

ALERT



Spring Securities Conference Calls For Building Investor Confidence

NASD Regulation, Inc. (NASD RegulationSM) held its annual Spring Securities Conference from May 21–23, 1997, in Washington, D.C. This year's theme was "Building Investor Confidence Through Member Compliance." The conference provided securities professionals with practical, up-to-date information to comply with industry rules and regulations.

The conference opened with remarks by Todd Robinson, Chairman, NASD Regulation, Board of Directors, and Chairman and Chief Executive Officer of Linsco/Private Ledger Corp. In his

remarks, Robinson echoed this year's theme by saying that the goal of the conference was to help compliance personnel help their firms. Following his welcome, NASD Regulation President Mary Schapiro addressed the audience.

Schapiro addressed several initiatives that occurred during her first year as NASD Regulation President. Specifically, Schapiro commented that the organization's obligations to the public are three-fold: to ensure market integrity through effective market sur-

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SEC Approves Move To Nasdaq Quotes In 1/16s

On May 28, 1997, the SEC approved a proposal by The Nasdaq Stock MarketSM to reduce the minimum quotation increment from 1/8 of a dollar (12.5 cents) to 1/16 of a dollar (6.25 cents) for all securities listed on Nasdaq[®] whose bid price is \$10 or above. Stocks under \$10 are already quoted in increments as small as 1/32. The new quoting system was implemented for all Nasdaq stocks on Monday, June 2.

Nasdaq believes the narrower quote increment will enhance market transparency and provide investors with improved opportunity for best execution. The change also makes it possible for Nasdaq to accommodate and reflect orders entered into Electronic Communication Networks (ECNs) that are priced narrower than the minimum quotation increment currently allowed

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veillance, to ensure that members are in full compliance with rules and regulations through a thorough examination of their business practices and dealings with customers, and to equip investors with the means to make informed decisions.

In speaking about the redesign of the Central Registration Depository (CRDSM) system, Schapiro said that, by year-end, the system will be enhanced further to give the public even easier access to disclosure information. Instead of waiting for a written response, the public will have the information available to them electronically through the NASD Regulation Web site.

She mentioned that, during NASD Regulation's examination process, some areas that will receive special emphasis include sales practice activity in SmallCapSM securities, suitability requirements for speculative and low-priced securities, telemarketing activities, and compliance with continuing education rules.

Schapiro then introduced Frank Zarb, NASD Chairman, CEO, and President. Zarb joined the NASD after a notable career in both the private and public sectors, including senior leadership positions with several major financial services firms.

Zarb commented on issues from the perspective of both a regulator and an industry professional. His comments centered around the word "trust." Zarb said that trust drives the markets, and that what's good for the investor ultimately results in being good for the industry.

He noted that the quality of the markets has grown and that the percentage of "bad guys" is small. However, he emphasized that there can be no relaxation in getting these individuals out of the industry. Regarding the question of de-regulation, Zarb stressed that any changes should be founded on investor protection.

The morning session continued with two panel discussions. NASD Regulation Executive Vice President and Chief Operating Officer, Elisse Walter, led the first panel on the inner workings of the NASD enforcement and disciplinary process, which included a discussion of the role of the new hearing officers.

The second panel was "Capital Formation on the Internet: Challenges & Pitfalls." It included a lively, multi-media slide presentation on the Securities and Exchange Commission's (SEC) enforcement efforts by John R. Stark, Special Counsel at the SEC for Internet Projects.

The keynote speaker at luncheon was the Honorable Michael G. Oxley, United States House of Representatives, Chairman of the Subcommittee on

Finance and Hazardous Materials. Congressman Oxley, who is a proponent of common sense stock pricing and the switch from fractions to decimals, praised the NASD for its proposed move to quote prices in 1/16s rather than 1/8s.

Oxley noted that the U.S. markets are the only significant world markets that still trade in fractions. He believes strongly that decimal pricing will result in savings for the individual investor. To quell industry concerns, Oxley pointed out that proposed legislation calls for allowing the SEC to decide how to implement the change and the time frame to accomplish it.

Following the general session, the conference offered a total of 18 workshops addressing key issues in the area of compliance. Each workshop featured a

panel of knowledgeable and experienced industry leaders moderated by senior NASD Regulation staff.

The panelists provided straightforward information and practical examples on such topics as advertising regulation, bank broker/dealer regulatory issues, handling customer complaints, independent contractors and financial planners, and MSRB Rules.

The next national conference will be the 1997 Fall Securities Conference from November 5-7 in Phoenix, AZ. For more information on the conference or other future programs, please visit NASD Regulation's Web site (www.nasdr.com), or contact Susan Fallon, Manager, NASD Public Relations & Conferences, at (202) 728-6900. □

SEC Approves Quotes in 1/16s, from page 1

for Nasdaq securities quoted at or above \$10.

"We're delighted the SEC moved quickly to approve our proposal to quote in 1/16. This will enhance transparency

and price discovery by allowing orders and quotes in smaller increments to be displayed publicly to the market," said Frank G. Zarb, Chairman, CEO and President of the NASD, parent corporation of The Nasdaq Stock Market.

Questions concerning this action may be directed to Cameron Brown, NASD Media Relations, at (202) 728-8379, or Reid Walker, NASD Media Relations, at (202) 728-8243. □

Regulation

Sweep Report Memorandum Provides Guidance On Heightened Supervision

As a follow-up to the Joint Regulatory Sales Practice Sweep (Sweep)', NASD Regulation and the New York Stock Exchange (NYSE) issued a joint memorandum. The memorandum discusses firms' responsibilities to supervise closely certain registered representatives

and describes actions that could constitute heightened supervision.

Sweep Report

NASD Notice to Members 97-19 contains the joint NASD Regulation/ NYSE memorandum, describing the

findings and recommendations published in the Sweep report. (See related story on the Sweep in April 1996, *NASD Regulatory & Compliance Alert*.) A significant Sweep report recommendation concerns firms that hire registered representatives with a

history of repeated customer complaints, disciplinary actions, or arbitrations. It is recommended that firms develop and implement special supervisory procedures for these registered representatives.

The memorandum also provides guidance to firms that decide to hire a registered representative with a history of customer complaints, disciplinary actions, or arbitrations. In particular, the memorandum discusses a registered-representative profile that should warrant heightened supervision and offers examples of specifically designed supervisory procedures to use for that scrutiny.

The following is a summary of the memorandum's guidance on special supervision.

Disciplinary History

The principal means of identifying registered representatives for special supervision is a review of their CRD report. Heightened supervision may be appropriate if Forms U-4 and U-5 disclose a history of customer complaints, disciplinary actions, or arbitrations. This also applies to registered representatives who develop such history while employed by the firm.

Development And Implementation Of Special Supervision

Once a registered representative is identified for special supervision, a firm should develop and implement procedures that address the sales practice concerns raised by the individual's history, as well as the nature of the firm's business and its size and structure. The firm should designate an appropriate supervisor to oversee the registered representative's activities. It is important for firms to document, monitor, and enforce the terms of each special supervisory arrangement.

In devising tailored supervisory programs, some typical factors to consider are as follows:

Registered Representative Activities: If the registered representative's misconduct involved a particular securities product, customer type, or activity, the firm should tailor supervision to limit the risk of similar recurring behavior.

Training: A firm should consider establishing a training plan, as part of its Firm Element Continuing Education Program, that specifically addresses the needs of registered representatives with a history of customer complaints, disciplinary actions, or arbitrations about a particular securities product or activity. Firms also should track customer complaints and provide appropriate training programs to avoid future complaints.

New Account Procedures: A firm should consider exercising closer than normal supervisory control over opening new customer accounts or submitting revised customer account information forms. Also, firms should be cautious in allowing individuals who warrant special supervision to handle certain types of accounts (i.e., discretionary accounts; margin, futures, and options accounts; employee, employee-related, and retirement accounts; accounts that contain low-priced, speculative securities; other accounts engaged in high-risk strategies; or any accounts where any of the conduct leading to the previous regulatory problems might be an issue).

Specific Transactions: A firm should consider establishing special review procedures for the types of transactions that led to a registered representative's prior problems. The memorandum cites examples of transactions that may pose potential harm, such as orders in discretionary accounts; orders in low-priced, speculative securities; orders of an unusual size or frequency considering the particular account's trading pattern; deep out-of-the-money and uncovered options orders; or mutual fund switches.

Customer Account Activity

Monitoring: A firm should consider generating special exception reports to detect unusual trading activity in a customer account or reviewing a problem registered representative's customer contacts.

Suggestions For Standard Supervisory Procedures

In addition, the memorandum reminds firms to pay particularly close attention to compliance by registered representatives under special supervision with the standard supervisory procedures concerning the following:

- Trade Corrections, Extensions, and Liquidations
- Communications with the Public
- Outgoing Correspondence, Advertising, and Sales Literature
- Incoming Correspondence and Customer Complaints

Members are encouraged to review *NASD Notice to Members 97-19* and give careful consideration to its findings, recommendations, and suggestions. Questions may be directed to Mary Revell, Assistant General Counsel, NASD Regulation, at (202) 728-8203, or to Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation, at (202) 728-6911. Copies of the Sweep report may be obtained from Reid Walker, NASD Media Relations, at (202) 728-8243. □

¹ *The Joint Regulatory Sales Practice Sweep was an initiative by the NASD, the NYSE, the SEC, and representatives of the North American Securities Administrators Association, Inc. (NASAA), to review sales practice activities of selected registered representatives and the hiring, retention, and supervisory practices of the firms employing them.*

Proposed Changes Would Allow Firms To Use Electronic Mail

NASD Regulation recently filed a proposed rule change with the SEC to revise NASD supervision rules. The change would give firms flexibility in developing procedures for reviewing written and electronic correspondence. Key areas of the proposal include:

- **Supervision of Registered Representatives:** As proposed, each firm must establish written procedures that require a registered principal to review each registered representative's outgoing and incoming written and electronic correspondence with the public relating to the member's investment banking or securities business. The procedures must be

designed to provide reasonable supervision of each registered representative and to demonstrate clearly implementation and execution of these procedures.

- **Procedures for Review of Correspondence:** Every firm must develop written procedures to review incoming and outgoing correspondence with the public relating to its investment banking or securities business that are tailored to its structure and the nature and size of its business and customer base. Any firm that does not review all correspondence *prior to use* must: regularly educate and train associated persons about the firm's procedures

governing correspondence; document this education and training; and monitor implementation and compliance with the procedures.

- **Retention of Correspondence:** Broker/dealer firms must retain correspondence as prescribed by all applicable rules, including the SEC's books and records rules.

The proposal appeared in the May 2, 1997, *Federal Register* (62 F.R. 24147). Questions may be directed to Mary Revell, Assistant General Counsel, NASD Regulation, at (202) 728-8203. □

Members Alerted To Bogus Treasury Securities

The Department of the Treasury (Treasury) recently informed the NASD that certain foreign individuals and groups are attempting to defraud broker/dealers and other entities by offering to sell and structure transactions in non-existent United States Treasury securities. Broker/dealers have been approached to act as fiduciaries in transactions that purchase and resell a fictitious instrument referred to as "Limited Edition" U.S. Treasury securities.

The bogus securities are represented as having the following features:

- 10-year term.
- 6 percent annual interest rate.
- \$100 million minimum purchase amount.
- Unspecified offering amount (i.e., the securities are represented as being available for sale until "exhausted").
- Initial price of 57 percent of the face value.
- Issued in physical (paper) form.

In addition, the proposal makes numerous other misrepresentations about the way marketable U.S. Treasury securities may be bought or sold, and the role that

Treasury plays in the original sale and issuance of securities.

Members beware: **There is no such security as a "Limited Edition" Treasury security.**

If domestic members are approached by individuals offering such a transaction, they should immediately contact Mr. Jim Kramer-Wilt of Treasury's legal staff at (304) 480-5190. If contact is made at the member's foreign affiliate, the appropriate local law enforcement authority should be notified. □

Compliance Questions & Answers

The Compliance Department frequently receives inquiries from members. To keep members informed on matters of common interest, the Compliance Department provides this question-and-answer feature through the *NASD Regulatory & Compliance Alert*.

Q. Is a fully disclosed broker/dealer with a \$5,000 minimum net capital requirement permitted to enter into repurchase agreement transactions (repos) with customers on a principal basis?

A. No. A fully disclosed broker/dealer with a \$5,000 minimum net capital requirement is not permitted to enter into repo transactions with customers on a principal basis. However, such a firm may enter into repo trades in the capacity of agent, because then the firm would only be involved in the arrangement of the transaction. The firm would be required to maintain an agreement with the customer stating that it would be operating as agent in any repo transactions. If the firm enters into repo trades as principal with other broker/dealers and customers, its minimum net capital requirement would be \$100,000 and \$250,000, respectively.

Q. If trades are executed on the same day, for the same customer, and have the same reason for requiring extension, may a member firm enter one Reg. T extension request for the multiple trades?

A. No. Self-regulatory organizations, such as the NASD, grant extensions under authority delegated to them by the Board of Governors of the Federal Reserve Board pursuant to Section 220.8(d) of Regulation T (Reg T) of the Securities Exchange Act of 1934. The NASD developed an automated Extension Request System to handle such requests and established procedures for submitting requests to

the NASD. These procedures require member firms to enter a separate extension request for each trade.

Q. In an initial public offering, if a broker/dealer is short shares that are covered by a "green shoe," must the firm take a haircut on the short position?

A. A green shoe is a clause in an underwriting agreement that states the issuer will authorize additional shares for distribution by the syndicate in the event of exceptional public demand. The number of shares covered by the green shoe is stated in the underwriting agreement. If a broker/dealer is short that number of shares, or any portion of that number, its short position is protected by the additional issuance under the green shoe. Therefore, no haircut is required on the short position.

Q. The NASD Guide to Rule Interpretations states that when an introducing broker/dealer (first tier) reintroduces, on a fully disclosed basis, the accounts of another nonclearing broker/dealer (second tier) to its clearing firm, and the first-tier broker/dealer requires a clearing deposit from the second-tier correspondent, the second-tier correspondent must treat the deposit as a nonallowable asset. May a second-tier correspondent obtain allowable asset treatment for a deposit required by the first-tier broker/dealer by maintaining the deposit at the first-tier broker/dealer's clearing firm?

A. No. If a deposit is required by the first-tier broker/dealer; is maintained for the benefit of the first-tier broker/dealer; or, is in the name of the first-tier broker/dealer, the deposit still must be treated as a nonallowable asset in the net capital computation by the second-tier firm despite the fact that it is being maintained at the first-tier broker/dealer's clearing firm. However, if a

deposit is required by the first-tier broker/dealer's clearing firm (rather than the first-tier broker/dealer) and that amount is on deposit at the first-tier broker/dealer's clearing firm in the name of the second-tier correspondent (with no benefit to the first-tier broker/dealer), then the deposit would receive allowable asset treatment by the second-tier correspondent.

Q. If a broker/dealer guarantees an obligation of an individual or other entity, is there a net capital charge for the guarantee? Is the guarantee considered Aggregate Indebtedness (AI)?

A. Yes. An example of this is where the owner of a firm personally borrows money from a bank, and the member firm guarantees repayment should the owner default. The member's balance sheet treatment depends on Generally Accepted Accounting Principles (GAAP), and the firm should be referred to its accountant for that determination. Regardless of the balance sheet treatment, however, the amount that is guaranteed must be included in the computation of aggregate indebtedness and included as a charge in the computation of net capital.

Q. If a broker/dealer permits its debt to debt-equity ratio to exceed 70 percent for more than 90 days, must the broker/dealer cease conducting a securities business?

A. Yes. The member firm should be advised that continuing to conduct a securities business while the debt to debt-equity ratio is above 70 percent would be a violation of the Net Capital Rule. The firm should cease conducting a securities business until the ratio is brought down to 70 percent or lower. The debt to debt-equity ratio is defined in SEC Rule 15c3-1(d).

Q. Should monthly investments into a mutual fund by a member firm be counted in determining whether the firm has exceeded the “ten transactions in any one calendar year for its own investment account” specified in the minimum net capital requirements for dealers (SEC Rule 15c3-1(a)(2)(iii))?

A. The SEC staff has advised that a firm making a single monthly

investment of \$1,000 or less into an established mutual fund account for the firm may exclude these transactions as dealer activities. Therefore, these transactions do not count toward the ten-transaction limit. This interpretation was published in *NASD Notice to Members 93-46*.

Q. May a subordinated loan have a variable interest rate?

A. Yes. Generally it is permissible for a subordinated loan to have a variable interest rate. However, if the loan agreement calls for subordination of accrued interest (which can be done by using the relevant optional paragraphs of standardized forms SL-1, SL-3, SL-5, and SL-6), the interest rate cannot be variable. □

NASD Regulation Reminds Members Of Margin Requirements

NASD Regulation reminds members that they are not permitted to extend credit beyond what is allowed by Reg T, NASD Rule 2520 and/or SEC Rule 11(d)(1). Member firms are cautioned, as follows:

- Margin maintenance calls must be issued as required by NASD Rule 2520, and the broker/dealer must, in computing its net capital, take the appropriate deduction from capital, if the customer does not meet the margin maintenance call and the broker/dealer does not choose to sell out the customer. SEC Rule 15c3-1

requires a charge to capital equal to the amount of the maintenance call once the call has been outstanding more than five business days. For whatever reason, if a broker/dealer does not issue a maintenance call, the firm is still required to take the charge as if the call had been issued.

- Open-end mutual funds can NEVER be purchased on margin. Section 11(d)(1) of the Securities Exchange Act of 1934 (the Exchange Act) prohibits purchasing open-end mutual fund shares on margin. Once an investor has purchased an open-end mutual fund, which has been paid for

in full *and* the investor has held the fund for 30 days, the fund will be considered to have loan value. That is, the value of the mutual fund shares can be used as collateral in purchasing additional securities which ARE margin eligible.

Questions may be directed to Samuel Luque, Jr., Associate Director, Compliance Department, at (202) 728-8472, or Susan DeMando, District Coordinator, Compliance Department at (202) 728-8411. □

SEC Issues No-Action Letter On Haircuts For Mortgage-Backed Securities

In December 1996, the SEC Division of Market Regulation issued a no-action letter that allows broker/dealers to use the alternative method in the Net Capital Rule (SEC Rule 15c3-1) when calculating proprietary haircut charges on certain pass-through mortgage-backed securities sponsored by U.S. government agencies. The letter also addresses charges for these securities under various hedging scenarios.

The alternative method uses the relationship between a security's market price and its par value to determine the maturity of the security for computing net capital net haircuts under SEC Rule 15c3-1(c)(2)(vi)(A). It is based on the theory that “a mortgage-backed security with a high coupon rate will experience a significant amount of prepayment of principal and, consequently, will tend to have a short duration.” As an example, the letter cites that “a thirty-year mort-

gage-backed security trading at \$108 with a par value of \$100 generally has a duration equal to a government security with nine to twelve months remaining maturity.”

Members should note that, if they choose to use this alternative method, they must apply the alternative method to all pass-through mortgage-backed securities covered under the no-action letter. These include any security spon-

sored by a U.S. government agency that represents a pro rata interest or participation in the principal and interest cash flows generated by a pool of mortgage loans of which at least 95 percent of the aggregate principal is composed of fixed-rate residential mortgage loans on one-to-four family homes, including

five- and seven-year mortgage loans with balloon payments at maturity. The letter excludes multifamily, adjustable-rate, commercial, and mobile-home mortgage loans.

Members intending to apply these haircuts to pass-through mortgage-backed

securities in their proprietary and other accounts should read the SEC's letter in its entirety. Requests for copies of the letter may be directed to Samuel L. Luque, Jr., Associate Director, Compliance Department at (202) 728-8472 or Robert Broughton, District Coordinator, at (202) 728-8361. □

Continuing Education Council Issues Firm Element Advisory

The Securities Industry/Regulatory Council (Council) on Continuing Education identified pertinent regulation and sales practice issues for inclusion in Firm Element training plans. A list of these issues was distributed in March by the Council in its first annual *Firm Element Advisory (Advisory)*.

Topics listed in the *Advisory* were chosen after a review of the performance of registered persons in the Regulatory Element computer-based training, and regulatory advisories issued by industry SROs during the previous 18 months. The Council stressed that it is not mandatory for firms to address each and every topic in their Firm Element training.

Each firm was encouraged to review the list *vis a vis*: (1) the financial products and services it offers to investors, and (2) its performance in the Regulatory Element. A Firm has discretion in deciding the relevancy of the topics to its lines of business and training needs, but also have the obligation to include topics not listed in the *Advisory* but identified by its Firm Element Needs Analysis.

The *Advisory* list included the suggested training topics along with a series of relevant training points and references to applicable SRO rules, regulations and interpretations. Some of the training topics mentioned in the *Advisory* were: telemarketing; mutual funds; variable

contracts; recent amendments to options position and exercise limits; new SEC order execution rules; speculative securities - best practices; supervisory obligations related to the use of electronic media (e.g. the Internet); and reporting obligations under MSRB Rules G-37 and G-38.

The complete *Firm Element Advisory* was published in *NASD Notice to Members 97-9*, in March 1997. Questions concerning the *Advisory* may be directed to John Linnehan, Member Regulation, at (301) 208-2932. □

Regulatory And Firm Element Examinations

The Securities Industry Continuing Education Program has been in effect for nearly two full years. Members are reminded that all routine cycle examinations by NASD Regulation include reviews of the firm's Regulatory and Firm Element compliance.

Where non-compliance is discovered, NASD Regulation will follow the

NASD *Sanction Guidelines* when considering formal disciplinary proceedings for firms that have failed to perform a needs analysis and develop a written training plan as required under the Continuing Education rules. Similarly, disciplinary action will be considered and the *Sanction Guidelines* applied where inactive persons who have failed to undergo Regulatory Element training

within the time frame of the rule continue to operate in a registered capacity.

Questions concerning the conduct of these examinations may be directed to your local NASD Regulation District Office. □

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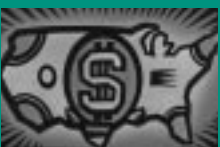
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Firms Need Heightened Supervision Of Aggressive Cold-Calling and Telemarketing Activities

Recent NASD Regulation examinations detected evidence of serious sales-practice violations by firms using aggressive cold calling and telemarketing strategies. Typical aggressive strategies include widespread use of high-pressure, cold-calling techniques in an attempt to get prospects across the country to open securities accounts and place orders to purchase securities recommended by the firm.

Often the initially recommended security is a widely followed, well-known, large-cap security with which the prospect is familiar. However, once an account is established, recommendations may switch to low-priced, high-risk securities. Firms that use such strategies to open customer accounts face a number of issues including the need for full disclosure, the question of fair dealings, and the requirement for effective supervision of these activities.

NASD Regulation urges senior management and compliance officials at such firms to take special measures to fulfill their statutory obligations under NASD Rules and other applicable securities laws. For example, firms should be alert to large numbers of cancellations/sellouts. Evidence gathered during recent examinations indicate that many cancellations/sellouts resulting from customers' failures to pay for transactions actually represent unauthorized transactions.

Some firms erroneously view cancellation/sellouts as an operational matter that does not require oversight and inter-

vention by senior management or compliance officials. Others do not incorporate into their written supervisory procedures any reference to the firm's obligation to supervise cancellations/sellouts. In more egregious situations, broker/dealer managers seem to tolerate activity that results in unauthorized transactions that are subsequently sold out when payment is not received.

Failure to supervise cancellation/sellouts in an environment of aggressive sales practices may result in significant disciplinary sanctions for failure to prevent and detect unauthorized transactions, among other potential violations. A firm's failure to address this aspect of its business in its written supervisory procedures, in and of itself, could be viewed as a violation of NASD Rule 3010.

Another serious violation of Rule 3010 would be a failure by any individual who has the authority, responsibility, and obligation for the business conduct of a member broker/dealer to investigate fully the circumstances surrounding repetitive instances of cancellations/sellouts. To supervise this type of activity, adequate written supervisory procedures need to be developed, implemented, and enforced. For example, these procedures generally call for contacting customers with cancellations/sellouts to determine the cause of the cancellation/sellout and whether the customer authorized the transaction.

Contacting customers also may disclose that salespersons made exaggerated and

unwarranted claims during telephone or electronic solicitations. Firms should initiate internal inquiries and take appropriate action when customer contact discloses evidence of unauthorized transactions or other wrongdoing.

NASD Regulation strongly urges all firms to incorporate heightened supervision of cold-calling and telemarketing activities into their written supervisory procedures. To comply with Rule 3010, written supervisory procedures must explain in sufficient detail the supervisory system established to prevent and/or detect violations by associated persons. For example, firms must explain the methods they use to fulfill their supervisory responsibilities, and they must note the persons assigned to enforce those responsibilities. Moreover, the supervisory system must be fully implemented.

Member firms, particularly those firms using aggressive telemarketing strategies, should review *NASD Notice to Members 96-90* (Clarification Of Member's Suitability Responsibilities With Emphasis On Member Activities In Speculative and Low-Priced Securities), *97-1* (Telemarketing Amendments), and *97-19* (Heightened Supervision Responsibilities).

Questions regarding this matter may be directed to your local NASD Regulation District Office. □

Supervision Of Off-Site Series 8 Or 24 Qualified Salespersons

Recent examinations conducted by NASD Regulation have identified instances of serious deficiencies in the way that certain firms supervise single-person or small branch offices that have been designated as Offices of Supervisory Jurisdiction (OSJs). Many times, the largest producer in such OSJ offices are Series 8 or 24 qualified persons who have been assigned by the broker/dealer to supervise all transactions emanating from that office, including transactions placed by the branch manager for his or her own customers.

Member firms that maintain a large number of geographically dispersed, small OSJ branches must establish a system that provides for supervision, on both a daily and periodic basis, of securities transactions effected by all registered persons, including transactions by registered principals. Some firms have even gone so far as to designate branch offices as OSJ offices, even though they are occupied by a single registered principal with no one else to supervise.

There is no such thing as an OSJ that can supervise itself.

Conduct Rule 3010 requires that each registered person (including registered principals) must be assigned to another appropriately registered person responsible for supervising that person's activities. From a practical standpoint, this means that one or more persons identified by the firm must take direct responsibility for the supervision of all producing salespersons, whether they are Series 8 or 24 qualified or not. This supervision would include, but not be limited to, evidencing the review of transactions on both a daily as well as a periodic basis.

It is strongly recommended that firms with numerous small OSJ offices review their written supervisory procedures to make sure they establish a system that adequately addresses all salespersons, including Series 8 or 24 qualified persons. Series 8 or 24 qualified persons are no more capable to supervise themselves than a Series 7 qualified registered representative.

Recent examinations have also shown weaknesses in the quality of internal

OSJ inspections conducted by member firms that maintain a network of numerous small OSJ offices. Members are reminded that audit procedures should be well-defined and should address substantive issues, including an in-depth review of problematic customer accounts that have exceeded certain established parameters in term of risk and/or activity. Also, all operational bank accounts maintained in audited branches should be reviewed to guard against the possible receipt and misuse of investor funds and other improper activities.

Additional guidance on these and other supervisory issues can be obtained from the Exchange Act Release No. 34-38174, January 15, 1997, in the matter of Royal Alliance Associates, Inc.

Please contact your local NASD Regulation District Office in the event you have any questions concerning these matters. □

Compliance Short Takes

NASD Publishes DPP Directory

In May, the NASD published a direct participation program (DPP or limited partnership) directory in anticipation of DPP securities being quoted on the OTC Bulletin Board® and trade reporting of transaction beginning on May 15, 1997. The DPP Directory was published in *NASD Notice to Members 97-23*. The directory contains a list of DPPs and their NASD-assigned symbols. The assigned symbols do not have an alphabetical resemblance to the name of the partnership. The symbols will be used by broker/dealers, transfer agents, and general partners when transferring and

registering limited partnership interests. Also, they will identify limited partnership interests for customer account transfers, and members will use them when complying with NASD trade-reporting requirements.

Members Reminded To Report Executive Representative Changes

NASD By-Laws require members to appoint one "executive representative" that will represent, vote, and act in all NASD affairs and receive NASD mailings, including *NASD Notices to Members*, *NASD Regulatory & Compliance Alert*, and updates to the

NASD Manual, on behalf of the member. Any changes to the executive representative must be submitted in writing to the NASD Corporate Secretary. Members may use the form in *NASD Notice to Members 97-20*.

NASD Regulation Proposes Change To Rule 8210

In April, NASD Regulation submitted a proposed change to Rule 8210, Reports and Inspection of Books for Purpose of Investigating Complaints. The amendment would require members to provide regulatory information in electronic form, provided the information is kept

in electronic form by the member. Also, it would allow NASD Regulation to establish electronic submission programs for regularly filed information.

SEC Adopts Final Rule For Electronic Storage

Effective April 14, 1997, the SEC amended Rule 17a-4, its books and records preservation rule to allow broker/dealers, in certain circumstances, to

use electronic storage media to maintain records required by the Rule. Members should review the SEC's adopting release in its entirety. It was published in the February 12, 1997, *Federal Register*.

SEC Approves UPC Change

The SEC recently approved an amendment expanding the scope of the NASD Uniform Practice Code. As a result of

this change, secondary market transactions in restricted securities that are not in a depository will be required to comply with the Code's operational procedures. It also clarifies that securities sold offshore under a Regulation S exemption are considered subject to the requirements of the Code when those securities are traded in the U.S. after the restricted period expires. □

Municipal Securities

NASD Regulation Appoints Municipal Securities Compliance Regulator

NASD Regulation recently appointed Malcolm P. Northam, a veteran regulator and analyst, as the organization's first Director of Fixed Income Securities Regulation. Northam joined the Member Regulation Department on May 5.

With more than 25 years of experience as a regulator and financial services consultant, Northam has a broad range of experience in the private sector and spent more than two decades with the Comptroller of the Currency as Deputy Director of the Investment Services Division and as a bank examiner.

"We are delighted to have someone of Mac's caliber and experience on board," said NASD Regulation Chief Operating Officer Elisse B. Walter. "Compliance in the municipal securities sector is one of NASD Regulation's top priorities, and Mac will help us maintain and improve a vigorous and uniform

national policy. While encompassing the entire fixed income area, Mac's role will be clearly focused on the regulation of all aspects of municipal securities activities by broker/dealer firms," Walter said.

"Given the breadth and scope of the NASD Regulation examination policy and member education responsibilities, it was absolutely essential that we position a single person at the center of these issues," Walter added. "Mac will also play a key role in NASD Regulation's expanded examination program to ensure that the nation's broker/dealers comply with our new rules on government securities sales practice."

In this new position, Northam will be NASD Regulation's primary liaison on municipal securities matters with the Municipal Securities Rulemaking Board (MSRB), the SEC, and an array of industry and investor groups.

NASD Regulation and the MSRB work cooperatively to create a successful structure for regulating the municipal securities activities of broker/dealer firms. The MSRB writes and interprets municipal securities rules and, as the industry's sole self-regulator in this area, NASD Regulation examines for, and enforces, compliance with them.

To support NASD Regulation's preventive compliance program, Northam will draw on his extensive experience conducting training sessions for bankers, regulators, auditors, and compliance professionals to develop and conduct educational sessions on municipal, government, and derivative securities issues for broker/dealer firms.

Also, he will work closely with NASD Regulation's District Offices to provide training and other instruction on municipal and government securities examination practices. □

NASD Regulation Exams Focus On Yield Burning

Due to concerns over members' involvement in "yield-burning" practices, NASD Regulation examiners are focusing on this area during on-site examinations of firms that act as underwriters or escrow agents in advance refunding municipal issues. Generally, examiners are concentrating their review on members' pricing practices, recordkeeping, and markup policies when Treasury securities are used in escrowed bond transactions.

In addition, special "sweep" investigations are being conducted by the New Orleans District Office and the Enforcement Department. These investigations include a more intense review of firms that are most actively involved in underwriting advance refunding issues.

What Is Yield Burning?

Yield burning is a term that describes the process of pricing a Treasury bond in order to generate an artificially lower yield. Yield burning results in municipalities paying inflated prices for government securities used in refinancing more expensive older debt. Sometimes, the older debt cannot immediately be retired. This is because, due to restrictive provisions, certain municipal bonds cannot be replaced immediately and may only be called, or refunded, at a later date. In these cases, municipalities sell new debt and invest the escrowed proceeds of that debt in U.S. Treasury securities while waiting to retire the older debt legally.

Special escrow accounts comprised of Treasury securities and other government bonds are created that give state and local governments the ability to wait until their bonds can be called and then replace the old debt with the escrow fund.

Federal law prohibits municipalities from earning more interest on the

Treasury securities than that which they are required to pay to holders of the new tax exempt debt (an arbitrage situation). This is because it considers the municipalities' ability to issue tax-free debt a form of subsidy or a privilege, and they are not permitted to profit from this special provision.

For these situations, the dealer may request Treasury to issue special securities. These special, lower-yielding debt securities, called State and Local Government Series (SLGS) bonds, or "Slugs," are specifically designed for these municipalities' escrow investment needs. SLGS are sold to match exactly the yield of the new municipal issue. However, it is estimated that SLGS are used in less than 50 percent of these escrow arrangements. There is currently no requirement to invest escrow funds in SLGS.

Yield burning occurs when, in an effort to satisfy the IRS arbitrage limitations, the dealer sells treasury securities to advance refunding escrow accounts at prices that are above market, "burning" the yield down to a level at which there is no arbitrage. In some cases, the municipality may be given assurances by the Treasury bond dealer that the bonds were sold at market prices.

Recently the IRS has pressured issuers to pay penalties on some advance refunding issues because there was an arbitrage spread when the excess markups were factored out. In some cases, issuers have taken the position that they relied on the bond dealers to obtain a fair market price, and that they should not be penalized by the IRS, as they were not aware that the prices of the bonds were above the then-current market price.

Yield Burning Example

On 1/1/87, a municipality issues

\$1,000,000 of debt (12-year bonds) at 10 percent with interest payable annually, and a 10-year call provision.

On 1/1/96, interest rates decline so that the municipality can now borrow at 5 percent, but it is locked into the original 10 percent interest rate for at least 10 years from issue date (one more year from 1/1/96) due to the call feature.

The municipality issues \$1,047,000 of new debt at 5 percent, and escrows the proceeds. These proceeds are invested in Treasury bonds paying 5.05 percent and maturing on 1/1/97. (This is referred to as an advance refunding of the 1/87 bonds). Within a year, the escrow account will earn about \$53,000 in interest, leaving \$1,100,000 to pay the old bonds, with the 1/1/97 interest payment of \$100,000.

The municipality now only pays 5 percent interest on the new tax exempt bonds. The escrow account investments are designed to defease, or retire the old debt according to a schedule. The net effect of the reissuance of the new debt in this example is that, by 1/1/97, the issuer will have effectively lowered its interest cost to 5 percent, and in the mean time, it earns 5 basis points of arbitrage on the escrow account spread.

If an issuer earns the restricted arbitrage profits, the entire bond issue can lose its tax exempt status. In a yield-burning situation, to ensure that the offering and escrow investments meet the arbitrage restrictions, the bond dealer may sell the Treasury bonds to the escrow account at a higher than market price, "burning" the yield on the escrow investments from 5.05 percent to 5 percent. Hence the municipality is in apparent compliance with IRS arbitrage restrictions. By 1/1/97, the municipality will have effectively lowered its interest cost to 5 percent.

Helpful Documentation In Underwriting Files/Use Of SLGS

Advance refunding underwriting files should contain evidence that the dealer obtained three reliable quotes for Treasury securities prior to their sale to the advance escrow account.

The use of SLGS instead of open market Treasury securities can limit the possibility of a yield-burning situation.

Members should note that reviews for yield-burning activity will remain an ongoing focus of NASD Regulation

examinations. Questions concerning this activity may be directed to your local District Office. □

Advertising

New Rule Applies To Telemarketing Scripts

In December 1996, the NASD adopted Conduct Rule 2211 to further protect customers from improper telephone solicitations regarding securities. The rule imposes time limitations and disclosures for brokers/dealers who use telemarketing (see "Tougher NASD Telemarketing Rules Take Effect" in the March 1997, *NASD Regulatory & Compliance Alert*). The new rule applies to both extemporaneous telemarketing efforts and situations where callers use a script.

Since the adoption of this standard, members have raised several questions with respect to telemarketing scripts. Questions have generally fallen into three categories: 1) what must be disclosed, 2) where the disclosures should appear, and 3) when the rule applies.

Prompt, Clear, And Conspicuous Identification

Scripts must provide prompt, clear and conspicuous identification by the caller of the following information:

- Their identity,
- The NASD member firm name,
- The address or phone number of the branch office or OSJ in which the caller may be contacted, and

- That the purpose of the call is to solicit interest in a security.

To comply, these disclosures should appear at the beginning or in the introductory portion of the script and prior to any detailed discussion of the security being offered.

The address information must be sufficiently specific that the customer would be able to contact the caller. Members may use either the telephone number or the exact street address. Location specific language such as, "I'm calling from ABC Brokerage at the corner of Main and Columbus Streets downtown," is also acceptable.

The caller must state that the product being offered is a security or that the purpose of the call is to discuss securities. This disclosure helps prevent confusion as to the nature of the product or service being offered.

Exemptions May Apply

The disclosure requirements of Rule 2211 do not apply to a script used by a registered representative to call existing clients who have active accounts under his or her control to solicit more sales of the same security or of a different security.

Similarly, telemarketing scripts are exempt from the disclosure requirements when used by unregistered sales assistants, at the direction of a registered representative, to maintain and service certain existing accounts. Such accounts must be both active and under the control of the registered representative who is directing the calls to be made. Of course, the unregistered person may not solicit the sale of securities in any fashion during the call.

Also, the disclosure requirements may be waived from a script when a registered representative directs a *registered* sales assistant to call existing clients who have active accounts under the control of the directing representative for the purpose of soliciting sales.

The NASD reminds its members that telemarketing scripts are sales literature and must also meet the approval, record keeping, filing, and content requirements of Conduct Rule 2210. Members with questions regarding telemarketing scripts are invited to call the Advertising Regulation Department at (202) 728-8330. □



“ASK THE ANALYST”

“Ask the Analyst” provides member firms a forum to pose questions to the NASD Regulation’s

Advertising/Investment Companies Regulation Department on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication. However, we will respond to all questions we receive either here or by contacting you directly. If you have any questions or comments, please contact the department at (202) 728-8330.

Electronic Communications

Q. What is the NASD’s position with respect to language such as “you can trade on-line” or “you get direct access to the markets from your home”?

A. We are concerned about communications that imply an investor can trade securities without using a broker. Investors cannot directly access the markets or execute trades. The Internet or other electronic means enable a customer to place an order electronically for execution by a member firm. Language describing electronic trading must accurately reflect how the transactions are handled.

Some communications improperly create the impression that every investor can trade for less electronically. Members must disclose any restrictions on a quoted discount or trade cost such as trade size, security type, etc. Unqualified statements about savings by trading electronically will mislead unless all trades made through the electronic medium receive the stated savings.

Q. Our firm would like to advertise on the Internet using a so-called “ban-

ner” advertisement to hyperlink to our homepage. Can we simply include our name in the banner advertisement without further disclosure?

A. Yes. Typically, a banner advertisement consists of a single word or phrase, often graphically depicted as a button, which directly links the Internet user to a specific homepage. An Internet banner advertisement functions much like an envelope in a paper communication. In the case of a banner advertisement that does no more than disclose a member firm name and enable the user to link to the member firm’s homepage, there is no need to include additional disclosure in the communication. However, if the advertisement offers specific products or services, additional disclosure may be required to comply with applicable standards.

Electronic Communications And Mutual Funds

Q. Our firm would like to advertise using an Internet banner advertisement that would hyper-link to our mutual fund Web site. Must we include a prospectus offer or other disclosure in the banner advertisement itself?

A. In this case the disclosures depend on the content of the banner advertisement. For instance, if the advertisement contains only a mutual fund or fund family name, such as the “ABC Funds,” and if the advertisement links directly to a homepage which contains properly disclosed prospectus offering language, then there is no need for the banner advertisement itself to offer a prospectus or to include other disclosure language.

However, if the banner advertisement includes language or graphics which relate to the desirability of owning a fund or funds, additional disclosure may be required. For example, a statement such as “ABC Funds - Outstanding Performance and Expert Money Management” would require a prospectus offer. In addition, NASD Conduct Rules would require that the “Outstanding Performance” claim be both true and substantiated in the homepage itself in order to provide the reader with a sound basis for evaluating the facts regarding the ABC Funds. The NASD Conduct Rules would also prohibit the use of language or graphics which were promissory of the success, or exaggerated the past performance, of a mutual fund (e.g., a line graph with an unwavering, upward trajectory) in a banner advertisement.

Mutual Funds

Q. With respect to seminar presentations by mutual fund wholesalers, does the sales material used (i.e., story boards, scripts, handouts, etc.) need to be approved by a principal of the NASD member firm and filed with the Advertising Regulation Department?

A. Yes. If the wholesaler presents the seminar to the general public, then the sales material must be approved internally by a registered principal and filed with the Advertising Regulation Department within 10 days of first use.

Bank Broker/Dealers

Q. Why are some firms allowed to have all their representatives operating from “non-branch” business locations, but any broker dealer doing occasional business in a bank must register that location as a branch?

A. With few exemptions, members

must register as a branch any location identified by any means to the public or customers as a place where the member conducts an investment banking or securities business (see NASD Conduct Rule 3010(g)(2) and Article III, Section 8 of the NASD By-Laws). Thus, the requirement to register a location as a branch depends primarily upon whether the branch is identified to the public as a place where securities business occurs. For example, if an

advertisement for securities includes the street address of a location, then that location must be registered, regardless of what amount of securities business occurs at the location.

The business conducted at the location may also, in certain instances, trigger the requirement to register as stated in *NASD Notice to Members 92-18*, dated April 1992. The *Notice* details several location types that, by their nature,

hold themselves out to the public as being places where a member conducts a securities business. In particular, the *Notice* indicates, "Any office location that operates...from public areas of buildings, such as bank branches, even when such locations are temporarily staffed...would still be required to register as a branch office." □

NASD Permits Broader Use Of Non-Member Names In Members' Communications

NASD Regulation will permit the names of non-member entities to be used in member communications with the public, regardless of whether such entity conducts a securities business only. NASD Regulation has determined to allow greater flexibility regarding the use of non-member names in member communications with the public.

To respond to concerns that investors may be confused by certain member communications that include non-member names without adequately disclosing the member name, Rule 2210(f) requires that the NASD member name be shown clearly and prominently. It also requires

that the relationship between the member and any non-member identified in the communication be clear and not confusing. If different products are offered by the member and non-member, it must be easy to determine which products are offered by each. Since registered individuals are often identified in communications, the rule requires that the relationship between the registered individual and each of the firms named be clear.

In a December 1992 *NASD Regulatory & Compliance Alert* article, NASD Regulation interpreted the rule to prohibit the use of non-member names

to identify branch offices when only a securities-related business was conducted at that location. Since that time, NASD Regulation has determined that members should have the flexibility to use non-member names in communications, consistent with Rule 2210(f), regardless of whether a non-securities business is conducted at the location identified in the communication.

Questions concerning this matter may be directed to the Advertising Regulation Department at (202) 728-8330. □

Arbitration

NASD Board Acts To Improve Service And Submit Task Force Proposals To SEC

In July 1996, the NASD Board approved increases in staff to support a number of proposed initiatives. Staff increases were approved for case administration, recruitment and training of arbitrators, and mediation. The Board

also approved an initiative to accelerate appointment of arbitrators to resolve discovery and other preliminary motions, as well as schedule evidentiary hearings. This initiative is being phased in geographically and will be completed

by the fourth quarter of 1997.

The NASD Board of Governors and the NASD Regulation Board of Directors have acted on five important proposals concerning arbitration — a punitive

damages rule, an amendment of the eligibility rule (NASD Rule 10304, formerly Section 15), list selection rule for the appointment of arbitrators, and extension of the large and complex case procedures. All rules have been or will be filed with the SEC shortly for notice, comment, and approval. These actions result from the January 1996 recommendations of the NASD Arbitration Policy Task Force (Task Force), chaired by former SEC Chairman David S. Ruder, and consultations with the NASD Regulation National Arbitration and Mediation Committee, the Securities Industry Conference on Arbitration (SICA), and interested forum constituents.

Punitive Damages

At their January 1997 meetings, the NASD Regulation Board of Directors and the NASD Board of Governors approved a rule authorizing arbitrators to award punitive damages in public customer arbitrations, provided the party seeking such damages is, at the time the arbitration claim is filed, a citizen of a state in which a court could award punitive damages for the same type of claim. The rule would apply to claims filed on and after the rule's effective date.

This rule would cap or limit the amount of punitive damages that can be awarded to up to two times compensatory damages or \$750,000, whichever is less. In addition, the rule provides that arbitrators also will look to the state law (of which the claimant is a citizen) for the standard of conduct to be used to determine whether an award of punitive damages is warranted.

Eligibility

In March 1997 and in April 1997, the NASD Regulation Board and the NASD Board approved, respectively, an amended eligibility rule. If approved, the amended rule will:

- retain the current six-year eligibility rule, but consider all filed claims eli-

Changes Filed With SEC

Amendment to Rule 10304 will make various changes about the eligibility of claims for arbitration. (See accompanying article for more detailed discussion.)

Amendment to Rule 10310 will increase the time for notice of the selection of arbitrators to parties from 8 to 15 days prior to the first hearing date.

Amendment to Rule 10311 will clarify the Director's authority to grant additional preemptory challenges to parties and will extend the time from 5 to 10

business days to exercise these challenges.

Amendment to Rule 10313 will extend the time that a party may preemptorily challenge a replacement arbitrator from within 5 to within 10 business days of notice of the replacement's identity.

Amendment to NASD Rule 10330 (formerly Section 41) will conform the rule to present practice by specifying that awards may be served by facsimile transmission or other electronic means.

gible unless challenged;

- establish bright line transaction and non-transaction dates from which the NASD Regulation Director of Arbitration (Director) will measure and make final eligibility decisions;
- permit investor claimants the option of taking all of their claims to court in the event any claim is determined to be ineligible;
- establish that ineligible investor claims are not barred from filing in court under the election of remedies doctrine or because investors signed predispute agreements to arbitrate such claims; and
- apply prospectively, meaning that the rule will apply only to claims filed after the rule's effective date.

In situations where investors have signed predispute arbitration agreements, but file their claims in court first, the rule will:

- permit member firms to request that the court compel arbitration provided all claims, ineligible and eligible, are sought to be compelled to arbitration and, once all claims are filed in arbi-

tration, preclude any eligibility challenges;

- permit member firms to challenge claim eligibility where the court compels the arbitration of the claims on request of the investor plaintiffs; and
- permit member firms to request court dismissal of investor-plaintiff claims on substantive statute of limitation grounds.

List Selection

In September, 1996, the NASD Regulation Board endorsed the list selection method for appointment of arbitrators. The rule will give parties more involvement in the selection of arbitrators who will decide their cases.

Large And Complex Case Rule

In May 1997, the NASD Regulation Board approved a recommendation to make the large and complex case procedures a permanent part of the Code of Arbitration Procedure. All provisions of the rule will be voluntary for parties. The rule applies to claims where the amount in controversy exceeds \$1 million or the case is complex.

Other Board Actions

Other arbitration rule changes resulting

from the Task Force recommendations have been approved by the Board and filed with the SEC. These include Amendments to NASD Rules 10302 (formerly Section 13) and 10203 (formerly Section 10) that will increase the dollar ceiling of public and industry claims to be decided by a sole arbitrator on the papers filed from \$10,000 to \$25,000. In addition, these changes

include amendments to NASD Rules 10302 (formerly Section 9) and 10308 (formerly Section 19) that will raise the dollar ceiling, from \$30,000 to \$50,000, for claims to be decided by a sole arbitrator with a hearing unless any party asks for a panel of three arbitrators.

During 1997, the NASD Regulation Board will continue to act on other Task

Force initiatives relating to the discovery process, collateral litigation, required disclosures in customer predispute arbitration agreements, and the arbitration of employment controversies, including statutory discrimination claims. □

Violations

Smith Barney And Lehman Brothers Censured And Fined \$250,000 Each; Customers Receive \$5.6 Million Refund

On March 12, 1997, NASD Regulation censured and fined Smith Barney and Lehman Brothers \$250,000 each and ordered the two firms to pay a combined total of more than \$5.6 million in refunds, including interest, to customers who were overcharged when they redeemed non-proprietary mutual funds.

NASD Regulation became aware of the overcharging after discovering and investigating a single customer complaint against Smith Barney. The commissions were disclosed on the customer's confirmation ticket.

NASD Regulation expanded its investigation, which revealed additional problems in the firm's mutual fund redemption practices. Further NASD Regulation scrutiny disclosed that the problem existed prior to the August 1993 acquisition of Shearson by Smith

Barney, thereby causing NASD Regulation to expand its probe to include Lehman Brothers.

More than 15,700 accounts were affected by the improper practice of charging commissions where none were allowed. This practice began in October 1990 at Shearson Lehman Brothers and continued until 1995, through Smith Barney's acquisition of the bulk of Shearson's retail operations. As a result, the settlement includes customers of both firms, who in some cases held more than one account.

"Today's settlement is important for investors and an excellent demonstration of the value customer complaints play in NASD Regulation's disciplinary process," said NASD Regulation President Mary L. Schapiro. Schapiro added, "This case underscores

the need for customers to inspect their trading confirmations closely and to report any suspected problems immediately."

Payments to Smith Barney's customers have already been made. Existing clients have received credits to their accounts and former clients were issued checks. Lehman Brothers will make payments to its customers over a period of 180 days commencing March 12, 1997, and will provide NASD Regulation with satisfactory proof of the payments.

Questions concerning this action may be directed to Michael Robinson, NASD Media Relations, at (202) 728-8411. □

NASD Regulation Fines And Censures First Albany

On May 16, 1997, NASD Regulation announced that it fined First Albany Corporation \$10,000 for recordkeeping violations arising from payments made to Armacon Securities, Inc. NASD Regulation also announced it censured the Bond Department Manager, a principal of the firm, for the same violations. Both disciplinary actions resulted from an offer of settlement in which the respondents neither admitted nor denied the allegations.

NASD Regulation found that First Albany made two \$10,000 payments to Armacon in return for advice—from a

principal of Armacon—primarily about how to become designated as an eligible bond underwriter by the New Jersey Health Care Financing Facilities Authority.

NASD Regulation discovered, however, that First Albany recorded the payments as expenses of two specific offerings of municipal securities conducted by the firm, though Armacon had not provided any services in connection with either offering. First Albany did not charge the expenses to the issuers involved or to other parties.

NASD Regulation also found that First Albany failed to create or maintain any records that recorded the services actually provided by Armacon.

In recording the payments in this fashion, NASD Regulation found that First Albany violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder and Municipal Securities Rulemaking Board Rule G-8.

Questions concerning these actions may be directed to Michael Robinson, NASD Media Relations, at (202) 728-8411. □

Corporate News

NASD Board Of Governors Elects Frank G. Zarb Chairman

In April 1997, NASD, the parent organization of NASD Regulation, Inc., and The Nasdaq Stock Market, Inc., elected Frank G. Zarb, as the first executive Chairman of the NASD Board of Governors.

In addition to his role of Chairman, Zarb also serves as the President and Chief Executive Officer of the NASD, positions to which he was elected in January of this year. (See related article in the March 1997, *NASD Regulatory & Compliance Alert*.)

Zarb replaces Daniel P. Tully, who concluded his term as NASD Chairman and who recently retired as Chairman and CEO of Merrill Lynch & Co. Tully will remain on the NASD Board. “Frank Zarb is a capable and effective leader,” said Tully. “The Board of Governors believes that this additional position will enhance his role as President and CEO and provide the organization with the vision and management continuity necessary for its continued growth. The Board and I look forward to working with him,” Tully said.

“I’m honored to serve as Chairman of the Board at this critical time in the organization’s history,” said Zarb. “There is a considerable amount of work currently underway at the NASD to perfect our market mechanisms. We are committed to strengthening our regulatory programs and further improving the fairness, efficiency, and liquidity of the markets we operate. These steps will benefit all who participate in our markets, particularly individual investors, and I am pleased that the Board has elected me to lead this vital organization through the next phase of its ongoing development.” □

NASD DISCIPLINARY ACTIONS

In December 1996 and January, February, and March 1997, 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.

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

December Actions

Samuel Allen Goldsmith (Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goldsmith consented to the

described sanctions and to the entry of findings that he effected the improper transfer of customer funds and thereby caused the misuse of the funds. The findings also stated that Goldsmith failed to respond to NASD requests for information.

Lynn B. Hall (Registered Representative, San Francisco, California) 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, Hall consented to the described sanctions and to the entry of findings that she signed customer names to life insurance policies and to a request for policy cancellation form without the customers' knowledge or consent.

Karen Shaolin Hsieh (Registered Representative, Hercules, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$500,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hsieh consented to the described sanctions and to the entry of findings that she effected the improper transfer of customer funds and thereby caused the misuse of the funds.

January Actions

Wilfred Alexander Soucy, Jr. (Registered Representative, Yardley, Pennsylvania) was fined \$25,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam. The sanctions were based on findings that Soucy participated in private securities transactions without giving prior written notification to his member firm.

February Actions

Larry Ira Klein (Registered Representative, Oakland, California) was fined \$150,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam. The SEC affirmed the sanctions following appeal of a June 1995 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Klein, in connection with the sale of stock, omitted material facts and made material misstatements of fact to the customers. Furthermore, Klein made unsuitable recommendations to customers regarding the purchase of stock without having reasonable grounds for believing that the investment was suitable for the customers in light of the customers' other security holdings, financial situation, and needs.

Marc A. Nichols (Registered Representative, San Bruno, California) was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Nichols forged the signatures of public customers on forms and submitted them to his member firm. In addition, Nichols persuaded a customer to sign a false notarized statement and submitted it to his member firm.

Robert Charles Stamos (Registered Principal, Walnut Creek, California) was fined \$62,000, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any principal capacity. In addition, Stamos is required to requalify by exam as a representative. The sanctions were based on findings that Stamos exercised effective control over the account of a public customer and recommended to the customer the purchase and sale of securities that were not suitable for the customer in light of the size and frequency of the trading and in light of the facts disclosed by the customer as to her other security holdings, financial situation, and needs.

March Actions

Darlene Dottie Johnson (Registered Representative, Sacramento, California) was fined \$22,000, suspended

from association with any NASD member in any capacity for two years, required to pay restitution to customers, and required to requalify by exam. The sanctions were based on findings that Johnson received checks totaling \$179,370.03 from public customers for investment purposes, deposited \$112,241.80 of the funds in other customer accounts, and retained \$24,400 until a later date.

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

December Actions

Maureen Galligan (Registered Representative, San Diego, California), Gerald Seroy (Registered Representative, Basking Ridge, New Jersey), and Jeffrey K. Trilling (Registered Representative, Rockville, Maryland) submitted Offers of Settlement pursuant to which Galligan was fined \$6,567.15 and suspended from recommending any transactions in penny stocks for one year, and Trilling was fined \$2,812 and suspended from recommending any transactions in penny stocks for one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Galligan, Seroy, and Trilling effected \$54,480 in penny stock transactions for public customers in contravention of Section 15(g) of the Exchange Act.

Edward Milman (Associated Person, Granada Hills, California) submitted an Offer of Settlement 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, Milman consented to the described sanctions and to the entry of findings that he arranged to have an imposter take the Series 7 exam for him. The findings also stated that Milman failed to respond to NASD requests for information.

January Actions

None

February Actions

Jack A. Alexander (Registered Principal, Poway, California) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Alexander consented to the described sanctions and to the entry of findings that he purchased shares of a new issue that traded at a premium in the immediate aftermarket, in contravention of the NASD Board of Governors Free-Riding and Withholding Interpretation.

Robert A. Grunburg (Registered Principal, Marina Del Rey, California) was fined \$5,000, suspended from association with any NASD member as a general securities principal for one month, and required to requalify by exam as a principal. The SEC affirmed the sanctions following appeal of a March 1996 NBCC decision. The sanctions were based on findings that Grunburg approved two newspaper advertisements that contained misleading or exaggerated statements concerning the ranking of mutual funds. Grunburg also failed to file the advertisements with the NASD within 10 days of the first use of the advertisements as required. Furthermore, Grunburg entered into a special sales concession arrangement (a sales contest) with a member firm related to the sale of mutual funds on an oral basis with no written agreement executed and without proper disclosure of the arrangement in the prospectuses for each fund. In addition, Grunburg failed to establish and maintain adequate written supervisory procedures.

Felix Gurfink (Registered Representative, Brooklyn, New York) was fined \$20,000 and barred from association

with any NASD member in any capacity. The sanctions were based on findings that Gurfink failed to respond to NASD requests for information.

March Actions

None

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

December Actions

Lester H. Lane (Registered Principal, Englewood, Colorado) was fined \$10,000 and suspended from association with any NASD member in any principal capacity for one year. The sanctions were based on findings that Lane caused and permitted his member firm to violate its restriction agreement.

Paul M. Spear (Registered Principal, Redondo Beach, California) was fined \$15,000, suspended from association with any NASD member in any capacity for one year, barred from association with any NASD member in any principal capacity with the right to re-apply after two years, and required to requalify by exam. The sanctions were based on findings that Spear permitted unregistered persons to solicit business for his member firms and compensated them for the transactions that resulted from their efforts. Furthermore, Spear shared securities commissions with an unregistered entity and solicited members of the public to become customers and place orders to purchase securities by misrepresenting that certain transactions would be executed without charge to the customers when he knew that the price to the customer would include a markup. Spear also induced a customer to purchase stock by projecting and promising future prices in excess of the customer's purchase prices without a reasonable basis and by failing to disclose to the customer the risks associated with the purchase of stock.

Michael A. Wynn (Registered Representative, Scottsdale, Arizona) was fined \$18,400, suspended from association with any NASD member in any capacity for 20 business days, required to pay \$30,000 plus interest in restitution to a customer, and required to requalify by exam. The sanctions were based on findings that Wynn recommended to a public customer the purchase of stock that was unsuitable for the customer in light of her investment objectives, financial situation, and needs. Wynn also exercised discretion in the account of a public customer without obtaining written authorization from the customer or written acceptance by his member firm.

January Actions

Edwin Andrew Bayne (Registered Representative, Laurel, Montana) was fined \$2,500, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam. The sanctions were based on findings that Bayne received commission checks made payable to a former registered person, signed the individual's name to the checks, and deposited them into bank accounts over which he had control.

Laurence G. Epstein (Registered Representative, Mercer Island, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000, barred from association with any NASD member in any capacity, and required to pay \$170,000 in restitution to a customer. Without admitting or denying the allegations, Epstein consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without obtaining prior written discretionary authorization from the customer and without written acceptance of such account by his member firm. The findings also stated that Epstein recommended the purchase of securities to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer based upon the nature of the investment, the size and fre-

quency of the recommended transactions, and the customer's financial situation, circumstances, and needs. Furthermore, the NASD found that Epstein effected transactions in the account of a deceased public customer without the knowledge or authorization of the customer's estate, personal representative, or executrix.

Thomas L. Gottschalk (Registered Principal, Arvada, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$40,000, barred from association with any NASD member in any principal capacity, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Gottschalk consented to the described sanctions and to the entry of findings that he approved advertising and business cards that did not conform to NASD rules. The findings also stated that Gottschalk permitted his member firm to conduct a securities business while failing to maintain required net capital and filed inaccurate FOCUS reports. Furthermore, the NASD determined that Gottschalk participated as a selling agent in a private placement of securities wherein the offering was subject to minimum sales contingency and, in connection with the offering, his member firm's books and records were inadequate and failed to evidence principal review of the transactions. The NASD also found that Gottschalk permitted his member firm to violate its restriction agreement with the NASD.

Terrence L. Hansen, Jr. (Registered Representative, Salt Lake City, Utah) was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$219,999.97 in restitution to public customers. The sanctions were based on findings that Hansen failed to invest customers' funds totaling \$219,999.97 as directed. Furthermore, Hansen provided false statements to public customers that purported to show that the customers had securities positions at a member firm, when in fact the firm did not carry any securities positions for the benefit of the customers. Hansen also failed to respond to an NASD request for information.

Shannon Akira Hayashi (Registered Principal, Fort Collins, Colorado) was fined \$26,750, barred from association with any NASD member in any capacity, and required to pay \$1,050 in restitution to a customer. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Hayashi made improper use of customer funds totaling \$5,350.

Aaron Lee Johnson (Registered Representative, Tempe, Arizona) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson failed to disclose a criminal conviction on a Form U-4. Johnson also failed to respond to NASD requests for information.

Terence J. Murphy (Registered Representative, Clancy, Montana) submitted an Offer of Settlement pursuant to which he was fined \$12,000 and required to requalify by exam. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he engaged in the solicitation of customers on behalf of two firms and received compensation for his efforts without disclosing promptly to his member firm his outside association with or employment by the firms.

Robert A. Quiel (Registered Principal, Bermuda Dunes, California) was fined \$12,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities principal and general securities representative. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Quiel effected principal retail transactions with customers involving securities at prices that were unfair and excessive with markups ranging from eight to 40 percent above the prevailing market price. Quiel also failed to respond completely to NASD requests for information.

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

February Actions

Mathew William Baker (Registered Representative, Des Moines, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$49,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mathew consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice of such activities to his member firm.

Jeffrey T. Burrows (Registered Representative, Cave Creek, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that Burrows misappropriated \$155,000 from public customers by inducing them to send him funds purportedly for investment and then converting such funds to his own use and benefit. Burrows also failed to respond to NASD requests for information.

Excel Financial, Inc. (Salt Lake City, Utah), Gary R. Beynon (Registered Principal, Salt Lake City, Utah) and Robert Lamont Sperry (Registered Principal, Salt Lake City, Utah) were fined \$25,000, jointly and severally. In addition, Beynon and Sperry were suspended from association with any NASD member in any principal capacity for one month. The sanctions were based on findings that the firm, acting through Beynon and Sperry, failed to return investor funds when the terms of the contingency were not satisfied. The firm, acting through Beynon and Sperry, also made non-bona fide sales of securities in an offering in that a percentage of the offering was acquired for resale by a corporation that was affiliated with the issuer and counted such sales towards the satisfaction of the minimum sales contingency.

This matter has been appealed to the SEC.

Michael R. French (Registered Representative, Scottsdale, Arizona) was fined \$1,000, suspended from association with any NASD member in any capacity for three months, and required to requalify by exam. The sanctions were based on findings that French failed to disclose a criminal conviction on his Form U-4.

Daniel R. Lehl (Registered Representative, Littleton, Colorado) and Thomas P. Meehan (Registered Representative, Thornton, Colorado). Meehan was fined \$45,000 and barred from association with any NASD member in any capacity and Lehl was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Meehan and Lehl failed to follow customer instructions to sell securities from their accounts. Lehl also made misrepresentations to a public customer in connection with the customer's request that his stock be sold. Furthermore, Meehan induced customers to purchase stock by representing that he would refund the purchase price if the customers lost money and engaged in unauthorized transactions in customer accounts. In addition, Meehan failed to respond to NASD requests for information and obtained from a public customer an agreement to settle the customer's complaint that contained undertakings by the customer not to initiate or pursue any regulatory complaint.

Tibor Robert Komoroczy (Registered Representative, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$168,000 in restitution to a member firm. Without admitting or denying the allegations, Komoroczy consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior authorization or consent. The findings also stated that Komoroczy exercised discretion in the accounts of public customers without obtaining prior writ-

ten discretionary authorization from the customers and without written acceptance of such account by his member firm.

Kevin J. Stelter (Registered Representative, Englewood, Colorado) was fined \$5,000, suspended from association with any NASD member in any capacity for three months, required to requalify by exam in any capacity, and ordered to disgorge \$3,900 in commissions to the NASD. The sanctions were based on findings that Stelter provided to a public customer a statement concerning recently purchased products that contained material misrepresentations about the products in the form of projected and guaranteed returns that were inaccurate and misleading.

March Actions

Todd Congrove (Registered Representative, Confer, Colorado) 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, Congrove consented to the described sanctions and to the entry of findings that, while taking the Series 6 exam, he was found with unauthorized material relating to the exam in his possession.

William Leonard England (Registered Representative, Nampa, Idaho) was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that England obtained possession of insurance disbursement checks totaling \$21,107.48 made payable to insurance clients, signed the payee's names to the checks, and deposited the checks at a bank to be credited to his credit card account. England also failed to respond to NASD requests for information.

Clinton Hugh Holland, Jr. (Registered Principal, Salem, Oregon) was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by exam as a registered principal. The U.S. Court of Appeals for the Ninth Circuit affirmed the sanctions following appeal of a December 1995 SEC decision. The sanctions were based on findings that Holland recommended to a public customer the purchase of speculative or high-risk securities without having reasonable grounds for believing that such recommendations were suitable for the customer considering the size and nature of the transactions, the concentration of speculative securities in the account, and the customer's financial situation, circumstances, needs, and objectives.

Howard David Liebrich (Registered Representative, Beaverton, Oregon) was fined \$210,724, suspended from association with any NASD member in any capacity for 60 business days, and required to requalify by exam. The sanctions were based on findings that Liebrich effected transactions in the accounts of public customers without obtaining written discretionary authority from the customers and without obtaining acceptance of the accounts by his member firm. Furthermore, Liebrich made recommendations to a public customer without having reasonable grounds for believing that the transactions were suitable for the customer given the number of transactions effected, the frequency of the transactions, the concentrated positions held in the account, and the customer's investment objectives, circumstances, and needs. Liebrich also attempted to guarantee a customer against losses in his account.

Maurice Fredric Re, III (Registered Representative, Pompano Beach, Florida) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Re obtained a check from his manager's personal check book, made out the check for \$975, signed his manager's name to the check without authorization, and used the funds for his own benefit. Re also failed to respond to NASD requests for information.

Dan Scott Taylor (Registered Representative, Corvallis, Oregon) was fined \$5,000, suspended from

association with any NASD member in any capacity for 18 months, and required to requalify by exam. The sanctions were based on findings that Taylor obtained a \$923 check issued erroneously by his member firm, signed the check, and attempted to negotiate the check.

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

December Actions

Everest Securities, Inc. (Minneapolis, Minnesota) and Jeanne Alyce Kunkel (Registered Principal, Minneapolis, Minnesota) The firm and Kunkel were fined \$15,000, jointly and severally and required to pay \$22,500 in restitution. Kunkel was barred from association with any NASD member in a principal capacity and required to requalify by exam as a registered representative. The SEC affirmed the sanctions following appeal of a September 1994 NBCC decision. The sanctions were based on findings that the firm and Kunkel offered and sold securities using documents that were misleading. The firm, acting through Kunkel, also failed to maintain accurate books and records.

This action has been appealed to a United States Court of Appeals, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Stacy Gene Nettinga (Registered Representative, Mitchell, South Dakota) submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$18,500 in restitution. Without admitting or denying the allegations, Nettinga consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. The findings also stated that, without the knowledge or consent of public customers, Nettinga misused customer funds totaling \$22,000 by changing their address to a post office box and either sending checks to that address or transferring funds between customer accounts.

January Actions

Timothy John Shipley (Registered Principal, Grover, Missouri) 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, Shipley consented to the described sanctions and to the entry of findings that, by use of instrumentalities of interstate commerce or the mail, he intentionally or recklessly employed devices to defraud customers by making untrue statements of material facts or omitting material facts necessary to make the statements by him not misleading. The findings also stated that Shipley engaged in a course of business that operated as a fraud or deceit upon customers in that he recommended to the customers the purchase of securities without a reasonable basis.

February Actions

James A. Goetz (Registered Representative, Dickinson, North Dakota) was fined \$2,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Goetz submitted applications to his member firm's matching gifts program requesting that \$1,600 be donated to a school and thereafter failed to contribute an equivalent amount of cash or property. Goetz knew or should have known that the funds were used to offset the tuition of his daughter at the designated school.

Goetz has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Steven Wayne Love (Registered Representative, Eldorado, Kansas) 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 one year. Without admitting or denying the allegations, Love consented to the described sanctions and to the entry of findings that he signed the names of public customers on forms requesting loans or other disbursements from the customers' insurance policies without their knowledge or consent.

Robert Eugene Nixon (Registered Representative, Lincoln, Nebraska) 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 five days. Without admitting or denying the allegations, Nixon consented to the described sanctions and to the entry of findings that he engaged in a pattern of recommending the sales of customers' mutual funds within the same mutual fund family without recommending that customers take advantage of a free exchange privilege.

Thomas Allyn Williams (Registered Representative, St. Charles, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity. Without admitting or denying the allegations, Williams consented to the described sanction and to the entry of findings that he made untrue statements of material facts or omitted to state material facts necessary to make the statement not misleading in light of the circumstances in which they were made in connection with the sale of securities. The findings also stated that Williams recommended the purchase of securities to public customers by means of baseless performance predictions and without having a reasonable basis for the recommendations.

March Actions

None

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

December Actions

Jeffrey N. Boone (Registered Representative, Mt. Juliet, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$3,740 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Boone consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase transactions for public customers without receiving an acknowledgement in writing from the customers that they understood that such purchases could have been executed at a reduced sales charge at certain breakpoint levels. The NASD found that Boone did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers based on their financial situation, investment objectives, and needs. The findings also stated that Boone sent correspondence to public customers before obtaining written supervisory approval of the correspondence from a principal of his member firm.

Dennis F. Nuss (Registered Representative, Maspeth, New York) 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 restitution. Without admitting or denying the allegations, Nuss consented to the described sanctions and to the entry of findings that he misappropriated and converted customer funds totaling \$350,000 for his own use and benefit without the knowledge or consent of the customers. The findings also stated that in an effort to conceal his activity, Nuss prepared and sent fictitious confirmations, monthly account statements, and Internal Revenue Service forms to public customers from whom he misappropriated the funds.

Rick E. Pierson (Registered Principal, Houston, Texas) was fined \$5,000 and suspended from association with any NASD member in any capacity for one week. The sanc-

tions were based on findings that, in connection with purchase and sale transactions of United States government agency securities, Pierson knowingly or recklessly failed to independently determine the market price for the transactions, and in so doing, Pierson participated in, and furthered, an "adjusted trading" scheme. Furthermore, Pierson failed to reflect on his member firm's books and records that these transactions were not effected at the then current market prices.

The Trading Desk, Inc. (Englewood, Colorado) and Jerry W. Manning (Registered Principal, Englewood, Colorado) The firm was fined \$75,000 and Manning was fined \$10,000. The sanctions were based on findings that the firm engaged in a series of purchases and sales transactions involving margin trading of government securities derivatives with institutional customers that were speculative and excessive in size and frequency and were unsuitable for the customers on the basis of their investment objectives, financial situations, and needs. Furthermore, the firm, acting through Manning, failed to properly supervise the activities of a registered representative.

January Actions

Hattier, Sanford & Reynoir (New Orleans, Louisiana), Gus A. Reynoir (Registered Principal, New Orleans, Louisiana) and Vance G. Reynoir (Registered Principal, New Orleans, Louisiana) were fined \$60,000, jointly and severally. In addition, the firm must retain an independent auditor to review its books and records and supervisory procedures and to implement the auditor's recommendations in a manner satisfactory to the NASD Regulation staff. G. Reynoir was suspended from association with any NASD member in any capacity for 30 days and required to requalify by exam as a general securities principal. V. Reynoir was suspended from association with any NASD member in any capacity for 30 days and required to requalify as a municipal securities principal. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that the firm, acting through G. Reynoir and V. Reynoir, issued trade tickets to a customer that misstated the firm's capacity on the transactions at issue as being "agent" rather than "principal."

This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Shelia P. Smith (Registered Representative, Mobile, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that, in connection with the offer and sale of interests in government funds, she failed and neglected to have an adequate basis on which to recommend the sale of such interests to public customers based on the customers' investment objectives, financial situations, and needs.

Michael J. Siegel (Registered Representative, Louisville, Kentucky) and Dennis C. Moore (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were each fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as investment company and variable contracts products representatives. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in the sale of unregistered securities in that they solicited public customers to invest in a company in which they held ownership interests. The findings also stated that Siegel and Moore engaged in private securities transactions without prior written notice to and approval from their member firm.

Stephens Inc. (Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which the firm was fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanction and the entry of findings that it allowed an individual to act as a general securities representative without being registered as such

with the NASD. The findings stated that the firm failed to exercise reasonable and proper supervision over individuals in connection with their recommendations and misrepresentations. The NASD found that the firm failed and neglected to establish, maintain, and enforce proper supervisory procedures governing communications between unregistered securities analysts and public customers. Furthermore, the NASD determined that the firm allowed individuals to make misrepresentations to public customers regarding the details of a merger and lawsuit settlement.

Timothy R. Strong (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$218,292 in restitution. Without admitting or denying the allegations, Strong consented to the described sanctions and to the entry of findings that he received \$218,291.53 from public customers for investment purposes, failed to submit the funds to his member firm and, instead, endorsed the checks, and deposited them into his personal bank accounts, without the public customers' knowledge or consent. The findings also stated that Strong failed to respond to NASD requests for information.

Gregory T. Watkins (Registered Representative, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for one month, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Watkins 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 without having reasonable grounds for believing that the transactions were suitable for the customers on the basis of their age, financial situations, investment objectives, and needs. The findings also stated that Watkins exercised discretion in the account of an institutional customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. Furthermore, the NASD determined that Watkins executed transactions in the accounts of public customers without obtaining a written third party trading authorization from the customers.

February Actions

Timothy W. Fowler (Registered Representative, Metairie, Louisiana) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fowler made improper use of customer funds by forging a public customer's name to five documents without the customer's knowledge or consent.

Walter Y. Hooper (Registered Representative, Montgomery, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000. Without admitting or denying the allegations, Hooper consented to the described sanction and to the entry of findings that, in connection with the offer and sale of interests in a mutual fund, Hooper made or caused to be made inaccurate statements about the fund in sales literature distributed to public customers. The NASD also found that Hooper failed to obtain prior written approval of sales literature by a firm principal and failed to submit the sales literature to the NASD. Furthermore, the NASD determined that Hooper failed and neglected to demonstrate an adequate basis on which to recommend the sale of such interests to public customers based on the customers' investment objectives, financial situations, and needs. The findings also stated that Hooper failed to demonstrate that he disclosed adequately the risks of investment in the funds.

Grover C. McCall, III (Registered Representative, Kingsport, Tennessee) was fined \$7,651.84, suspended from association with any NASD member in any capacity for five days, and required to requalify by exam as a gener-

al securities representative. The sanctions were based on findings that McCall executed unauthorized transactions in the account of a public customer without the knowledge or consent of the customer. McCall also exercised discretion in a 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.

Karl M. Meeks (Registered Representative, Lakewood, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Meeks consented to the described sanctions and to the entry of findings that he caused a \$1,510 check to be issued from the bank account of an affiliate of his former member firm and converted the funds for his own use and benefit without the affiliate's knowledge or consent.

Raymond P. Nauts (Registered Representative, Ocean Springs, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nauts consented to the described sanctions and to the entry of findings that he disbursed five checks totaling \$17,863.31 from the accounts of a deceased public customer and converted these funds for his own use and benefit without the knowledge or consent of the customer's estate. Furthermore, the NASD found that Nauts forged the signature of the customer to four of the checks in order to facilitate the redemption of these funds. The findings also stated that Nauts failed and neglected to respond timely to NASD requests for information and failed to update his Form U-4 with his correct address of record.

R. M. Duncan Securities, Inc. (Little Rock, Arkansas) and Randall M. Duncan (Registered Principal, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Duncan, allowed a registered representative to recommend and engage in a purchase transaction of a limited partnership in the account of public customers without having reasonable grounds for believing that such recommendation and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. The findings also stated that the firm, acting through Duncan, failed to exercise reasonable and proper supervision over a registered representative in that they approved the aforementioned transaction before ascertaining that the investment was suitable for the customers.

Mark T. Samples (Registered Representative, Orlando, Florida) 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, Samples consented to the described sanctions and to the entry of findings that he included false financial information on the new account form of a public customer. The NASD also found that Samples failed to execute purchase orders for a public customer and misrepresented to the customer that the purchase orders had been made, when in fact, no such purchase had been executed. Furthermore, the findings stated that Samples shared directly or indirectly in the profits and losses in the account of a public customer and failed to obtain written authorization from his member firm prior to sharing in a customer account. The findings also stated that Samples delivered a handwritten letter to a public customer without obtaining prior written approval of the correspondence from a principal of his member firm.

The NASD also determined that Samples recommended and engaged in securities trading in the account of a public customer without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of the

customer's financial situation, investment objectives, and needs. In addition, the NASD found that Samples failed to make reasonable efforts to obtain accurate information regarding the financial status, tax status, and investment objectives of a public customer in that the new account form he completed contained inaccurate financial information for the customer.

Sentra Securities Corporation (San Diego, California), Joseph J. Hoenigman (Registered Principal, Lacosta, California) and Vaughn L. Woods (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$13,500. Hoenigman and Woods were each fined \$5,000 and suspended from association with any NASD member in any principal capacity for one week. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm recommended and engaged in certain purchase and sale transactions in the account of a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer on the basis of the customer's financial situation, investment objectives, and needs. The findings also stated that the firm, acting through Hoenigman and Woods, failed to exercise reasonable and proper supervision over an individual and failed to establish, maintain, and enforce proper supervisory procedures governing the review of options and equity transactions and the review of municipal securities transactions.

Timothy L. Voss (Registered Representative, Versailles, Kentucky) submitted an Offer of Settlement pursuant to which he was fined \$30,000. Without admitting or denying the allegations, Voss consented to the described sanction and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Voss falsified trade order tickets to reflect that the trades were discussed with a public customer prior to execution, when in fact they were not, and marked order tickets to reflect that such trades were unsolicited, when in fact they were not, thus causing his member firm's books and records to be inaccurate. Furthermore, the NASD found that Voss executed options trades in the account of a public customer prior to approval of such trades by his member firm.

March Actions

Blount Parrish & Roton, Inc. (Montgomery, Alabama) and William B. Blount (Registered Principal, Montgomery, Alabama) submitted an Offer of Settlement pursuant to which they were fined \$55,000, jointly and severally. In addition, the firm must hire an independent counsel to review the firm's procedures with respect to its adherence to certain MSRB Rules and to implement any recommendations made by the counsel. The respondents also agreed to make no contributions to any political action committee and to refrain from doing business with any lobbyist that controls or operates a political action committee. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Blount, in its role as underwriter, failed to accurately reflect the redemption feature of \$6,500,000 in industrial development revenue bonds for the Industrial Development Board of the City of Birmingham, Alabama. Specifically, the NASD found that the firm offered and sold the bonds by means of an offering statement that failed to adequately disclose the redemption provisions of the bonds. The NASD also determined that the firm recorded an incorrect call feature on its confirmations of sale for the bonds and failed to disclose that the terms of the redemption feature had been omitted from the official statement, when the firm knew or should have known of such omission.

Eric Darrisaw (Registered Principal, Jersey City, New Jersey) and Toni Hacket-Antrum (Registered Principal, Perry, Florida) submitted an Offer of

Settlement pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that a member firm, acting through Darrisaw and Hacket-Antrum, failed to establish, maintain, and enforce proper supervisory procedures. The findings also stated that a member firm, acting through Darrisaw and Hacket-Antrum, provided to a public customer a written proposal containing misleading information and failed to maintain a continuing and current education program for its covered registered persons.

Randolph N. Strickland (Registered Representative, Birmingham, Alabama) was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Strickland caused three checks totaling \$8,050 to be withdrawn from the IRA account of a public customer and converted the funds for his own use and benefit by forging the customer's signature on the checks and depositing them into his personal checking account without the customer's knowledge or consent. In addition, Strickland received two checks totaling \$4,770 that had been drawn on a public customer's IRA account and converted the monies for his own use and benefit without the customer's knowledge or consent. Furthermore, Strickland engaged in outside business activities without giving prior written notice to or approval from his member firm and recommended to a public customer the transfer of funds when such recommendation and the resultant transactions were unsuitable for the customer on the basis of his financial situation, investment objectives, and needs. Strickland also failed to respond to NASD requests for information.

District 6—Texas

December Actions

None

January Actions

Joe Dwayne Baugus (Registered Representative, Spring, Texas) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Baugus participated in a private securities transaction without providing prior written notice to his member firm. Baugus also failed to respond to NASD requests for information.

Glenn Ray Dean (Registered Representative, Port Isabel, Texas) 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, Dean consented to the described sanction and to the entry of findings that he effected a private securities transaction without providing prior written notice to his member firm. The findings also stated that Dean failed to respond timely and completely to NASD requests for information.

Bruce William Irvine (Registered Representative, Temple, Texas) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Irvine received checks made payable to public customers on which he forged the signatures of such customers and converted the funds to his own use and benefit. Irvine also failed to respond to NASD requests for information.

February Actions

Micah C. Douglas (Registered Representative, Kingwood, Texas) was fined \$7,500 and suspended from association with any NASD member in any capacity for 45 days. The SEC affirmed the sanctions following appeal of a September 1995 NBCC decision. The sanctions were based on findings that Douglas failed to give his member firm prior written notice of outside business activities that consisted of securities transactions conducted in the name of a company with his name. Douglas also made misrepresentations to a public customer about himself and his com-

pany. Specifically, Douglas falsely represented that his company was registered with the SEC as a broker/dealer, was a full-service broker/dealer, had Securities Investor Protection Corporation coverage, and had never been the subject of any complaint or investigation by a self-regulatory organization. Douglas also falsely represented that all of the transactions effected by the firm were guaranteed by his member firm. In addition, Douglas made misrepresentations in connection with the sale of inverse floater notes in that he failed to disclose that the notes' yield would fluctuate inversely to prevailing interest rates.

Henry Edward Vail (Registered Representative, Houston, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The U.S. Court of Appeals for the Fifth Circuit affirmed the sanctions following appeal of a June 1995 SEC decision. The sanctions were based on findings that Vail made improper use of funds of a local political club by converting \$11,000 to his own use and benefit.

Richard T. Clark, Jr. (Registered Representative, Tulsa, Oklahoma) 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, Clark consented to the described sanctions and to the entry of findings that he failed and neglected to notify his member firms in writing of his personal securities accounts that he opened at other member firms. The findings also stated that Clark failed to provide written notification to the other member firms of his employment with his member firms.

March Actions

Donald Sherman Becker (Registered Representative, Carrollton, Texas) 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 two weeks. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that he solicited securities transactions without being registered with a member firm.

Larry Valton Davis (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$52,000. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he prepared a confidential private offering memorandum and thereafter disseminated or caused the dissemination of that offering memorandum to potential investors knowing that it contained false information. The findings also stated that Davis participated in a private securities transaction and failed to provide written notice to his member firm.

Nationwide Securities Corporation (Fort Worth, Texas) and Kevin Bryan Williams (Registered Principal, Fort Worth, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally and Williams was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Williams, effected securities transactions while failing to maintain its minimum required net capital and failed to maintain accurate books and records. The NASD determined that the firm, acting through Williams, failed to enforce its written supervisory procedures and permitted individuals to engage in the investment banking or securities business of the firm without being properly registered with the NASD. The findings also stated that the firm, acting through Williams, reported 20 of 200 transactions reviewed as late, but failed to designate the transactions as late.

John Daniel Reaves (Registered Representative, Houston, Texas) 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, Reaves consented to the described sanction and to the entry of findings that he disseminated to prospective investors documents relating to an offering of securities that reflected misleading statements and omissions of material facts without providing to his member firm written notice of the proposed transactions.

Jorge Eduardo Villalba (Registered Principal, Ducanville, Texas) 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 five business days. Without admitting or denying the allegations, Villalba consented to the described sanctions and to the entry of findings that he engaged in excessive trading in customer accounts.

James W. Winter (Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Winter consented to the described sanctions and to the entry of findings that he recommended and sold mortgage-backed derivative products to public customers without disclosing the nature and risks of these products and that the products might not have been suitable for the customers.

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

December Actions

Charles E. Anderson, Jr. (Registered Representative, Seneca, South Carolina) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anderson failed to respond to NASD requests for information about his termination from a member firm.

Charles T. Birdsong (Registered Representative, Tampa, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Birdsong promised two public customers that he would reimburse them for the losses they incurred in their securities accounts and sent checks totaling \$11,350 to the customers to cover margin calls in their accounts.

Birdsong's suspension began November 18, 1996, and concluded December 17, 1996.

John S. Brownson, Jr. (Registered Representative, North Miami Beach, Florida) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brownson opened a securities account with his member firm under a false customer name and failed to disclose that the address and telephone number on the account card was the old office address and telephone of another individual who controlled the account.

James Henry Jones, Jr. (Registered Representative, St. Petersburg, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones failed to respond to NASD requests for information about customer complaints.

James A. Madorma (Registered Representative, Wellington, Florida) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Madorma effected or caused to be effected purchase transactions in the account of a public customer without the customer's prior knowledge or authorization. Madorma also failed to respond to an NASD request for information.

Russell Charles Martin (Registered Representative, Miami Beach, Florida) was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam as a general securities sales representative. The sanctions were based on findings that Martin effected or caused to be effected the purchase of warrants in the joint account of public customers without their prior knowledge or authorization.

Rothschild Global Investments, Inc. (Tampa, Florida) was fined \$25,000 and expelled from membership in the NASD. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS Part I and IIA reports with the NASD. The firm also prepared an inaccurate general ledger, trial balance, and net capital computation and failed to give telegraphic notice of its net capital deficiency.

Ira Weiner (Registered Representative, Sunrise, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$145,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Weiner consented to the described sanctions and to the entry of findings that he obtained from a public customer checks totaling \$29,000 intended for the purchase of shares of a common stock, deposited the checks in the bank account of an entity over which he exercised control, and converted the funds for his own use and benefit.

January Actions

None

February Actions

Donald G. Brown (Registered Representative, Naples, Florida) was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown sold a \$5,000 municipal bond to a public customer outside the scope of his employment with his member firm without giving prior written notice to or receiving prior written permission from his member firm to engage in the transaction. Moreover, Brown failed to return the customer's funds in a timely manner after he was unable to obtain delivery of the bonds.

Richard K. Frazier (Registered Representative, Tampa, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Frazier failed to respond to an NASD request for information about his termination from a member firm.

Jeffrey L. Greene (Registered Principal, Greenville, South Carolina) 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, Greene consented to the described sanctions and to the entry of findings that he received a \$10,000 check from a public customer for investment purposes and instead, converted the proceeds for his own use and benefit. Furthermore, the NASD determined that, to conceal his misconduct, Greene gave the customer a false confirmation statement showing that the customer's funds had been invested.

Donald E. James (Registered Representative, Athens, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that James failed to respond to NASD requests for information about his termination from a member firm.

Kenneth N. Kleid (Registered Representative, Parkland, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kleid failed to respond to NASD requests for information about his termination from a member firm.

Phillip L. Mosley (Registered Representative, Atlanta, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mosley failed to respond to NASD requests for information about his termination from a member firm.

Richard T. Sullivan, Jr. (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any principal or supervisory capacity for one year, prohibited from serving as a director of compliance for a member firm for two years following his reemployment by any NASD member firm, and required to requalify by exam in any principal capacity. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce reasonable supervisory procedures to prevent his member firm's retail customers from being charged fraudulently excessive markups.

Anthony J. Toscano (Registered Representative, Clearwater, Florida) was fined \$10,000 and required to requalify by exam as a general securities representative. The sanctions were based on findings that Toscano effected the purchase of securities in the account of a public customer without the customer's knowledge or authorization.

Francisco S. Velez (Registered Representative, San Juan, Puerto Rico) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Velez engaged in business activities outside the scope of his employment with his member firm and failed to disclose to the firm his involvement in such activities.

Deborah A. Woodard (Registered Representative, Navarre, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Woodard failed to respond to an NASD request for information about her termination from a member firm.

Craig James Zavada (Associated Person, Boynton Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zavada failed to respond to an NASD request for information about his termination from a member firm.

March Actions

None

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

December Actions

None

January Actions

Roberto Gabriel Anker (Registered Representative, Rochester Hills, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Anker engaged in private securities transactions without providing prior written notice to or obtaining prior written authorization from his member firm to engage in such activities. Anker also failed to respond to NASD requests for information.

John F. Cooper (Registered Representative, Mesa, Arizona) was fined \$15,000, barred from association with any NASD member in any capacity, and required to pay \$3,099.80 in restitution to a member firm. The sanctions were based on findings that Cooper obtained a dividend withdrawal check made payable to an insurance customer,

endorsed the check, cashed it or caused it to be cashed through an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customer.

Dianne Baum (Associated Person, Staten Island, New York) submitted an Offer of Settlement pursuant to which she was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Baum consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests to appear for an on-the-record interview.

Dina L. Casanova (Associated Person, Brooklyn, New York) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Casanova failed to appear at the NASD for an on-the-record interview.

Jerome H. Kowalski (Registered Representative, Dayton, Ohio) and John F. Rebolt (Registered Representative, Fairborn, Ohio) Kowalski was fined \$7,500, suspended from association with any NASD member in any capacity for 60 days, required to requalify by exam as a general securities representative, and ordered to pay \$5,740 in restitution. Rebolt was fined \$12,500, suspended from association with any NASD member in any capacity for 60 days, ordered to requalify by exam as a general securities representative, and ordered to pay \$9,785 in restitution. The NBCC affirmed the sanctions following appeal of a Cleveland DBCC decision. The sanctions were based on findings that Kowalski and Rebolt used the means or instruments of interstate commerce or the mail to sell securities when there was no registration statement filed with the SEC or in effect for such securities. Kowalski and Rebolt also participated in private securities transactions by selling presubscription shares of stock to public customers and failed to give prior written notice to and obtain prior written authorization from their member firm to engage in such activities. Furthermore, Rebolt failed to respond to NASD requests for information.

Pierce & Company L.P. (Chicago, Illinois), Wayne L. Pierce (Registered Principal, Oak Park, Illinois), and Carol J. Berberich (Registered Principal, Bartlett, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Pierce and Berberich, conducted a securities business while failing to maintain its minimum required net capital. The NASD also found that the firm, acting through Pierce and Berberich, prepared inaccurate trial balances and net capital computation and filed inaccurate FOCUS Part I and IIA reports with the NASD.

Brian L. Plescher (Registered Representative, Grand Rapids, Michigan) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Plescher exercised discretion in the accounts of public customers without obtaining written authorization from the customers and written acceptance of the discretionary authority by his member firm.

Mark J. Pruss (Registered Representative, Plainfield, Illinois) was fined \$355,000, barred from association with any NASD member in any capacity, and ordered to pay \$66,742.68 in restitution to a customer. The sanctions were based on findings that Pruss obtained from a public customer checks totaling \$66,742.68 with instructions to use the funds to purchase securities. Pruss failed to follow said instructions and used the funds for some purpose other than for the benefit of the customer. Pruss also failed to respond to NASD requests for information.

Richard L. Sladek (Registered Representative, Cuyahoga Falls, Ohio) was fined \$92,000, barred from association with any NASD member in any capacity, and required to pay \$12,000 in restitution to a member firm.

The sanctions were based on findings that Sladek received a \$12,000 check from a public customer for investment in a mutual fund. Without the customer's consent, Sladek failed to use the funds for their intended purpose and used the funds for some other purpose other than for the benefit of the customer. Sladek also failed to respond to NASD requests for information.

Craig D. Sterling (Registered Representative, Chicago, Illinois) 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 two business days. Without admitting or denying the allegations, Sterling consented to the described sanctions and to the entry of findings that he charged retail customers unfair prices, including excessive gross commissions, in the sale of securities.

James C. Turchiarilli (Registered Representative, Williamsville, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative and general securities principal. The sanctions were based on findings that Turchiarilli participated in private securities transactions and failed to give prior written notice to or obtain prior written authorization from his member firm to engage in such activities.

John J. Weber (Registered Representative, Newport Beach, 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 three business days. Without admitting or denying the allegations, Weber consented to the described sanctions and to the entry of findings that he charged retail customers unfair prices including excessive gross commissions in sales of securities.

February Actions

J. Richard Allison (Registered Representative, Palm Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Allison consented to the described sanctions and to the entry of findings that he signed two customers' names to annuity change request forms that changed the broker/dealer and representative of record for the customers and submitted the forms without the knowledge or consent of the customers.

Anthony Joseph Amaradio (Registered Representative, Laguna Hills, California) submitted an Offer of Settlement pursuant to which he was fined \$75,000, suspended from association with any NASD member in any capacity for 90 days, required to pay \$13,805.43 in restitution to customers, and must requalify by exam. Without admitting or denying the allegations, Amaradio consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of insurance products without having reasonable grounds for believing that such recommendations were suitable for the customers based upon their investment objectives, financial situations, and needs.

Amaradio's suspension began February 1, 1997.

Robert J. Gilbert (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gilbert consented to the described sanctions and to the entry of findings that he purchased and sold securities for the accounts of public customers without the customers' knowledge or consent and in the absence of written or oral authorization to exercise discretion in said accounts. The findings also stated that Gilbert failed to respond to NASD requests to appear for an on-the-record interview.

David J. Leytze (Registered Representative, Cincinnati, Ohio) submitted an Offer of Settlement pursuant to which

he was fined \$36,156, suspended from association with any NASD member in any capacity for five business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Leytze consented to the described sanctions and to the entry of findings that he participated in the solicitation and sale of preferred stock to public customers on a private basis and failed to give prior written notice to and obtain prior written authorization from his member firm to engage in such activities.

Elmer G. Schuchmann, Jr. (Registered Representative, Red Bud, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schuchmann consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving written notice to and receiving written approval from his member firms to engage in such activities.

Kevin Todd Smith (Registered Representative, Dixon, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he obtained a \$3,000 check from a public customer with instructions to use the funds to pay a loan against the customer's life insurance policy. The NASD found that Smith failed to follow the customer's instructions and used the funds for some purpose other than for the benefit of the customer.

State First Financial, Inc. (Lansing, Michigan), Jerry G. Sutton (Registered Principal, East Lansing, Michigan), and Karen S. Smelker (Registered Representative, Lansing, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Sutton were fined \$13,500, jointly and severally and Smelker was fined \$16,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sutton, permitted Smelker to engage in the investment banking or securities business and function as a representative when she was barred and subject to disqualification.

March Actions

Mark Antonio Allwood (Registered Representative, Bronx, New York) was fined \$48,519.75 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Allwood obtained checks totaling \$8,024.82 issued by his member firm and made payable to public customers, cashed the checks, and used the funds for some purpose other than for the benefit of the customers without their knowledge or consent. Allwood also obtained a public customer's signature on a policyowner service request form under the pretense that the form would be used to change the beneficiary on the customer's variable life policy. Furthermore, Allwood failed to respond to NASD requests for information.

Richard W. Bosley (Registered Representative, Cincinnati, Ohio) was fined \$38,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bosley received a \$2,970 check from a public customer for the purchase of a mutual fund and without the customer's knowledge or consent, used the funds for some purpose other than for the benefit of the customer. Bosley also failed to respond to NASD requests for information.

Simone Joseph DiBella (Registered Representative, Clinton Township, Michigan) 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, DiBella consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and

failed to give prior written notice of such sales to his member firm, and to obtain prior written authorization from his member firm to engage in such activities.

Jacqueline Marie Freeze (Registered Representative, Huntington Woods, Michigan) 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, Freeze consented to the described sanctions and to the entry of findings that she participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from her member firm, to engage in such activities.

Richard Geiger (Registered Representative, Peoria, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and prohibited for one year from qualifying and/or acting in any principal capacity with any NASD member firm. Without admitting or denying the allegations, Geiger consented to the described sanctions and to the entry of findings that he was associated with a member firm as its president, while failing to properly qualify and/or register in the appropriate capacity prior to engaging in such capacity with the firm. The findings stated that Geiger, acting on behalf of his member firm, effected securities transactions while failing to timely and accurately report the transactions and while failing to disclose accurate information on customer confirmations. The NASD also found that Geiger, acting on behalf of his member firm, permitted an individual to engage in the investment banking or securities business as a representative with his member firm, while the individual failed to properly qualify and register in the appropriate capacity.

Charles William Maniaci (Registered Representative, Detroit, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$83,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maniaci consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities. The findings also stated that Maniaci failed to respond to NASD requests for information.

Michael W. McGhee (Registered Representative, Columbus, Ohio) 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, McGhee consented to the described sanctions and to the entry of findings that he obtained unauthorized loans and dividend withdrawals from public customers by signing their names to service request forms for their insurance policies without their permission.

Mark Walter Promack (Registered Representative, Clinton Township, Michigan) submitted an Offer of Settlement 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, Promack consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities.

Angel B. Rivas (Registered Representative, Madrid, Spain) submitted an Offer of Settlement pursuant to which he was fined \$260,000, barred from association with any NASD member in any capacity, and required to pay \$52,000 in restitution to his member firm. Without admitting or denying the allegations, Rivas consented to the described sanctions and to the entry of findings that he transferred \$39,000 to his personal bank account from the operation account of his member firm without the firm's

knowledge or consent and in the absence of any entitlement of such funds. The findings also stated that Rivas issued checks totaling \$3,500 to an attorney who rendered no services to his member firm but instead rendered services to Rivas personally without the knowledge or consent of his member firm. Furthermore, the NASD determined that Rivas issued a \$20,000 bonus check to himself and failed to deduct amounts required to be withheld, and thereafter, submitted a false invoice when the payment was questioned by his member firm's auditors. The NASD found that Rivas failed to respond to NASD requests for information.

Patrick Lee Roese (Registered Representative, Columbus, Ohio) 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, Roese consented to the described sanction and to the entry of findings that he accepted \$11,000 from public customers for the purchase of security and insurance products, deposited the funds into the account of a financial planning company he created as a sole proprietorship, disbursed \$5,000 for a customer's securities purchases, and used the remaining \$6,000 for his own benefit.

Richard W. Rohde (Registered Representative, Rocky River, Ohio) 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 \$42,857.31 in restitution to a member firm. Without admitting or denying the allegations, Rohde consented to the described sanctions and to the entry of findings that he received accumulated dividends, cash surrender values, and policy loans from insurance policies or annuities maintained by public customers totaling \$46,996.59, applied \$4,142.28 of the funds to premium payments, and retained the remaining \$42,857.31 for his own use and benefit.

David D. Ryan (Registered Representative, Chicago, Illinois) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ryan failed to respond to NASD requests for information.

Kenneth Lawrence Schmidt (Registered Representative, Grosse Pointe Farms, Michigan) 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, Schmidt consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities.

Timothy J. Smith (Associated Person, Plymouth, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$80,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities.

Scott Michael Sowles (Registered Representative, Clarkston, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$165,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sowles consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities. The findings also stated that Sowles failed to respond to NASD requests for information.

Raymond L. Stekloff (Registered Representative, Rochester, New York) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stekloff provided a letter to a public customer that was intended to induce the customer to transfer an individual's retirement account back to his member firm from another firm by offering the customer \$15,000 to compensate him for previous losses while the account was handled by his member firm, or a guarantee that this account would be worth \$125,000 on a certain date. The letter, written by Stekloff, falsely purported to be from a regional vice president of his member firm. Stekloff also failed to respond to NASD requests for information.

George Arthur Stemple (Registered Representative, Crete, Illinois) was fined \$75,000, barred from association with any NASD member in any capacity, and required to pay \$5,000 in restitution. The sanctions were based on findings that Stemple obtained a \$5,000 check that represented a partial surrender of an insurance policy owned by a public customer, endorsed the check, and used the proceeds for some purpose other than for the benefit of the customer. Furthermore, Stemple signed a Form U-4 that failed to disclose a final order permanently revoking his Indiana insurance license. Stemple also failed to respond to NASD requests for information.

Steven Richard Wilmoth (Registered Representative, East Pointe, Michigan) submitted an Offer of Settlement 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, Wilmoth consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities.

Michael Francis Zapytowski (Registered Representative, Roseville, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zapytowski consented to the described sanctions and to the entry of findings that he engaged in private securities transactions while failing to give prior written notice of, and obtain prior written authorization from, his member firm to engage in such activities.

Gus Neno Zoppi, Jr. (Registered Representative, Rochester Hills, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$115,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zoppi consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities. The findings also stated that Zoppi failed to respond to NASD requests for information.

Gus Neno Zoppi, III (Registered Representative, Oak Park, Michigan) 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, Zoppi consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice of, and to obtain prior written authorization from, his member firm to engage in such activities. The findings also stated that Zoppi failed to respond to NASD requests for information.

District 9—Delaware, District of Columbia, Maryland, southern New Jersey (the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem), Pennsylvania, Virginia, and West Virginia

December Actions

Terrance L. Areford (Registered Representative, Morgantown, West Virginia) submitted an Offer of Settlement 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, Areford consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to an application for a variable annuity and submitted the application to his member firm without the authorization or consent of the customer.

Charles H. Boyd (Registered Principal, Baltimore, Maryland) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Boyd affixed the endorsements of public customers on a \$25,000 check and deposited the check to a bank account of a corporation in which he had an ownership interest without the prior authorization of the customers. Boyd also failed to respond to NASD requests for information.

Edwin G. Carpenter, II (Registered Representative, Philadelphia, Pennsylvania) submitted an Offer of Settlement 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, Carpenter consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to appear and provide testimony in connection with an investigation.

Christopher C. Chaney (Registered Representative, Jessup, Maryland) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chaney purchased shares of stock for the account of a public customer without the customer's knowledge or consent. Chaney also failed to respond to NASD requests for information.

Michael G. Cohen (Registered Principal, Philadelphia, Pennsylvania) submitted an Offer of Settlement 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, Cohen consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to provide testimony.

Francis P. Collins (Registered Representative, Drexel Hill, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$250,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collins consented to the described sanctions and to the entry of findings that he distributed internal summaries to registered representatives regarding recommended stocks that failed to disclose material risks and material adverse financial information about the stocks. The findings also stated that Collins discouraged registered representatives from doing their own research into recommended stocks and gave scripts to registered representatives about stocks for use in their sales presentations to public customers containing price predilections, material omissions, and material misrepresentations. Furthermore, the NASD found that Collins discouraged registered representatives from processing unsolicited sell orders from customers and encouraged or permitted registered representatives he supervised to execute unauthorized trades in customer accounts to purchase recommended stocks.

John R. Cox (Registered Representative, Unionville, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cox failed to respond to NASD requests for information about allegations by policyholders of misrepresentation and unauthorized loan transactions.

Michael F. Fuoco (Registered Representative, Cherry Hill, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The

sanctions were based on findings that Fuoco failed to respond to NASD requests for information.

Anthony D. Hammond (Registered Representative, Owings Mills, Maryland) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hammond failed to respond to NASD requests for information about customer complaints.

Robert C. Intrieri (Registered Representative, North Wales, Pennsylvania) submitted an Offer of Settlement 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, Intrieri consented to the described sanctions and to the entry of findings that, without the prior authorization or consent of public customers, he affixed signatures purporting to be those of the customers to insurance forms and thereafter submitted them to his member firm.

John T. Jarvis (Registered Representative, Pittsburgh, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jarvis failed to respond to NASD requests for information about customer complaints.

Robert R. McMurtrie (Associated Person, Voorhees, New Jersey) was fined \$250,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McMurtrie engaged in a fraudulent scheme to misstate his member firm's reported assets, capital, and net capital, thereby concealing its actual financial condition. McMurtrie's aforementioned conduct enabled his member firm to effect securities transactions while failing to maintain its required level of net capital. McMurtrie also failed to respond to NASD requests for information.

Anthony W. Palma (Registered Principal, Ft. Lauderdale, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Palma submitted false information to the NASD in connection with an investigation.

Joseph A. Panasiuk (Registered Representative, Ardsley, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Panasiuk failed to respond to NASD requests for information.

David J. Pawlicki (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pawlicki consented to the described sanctions and to the entry of findings that he affixed a customer's signature to a life insurance policy application, a policy delivery receipt, and related documents and submitted the applications to his member firm without the customer's authorization or consent. The findings also stated that Pawlicki, in connection with the submission of the aforesaid application, caused \$302.90 to be withdrawn from another policy owned by the customer and applied to pay the initial annual premium on the new application.

Roy Allan Rubin (Registered Principal, Collegeville, Pennsylvania) and Joseph Francis Chester, Jr. (Registered Principal, Princeton, New Jersey) submitted Offers of Settlement pursuant to which Rubin was fined \$250,000 and barred from association with any NASD member in any capacity. Chester was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Rubin and Chester engaged in abusive sales practices and directed, fostered, or induced registered representatives to also engage in abusive sales practices. The findings also stated that Chester engaged in unauthorized trading and directed registered representa-

tives he supervised to engage in unauthorized trading as well. Furthermore, the NASD determined that Rubin and Chester failed to establish, implement, and enforce reasonable procedures to deter or prevent the above violations.

William T. Weiss (Registered Representative, Orangeville, Pennsylvania) 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, Weiss consented to the described sanctions and to the entry of findings that without the authorization or consent of public customers, he affixed or caused to be affixed to checks and a disbursement request form the endorsements of public customers, negotiated the checks, and deposited one of the checks in his bank account.

January Actions

Peter Caruso (Associated Person, Brooklyn, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Caruso arranged and conspired to have an imposter take the Series 7 qualification exam for him. Caruso also failed to respond to NASD requests for information.

Dominick M. Schina (Registered Representative, Jobstown, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$15,000, barred from association with any NASD member in any capacity, and required to pay a \$6,513.99 arbitration award. Without admitting or denying the allegations, Schina consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. The NASD also found that Schina failed to pay an arbitration award.

Ronald G. Zimmerman Jr. (Registered Representative, Arlington, Texas) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zimmerman, acting without the authorization or consent of a policyholder, affixed a signature purporting to be that of the policyholder to a request form for a \$2,166 policy loan and submitted the form to his member firm.

February Actions

James W. Gaskins, Jr. (Registered Representative, Wilmington, Delaware) was fined \$60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gaskins received a \$7,462.10 redemption check from the account of a public customer, negotiated the check, and failed to remit the funds for their intended purpose. Gaskins also failed to respond to NASD requests for information.

Stephen Gritzan (Registered Representative, Washington, DC) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gritzan recommended and sold securities to public customers when he knew of negative material information as to the risks of the securities or was reckless in not knowing and omitted to disclose the negative information to the customers. Gritzan also recommended the purchase and sale of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for them in light of the size and frequency of the transactions, the nature of the securities, and their financial situation, needs, and investment objectives. Furthermore, Gritzan exercised discretionary power over the accounts of public customers and used such authority to effect discretionary securities transactions in these accounts without first having such discretionary power reduced to writing and accepted by his member firms. Gritzan also executed unauthorized transactions in customer accounts.

James M. Hayes (Registered Representative, Suffolk, Virginia) was fined \$200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hayes received \$35,000 in

checks from public customers for investment purposes and instead, deposited the checks and converted the funds for his own use. Furthermore, Hayes prepared and provided to public customers statements misrepresenting that \$30,000 had been used to purchase shares in a fund. Hayes also failed to respond to NASD requests for information.

Francis M. Kalitsi (Registered Representative, Washington, DC) 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 business days. Without admitting or denying the allegations, Kalitsi consented to the described sanctions and to the entry of findings that he mistakenly put in an order ticket to purchase 10,000 shares of stock for a public customer instead of 1,000 shares. According to the findings, rather than change the order to 1,000 shares, Kalitsi contacted seven other clients and recommended that they purchase the stock. The NASD found that by this time, the price had dropped and Kalitsi failed to advise his customers of this.

Oscar J. Leon (Registered Representative, Centreville, Virginia) 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, Leon consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. The findings also stated that Leon forged the signature of a public customer on 21 checks totaling \$19,300 and negotiated and converted \$7,600 of the proceeds for his own use and benefit.

Norman L. Patterson (Registered Representative, Pittsburgh, Pennsylvania) 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, Patterson consented to the described sanctions and to the entry of findings that he received \$1,008.47 from public customers in payment of insurance premiums and failed to remit the funds promptly to his member firm.

Rodney M. Phillips (Registered Representative, Morgantown, West Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$175,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Phillips consented to the described sanctions and to the entry of findings that he sought and obtained the issuance of loans by his member firm against the insurance policies of public customers. The NASD also found that Phillips obtained possession of the loan checks totaling \$36,236 and converted the funds for his own use and benefit without the knowledge or consent of the customers.

Cecil W. Piper (Registered Representative, Washington, DC) was fined \$26,750, barred from association with any NASD member in any capacity, and required to pay \$25,000 plus interest in restitution to a customer. The sanctions were based on findings that Piper participated in a private securities transaction while failing to provide written notice of such transaction to his member firm. Piper also recommended the purchase of securities to a public customer without having reasonable grounds for believing such recommendation was suitable for the customer in light of the customer's financial circumstances, needs, and objectives.

Frederick W. Slaughter (Registered Representative, Westminster, Maryland) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Slaughter failed to respond to NASD requests for information.

Salvatore J. Spena (Registered Representative, McKee City, New Jersey) was fined \$5,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on

findings that Spena completed, signed, and submitted to his member firm applications for life insurance policies without the knowledge or consent of the applicants. Spena also received from insurance customers \$1,437.88 for automobile insurance coverage and failed to submit the funds to the proper entities.

Matthew Telesca (Registered Representative, Allentown, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Telesca failed to respond to NASD requests to appear for an on-the-record interview concerning a customer complaint.

March Actions

Richard N. Morello (Registered Representative, Oakland, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$400,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Morello consented to the described sanctions and to the entry of findings that he forged customer signatures on various forms submitted to his member firm, obtained possession of checks issued by his member firm payable to the customers, forged the customers' signatures on the checks, and converted the funds for his own use and benefit. The findings also stated that Morello received funds from customers in payment of insurance premiums or for other purposes and failed to apply the funds as directed. According to the findings, Morello, instead, converted the funds for his own use and benefit or caused the funds to be used or applied on behalf of or for the benefit of other customers.

District 10—the five boroughs of New York City and the adjacent counties in New York (the counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester) and northern New Jersey (the state of New Jersey, except for the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem)

December Actions

None

January Actions

Mitchell Aguirre (Registered Representative, Woodhaven, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Aguirre failed to respond to NASD requests for information about a customer complaint.

Eddie Harrison Artis (Registered Representative, Jersey City, New Jersey) 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, Artis consented to the described sanctions and to the entry of findings that he received \$5,000 from a public customer for investment purposes and instead, converted the funds to his own use without the customer's knowledge, authorization, or consent. Artis also failed to respond to NASD requests for information.

John D'Esposito (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 D'Esposito had an imposter take the Series 7 exam on his behalf.

James C. DiAngelo (Registered Representative, Kings Park, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that DiAngelo, as a result of a customer's complaint about an alleged unauthorized trade executed in the customer's account, paid the customer \$450 for losses without

his member firm's knowledge or consent. DiAngelo also failed to respond to NASD requests for information.

Danilo Dario Diaz (Registered Representative, Deer Park, New York) was fined \$5,277 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Diaz consented to the described sanctions and to the entry of findings that he altered a money order that was submitted by a public customer for insurance payment and, instead, used the money order to reinstate a lapsed policy for another customer.

Rafael Diaz (Associated Person, Bronx, New York) was fined \$28,628.10 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Diaz caused checks totaling \$1,150 to be drawn on the insurance policies of public customers, wrongfully obtained possession of the checks, forged the customers' signatures, cashed the checks, and converted the funds to his own personal use. Diaz also received from public customers \$575.62 in life insurance policy premiums, failed to submit the premiums, and converted the funds to his own personal use. Furthermore, Diaz failed to respond to NASD requests for information.

Lev George Fedyniak (Registered Representative, Poughkeepsie, New York) was fined \$170,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fedyniak received \$30,000 from public customers for purchasing investments on their behalf and instead, invested these monies with a non-member firm and failed to return any of the customers' money at their request. Fedyniak also failed to respond to NASD requests for information.

Gilmore Securities & Company (Fair Lawn, New Jersey) and Brian K. Gilmore (Registered Principal, Westwood, New Jersey) submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gilmore, permitted the total outstanding principal amounts of its satisfactory subordinated agreements to exceed 70 percent of its debt-equity total in contravention of SEC Rule 15c3-1(d).

Keith D. Hall (Associated Person, Montclair, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hall failed to appear at the NASD for an on-the-record interview.

Felix A. Rodriguez (Registered Representative, New York, New York) 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, Rodriguez consented to the described sanctions and to the entry of findings that he effected the purchase of securities in the accounts of public customers without their knowledge or authorization.

Shawn C. Ruffin (Registered Representative, Jersey City, New Jersey) was fined \$220,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ruffin executed unauthorized transactions in customer accounts without their knowledge, authorization, or consent. Ruffin also executed unsuitable options transactions in a customer's account without having a reasonable basis to believe that the transactions were suitable for the customer and made misrepresentations to the customer regarding the transactions. Furthermore, Ruffin submitted a false new account form to his member firm and failed to respond to NASD requests for information.

Thomas M. Scully (Registered Representative, Franklin Square, New York) was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$682.50 in restitution to a member firm. The sanctions were based on findings that Scully made misrepresentations to a public customer in an effort

to induce the customer to purchase shares of a stock. Furthermore, Scully purchased shares of common stock in the account of public customers without their prior knowledge, authorization, or consent. In addition, Scully purchased or effected the purchase of shares of stock in his securities account at his member firm and failed to pay for the purchase. Scully also failed to respond to NASD requests for information.

George C. Vafias (Registered Representative, Brooklyn, 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 three months, and required to pay \$3,607.14 in restitution to a public customer. Vafias also must disgorge \$815.55 plus interest and is required to requalify by exam. Without admitting or denying the allegations, Vafias consented to the described sanctions and to the entry of findings that he purchased and sold shares of stock in the accounts of public customers without their prior knowledge or consent.

Brian S. Walker (Registered Representative, Wanaque, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$455,600 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he received funds from public customers for investment purposes and, instead, converted the funds for his own use without the customers' knowledge, consent, or authorization. The findings also stated that Walker failed to respond to NASD requests for information.

Willis White, III (Registered Representative, Hempstead, New York) was fined \$10,000, suspended from association with any NASD member in any capacity for two months, required to requalify by exam, ordered to pay \$3,503.12 in restitution to customers, and ordered to disgorge \$504.25. The sanctions were based on findings that White effected unauthorized transactions in customer accounts without the knowledge, authorization, or consent of the customers.

February Actions

Alan Bruce Dustal (Registered Representative, South River, New Jersey) was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay restitution. The sanctions were based on findings that Dustal misappropriated customer funds totaling over \$600,000 for his own use and benefit. Dustal also failed to respond to NASD requests for information.

Paul D. Evanko (Registered Principal, Glen Gardner, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Evanko consented to the described sanctions and to the entry of findings that he gave or dictated scripts about recommended stocks to registered representatives for use in their sales presentations to customers that contained price predictions, material omissions, and material misrepresentations.

Merrill Lynch, Pierce, Fenner & Smith Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it allowed officers to act in the capacity of a general securities principal and/or representative without appropriate registration. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures and failed to supervise adequately the registration status of individuals acting in the capacity of a general securities principal.

Ronald A. Perez (Registered Representative, East Brunswick, New Jersey) was fined \$30,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a

New York DBCC decision. The sanctions were based on findings that Perez failed to disclose criminal charges on a Form U-4 and failed to respond to NASD requests for information.

This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

John Romano (Registered Representative, Fort Salonga, 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 105 days, required to requalify by exam in all capacities, and must refrain from opening a brokerage account, either for himself or his spouse, at a firm other than that of his employer for five years. Without admitting or denying the allegations, Romano consented to the described sanctions and to the entry of findings that he opened a securities account in his wife's name at another member firm and neither notified his member firm in writing that he had opened the account nor advised the other firm of his association with his member firm. The findings also stated that Romano placed orders for the same account without giving prior written notice to his member firm of his intention to execute these transactions. Furthermore, the NASD found that Romano, with an intent to defraud his member firm, knowingly or recklessly sold securities from his member firm's proprietary trading account at prices substantially below the prevailing market price, to the detriment of his member firm.

Peter Kittl Usamanont (Associated Person, New York, New York) submitted an Offer of Settlement 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, Usamanont consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about his termination from a member firm.

Michael Anthony Valenoti (Registered Representative, Lake Ariel, Pennsylvania) 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 a principal capacity for 30 days. Without admitting or denying the allegations, Valenoti consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce adequate supervisory procedures.

Barry C. Wilson (Registered Principal, Bloomfield, New Jersey) was fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a financial and operations principal. The SEC affirmed the sanctions following appeal of a January 1996 NBCC decision. The sanctions were based on findings that Wilson failed to respond completely and timely to NASD requests for information regarding an investigation of his member firm.

March Actions

John F. Bald (Registered Representative, Carmel, New York) was fined \$1,270,000, barred from association with any NASD member in any capacity, and required to pay restitution. The sanctions were based on findings that Bald converted for his own use more than \$250,000 from the accounts of a bank customer. Bald also failed to respond to NASD requests for information.

Buttonwood Securities, Inc. (New York, New York) and Edward A. McKay, Jr. (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. McKay was suspended from association with any NASD member as a general securities principal for 30 days and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McKay, conducted a securities business while failing to maintain its minimum required

net capital. The findings also stated that the firm, acting through McKay, did not abide by the terms and conditions agreed to in its restrictive agreement with the NASD.

John Joseph Cummins (Registered Representative, New York, New York) was fined \$155,000, barred from association with any NASD member in any capacity, and ordered to pay \$50,000 in restitution to a customer. The sanctions were based on findings that Cummins engaged in private securities transactions without giving prior written notice to or obtaining approval from his member firm to participate in such transactions. Furthermore, Cummins obtained \$25,000 from a public customer under false pretenses and converted the funds for his own use and benefit. Cummins also failed to respond to NASD requests for information.

Rick Fertel (Associated Person, Brooklyn, New York) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fertel arranged to have an impostor take the Series 7 exam on his behalf. Fertel also failed to respond to NASD requests to appear for an on-the-record interview.

Frederick Fusco (Registered Representative, Staten Island, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fusco failed to respond to NASD requests for information.

Peter B. Harman (Registered Representative, Cronpond, New York) was fined \$29,939.50 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Harman received \$823.25 from a public customer as insurance premium payments, failed to credit the customer's insurance policy and, instead, converted the funds for his own use. Harman also failed to respond to NASD requests for information.

Fredric A. Hickson (Associated Person, Staten Island, New York) was fined \$72,949 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hickson filed a Form U-4 that failed to disclose his association with a member firm and a criminal arrest. Furthermore, Hickson executed securities transactions in customer accounts while unregistered and took steps to conceal his misconduct from regulatory authorities. Hickson also failed to respond to NASD requests for information.

Jeffrey Peter Ihm (Registered Representative, Farmingdale, New York) was fined \$98,832.50, barred from association with any NASD member in any capacity, and ordered to pay \$13,262.07 in restitution to a customer. The sanctions were based on findings that Ihm received checks totaling \$15,766.50 from a public customer for investment purposes and, instead, endorsed the checks and converted the funds for his own use and benefit. Ihm also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Ashwin S. Kumar (Registered Representative, Forest Hills, New York) was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution. The sanctions were based on findings that Kumar received a \$10,000 check from a public customer for investment purposes, endorsed and cashed the check, and converted the funds for his own use. Kumar also failed to respond to NASD requests for information.

John J. Labeck (Registered Representative, Valley Stream, New York) was fined \$204,125, barred from association with any NASD member in any capacity, and ordered to pay \$10,825 in restitution to a customer. The sanctions were based on findings that, in a scheme to defraud his member firm and a public customer, Labeck executed unauthorized trades, forged a customer's signature, and misused customer funds. In addition, Labeck executed the sale and purchase of shares of common stock in the accounts of public customers without the customers' prior knowledge, authorization, or consent. Furthermore,

Labeck participated in private securities transactions and caused a falsified new account form to become a part of his member firm's books and records. Labeck also failed to respond to NASD requests for information.

Patrice Lambert (Registered Representative, Staten Island, New York) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lambert signed and filed with the NASD a Form U-4 that failed to disclose that he had been arrested and convicted of three crimes. Lambert also failed to respond to NASD requests for information.

Dmitry A. Levitsky (Registered Representative, Philadelphia, Pennsylvania) was fined \$80,000, barred from association with any NASD member in any capacity, and ordered to pay \$14,504.50 in restitution to customers. The sanctions were based on findings that Levitsky effected unauthorized transactions in customer accounts. Levitsky also distributed business cards to customers representing that he was the president of his member firm without the firm's authorization. Furthermore, Levitsky failed to respond to NASD requests for information.

Steven Markov (Registered Principal, New York, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Markov failed to respond to NASD requests for information about his termination from a member firm.

Gilbert Ramos (Registered Representative, Staten Island, New York) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ramos executed the purchase and sale of securities in the accounts of public customers without their knowledge, authorization, or consent. Ramos also failed to respond to NASD requests to appear for an on-the-record interview.

District 11—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester; the counties of Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)

December Actions

Clayton L. Chamberlain (Registered Representative, Fulton, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chamberlain failed to respond to NASD requests for information about customer complaints.

Dean R. Jennings (Registered Representative, Tolland, Connecticut) 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, Jennings consented to the described sanctions and to the entry of findings that he facilitated loan distributions from insurance and annuity policies of public customers totaling \$5,316.39 and caused the checks to be cashed or deposited to his account for his personal use and benefit without the knowledge or consent of the customers.

Joseph K. McCusker (Registered Representative, Center Conway, New Hampshire) 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, McCusker consented to the described sanctions and to the entry of findings that he forged customer signatures on insurance policy dividend checks totaling \$505.46 without the customers' knowledge or consent.

January Actions

Klaus Foetzsch (Registered Principal, Dusseldorf, Germany) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and required to requalify by exam. Without admitting or denying the allegations, Foetzsch consented to the described sanctions and to the entry of findings that, on behalf of his member firm, he created and controlled a fictitious discretionary account through which he effected various securities transactions. The NASD found that, in connection with the aforementioned activities, Foetzsch knowingly prepared and established various books and records under the fictitious account. The findings also stated that Foetzsch knowingly submitted a false and misleading Form U-5 to the NASD regarding the termination of a registered representative.

Oftring & Co., Inc. (Worcester, Massachusetts) and Robert J. Oftring (Registered Principal, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the respondents were fined \$15,000, jointly and severally. In addition, Oftring must requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Oftring, failed to establish and maintain a supervisory system to supervise the activities of each registered representative and associated person of the firm adequately and failed to enforce compliance with its written supervisory procedures. The findings also stated that the firm, acting through Oftring, allowed a former registered representative of the firm to solicit new business from customers and receive securities sales commission compensation when the individual was not registered with the firm.

February Actions

None

March Actions

Ralph W. Grant (Registered Representative, Shelton, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanctions and to the entry of findings that he withheld and misappropriated \$23,496.29 representing premium payments on insurance policies and variable annuity contracts for public customers.

Michael J. Ireland (Registered Representative, Madison, Maine) 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, Ireland consented to the described sanctions and to the entry of findings that he submitted fictitious insurance policy disbursement request forms for public customers wherein he received two checks totaling \$3,877.67. The findings also stated that Ireland forged the customers' signatures, double endorsed the checks, and deposited them into his personal account for his own use and benefit.

Richard B. McCulloch (Registered Representative, Westerly, Rhode Island) submitted an Offer of Settlement 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, McCulloch consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction outside the regular course or scope of his employment with his member firm without giving prior written notice to his member firm describing in detail the proposed transaction, his role therein, and whether he received or was to receive any selling compensation in connection with the transaction.

Richard N. Nathman (Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver

and Consent pursuant to which he was fined \$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nathman consented to the described sanctions and to the entry of findings that he received \$1,080 from a public customer intended for an investment in mutual funds. The NASD found that Nathman never invested the funds as intended and misused the funds.

Prime Capital Services, Inc. (Poughkeepsie, New York), Michael P. Ryan (Registered Principal, Poughkeepsie, New York) and Ralph A. Porpora (Registered Principal, Copake, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Ryan and Porpora, failed to establish and enforce written supervisory procedures. The findings also stated that the firm, acting through Ryan and Porpora, misrepresented to investors the use of the proceeds from an intrastate best-efforts offering.

David A. Stevenson (Registered Representative, Farmington, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000,000 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 received customer funds intended for mutual fund investments and caused the unauthorized disbursement of liquidation checks from existing mutual fund accounts totaling \$700,000 that he converted for his own use and benefit without the customer's knowledge or consent.

Market Regulation Committee

December Actions

None

January Actions

Castle Securities Corporation (Freeport, New York) and Michael T. Studer (Registered Principal, Rockville Centre, New York) were fined \$25,000, jointly and severally and required to pay \$19,373.56 plus interest in restitution to customers. In addition, Studer was suspended from association with any NASD member in any capacity for 30 days and required to requalify by exam as a general securities principal. The NBCC imposed the sanctions following appeal of a Market Regulation Committee Decision. The sanctions were based on findings that the firm manipulated the price of a common stock in that it used its dominant and controlling position in the market to establish and maintain an artificial and inflated price of the stock and arbitrarily increased that price when it was known there was little or no investor or dealer interest in the stock and no favorable news or developments concerning the stock. Furthermore, the firm charged its retail customers unfair and fraudulently excessive mark-ups ranging from 16 to 66 percent over the prevailing market price for the common stock. The firm, acting through Studer, also failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the firm's customers from being charged manipulated prices and unfair and fraudulently excessive markups in a common stock. The firm and Studer have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Richard E. Gregory (Registered Representative, Irving, Texas) 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 16 months. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he induced a public customer to purchase a security by making predictions that he had reason to know, or was reckless in not knowing, lacked a reasonable or adequate basis in fact.

Susan Baker Head (Registered Principal, Princeton, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$3,750, suspended from association with any NASD member in any capacity for two weeks, and suspended from association with any NASD member in any principal capacity for two months. Without admitting or denying the allegations, Head consented to the described sanctions and to the entry of findings that she failed to detect the manipulative pattern of trading by her member firm.

Peter Dennis Mathews (Registered Principal, Edina, Minnesota), James Gus Oliver (Registered Principal, Grapeville, Texas), Robert Alan Williky (Registered Representative, Colleyville, Texas) Mark Joseph Vanyo (Registered Representative, Eagan, Minnesota), Lyle Emery Bettenhausen, Sr. (Registered Representative, Tampa, Florida) and Gloria Ann Williams (Registered Representative, Plano, Texas), Mathews, Oliver, Williky, Vanyo, and Bettenhausen submitted an Offer of Settlement pursuant to which Mathews was fined \$400,000 and barred from association with any NASD member in any capacity and Oliver was fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam. Williky was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days and Vanyo was fined \$50,000, suspended from association with any NASD member in any capacity, and required to requalify by exam. Bettenhausen was fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam. In a separate decision Williams was fined \$50,000 and barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, Mathews, Oliver, Williky, Vanyo, and Bettenhausen consented to the described sanctions and to the entry of findings that, in connection with a public offering, Mathews and Williky knowingly effected transactions that they knew or should have known, or were reckless in not knowing, were non-bona fide and designed to create the appearance of a successful completion of the offering. The findings also stated that Mathews and Williky knowingly or recklessly bid for and purchased, induced orders to bid for and purchase, and sold or resold, 20 percent of the offering while the distribution continued after its purported closing. Furthermore, the NASD determined that Mathews, Oliver, and Vanyo, by means of manipulative, deceptive, and other fraudulent devices and contrivances, effected a series of transactions that created actual and apparent trading in a stock, artificially supported the price, and were effected for the purpose of inducing the purchase or sale of the stock to others. The NASD found that Mathews, Oliver, and Bettenhausen made statements of material fact that they knew, had reason to know, or were reckless in not knowing, were false to induce retail customers to make investment decisions. The NASD also determined that Mathews executed transactions in the accounts of public customers that were not authorized and were made in order to support a stock price, further the aforementioned manipulative scheme, and avoid net capital deficiencies by lowering his member firm's inventory. The findings stated that Mathews also allowed an individual, who was precluded from functioning as a registered representative, to direct trading, update quotations, direct unauthorized transactions in customer accounts, and participate in selling group and retail sales efforts at his member firm. The individual also failed to establish, maintain, and enforce supervisory procedures to assure compliance with applicable rules, misused customer funds, and engaged in private securities transactions.

In addition, Williams failed to inform her member firm in writing concerning accounts and transactions she had at another member firm or inform the executing firm of her status with her member firm. Williams also failed to respond to NASD requests for information.

Dominick M. Schina (Registered Representative, Voorhees, 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, Schina consented to the described sanctions and to the entry of findings that he entered into oral and written agreements with a company in which he received compensation without disclosing to his member firm or customers that he had entered into the agreements.

Frank P. Zitkevitz (Registered Representative, Laurel Springs, New Jersey) submitted an Offer of Settlement 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, Zitkevitz consented to the described sanctions and to the entry of findings that he participated in private securities transactions and exercised discretion in the accounts of public customers without informing the customers of such transactions.

February Actions

Kevin T. Cabell (Registered Principal, Peachtree, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cabell failed to provide infor-

mation and testimony requested by the NASD in connection with an ongoing investigation.

Knight Securities, L.P. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$50,000 and required to pay \$166,230 in restitution to customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed day limit orders after such orders had expired. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce supervisory procedures that would detect and deter the above conduct.

Guy G. Mockbee (Registered Representative, Rochester, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mockbee failed to respond to NASD requests for information.

March Actions

Trautman Kramer & Co. (New York, New York), Gregory Owen Trautman (Registered Principal, Brooklyn, New York), Robert Joseph Kramer

(Registered Principal, New York, New York), and Peter Anthony Cardillo (Registered Representative, Marlton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$100,000, jointly and severally and required to pay \$70,453 plus interest in restitution to customers, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the recommendation and sale of a common stock, the firm, Trautman, and Kramer, failed to ensure that the firm's registered representatives disclosed that Trautman and Kramer were selling the stock. The findings also stated that the firm, Trautman, Kramer, and Cardillo failed to ensure that the firm's registered representatives were aware of and disclosed material information about the stock to their customers. Furthermore, the NASD determined that the firm, acting through Trautman and Cardillo, failed to establish, maintain, and enforce written supervisory procedures.

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