed to file an accurate Free-Riding and Withholding Questionnaire with the NASD regarding the firm's participation in another IPO that traded at a premium in the immediate aftermarket. The firm, acting through Goetchius, also failed to prepare, maintain, and enforce adequate and accurate written supervisory procedures concerning supervision of underwriting activity and reallocation of "hot issue" IPO shares sold to "restricted" individuals. In addition, the firm, acting through another respondent, failed to properly supervise an individual who was not registered with the NASD. (NASD Case #C10990175)

Essex National Securities, Inc. (CRD #25454, New York, New York) and Jeffrey Deloy Powell (CRD #1805180, Registered Principal, Napa, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. The firm was also ordered to disgorge \$49,225.51 to the NASD and fined \$5,000, jointly and severally, with another individual. Without admitting or denying the allegations, the firm and Powell consented to the described sanctions and to the entry of findings that the firm, acting through Powell, violated a Restriction Agreement with the NASD when it acted as a

participant in an IPO and failed to establish and maintain a system of supervision that would have prevented the firm from violating the IPO Restriction Agreement. The findings also stated that the firm, acting through Powell, permitted individuals to act in capacities that required registration as general securities representatives when they had been deemed "inactive" because they had failed to timely complete the Regulatory Element of the NASD's Continuing Education Rules. The firm, acting through another individual, also received payments for the purchase of shares offered in the IPO. (NASD Case #C10990193)

Fleet Enterprises, Inc. (CRD #17434, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain and update the Uniform Application for Broker/Dealer Registration (Form BD) by failing to update and identify the firm's contact employee. The findings also stated that the firm failed to respond to NASD requests for documents and/or information in a timely manner. (NASD Case #C10990173)

Xavier Van Gray (CRD #2856501, Associated Person, Jersey City, New Jersey) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gray failed to respond to NASD requests for information. (NASD Case #C10990046)

Richard William Jefferson, Jr. (CRD #2683679, Registered Representative, Hempstead, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jefferson failed to respond to NASD requests for information. (NASD Case #C10990065)

Keba Keinde (CRD #2526406, Registered Representative, Washington, D.C.) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam. If he fails to requalify, he will be suspended from association with any NASD member in any capacity until he requalifies. Without admitting or denying the allegations, Keinde consented to the described sanctions and to the entry of findings that he was engaged in business activities outside his employment with a member firm and failed to provide his firm with prompt, or any, prior written notice of his activities. (NASD Case #C10990113)

Asim Sain Kohli (CRD #2717474, Associated Person, Monmouth Junction, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kohli consented to the described sanctions and to the entry of findings that he failed to appear for scheduled NASD on-the-record interviews. (NASD Case #C10990181)

Gerald Louis Leal (CRD #1040096, Registered

Representative, New York, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Leal failed to respond to NASD requests for information. (NASD Case #C10990074)

Duckjae Lee (CRD #1641366, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$79,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he withdrew \$11,900 from a public customer's whole life policy and converted the funds for his own use and benefit. (NASD Case #C10990189)

Matthew Jason Matles (CRD #2509983, Registered Principal, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Matles consented to the described sanctions and to the entry of findings that he allowed unregistered individuals to use his name and individual registered representative number in their dealings with the public for the express purpose of soliciting and purchasing securities and opening new securities accounts at his member firms. The findings also stated that Matles failed to cooperate during the course of an on-the-record interview in that he failed to answer questions posed to him by the NASD staff. (NASD Case #C10990180)

Montrose Capital Management, Ltd. (CRD #40799, New York, New York) and Michael Edward Wallace (CRD #2328485, Registered Principal, Yardley, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$5,000. Without admitting or denying the allegations, the firm and Wallace consented to the described sanctions and to the entry of findings that the firm, acting through Wallace, failed to maintain its minimum required net capital while conducting a securities business and failed to submit an Annual Filing of Audited Financial Statements to the NASD in a timely manner. (NASD Case #C10990186)

Tasin & Company, Inc. (CRD #30709, Hauppauge, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$48,450. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report, or to report accurately, to the NASD statistical summary information regarding customer complaints, customer settlements, and disciplinary action by states against the firm's registered representatives. The findings also stated that the firm failed to update its bid/ask to reflect the limit order price and failed to update the full limit order size in its quote in securities in which the firm made a market. The firm also engaged in inaccurate trade reporting or failed to accept or decline trades in a timely manner. In addition, the firm allowed an individual to perform the duties of a registered person when he had not completed the

Regulatory Element of the Continuing Education requirement and failed to establish, maintain, and enforce compliance and supervisory systems and procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and rules regarding trade reporting, continuing education, and customer complaints. (NASD Case #C10990183)

Westfalia Investments, Inc. (CRD #19606, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to create written records for proprietary short-sale orders showing the present location of the securities in question, whether they were in good deliverable form and the customer's ability to deliver them to the firm within three business days, or the identity of the individual and firm contacted who offered assurance that the shares would be delivered or that they were available for borrowing by settlement date and the number of shares needed to cover the short sales. The findings also stated that the firm failed to include a symbol indicating that transactions were sell short or sell short exempt in the firm's ACT reports for short-sale transactions. In addition, the firm effected short sales for NNM securities at or below the current best inside bid when the current best inside bid as displayed by the NNM was below the preceding best inside bid in the security. The firm also effected short sales for securities registered on a national securities exchange at or below the price at which the last sale was reported pursuant to an effective transaction reporting plan. In addition, the firm failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with the NASD's rules including short sales and written records. The firm also failed to maintain records documenting the content of its Firm Element Continuing Education Program and completion of each program by covered registered persons. (NASD Case #C10990179)

District 11 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Monroe, Livingston, and Steuben; and the five boroughs of New York City)

September Actions

Cary Francis Butterfield (CRD #1291148, Registered Representative, Augusta, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay \$32,847.34 in restitution to public customers. Without admitting or denying the allegations, Butterfield consented to the described sanctions and to the entry of findings that he engaged in private securities transactions in that he participated in the sale of promissory notes to customers without written notice to, and approval from, his member firm. (NASD Case #C11990032)

Todd Joseph LaScola (CRD #1968448, Registered

Principal, Warwick, Rhode Island) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LaScola consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning alleged unauthorized trading and misappropriation of funds. (NASD Case #C11990021)

Marlene Marcello McKenna (CRD #832452, Registered Principal, Providence, Rhode Island) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$450,000, barred from association with any NASD member in any capacity, and ordered to pay \$86,710, plus interest, in restitution to public customers. Without admitting or denying the allegations, McKenna consented to the described sanctions and to the entry of findings that she converted and misappropriated at least \$86,710 in cash proceeds from variable life insurance policies of public customers for her own use and benefit. (NASD Case #C11990029)

James Sylvester Ruscoe (CRD #2091493, Registered Representative, Peru, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$1,260,000, barred from association with any NASD member in any capacity, and ordered to pay \$249,874.18, plus interest, in restitution. Without admitting or denying the allegations, Ruscoe consented to the described sanctions and to the entry of findings that he improperly converted \$249,874.18 belonging to public customers for his own use and benefit. (NASD Case #C11990030)

Douglas Frank Schwartz (CRD #2059820, Registered Representative, Fort Meyers, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$150,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he improperly misused and borrowed public customer funds totaling \$150,000. (NASD Case #C11990031)

October Actions

Michael Anthony Doyle (CRD #71513, Registered Principal, Cape Elizabeth, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Doyle consented to the described sanctions and to the entry of findings that he participated in private securities transactions involving public customers who invested a total of \$295,000 without giving prior written notice to, or receiving prior written permission from, his member firm. (NASD Case #C11990034)

Ellis Keith Ings (CRD #2411137, Registered Representative, New York, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ings failed to respond to NASD requests for information. (NASD Case #C11980022)

November Actions

Oscar Conrad Dotson (CRD #2585430, Registered Representative, Providence, Rhode Island) was fined \$37,783 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dotson received a check for \$556.70 from a public customer to reinstate an insurance policy, failed to apply the funds to the policy, and deposited the check into his personal account. Dotson also failed to respond to NASD requests for information concerning his termination from a member firm. (NASD Case #C11990020)

James Curtiss Sammis (CRD #2433652, Registered Representative, Beacon Falls, Connecticut) was fined \$25,000 and barred from association with any NASD member in any capacity. The findings stated that Sammis failed to respond to NASD requests for information concerning the circumstances of his termination by a member firm. (NASD Case #C11990025)

December Actions

Auerbach, Pollak & Richardson, Inc. (CRD #29824, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain the required minimum net capital. The findings disclosed that the firm, by being one of the guarantors to a credit agreement of its parent corporation with a bank, failed to include the amount guaranteed in the computation of aggregate indebtedness and as a charge in the computation of its net capital. (NASD Case #C11990048)

Scott Patrick Baumgarte (CRD #2912856, Registered Representative, Ellenville, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Baumgarte submitted fictitious applications for traditional life insurance policies to his member firm. (NASD Case #C11990026)

David Brand Eppner (CRD #1494286, Registered Principal, West Hartford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$1,425,000, barred from association with any NASD member in any capacity, and ordered to pay \$282,613.21, plus interest, in restitution to public customers. Without admitting or denying the allegations, Eppner consented to the

described sanctions and to the entry of findings that he improperly converted \$282,613.21 belonging to public customers for his own use and benefit. (NASD Case #C11990044)

Thomas Robert Goulet (CRD #1657522, Registered Representative, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goulet consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Goulet misused approximately \$141,200 in customer funds intended for investment in limited partnerships in that he deposited the funds in his business operating account which he commingled with his personal funds and used for his own benefit, without the knowledge or consent of the firm or his customers. (NASD Case #C11990046)

Enforcement Department

September Actions

None

October Actions

Michael Brad Newman (CRD #2124869, Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Newman consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers, failed to execute a customer order to sell a security, and required that public customers purchase aftermarket shares as a condition of purchasing initial public offering units. (NASD Case #CAF980031)

Steven Joseph Orandello (CRD #2098840, Registered Representative, Seaford, New York) submitted an Offer of Settlement pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 120 days, and prohibited for a period of one year from September 1, 1999, from associating with any NASD member unless that member shall agree in writing to tape record all conversations between Orandello and public customers. The firm must also agree to maintain those tape recordings for a period of three years. Without admitting or denying the allegations, Orandello consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers, failed to execute a customer order to sell a security, caused an unauthorized transaction to be made in the account of a customer, and required that

customers purchase aftermarket shares as a condition of purchasing initial public offering units. (NASD Case #CAF980031)

Howard Richard Perles (CRD #1174341, Registered Principal, Staten Island, New York) and Laurence Mark Geller (CRD #1533947, Registered Representative, Demarest, New Jersey). Perles was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative. Geller was fined \$25,000, and suspended from association with any NASD member in any capacity for 30 business days. The sanctions were based on findings that Perles and Geller engaged in prearranged (or wash and matched) trading and failed to reflect accurately the prearranged trades on the books and records of their respective firms.

The NASD Department of Enforcement has appealed this matter as to Perles and Geller to the NAC; Perles and Geller have cross-appealed this action to the NAC. The sanctions are not in effect pending consideration of the appeals. (NASD Case #CAF980005)

Steven Ross Stecklow (CRD #2111105, Registered Representative, Roslyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Stecklow consented to the described sanctions and to the entry of findings that he made improper price predictions as to speculative securities to public customers. The findings also stated that Stecklow solicited aftermarket shares of stock before the completion of the distribution of the initial public offering. (NASD Case #CAF980031)

November Actions

Stephen Glenn Buxton (CRD #2291322, Registered Representative, Fort Lee, New Jersey) was fined \$65,000, suspended from association with any NASD member in any capacity for two years for effecting unauthorized trades, barred from association with any NASD member in any capacity for failing to execute customer orders, ordered to pay \$750, plus interest, in restitution to a public customer, and ordered to requalify by exam as a general securities representative prior to association with any member firm. The sanctions were based on findings that Buxton effected unauthorized trades in the accounts of public customers and failed to execute customer orders to sell securities. (NASD Case #CAF970002)

Harold Richard Eighme (CRD #1073737, Registered Representative, St. Clairsville, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eighme consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be

acquired for little or no additional cash payments by using cash values and/or future dividends from existing life insurance policies when, in fact, the customers were required to make payments to maintain the insurance coverage. The findings also stated that Eighme misrepresented to an employer that variable life insurance was solely a retirement plan and failed to disclose the life insurance elements of the product. In addition, Eighme sold variable life insurance to customers for whom the purchases were not suitable, misrepresented that variable life insurance was solely an investment product, and failed to disclose the life insurance elements of the product. (NASD Case #CAF990021)

December Actions

Coleman & Company Securities, Inc. (CRD #1486, New York, New York) was fined \$200,000, suspended from participating in any underwritings for three months, and thereafter suspended for an additional nine months from acting as a lead managing underwriter. As a condition to resuming any underwriting activity, the firm was also ordered to retain a consultant acceptable to the NASD during its initial three-month suspension and to revise its compliance manual in accordance with the consultant's recommendations. The sanctions were based on findings that the firm unjustifiably terminated a firm commitment underwriting because the price of the stock fell in the aftermarket, purchasers failed to affirm their orders, and the firm had insufficient capital to purchase the offered shares. (NASD Case #CAF980022)

Harold Martin Kotler (CRD #1388272, Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kotler consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be acquired for little or no additional cash payments by using cash values and/or future dividends from existing life insurance policies when, in fact, the customers were required to make payments to keep the insurance in force. The findings also stated that Kotler sold variable life insurance to customers for whom the purchases were not suitable and misrepresented that variable life insurance was a pension plan without disclosing the life insurance elements of the product. (NASD Case #CAF990022)

Market Regulation Committee

September Actions

Credit Suisse First Boston Corporation (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute SelectNetSM orders and thereby failed to honor its published quotation. (NASD Case #CMS990070)

Morgan Stanley & Co., Inc. (CRD #8209, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable laws and regulations regarding trade reporting. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for securities and to buy or sell in such market so that the resultant price to each customer was as favorable as possible under prevailing market conditions. In addition, the NASD found that the firm failed to report transactions in high yield bonds not quoted in FIPS on the dates of each such transaction any time during the operating hours of FIPS. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to ACT compliance, trade reporting, recordkeeping, SEC Rule 10b-10, the SEC's Order Handling Rules, the Limit Order Protection Interpretation, best execution, anti-competitive practices, the use of SOES, and the conducting of an annual review of its OTC Trading Department. (NASD Case #CMS990084)

Darrell Scott Rosenthal (CRD #1702839, Registered Representative, Bellaire, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for seven business days. Without admitting or denying the allegations, Rosenthal consented to the described sanctions and to the entry of findings that he, acting in his capacity as a registered representative for his member firm, intentionally caused transactions to The Nasdaq Stock Market[®] to be executed and reported in his own account, affecting the reported last sale prices in the securities. The findings also stated that Rosenthal marked opening order tickets in his own account "sell close" when such orders established opening short positions and subsequently, on the same days, marked corresponding order tickets in his own account "buy open" when such orders closed out the previously established short positions. (NASD Case #CMS990092)

Warburg Dillon Read, L.L.C. (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$9,500, and required to pay \$3,968.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received customer limit orders to buy or sell securities and failed to contemporaneously execute shares of the customer limit orders after it bought or sold shares for its market-making account. The findings also stated that firm failed to immediately display customer limit orders when the orders were at a price that would have improved its bid or offer in each security related to those orders or when the orders were priced equal to its bid or offer and the national best bid or offer and the size of the orders represented more than a de minimis amount in relation to the size associated with its bid or offer in each security. Furthermore, the NASD determined that the firm failed to provide, in connection with transactions where it

acted as principal, written notification to its customers of the reported trade price of the transaction, and failed to maintain memoranda on broker orders in compliance with SEC and NASD rules. The NASD also found that the firm sold shares of securities to public customers and failed to use reasonable diligence to ascertain the best inter-dealer markets for the securities so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. (NASD Case #CMS990069)

October Actions

Harold Bailey Gallison, Jr. (CRD #1040211, Registered Principal, Las Vegas, Nevada) was censured, fined \$100,000, barred from association with any NASD member in any principal or supervisory capacity, and ordered to requalify by exam in any capacity. The SEC upheld the NASD sanctions following appeal of a February 1998 NAC decision. The findings stated that Gallison failed to properly establish, maintain, and enforce written supervisory procedures concerning registered personnel in a branch office. (NASD Case #CMS950110)

November Actions

Bear, Stearns Securities Corp. (CRD #28432, Whippany, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that on occasions where Bear, Stearns & Co. acted as principal for its own account, Bear, Stearns Securities Corp. produced customer confirmations that failed to comply with the SEC rule concerning the use of average price confirmation disclosures. The findings also stated that institutional Depository Trust Company confirmations produced by Bear, Stearns, Securities Corp. for Bear, Stearns & Co. did not state that each of these transactions was, in fact, an average price transaction. (NASD Case #CMS990116)

Correspondent Services Corporation (CRD #25927, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to prevent its parent member firm from entering orders into SOES on behalf of non-public customers. The findings also stated that Correspondent Services Corp. failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the use of SOES. (NASD Case #CMS990124)

TD Securities (USA) Inc. (CRD #18476, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of

findings that the firm executed short-sale transactions at or below the inside bid when the current inside bid was below the preceding inside bid in the security, failed to create and maintain a written record of the affirmative determination for short-sale orders, and failed to report short-sale transactions to ACT with a short-sale indicator. The findings also stated that the firm failed to properly mark the order tickets as short for short-sale orders. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the short-sale rule. (NASD Case #CMS990122)

December Actions

Fahnestock & Company, Inc. (CRD #249, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$14,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute, or partially execute, a customer limit order after trading in the same security for its own account that would have satisfied the customer limit order. The findings also stated that the firm executed transactions and failed to use reasonable diligence to ascertain the best inter-dealer markets so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. The firm also failed to disclose that the price for a security in a customer confirmation was an average price and failed to disclose that it was acting in the capacity of a Market Maker in other customer confirmations. In addition, the firm failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimus change in relation to the size associated with the firm's bid or offer in each security. The firm also failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with annual reviews, markups and markdowns, registration of trading personnel, SOES order eligibility, and harassment as described in the SEC 21(a) Report. (NASD Case #CMS990129)

J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions to ACT properly and in a timely manner. In transactions involving non-Nasdaq® securities, the firm failed to record quotes for over-the-counter (OTC) Market Makers. The findings also stated that the firm failed to properly maintain brokerage order memoranda and failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with regard to trade reporting, best execution, limit order protection, order handling, and anti-competitive practices. (NASD Case #CMS990138)

La Jolla Capital Corporation (CRD #24341, San Diego, California) was censured, fined \$100,000, and required to retain an independent consultant to audit and monitor the firm's compliance program for two years. The SEC upheld the NASD sanctions following appeal of a February 1998 NAC decision. The findings stated that the firm and its president, Harold Bailey Gallison, Jr., failed to properly establish, maintain, and enforce written supervisory procedures concerning registered personnel in a branch office. (NASD Case #CMS950110)

Rice, Voelker, L.L.C. (CRD #39838, Mandeville, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in Nasdaq National Market securities to ACT in a timely manner and to include a "SLD" modifier or to include the time of execution for transactions executed outside normal market hours. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with trade reporting rules. (NASD Case #CMS990135)

SG Cowen Securities Corporation (CRD #7616, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$29,500, and required to pay \$42,496, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute customer limit orders in Nasdaq securities after it traded each of the securities related to those orders for its own market-making account at a price that would have satisfied each of the orders. The findings also stated that the firm executed customer transactions without using reasonable diligence to ascertain the best prevailing inter-dealer market for each relevant security so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The firm also incorrectly reported to ACT its capacity in a transaction in an NNM security and failed to accept or decline transactions in eligible securities in a timely manner. The firm also failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimus change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to properly maintain brokerage order memoranda and failed to establish, maintain, and/or enforce adequate supervisory procedures reasonably designed to achieve compliance with applicable securities laws, rules, and regulations. (NASD Case #CMS990139)

Sharpe Capital, Inc. (CRD #18452, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and ordered to pay \$3,071.88, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute, or partially execute, customer limit orders after trading in the same security for its own account at prices that would have satisfied the customer limit orders and failed to use reasonable diligence in the execution of transactions to ascertain the best inter-dealer markets so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to disclose information in customer confirmations and entered a priced order into an electronic communications network which was deemed to be a bid or offer without communicating account information to the NASD. The firm also failed to display customer limit orders immediately when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders were priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimus change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to properly maintain customer order memoranda, customer confirmations, and limit order records and failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with NASD rules and regulations. (NASD Case #CMS990141)

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