

# ALERT

## NASD Adopts New Code Of Procedure

On August 7, 1997, the Securities and Exchange Commission (SEC or Commission) approved the National Association of Securities Dealers, Inc.'s (NASD®) new Code of Procedure. [SR-NASD-97-28, approved in Securities and Exchange Commission Rel. No. 34-38908 (Aug. 7, 1997).] The new Code of Procedure became effective immediately, and its application to disciplinary proceedings is described on the following pages.

The SEC also approved rules relating to membership application procedures and procedures used to determine eligibility questions; impose limitations on the

operations of members; impose summary suspensions, non-summary suspensions, cancellations, or bars; and adjudicate denials of access. These rules also became effective immediately.

Immediately upon approval, these rules and an accompanying *Special NASD Notice to Members 97-55* were published electronically on the NASD Regulation, Inc., Web Site ([www.nasdr.com](http://www.nasdr.com)). For members without access to the Internet, the full text of the rules in printed format is available from NASD MediaSource at (301) 590-6142.

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## NASD To Eliminate Mandatory Arbitration Of Statutory Discrimination Claims

The NASD announced on August 7, 1997, that it would eliminate mandatory arbitration of statutory discrimination claims for registered brokers. Currently, the NASD requires all registered representatives and principals, as a condition of employment in the securities industry, to agree to arbitrate all employment and investor claims.

The new NASD policy would permit employees to choose between entering into private arbitration agreements with their employers, or reserving the right to

file a case in federal or state court for statutory discrimination claims. The NASD's proposed new rule will require enhanced disclosure to employees. The proposal also would require any brokerage firm that uses private arbitration agreements with its employees to specify an SRO or other arbitration forum that meets certain standards similar to those articulated in the American Bar Association's "Due Process Protocol."

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## Code Of Procedure

Under the new Code, NASD Regulation<sup>SM</sup> staff, rather than the District Committees or the Market Regulation Committee (formerly the Market Surveillance Committee), will determine whether to institute a disciplinary proceeding. The Hearing Panel issuing a decision in a disciplinary proceeding will consist of two industry representatives (the Panelists) and a Hearing Officer. Under the new rules, the Hearing Officer is a professional member of NASD Regulation's new Office of Hearing Officers (OHO) and chairs the Hearing Panel.

Before a case is heard, the Hearing Officer will be available to answer questions and resolve procedural issues. For most cases, the Hearing Officer will have one or more pre-hearing conferences to address such questions and resolve discovery and other scheduling issues. There are new rules relating to *ex parte* prohibitions and an express provision for a motions practice. After a case is heard the Hearing Panel will issue a written decision. If not appealed or called for review by the National Business Conduct Committee, the decision of the Hearing Panel represents the final decision of the NASD.

## Procedures Regarding Eligibility, Limitations On Operations, Summary And Non-Summary Suspensions, Cancellations, Bars, And Denials Of Access

The NASD amended the procedures relating to eligibility, limitations on operations, summary and non-summary suspensions, cancellations, bars, and denials of access to provide greater detail regarding the procedural rights of a participant in a proceeding and to conform such proceedings to the current corporate structure. The new rules are in the new Rule 9400 and 9500 Series.

## Rules Regarding Investigations And Sanctions

The NASD made some related changes to the Rule 8000 Series—Investigations and Sanctions. The Rule 8000 Series are the procedures used in NASD investigations and examinations to clarify the NASD’s authority to require members and their associated persons to testify under oath or affirmation and provide other information.

## Effectiveness Provisions Relating To The Code Of Procedure

The new Code of Procedure will apply to disciplinary proceedings as follows.

**A. A 14-Calendar Day “Opt-In” Period.** A respondent who is named in a complaint that was authorized prior to August 7, 1997, may opt to have the disciplinary proceeding go forward under the new Code if the first attempted service of the complaint upon the respondent occurred no earlier than 14 calendar days before August 7, 1997, *i.e.*, July 24, 1997. A respondent must notify NASD Regulation staff in writing of its request to have the disciplinary proceeding administered under the new Code prior to or on the date the respondent’s answer is due. However, in a disciplinary proceeding involving more than one respondent, all respondents must opt in for the new Code to apply.

**B. Complaints, Offers Of Settlement.** If a complaint was authorized prior to August 7, 1997, a respondent may not seek to obtain reconsideration of whether the complaint should have been authorized under the new Code. Otherwise, the application of the new Code to a complaint and the related disciplinary pro-

ceeding is established by determining when the complaint was authorized and when NASD staff first attempted service of the complaint. For complete details of when the former or new Code applies to complaints; offers of settlements; Acceptance, Waiver and Consent proceedings; and appeals, see *Special NASD Notice to Members 97-55*.

## The Case Authorization Process Investigations

Investigations under the new Code will be handled in essentially the same manner as performed previously. At the conclusion of an investigation, the staff will determine whether formal action is appropriate. In certain cases, the staff may determine that formal disciplinary action is not warranted, but informal cautionary action is appropriate. In such instances, the staff may issue a Letter of Caution and may also schedule a meeting known as a “Compliance Conference.”

## Case Authorization Of A New Disciplinary Proceeding

As of August 7, 1997, all District Office cases will be authorized by the new Case Authorization Unit (CAU) in the Department of Enforcement. After review of the case at the District Office level, the recommendation to bring a formal disciplinary action will be forwarded to the CAU.

Additionally, the newly formed Office of Disciplinary Policy (ODP) will assist in the development of overall disciplinary policy for the organization. On behalf of the Office of the President of NASD Regulation, ODP will review and approve all recommendations by District Offices to file significant or complex formal actions raising important regulatory or policy issues. ODP review will be

concurrent, and in coordination with CAU review. The ODP also will provide an objective review and approval of cases that are investigated by the Department of Enforcement in Washington D.C., as well as those that relate to quality-of-market issues. All offers of settlement supported by the staff will be reviewed in the same manner as described above for filing cases.

## Summary

The NASD urges members and their associated persons to review the new rules. Questions regarding the Code of Procedure may be directed to: Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8985, or Katherine Malfa, Chief Counsel, Department of Enforcement, NASD Regulation, at (202) 974-2853. Questions regarding the procedures in the Rule 9400-9500 Series may be directed to Mary Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252. Questions regarding the Rule 8000 Series may be directed to Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation, at (202) 728-6911, or Mary Dunbar, at (202) 728-8252. Questions regarding the case authorization process may be directed to William R. Schief, Vice President, Department of Enforcement, NASD Regulation, at (202) 974-2858, or Louise Corso, Senior Attorney, Department of Enforcement, NASD Regulation, at (202) 974-2835. Questions regarding the new or continuing membership admission process under the Rule 1010 Series may be directed to Daniel M. Sibears, at (202) 728-6911, or Mary Dunbar, at (202) 728-8252. □

To help formulate this policy, NASD and NASD Regulation senior management formed an Advisory Committee on Employment Discrimination Claims. The Advisory Committee conducted a meeting in June at which it heard from five panels of speakers invited from civil rights groups and the Equal Employment Opportunity Commission, member firms, attorneys who represent employees, attorneys who represent broker/dealers, and employee organizations. The Advisory Committee also heard from experts in the employment arbitration field. The Advisory Committee then discussed the issues with NASD senior management and its views were presented to the NASD and NASD Regulation Boards at their most recent meetings.

Specifically, the Boards voted to take the following actions:

*Amend the NASD's rules to remove from the mandatory arbitration requirement all employment discrimination and sexual harassment claims made under federal or state statutes.*

This does not require amendment to the Form U-4 itself. The Form U-4 will still require arbitration of other disputes among member firms and their employees, as well as disputes relating to customers.

*Make the rule change effective one year after approval by the SEC.*

The one-year period will allow the NASD time to enhance the arbitration forum, making it more attractive to employees, and to produce explanatory material for employees and firms.

The one-year period also will give firms and employees time to consider their options.

*Keep all other types of employment disputes in arbitration.*

If a discrimination claim is intertwined with compensation and defamation claims, the discrimination claim can proceed in court and the other claims must proceed in arbitration, unless the parties agree to have all the claims decided in one forum.

*Require any arbitration agreements used by firms to select as the arbitration forum either an SRO or another forum that meets certain due process standards.*

The NASD will work with member firms and employees to define the details of such standards.

*Provide better disclosure to registered persons of their rights and of the features of arbitration.*

Firms that choose to use pre-dispute arbitration agreements should make employees aware of any rights or remedies they may be giving up by signing the agreement.

The NASD will assist firms in drafting disclosure forms explaining the effect of the arbitration clause to employees before they sign the Form U-4.

The NASD also has committed to improve the quality of its dispute resolution forum for the resolution of discrimination claims through increased diversity on arbitration panels, specialized training of arbitrators, and other enhancements. The NASD also will continue to urge parties to mediate employment disputes. The NASD's voluntary mediation program has already proven to be an effective process to resolve disputes of this nature.

Of the 5,631 cases filed in the NASD's arbitration forum last year, approximately 15 percent involved disputes between employees and firms. The other 85 percent were customer claims. Of the employee claims, 109 alleged employment discrimination of some kind. □

## NASD Regulation Mediation Program Celebrates Its Second Anniversary

NASD Regulation's Mediation Program picked up steam during its second year. The number of cases closed in the second year of operations exceeded the first-year total by 300 percent. Almost 850 cases closed in mediation during the first two years (633 closed in the second year alone), with a settlement rate of 80 percent. The number of cases in which

parties agreed to mediate has increased in each of the last six months. New activity in the Midwest and Florida regions, plus the continued momentum in the New York and Western regions, resulted in the dramatic growth.

The average mediation case is open only two to three months. Quick turnaround

time and the streamlined process translate into savings of time and costs for parties using the mediation alternative. Moreover, parties and counsel report a high degree of satisfaction with the process. Ninety-eight percent of the participants who responded to a recent survey said they would use the process again.

Building on the success of the program, NASD Regulation is sponsoring a separate "Settlement Week" event in each of five major cities. Settlement Week is designed to encourage the quick settlement of cases and to facilitate exploration of the benefits of mediation. To make the mediation alternative cost-effective for even more parties, NASD Regulation mediators have agreed to serve at reduced rates during Settlement Week. The special provisions should encourage parties with smaller claims to take advantage of the benefits of mediation. For claims with less than \$30,000 in controversy, a three-hour mediation will be arranged for a cost of only \$150 per party. Unique incentives also exist for parties in larger cases during Settlement Week. Eight hours of mediation will cost each party \$600. Half of the \$600 will be applied toward the party's arbitration costs if the matter is

not resolved as a result of the mediation. The first Settlement Week was in Fort Lauderdale (September 8-12), to be followed by New York City (October 13-17), Houston (November 10-14), Los Angeles (December 1-5), and San Francisco (December 8-12).

The Mediation Program now has almost 500 mediators qualified for the NASD Regulation roster nationally. Parties choose from lists of mediators with a variety of backgrounds.

NASD Regulation sponsors three-day mediator skills training programs covering dispute resolution methods, ethical issues confronting mediators, and impasse-breaking techniques. The next training programs are scheduled for Phoenix (October 27-29), New York (November 3-5), and Fort Lauderdale (January 1998).

The mediation alternative is here to stay. The growth trend is attributable to the educational efforts made by NASD Regulation staff, mediators, and advocates. Parties save time and costs and control the process and the outcome of their own disputes. As parties and counsel learn to use the flexibility that mediation offers, they will find more and more cases suitable for mediation.

Questions on mediation may be directed to Kenneth L. Andrichik, Director, Mediation and Neutral Management, NASD Regulation, at (212) 858-3915. □

## NASD Announces Audit Report Findings Of Independent Consultant

The Audit Committee of the NASD Board of Governors announced that Frederick M. Werblow, the Independent Consultant appointed in connection with the NASD's settlement last year with the SEC, in a report forwarded to the SEC, stated that the NASD has made substantial improvement of its enforcement, surveillance, examinations, and internal audit functions. Werblow submitted his report to the NASD Audit Committee, which in turn submitted it to the Chairman of the NASD Board of Governors and the SEC.

The NASD, according to Werblow, has made "substantial improvements" by building an independent internal audit staff reporting directly to the Audit Committee; improving surveillance and examination for compliance with the order handling rules; improving trade

reporting through enhanced surveillance, examination, and enforcement procedures; upgrading the ability to enforce the firm-quote rule by developing a process to address backing away complaints during the trading day; and addressing improper actions by market makers. In addition, the report discloses that the NASD has developed new technology to support the regulation of trade reporting, firm quote, and market maker competitiveness requirements.

Werblow noted that while an Office of Hearing Officers has already been established and staffed, the NASD was awaiting SEC approval of its proposed changes to the Code of Procedure before its professional hearing officers could preside over NASD disciplinary proceedings. Code of Procedure changes also would transfer to staff the authority

to authorize cases and process applications for membership. A rule proposal was also pending at the SEC to set out clear procedures and criteria for admission to membership in the NASD. (Subsequent to Werblow's report the new rules became effective. See article on page 1.)

The report also states that the NASD has established NASD Regulation, as an independent regulator responsible for day-to-day market regulation, surveillance, examination, and disciplinary oversight for all member brokerage firms and brokers; developed and implemented rules prohibiting pricing collusion and retaliation by market makers; and modified its excess spread rule.

Werblow observed that the NASD has completed much of the design of the

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Order Audit Trail System (OATS), pending approval by the SEC of its rule filing. The system is not required to be completed until August 1998.

The report makes a number of recommendations to the NASD in order to further enhance its regulatory and internal audit programs. In particular, the Independent Consultant recommends that the NASD provide additional surveillance, examination, and legal resources; implement a case-tracking system for the Market Regulation Department to ensure that cases are identified and followed; and institute a report card system to apprise market makers of their level of compliance with existing and newly created trading rules.

“The NASD has made substantial improvements in surveillance, examina-

tion, and enforcement of order handling, trade, and quote reporting rules,” Werblow said. “The findings disclosed in the report indicate the NASD has made compliance with these undertakings a top priority.”

“On behalf of the NASD, I am pleased to accept the findings of this report. When we look back, I believe that the NASD’s settlement with the SEC was a critical turning point in our efforts to make Nasdaq® the fairest, most efficient, and most technologically advanced stock market in the world. The NASD has enhanced its regulatory oversight program in the last year through a major commitment in both technological and staff resources. We are pleased that the Independent Consultant recognized those actions and we are absolutely committed to taking whatever steps we

find necessary to be the most effective and efficient self-regulatory organization in the world. In the last year alone, the NASD has implemented an array of regulatory and market initiatives to better serve the investing public. We will continue to deploy resources wherever necessary to assure the integrity of the markets,” said Frank G. Zarb, NASD Chairman, Chief Executive Officer, and President.

Werblow, a retired partner of Price Waterhouse LLP, has more than three decades of experience in the financial and securities industry. □

## Regulation

# NASD Regulation Names Mary Alice Brophy Executive Vice President For Member Regulation

Veteran securities industry executive Mary Alice Brophy has been named Executive Vice President for Member Regulation. Brophy will oversee NASD Regulation’s nationwide District Office network and home-office-based departments responsible for examinations, testing, continuing education, compliance programs, member admissions, and other core regulatory programs. She will be based in Washington and is scheduled to assume her new duties October 1, 1997.

Most recently Senior Vice President and Director of Compliance for the Minneapolis-based brokerage firm Dain Bosworth, Brophy also served as Senior Vice President of Interra Financial, the entity responsible for ensuring compliance at all three of the company’s bro-

ker/dealer and investment advisory subsidiaries. She joined Dain Bosworth in 1988.

From 1985 to 1988 she served as Vice President for the privately held Minneapolis-based Management Compensation Group. Earlier, she was Senior Vice President and General Manager of the Eberhardt Company, a large mortgage banker and real estate corporation (1983-1985). From 1979 to 1982, Brophy served as the Minnesota Commissioner of Securities and Real Estate, where she played an active role in the development of the Uniform State Securities Examination. Previously, she was an Assistant Vice President for Piper, Jaffray overseeing the Corporate Syndicate Department (1970-1979). □



# The NASD Regulation Web Site: Communicating With Members And Investors

A year ago, NASD Regulation launched its World Wide Web Site ([www.nasdr.com](http://www.nasdr.com)). The Site has two equally important objectives: to communicate efficiently with members and to provide tools for the ultimate protection and benefit of the investor.

The Internet has become the fastest growing communications medium today. Millions of pages are added each week, and hundreds of Web sites are created each day. NASD Regulation is using this new tool to provide visitors to its Web Site with the latest regulatory information, often before the printed version is distributed. In fact, the NASD Regulation Web Site was ranked 4 out of a possible 5 by *Web Magazine*.

## Critical Resource For Members

NASD Regulation is dedicated to providing members with all its publications on-line. The Web Site allows quick, unlimited, and free access to critical publications such as *NASD Notice to Members*, and members also have access to this newsletter—*Regulatory & Compliance Alert*. Compliance officers can improve internal communications by providing relevant parts of on-line publications to registered representatives and other employees within their firms, as well as provide up-to-date information on critical NASD Regulation initiatives affecting member firms.

The following are the main features of the NASD Regulation Web Site designed for member firms:

- Publications: *NASD Notice to Members*, *Regulatory & Compliance Alert*, *From Our View*, and *Membership On Your Side*.
- Interpretive letters from NASD Regulation's Office of General Counsel.

- NASD Regulation project updates and information pages: Order Audit Trail System and Central Registration Depository.
- Examination information and sites.
- Continuing education information.

By the fourth quarter of this year, the *NASD Manual* should be accessible on-line and free of charge. In the future, NASD Regulation plans to phase out the printed version of the *Manual*, which is distributed yearly in a paperback version.

## Investor Education And Outreach Program

The NASD Regulation Web Site has a section dedicated to investor protection and education. As part of its outreach program, NASD Regulation publishes many guides for investors, descriptions of its various dispute resolution programs, information about SEC Order Handling Rules, and much more.

The following information is available for investors on the NASD Regulation Web Site:

- *Invest Carefully: Possibilities & Pitfalls (The Internet As An Investment Tool)*.
- *Invest Wisely: Advice from your securities regulators.*
- *There Are Rules To Protect You When Stockbrokers Call.*
- *How The New SEC Order Handling Rules Affect Individual Investors.*
- *Investors And Dispute Resolution.*

NASD Regulation encourages firms with Web sites to link to the NASD Regulation Site (although outside entities cannot use the NASD Regulation logo). This provides members' customers and other Web visitors access to a vari-

ety of regulatory services on-line. A member firm should call the Internet staff at (301) 590-6893 or e-mail NASD Regulation using the Site's "Feedback" function if it plans to include a description of the NASD Regulation Site or specific NASD Regulation content on its own site. NASD Regulation Internet staff will be happy to work together with firms regarding information referring to the NASD Regulation Web Site before that information "goes live." However, if a firm is only adding the NASD Regulation Web Site to a list of links, there is no need to contact the Internet staff.

## Filing A Complaint Or A Regulatory Tip

Filing a complaint or a regulatory tip can be accomplished by calling or writing to NASD Regulation, but it is also possible to perform this same function through the NASD Regulation Web Site. This section of the Web Site provides guidelines on how to avoid disputes and who should be filing a complaint or a regulatory tip.

## Requests For Comments

In order to expand the pool of comments from key constituents, NASD Regulation invites member firms, investors, and the general public to comment on significant rule proposals on a regular basis. The NASD Regulation Web Site also provides a link to the SEC public comment page, where the SEC encourages submission of comments on the proposed rules during the comment period.

## Other Securities Links

A good Web site cannot be complete without a set of relevant links to other high-caliber sites with important information. The NASD Regulation Site includes one of the most comprehensive sets of securities regulators links on the Web. This includes a Web link (or an

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e-mail address) to securities industry SROs in the United States and the world. Visitors can also find other links that are of interest to members and investors, such as links to U.S. federal regulatory agencies, international regulators, trade associations, state securities regulators, and other regulatory bodies. As examples, this Web Site provides links to the Office of Foreign Assets Control (OFAC) and to the Bureau of the Public Debt: Government Securities Market Regulation. The link to OFAC

was created to provide members with information about persons and entities identified as “Specially Designated Blocked Persons and Nationals.” Through the Bureau of Public Debt Web Site, visitors can access the Government Securities Act of 1936, as well as information on frauds and scams in the government securities market.

### Feedback

NASD Regulation is always looking for new features and ideas to add to its Web

Site, and therefore, actively solicits visitors’ feedback, comments, and suggestions. Everyone is encouraged to be part of this Web Site’s on-line focus group and participate in the ongoing re-evaluation of existing and upcoming features.

NASD Regulation is committed to using its Web Site as one of its main communications tools with members and investors in the future and, therefore, encourages member firms to gain access to the Internet. □

## SEC Approves Amendments To The Interpretation On The Release Of Disciplinary Information

The SEC recently approved amendments to the Interpretation on the Release of Disciplinary Information, IM-8310-2, authorizing the NASD to release to the public information on disciplinary complaints and non-final disciplinary decisions that present significant investor-protection issues, provided appropriate disclosures concerning the status of the complaint or decision accompany the release. Under the amendments, information will be automatically released to the public for complaints alleging violations of one or more Designated Rules, which are listed in *NASD Notice to Members 97-42* and present the most significant investor-protection concerns and include anti-fraud, anti-manipulation, and sales-practices rules. The amendments also authorize the NASD to release publicly information on any complaint that the President of NASD Regulation determines should be disseminated in the public interest.

Release of complaints will be accompanied by a disclosure stating: “The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you are encouraged to contact the respondent before drawing any conclusions regarding the allegations in the complaint.”

Under the amendments, the NASD will also automatically release any non-final decision that imposes monetary sanctions of \$10,000 or more, or penalties of expulsion, revocation, suspension, or a bar from being associated with member firms. In addition, the amendments require the release of all non-final and final decisions that contain an allegation of a Designated Rule, regardless of

whether any sanction had been imposed. The public policy interests that justify the release of information at the complaint stage also compel a release of information at the decision stage, regardless of whether the decision results in the finding of a violation and the imposition of sanctions, a dismissal of the allegation, or a reversal of earlier findings. As with the release of information with respect to complaints, the amendments require that appropriate disclosures accompany the release of non-final decisions.

Questions regarding these amendments may be directed to Gary L. Goldsholle, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8104. □

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For more information, please call Joyce Gregory at **(202) 728-8330**.

## NASD Submits OATS Rule To The SEC

The NASD filed proposed Rules 6900 through 6970 with the SEC. The proposed rules will require member firms to capture and report specific data elements related to the handling or execution of orders in Nasdaq equity securities.

NASD Regulation's Order Audit Trail System (OATS) will receive and validate member firm order information. NASD Regulation will use this information to recreate events in the life cycle of an order and more completely monitor trading practices of member firms. NASD member firms will be required to report information for orders in Nasdaq equity securities that are: received from a customer for handling or execution or received from another member firm for handling or execution. In addition, the

rules would apply to proprietary orders originating in-house, excluding market maker transactions conducted at the trading desk.

Under the proposed rules, OATS will be implemented in phases. By February 2, 1998, member firms will be required to synchronize the clocks used to record the time of reportable events to a standard and within an accuracy to be determined by the NASD. By August 8, 1998, electronic orders received or captured by member firms are proposed to be subject to the reporting requirements. Electronic orders are defined as orders that are received by a firm in electronic format, or orders that are recorded in an electronic format upon or promptly after receipt. On January 1, 1999, non-elec-

tronic orders received by a market maker's trading desk are proposed to be subject to the rules. By January 31, 2000, all other orders and reporting events not previously covered would be subject to the reporting requirements.

The OATS Support Center is the primary source of OATS information for NASD member firms. The Center is open Monday through Friday from 8 a.m. until 6 p.m. Eastern Time. The e-mail address is [oatscsc@nasd.com](mailto:oatscsc@nasd.com); the telephone numbers are (888) 700-OATS and (301) 590-6503. General information can also be obtained from the OATS Web Page found at the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)). □

## Year 2000 Initiative Moves Forward

The year 2000 is coming and NASD members, if they have not already done so, should initiate their own Year 2000 (Y2K) projects.

Last year, recognizing the seriousness of Y2K issues, the NASD, NASD Regulation, and Nasdaq formed a Y2K Executive Steering Committee of officers representing the three NASD organizations. In June 1996 the NASD established a centralized Y2K Program Office to oversee and coordinate all initiatives across the organization. As a result of this effort, the NASD has systems that have gone through the Y2K conversion and testing process and are now back in use.

In order to coordinate the Y2K efforts, the NASD communicates regularly with

the securities industry on how the needed changes will be carried out.

- The NASD published information in *NASD Notices to Members* on this subject. The July 1996 *NASD Notices to Members* included, in the "For Your Information" section, an alert to the upcoming efforts of the NASD and the changes that member firms would have to make. The second appearance of Y2K information (*NASD Notice to Members 97-16*) occurred in March 1997 and described the NASD's efforts, as well as responsibilities of the member firms and advice on implementing their own Y2K programs.
- Nasdaq Trading and Market Services published an article in its June 1997 *Subscriber Bulletin* that outlined

Nasdaq's Y2K compliance plan, including past and current industry activities, market participant responsibilities, and a system testing availability schedule.

- In May of this year Nasdaq Trading and Market Services began including Y2K as a topic at its quarterly vendor focus groups to ensure that those who provide the NASD and its subsidiaries with data support understand how the NASD is becoming Y2K compliant and what vendors need to do to support NASD efforts.
- There are Y2K Web Pages on both the NASD Web Site ([www.nasd.com](http://www.nasd.com)) and the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) to ensure that members have ready and current access to the NASD's Y2K efforts.

The NASD is also a founding member of the Y2K Exchange and Utility Subcommittee of the Securities Industry Association (SIA), along with the New York Stock Exchange, the American Stock Exchange, the National Securities Clearing Corporation, the Depository Trust Company, and the Securities Industry Automation Corporation. Nasdaq is working with these organizations to establish data interchange guidelines and to plan for unit, bilateral, and industry-wide testing.

Unit testing is described by the SIA as an exchange's or utility's one-on-one testing with its participants. Bilateral testing is described as an exchange or utility doing one-on-one testing with another exchange or utility. This testing is expected to be completed by the end of 1998 prior to industry-wide tests, which are tentatively scheduled throughout 1999. The June 1997 *Subscriber Bulletin* provides a table that outlines when specific Nasdaq systems will be available for unit testing of Y2K compliant applications and dissemination services.

A major objective of the SIA Exchange and Utility Subcommittee is to develop the means for an industry-wide test in 1999. This test—which requires widespread cooperation among industry principals—will provide the securities industry with a test market environment to perform transaction cycle testing, and allow industry participants to synchronize their computers to simulate a particular trading date. Subscribers will be invited to use this test market environment and conduct cycle tests as they see fit. This testing will allow the industry participants to ensure that their systems will continue to operate in a Y2K environment.

In fact, the SIA recently held a Y2K Summit that outlined several areas, including the state of current Y2K initiatives: identification of various scenarios; how to avoid and deal with potential Y2K problems; identification of specific issues, such as testing, audit objectives and standards, international issues, disclosure, and liquidity; preparation of key action lists; and discussion of prioritization, responsibilities, and next steps within the securities industry.

The NASD and its subsidiaries are working closely with the SEC and the industry to ensure that systems interfacing with those of the NASD will continue to function as we all enter the year 2000. The NASD urges each of its members to also take a serious position on Y2K issues and act to ensure that all systems are compliant on or before January 1, 2000.

Questions or comments regarding the NASD Year 2000 program may be directed to: Bill Bone, Vice President, Strategic Technology Services, NASD, at (301) 208-2951; Lyn Kelly, Director, NASD Regulation, at (301) 590-6342; Mike Buckingham, Associate Director, Operations, Planning, and Support, Nasdaq, at (203) 385-4569; Sue Ann Gillespie, Director, Production Services, NASD, at (301) 590-6315; and Dick Broome, Director, Systems Development, NASD Regulation, at (301) 721-1108.

## Continuing Education

# Continuing Education Council Issues Publications

The Securities Industry/Regulatory Council (Council) on Continuing Education recently published *Examples of Firm Element Practices and Council Commentary (Firm Element Practices)* to illustrate a variety of approaches different broker/dealers have taken to comply with the Firm Element of the continuing education requirements. *Firm Element Practices* contains the actual needs analyses and training plans of eight broker/dealers: a small, a mid-sized, and a large general securities firm; a mid-sized investment banking firm; a mid-sized and a large insurance-affiliated broker/dealer; and a mid-sized and a large independent contractor broker/dealer. In the accompanying com-

mentary on each firm's plan, the Council discusses what it considers its strong and weak aspects.

The Council believes that *Firm Element Practices* will assist firms in meeting continuing education requirements by showing how representative firms have interpreted the Guidelines For Firm Element Training (see *NASD Notice to Members 96-69*, October 1996). It realizes, however, that each firm has unique needs and characteristics that should be identified and addressed in that firm's Firm Element training plan. The Council recommends that every firm review *Firm Element Practices* for useful ideas and approaches to the continu-

ing education requirements, but cautions that the training plans contained in *Firm Element Practices* do not constitute a "safe harbor" of any kind.

A Reader Survey is included in *Firm Element Practices* so that from your responses, the Council can make sure that future editions of *Firm Element Practices* address your needs.

A copy of *Firm Element Practices* was recently mailed to each NASD member accompanied by a *Special NASD Notice to Members*. Within a few months, this publication will also be available on the NASD Regulation Internet Web Site at [www.nasdr.com](http://www.nasdr.com). Additional printed

*(Continued on page 11)*

copies of Firm Element Practices may be obtained from NASD MediaSource (301-590-6142) for \$10 per copy.

Also available from NASD MediaSource is the revised version of the Council pamphlet *The Continuing Education Program For Securities Professionals*. This pocket-sized booklet contains valuable information about the Securities Industry Continuing

Education Program along with answers to frequently asked questions about continuing education. Many firms have found the pamphlet useful to distribute to their registered representatives who are taking the Regulatory Element computer-based training for the first time. The pamphlet, at 35 cents per copy, may be ordered from MediaSource with a minimum order of 100 copies.

Questions or comments regarding the Continuing Education Program may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, at (301) 208-2932, Frank McAuliffe, Vice President, Member Regulation, NASD Regulation, at (301) 590-6694, or Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation, at (202) 728-6911. □

## 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 *Regulatory & Compliance Alert*.

### Regulation T

#### **Extensions**

*Q. The NASD has established a limit of five Reg. T extensions that a customer may receive in a 12-month period. If a customer does multiple trades on the same day and requests an extension for each, does each separate trade count toward the limit of five Reg. T extensions that a customer may receive in a 12-month period?*

A. No. For purposes of the limit in a 12-month period, the NASD's automated Extension Request System counts extensions by "request date" rather than by trade. The NASD's procedures for granting Reg. T extensions limit a customer to a maximum of five Reg. T request dates per rolling 12-month period for certain reasons codes (such as "check is in the mail"). For the trades to be counted together, the customer, trade date, and reason code must be the same. For example, if seven Reg. T extension requests were granted to one customer for one trade

date for the reason "check is in the mail," this would count as one of the five permitted request dates. The customer could receive Reg. T extensions on four more request dates during the rolling 12-month period.

*Q. Is the limit of five Reg. T extensions in 12 months computed by account?*

A. No. Pursuant to the NASD's procedures, the 12-month limit is per customer, not per account. Customers are identified in the Extension Request System by a customer number, which is either a social security number, tax identification number or foreign number (the foreign numbers are assigned by the Extension Request System). If a customer has more than one account identified with the same customer number (whether at the same firm or at different firms), all Reg. T extensions entered for these accounts are aggregated towards the 12-month limit.

#### **De Minimis Amount Exception**

*Q. If there is more than one purchase transaction in a cash account, each with the same Reg. T date and each creating a debit balance due under \$1,000, but in the aggregate the customer owes more than \$1,000 on Reg. T date, what is the broker/dealer's obligation under Reg. T?*

A. Reg. T has established a de minimis amount of \$1,000 for which there is no requirement to obtain a Reg. T extension, however, the word *sum* in section 220.8(b)(4) is not limited to individual transactions. Once the time period for payment has expired for transactions in the cash account, the broker/dealer cannot disregard a sum exceeding the de minimis amount on a specific day simply because the sum is composed of multiple late payments, each of which is below the de minimis amount. Therefore, the broker/dealer must obtain an extension for each transaction, or promptly cancel or otherwise liquidate each transaction that when aggregated would exceed the de minimis amount.

#### **Security No Longer Margin Eligible**

*Q. If the Federal Reserve Board (the Fed) determines that a security is no longer margin eligible and if a broker/dealer has extended credit to customers on that security prior to the Fed's determination, is the broker/dealer required to then issue a margin call to each customer for the amount of credit previously extended?*

A. No. Reg. T section 220.3(c)(2) allows any credit initially extended in compliance with Reg. T to be maintained regardless of "Any security in an account ceasing to be margin" eligible.

## Partial Payments

*Q. In a cash account, may a broker/dealer accept partial payment from the customer and not request an extension or cancel or liquidate a transaction as long as the amount remaining unpaid is less than the de minimis amount specified in 220.8(b)(4)?*

**A.** No. Indebtedness may be disregarded only if it does not exceed \$1,000 on trade date.

## Secured Demand Notes—Withdrawal Of Excess Collateral

*Q. If the collateral pledged on a satisfactory subordinated Secured Demand Note increases in value, may the lender withdraw the excess collateral?*

**A.** Yes. SEC Rule 15c3-1d (a)(2)(v)(D) states that the lender may withdraw excess collateral. This language also appears in the subordination

agreements. If collateral is withdrawn, Schedule A of the agreement should be amended so that it correctly reflects the collateral remaining on the agreement.

## Commission Rebates To Broker/Dealer Customers

*Q. Is an introducing firm considered to be receiving customer funds pursuant to SEC Rules 15c3-1 and 15c3-3 if the firm receives commissions from its clearing firm on customer trades, and rebates a portion of the commissions to specific customers pursuant to “commission recapture program” agreements with those customers?*

**A.** Yes. Although the funds were received from the clearing firm rather than directly from the customer, the funds are owed to the customer pursuant to the agreement with the customer and are therefore customer funds for the purposes of these rules.

## Foreign Equity Securities—Criteria To Establish A Ready Market

*Q. Can transaction and quotation history from a foreign equity securities market be relied upon to substantiate a “ready market,” as defined in SEC Rule 15c3-1, for securities of a foreign issuer?*

**A.** No. An equity security of a foreign issuer may only be treated as having a ready market, as defined in SEC Rule 15c3-1, if it is included in the FT Actuaries World Indices or if it is the underlying security for an ADR listed on a domestic national securities exchange or Nasdaq. Transaction and quotation history from a foreign securities market may not be relied upon to substantiate a “ready market.”

Questions regarding this information may be directed to the NASD Regulation Compliance Department at (202) 728-8221. □

## Municipal Securities

# Municipal Securities Update

NASD Regulation reminds members about the use of automated comparison, clearance and settlement systems, and trade reporting for municipal securities. See MSRB Rules G-12 and G-14.

### “T Input Percentages”

Accurate and timely automated comparison of municipal trades is critical to a member firm’s successful and efficient trade processing function. Accurate and timely automated comparison of municipal trades is also critical to the efficient and effective regulatory oversight of inter-dealer transactions, and effective January 1, 1998, customer transactions, including: identification of executing broker, trade and settlement dates, trade time, par value, yield, dollar price, and capacity.

Municipal securities dealers must report all transactions with other brokers, dealers, or municipal securities dealers to the National Securities Clearing Corporation (NSCC). NASD Regulation receives and reviews an NSCC “regular way trade comparison analysis” for each member firm. This NSCC report is a numerical review of each member firm’s trade comparisons.

The “T Input Percentage” is the primary indicator that NASD Regulation uses to evaluate member firm compliance with MSRB Rule G-12. An industry-wide goal is to obtain a 95% “T Input” rate. NASD Regulation is concerned that for some members the “T Input Percentage” is less than the stated industry goal of 95%. NASD Regulation has recently

communicated to many member firms about their low “T Input Percentage” and have solicited responses about steps that are being taken to improve the percentage. NASD Regulation plans to continue to monitor member firm compliance with MSRB Rule G-12 and will consider remedial measures for those firms that do not demonstrate an improved “T Input Percentage.”

### Executing Broker Symbol

Some member firms erroneously believe that when they are functioning as an introducing broker they do not need a symbol unique to their firm. In order to identify its transactions each municipal dealer—including those that function as an introducing broker—needs to obtain an executing broker symbol. Nasdaq

*(Continued on page 14)*

Subscriber Services (800-777-5606) will assign executing broker symbols for reporting municipal securities.

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## **Delivery Of New Issue Official Statements To Customers**

NASD Regulation has received information that member firms may not be consistently complying with the official statement requirements of MSRB

Rule G-32. MSRB Rule G-32 requires, in part, that a municipal securities dealer deliver—*no later than settlement*—a copy of the new issue official statement. In the event that a final official statement is not prepared, the dealer must provide a preliminary official statement accompanied by a notice that no final official statement is being prepared. The NASD wishes to point out

that the requirements of MSRB Rule G-32 apply to all municipal dealers that sell *any* new issue municipal security, including those dealers that are not managing or sole underwriters.

Questions or comments may be directed to Malcolm P. Northam, Director of Fixed Income Securities Regulation, NASD Regulation, at (202) 728-8085.

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## **Advertising**

# **Member Firms Seek Guidance On Public Appearances**

The popularity of on-line chat rooms, call-in format broadcasts, and seminar presentations have lead to an increase in requests by NASD member firms for guidance on public appearances by their associated persons. Public appearances include both scripted and extemporaneous discussions.

## **Overall Standards**

The standards of Rule 2210, Communications with the Public, apply to all public appearances regardless of whether the presentation has been scripted or consists of unrehearsed remarks in response to a question. Overall, these standards require a full and fair description of any securities product or service including material information such as risks or costs. For example, in response to a caller's question during a radio broadcast, a representative recommends a specific stock of local interest that is trading in the secondary market. This recommendation is permitted, provided the representative satisfies the disclosure requirements of Rule 2210. Thus, the representative is required to disclose certain material relationships between his firm and the security, such as that his firm makes a market in the stock. In addition, he must provide the current price of the stock and mention if there are any special risks associated with the security, *e.g.*, that the local company issuing the stock is risky because it is still in its start-up phase.

The rule also prohibits exaggerated, unwarranted, or misleading statements or claims, including promises of specific future returns or projections of investment performance. Thus, using the example above, the representative would be prohibited from giving assurances about the level of return the caller could expect from an investment in the recommended stock.

In addition, the rule calls for clear and prominent disclosure of the name of the member firm through which any securities products or services under discussion would be offered. If a non-member entity, such as a registered person's insurance agency is named in the presentation, then the presentation must be clear that the securities products or services under discussion are offered by the NASD member firm.

## **Common Content Problems**

Member firms and associated persons have little control over the audience for a radio or television broadcast or an on-line chat room. In preparing and supervising these mass media appearances, members must limit the message to one appropriate for a broad, general audience. One cannot assume a specific level of audience knowledge, experience, or suitability. For example, high risk securities may not be appropriate for discussion in a broadcast format where any listener or viewer may tune in at any time. Similarly, it is generally inappro-

priate to discuss securities subject to prospectus delivery in the mass media as the SEC strictly limits what can be said about these products prior to delivery of the prospectus.

Overly complex messages can also create problems. For example, a chart presented in a 30-second television commercial simultaneously with graphics, narration, and music may actually obscure rather than illustrate a particular point. The viewer may be unable to absorb the meaning of the chart unless the presentation is simplified. In this case, the member could omit the chart and/or modify the narration to describe and explain the chart.

Disclosure in any type of media must be clear and understandable, and in mass media this requirement is critical. Fine print disclaimers are inappropriate for television as they cannot appear on screen long enough to be read; similarly, radio disclosures must be articulated slowly enough for the listener to understand.

Technical terminology or jargon may also mislead or fail to enhance the audience's understanding of the product. While a financial professional may understand that the phrase, "Subject to market fluctuation," means the investment can lose money, a first-time investor may not.

## Approval, Recordkeeping, And Filing Requirements For Scripted Presentations

Scripted presentations, regardless of the medium, must receive the prior, written approval of a registered principal. Members must maintain copies of scripted presentations, including who prepared and approved the material, on file for three years. Depending upon the content of the presentation, the type of material used, or the status of the member firm, scripted material may be subject to filing with the Advertising Regulation Department. (See the chart below for more information on filing requirements.)

## Supervision Of Extemporaneous Presentations

As noted above, extemporaneous presentations must reflect the same content standards as scripted material. However, unlike scripted presentations,

members must establish their own procedures for the supervision and approval of these appearances. If members choose to allow this business activity to take place, they must assure that there is a mechanism for prior approval (or disapproval) of each public appearance by a registered person. Members may also require the submission of outlines or guest lists prior to approving a public appearance by a registered person.

Procedures should provide for the review and monitoring of appearances. For example, a firm may choose to require its representatives to videotape their extemporaneous seminars for later review by a compliance officer.

Alternatively, compliance personnel could monitor such appearances directly by attending the seminar(s). For broadcasts, a firm may require its representatives to provide tapes or transcripts of all radio or tapes of television appearances.

Another alternative would be for compliance personnel to listen to or watch the broadcasts when they occur.

While a firm cannot control each and every statement made by an associated person, the firm must provide clear guidance as to what may and may not be discussed. A written list of acceptable and unacceptable presentations (*i.e.*, “do’s and don’ts”) can help a firm supervise this aspect of its business. Broad general guidance can also help a firm control extemporaneous content; for example, firms should make clear to associated persons that they may not discuss products he or she is not licensed to sell.

Questions regarding public appearances may be directed to the Advertising Regulation Department at (202) 728-8330. □

The most frequent question asked of the Advertising Regulation Department staff is, “What communications with the public must NASD member firms file?” The following chart summarizes the filing requirements set forth in Rules 2210(c) and 2220(c):

Who	What	When
Members who have never filed	All Advertising*	10 days prior to first use for one year dating from the first submission
All members	Options material used prior to delivery of the options disclosure document	10 days prior to first use for approval
All members	CMO Advertising	10 days prior to first use for approval
All members	Investment Company Advertising or Sales Literature that contains a ranking category created by the member firm	10 days prior to first use for approval
All members	Investment Company Advertising and Sales Literature	Within 10 days of first use
All members	Public Direct Participation Program Advertising and Sales Literature	Within 10 days of first use
All members	Government Securities Advertising	Within 10 days of first use

\*Advertising is generally material that appears in media (*e.g.*, newspaper, television, magazines), whereas sales literature is material that is directed to a specific audience or group (*e.g.*, form letters, research reports, article reprints). For complete definitions see Rules 2210(a) and 2220(a).

## DID YOU KNOW YOU CAN

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# “ASK THE ANALYST”

“Ask the Analyst” provides member firms a forum to pose questions to the NASD Regulation 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/ Approval And Recordkeeping

*Q. Our brokerage firm is affiliated with a non-NASD member company that wants to advertise brokerage services or securities products offered through our firm on its Internet site. Should we monitor electronic communications prepared by an affiliated non-NASD member company about the broker/dealer services that we provide or the securities products that we offer?*

**A.** Yes. Advertising (or sales literature) about your firm’s brokerage services or securities products, whether electronic or through other media, should not be used without your firm’s knowledge and approval. You should take reasonable steps designed to ensure that affiliated non-member companies, such as a bank or insurance company, receive your firm’s approval before advertising the brokerage services or securities products offered by your firm.

## Mutual Funds

*By request we have updated and reprinted the following question and answer which originally appeared in the July 1995 Regulatory & Compliance Alert.*

*Q. I recently saw a favorable article in a major magazine on a mutual fund my company sells. I would like to mail copies of this article to clients, but my branch manager won’t let me do so until I add a lot of disclosures. Since anyone could have read the article in the magazine, why do I have to add so much information?*

**A.** Unlike the original, printed magazine article, your distribution of this reprint makes it sales literature as defined in NASD Conduct Rule 2210, regarding communications with the public. Accordingly, you and your firm will be held responsible for the content of the article. You will need to obtain advance, written approval by a registered principal of your firm according to Rule 2210(b)(1). In addition, since the article concerns a mutual fund, your firm must submit it to the Advertising Regulation Department within 10 days of first use as specified by Rule 2210(c)(1); your firm may voluntarily submit the article prior to use.

The article must include a balanced discussion of risk and reward, and must avoid exaggerated, misleading or promissory statements or claims in order to comply with Rule 2210. The rule also requires clear and prominent disclosure of your NASD member firm’s name. If the article fails to disclose risks or contains exaggerated, misleading, or promissory language, your firm must determine whether the presentation can be “cured” through additional disclosure which would accompany the article, such as a cover letter, or whether to avoid using the article completely.

In addition, SEC rules permit only very limited communications about mutual funds before prospectus delivery. If the

article contains information beyond SEC rule specifications, you must use the piece with the prospectus for the fund. Finally, we advise obtaining appropriate permission to use the reprint in accordance with federal copyright laws.

## Unit Investment Trusts

*Q. What information should member firms include in communications with the public when promoting equity strategy unit investment trusts (UITs)?*

**A.** Typically, equity strategy UITs invest in stocks selected from a well-known index based on objective, easily verifiable criteria. For example, the UIT may purchase the 10 stocks from an index that yielded the highest dividends over the preceding year. The UIT holds the stocks for a short term (one or two years) and then dissolves. The sponsor may offer successive trusts with similar portfolios thereby allowing the investor to pursue the strategy over a number of years. In order to fairly describe these products as required by Rule 2210(d)(1)(A), communications with the public should clearly explain:

- the investment is a fixed portfolio of securities with a one-year life (or other set term);
- the strategy is a long-term one and, therefore, investors should consider their ability to pursue investing in successive trusts; and,
- the tax consequences associated with rolling over an investment from one trust to the next.

Marketing materials for these UITs frequently illustrate how the strategy would have performed historically over the long-term (e.g., the previous 15

*(Continued on page 18)*

years), including time periods prior to the existence of the UIT or the series of UITs. This type of "strategy performance" is permitted where the strategy reflects objective, easily verifiable criteria. However, to clearly explain this hypothetical performance, the communication must disclose:

- that the strategy performance is hypothetical and not indicative of the performance of a specific trust;

- strategy performance that reflects the fees and charges associated with the UIT; and
- the percentage amount of all sales charges (including deferred charges).

Comparisons of the hypothetical performance to the index would require disclosure that in any given year the strategy may lose money or underperform the index. Also, if cumulative or

average annual total return performance is compared, then year-by-year data (or other consecutive time periods reflective of the UIT's term) for both the strategy and the index must be included. o

## Regulatory Short Takes

# NASD Regulation Seeks SEC Approval Of Policy On Electronic Delivery Of Information

NASD Regulation filed a proposed rule change with the SEC seeking approval of a policy regarding the electronic delivery of information between members and their customers as required or permitted by NASD rules (File No. SR-NASD-97-57). The SEC will seek comment on the proposal through publication in the *Federal Register*.

The SEC has issued two interpretive releases that establish a framework under which broker/dealers and others may use electronic media as an alternative to paper-based media to satisfy delivery obligations under the federal securities laws. The SEC indicated in the releases that an electronic communication from a customer to a broker/dealer generally will satisfy the requirements for written consent or acknowl-

edgment under these laws. [The releases appeared in the *Federal Register* on May 15, 1996 (61 FR 24644) and October 13, 1995 (60 FR 53458).]

The proposed policy submitted to the SEC states that use of electronic media is permitted provided members comply with the standards contained in the SEC releases. These standards address, among other things, notice, access, evidence to show delivery, communication of personal financial information, and consent. The policy contains a list of current NASD rules that require or permit communications between members and their customers for which electronic delivery may be used in accordance with the standards contained in the SEC releases. The draft policy states that electronic delivery also may be used for

a new rule or an amendment to an existing rule that requires or permits communications between members and their customers unless NASD Regulation specifies otherwise.

The SEC recently approved a New York Stock Exchange (NYSE) proposed rule change seeking approval of a similar NYSE policy regarding electronic delivery of information to customers [62 FR 32848 (June 17, 1997)].

Questions concerning the proposal may be directed to Mary Revell, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8203. □

## Members Be Advised

*The year 2000 will be upon us in less than two and a half years, and all NASD member firms will have to ensure that their automated systems will continue to operate successfully. The NASD has instituted a Year 2000 (Y2K) Program to address the unique challenges this coming century poses for our date-sensitive systems. The NASD urges*

*all of its members to initiate a Y2K project as well. Computer failures related to Y2K problems generally will be considered neither a defense to violations of a firm's regulatory or compliance responsibilities nor a mitigation of sanctions for such violations. **Remember, the deadline is January 1, 2000, and there are no extensions!***

# Members Reminded About Prompt Payments To Customers

NASD Regulation reminds members that their payment policies must deal fairly with customers. Recent complaints from investors voice concerns that they are not receiving their interest and dividend payments on a timely basis.

Broker/dealers are required to make interest and dividend payments to customers promptly upon receipt. These payments may not be deferred, even for a monthly disbursement, unless customers were given the opportunity in advance to choose immediate rather than deferred payment.

In a 1978 SEC release (Securities Exchange Act Release No. 15194) still relevant today, the SEC states that “the imposition of a system of deferred payments without informed and timely notice to customers is inconsistent with a broker/dealer’s obligation to deal fairly with its customers and is inconsistent with just and equitable principles of trade.”

NASD Regulation urges all members to review their procedures for making interest and dividend payments to customers and ensure that they are consistent with the views promulgated by the

SEC in its 1978 release. During routine examinations, NASD Regulation staff will be alert to compliance in this area. Any instances of unfair payment practices will be subject to appropriate disciplinary action.

Questions concerning this matter may be addressed to Samuel Luque, Jr., Associate Director, Compliance Department, NASD Regulation, at (202) 728-8472, or Susan DeMando, District Coordinator, Compliance Department, NASD Regulation, at (202) 728-8411. □

# New SEC Options Haircuts Take Effect September 1, 1997

The SEC recently adopted changes to the treatment of options and options-related inventory positions in SEC Rule 15c3-1, the Net Capital Rule. Effective September 1, 1997, broker/dealers may no longer rely on the strategy-based haircuts in Section (c)(2)(x) of the Rule or haircuts pursuant to an SEC No-Action Letter to the Securities Industry Association dated October 23, 1985. In addition, the haircuts contained in Appendix A are modified significantly.

Instead, broker/dealers now may use approved theoretical options pricing models to determine haircuts on listed options and related positions for futures,

options on futures, foreign currency, and forward contracts. For broker/dealers, especially those doing a limited options business, that do not want to use pricing models, the SEC included an “Alternative Strategy-Based Methodology” in the Rule.

Other amendments include a change in the time frame, from the end of the business day to noon of the next day, within which broker/dealers must take net capital charges on the options specialist’s trading positions that they carry; and the elimination of subparagraph (a)(7) regarding requirements for self-clearing options specialists, which are no longer

applicable since the haircuts in Section (c)(2)(x) have been eliminated.

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

# NASD Regulation Urges Members To Review Form BD And Update Information

Article III of the NASD By-Laws requires that members ensure information reported on the Form BD is kept current. Members are obliged under Section 1(d) to file the updated information within 30 days after learning of the facts and circumstances giving rise to the amendment. Among the items sometimes overlooked include the firm's main and mailing addresses and other administrative information found in Items 1, 2, and 3 on the Form BD. Failure to keep this as well as branch office information (Schedule E to Form BD) could result in missing important

communications from the NASD and other regulatory authorities.

Current Items 7, 8, 10, 11, and 12 contain details about the firm's manner and categories of business that could trigger registration implications when circumstances change. Changes in the firm's ownership, control, and senior management are reported on Schedule C to Form BD and under the NASD's new Rule 1010 Series generally some circumstances must be reported to the firm's District Office in advance. (See recently revised Membership and

Registration Rule 1018.) You are encouraged to review all Items listed on the Form BD periodically to identify any outdated information. Except for the Schedule E, all amendments to Form BD must be under cover of a properly notarized Page 1.

Member firms should contact their assigned Quality & Service Team to obtain a blank Form BD and complete mailing instructions or call (301) 590-6500. The local District Office should be contacted regarding changes in ownership, control, or operations. □

## Trading & Market Making

# SEC's "1% Rule" For CQS Securities To Go Into Effect On October 1, 1997

The SEC announced that the "1% Rule" for CQS (Consolidated Quotation System) securities will be implemented on October 1, 1997 (see SEC Release No. 38870, July 24, 1997). The "1% Rule," which is part of the SEC's Order Handling Rules first adopted on September 6, 1996, provides that any CQS market maker that accounts for one percent or more of the trading volume in *any* exchange-listed security must publicly disseminate quotations in that security. Presently, CQS market makers in Rule 19c-3 securities must publicly disseminate quotes if they account for one percent or more of the volume in the security. In conjunction with adoption of the 1% Rule, the SEC also amended the term "OTC market maker" to include dealers that internalize their order flow or who hold themselves out only to particular firms. Accordingly, with respect to exchange-listed securities, a firm is now obligated to publicly quote a security if its volume

exceeds one percent of the total volume in the security, even if its volume was attributable to internalized order flow. Following is a summary of the scope of the 1% Rule, the methodology firms should use to calculate their volume under the Rule, and issues associated with the withdrawal of quotations under the Rule.

## Scope Of The Rule

- The 1% Rule applies to all exchange-listed securities; it does not apply to Nasdaq-listed securities. While the SEC has proposed extending the 1% Rule to Nasdaq-listed issues, it has not yet acted on this proposal.
- The 1% Rule does not apply to firms that are acting solely as block positioners in exchange-listed issues. SEC Rule 11Ac1-1(a)(13) provides that the term OTC market maker "shall mean any dealer who holds itself out as being willing to buy from

and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange *in amounts of less than block size.*" Accordingly, block positioners, to the extent they are not also simultaneously holding themselves out as market makers for orders less than block size, are not effected by the 1% registration requirement. In this connection, SEC staff has stated that while they do not believe that executing orders for less than block size on an infrequent basis would necessarily constitute holding oneself out as a market maker, "a firm must evaluate whether it is in fact holding itself out as willing to buy from and sell to its customers, or otherwise, on a regular or continuous basis, in other than block size even if it is primarily engaged in transactions with customers of block size."

- Firms that effect trading strategies that involve executions in more than one

security may qualify for the “block positioner” exemption from the SEC’s market maker definition. SEC staff has stated that it believes “that the block positioner exception would permit a firm to aggregate the number of shares or market value of individual securities where the executions in these securities are part of one transaction, such as a program trade. However, a particular trading strategy would have to be evaluated to determine whether the firm is trading in a manner consistent with such exemption.”

### Calculation Of Volume Under The Rule

- SEC staff has issued an interpretive letter that provides that “if a firm acts in the capacity of an OTC market maker in a security, it must include for purposes of the 1% calculation all volume executed by the entire firm in that security, unless it can demonstrate that the particular trades that it wishes to exclude from the 1% calculation were wholly separate from the firm’s OTC market making activities in that security and the firm implements and utilizes an effective system of internal controls, such as appropriate ‘Chinese Walls,’ to maintain this functional separation. If, for example, a firm demonstrates that 15% of its trading in a particular security was done through part of the firm that had no interaction with the firm’s OTC market making activities, then that 15%

of the firm’s volume need not be counted for purposes of calculating the 1% volume threshold.”

- A firm holding itself out as a market maker in a CQS issue should evaluate whether it has exceeded the 1% volume threshold on a quarterly basis. Specifically, at the end of a particular calendar quarter, a market maker must determine whether its total trading volume exceeded 1%. If so, within 10 business days thereafter, the market maker must register as a CQS market maker with Nasdaq and commence quoting regular and continuous two-sided markets in that issue.
- To calculate its volume in a particular issue, a market maker must add all of its proprietary volume in the stock, regardless of whether the trades occurred in the third market or on an exchange and regardless of whether the firm had a trade reporting obligation with respect to the trades. For example, if a firm bought 20,000 shares in the third market, sold 20,000 shares in the third market, bought 20,000 shares on an exchange, and sold 20,000 shares on an exchange, its total volume in the stock would be 80,000 shares.
- A firm may be required to register as a CQS market maker even though it is merely internalizing its own customer order flow. The SEC’s approval order for the 1% registration requirement states that “dealers that internalize

customer order flow . . . would fall within the definition [of an OTC market maker] even though they do not hold themselves out to all other market participants.” Similarly, firms that hold themselves out to only particular firms as being willing to receive and execute customer order flow on a regular and continuous basis would fall within the definition of an OTC market maker.

- It is ultimately the obligation of a market maker to determine whether it has exceeded the 1% volume threshold, although Nasdaq and NASD Regulation will be monitoring members’ trading activities in CQS securities to ensure compliance with the Rule.

### Withdrawal Of Quotations

- SEC staff has stated that “the requirement to provide quotations in a subject security shall terminate 10 business days after the occurrence of two successive calendar quarters in which the firm’s trading volume for such subject security is less than 1% of the aggregate trading volume.”

A CQS market maker is not precluded from withdrawing from a security in which it has exceeded the 1% volume threshold during the preceding calendar quarter; however, if it does so, it must cease holding itself out as a market maker in the issue. □

## SEC Approves Anti-Intimidation/Coordination Interpretation To Conduct Rule 2110

On July 17, 1997, the SEC approved a new interpretation under Conduct Rule 2110 (IM-2110-5) regarding anti-intimidation/coordination activities of member firms and persons associated with member firms (SEC Rel. No. 34-38845). This rule interpretation defines certain

conduct that is inconsistent with just and equitable principles of trade, and sets forth specific exclusions which identify *bona fide* commercial activities by and among member firms. The interpretation identifies three general areas of conduct that are prohibited and apply to primary

market as well as secondary trading activities.

The first part of the interpretation prohibits coordinating activities by member firms involving quotations, prices, trades, and trade reporting. Conduct

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covered by this prohibition would include, but not be limited to, agreements to report trades late or inaccurately, or agreements to maintain certain minimum spreads or quote sizes above the legal minimums.

The second part of the interpretation prohibits "directing or requesting" another member to alter prices or quotations. This includes situations in which a market maker requests another market maker to move or adjust its displayed quotations to accommodate the requesting market maker. This prohibition does not extend to activity that permits a member to route customer orders to market makers for handling or permits a correspondent firm of the member to ask a market maker to represent an order in the market maker's quote.

The third part of the interpretation relates to conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member in a manner that interferes with or impedes the forces of competition among member firms in The Nasdaq Stock Market<sup>SM</sup>. This part of the prohibition is intended to reach conduct that goes beyond legitimate bargaining among member firms. This conduct may include, among other things, refusals to trade, improper systems messages, trading in odd lots, and other conduct intended to influence a member to engage in improper market activity or refrain from legitimate market activity. However, members are not prohibited from taking unilateral action in selecting with whom to trade and under what terms, based on legitimate market and commercial criteria (e.g., credit exposure). In addition,

this interpretation does not prohibit a market maker from contacting another market maker in a locked or crossed market situation to attempt to unlock or uncross the market.

The NASD issued this interpretation to codify long-standing policy and to comply with certain undertakings included in an SEC Order (SEC Rel. No. 34-37538) of August 8, 1996, in which the Commission made specific findings of certain anti-competitive behavior of Nasdaq market makers in The Nasdaq Stock Market.

Questions regarding this interpretation may be directed to David A. Spotts, Senior Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8014. □

## Compliance With SEC Order Handling Rules And Nasdaq Trading Rules

The NASD reviews member firm compliance with the SEC Order Handling Rules and with Nasdaq trading rules. The NASD takes this opportunity to reemphasize the application of several rules and system changes and to remind members of their responsibilities in certain areas. Several of these topics have been addressed in the more than 50 faxes that have been sent to head traders and others at member firms since January 1997. Responsible Nasdaq departments are listed below, with appropriate contacts and telephone numbers.

### Members That Use SelectNet Broadcast Must Comply With ECN Rules

In the stocks covered by the SEC Order Handling Rules (the SEC Rules), a market maker is required to reflect all orders (customer and proprietary) placed in

an electronic communications network (ECN) in its quote unless the ECN's display is included in the Nasdaq system and there is access to that ECN. SelectNet<sup>SM</sup> is not a linked or eligible ECN under the SEC Rules in that SelectNet orders are not reflected in the Nasdaq quote montage and, accordingly, market makers may not use SelectNet Broadcast to reflect orders priced better than their own displayed quotes, without also adjusting their quotes.

### ECN Rules

1) A market maker that broadcasts a SelectNet order must reflect that order in its own quote if the order is priced better than its quote, whether the market maker is at the inside or not. For example, if a market maker broadcasts a SelectNet order to buy 1,000 shares at 20, the market maker must change its Nasdaq bid to 20 for 1,000 shares.

2) If a market maker is at the inside and places a customer order into SelectNet Broadcast that represents a size greater than 10 percent of its quote size, the market maker must increase its displayed size in its quote. For example, if the market maker referenced above broadcasts a customer order in SelectNet to buy 5,000 shares at 20, the market maker must change its Nasdaq bid to 6,000 shares. (It is not necessary to change a market maker's quote size to reflect a proprietary order.)

3) Before Nasdaq moved to display quotes in 1/16s, a market maker could broadcast an order in SelectNet priced 1/16 better than its displayed quote without changing its quote in Nasdaq, but since the change on June 2, 1997, this is no longer permissible. Market makers may continue to preference orders to other market makers or ECNs

via the SelectNet preference service without changing their quotes.

4) A market maker that broadcasts an all-or-none (AON) SelectNet order priced superior to its quote must still update its quote to reflect the better-priced SelectNet order.

### **Market Makers Must Reflect Customer Limit Orders In Quotes**

In all stocks covered by the SEC Rules, customers are not required to request that their limit orders be displayed in a market maker's quote. All customer orders that are priced better than a market maker's quote or that add size to the market maker's quote at the inside price are required to be displayed, unless an exception applies. Exceptions include: block size orders (e.g., 10,000 shares or \$200,000 market value); odd-lots; all-or-none orders; those executed immediately upon receipt, sent to another market maker or a linked ECN; or those requested by the customer not to be displayed. Customers do not have to ask for their limit orders to be displayed—it is the obligation of the market maker to display the orders, unless instructed otherwise by the customer.

### **Market Makers Must Display Customer Orders**

The SEC Rules require members to display customer limit orders as soon as possible, within 30 seconds of receipt in normal market conditions. The 30-second rule does not apply at market openings or shortly thereafter, when trading reopens after a trading halt, or when an initial public offering (IPO) first begins trading, but it does apply at all other times. Members are reminded of their obligation to comply with the 30-second time frame.

### **Members Must Comply With Limit Order Protection Rules**

Whether or not a stock is subject to the SEC Rules, a member's obligation to protect a customer limit order does not cease when the order is sent to an ECN or a market maker for execution. The

limit order protection obligations (Manning Rules) apply to all customer limit orders sent to an ECN or a market maker, and the member sending or receiving the order cannot trade ahead of that order. Members must monitor the status of the order and not trade ahead of it until the order has been executed within the ECN or by the market maker.

For example, in an instance where a member receives a customer limit order, sends it to an ECN for execution, and subsequently receives a market order, the SEC has stated that the market order must be given the improved price of the limit order. A member's obligation to protect the limit order and to improve the price of an incoming market order does not end when the limit order is sent to another entity for execution.

### **Market Makers Should Review "No Dec" Feature**

Nasdaq has given market makers the option to prevent their displayed quote size from being decremented following an execution in the Small Order Execution System (SOES<sup>SM</sup>) (no dec), provided that their published quote size is equal to or greater than the SOES tier size. This qualification on the use of no dec has been put into place to ensure that market makers who do not want their quote size diminished will continue to provide liquidity of at least the SOES tier size. Accordingly, while it is permissible under the rules to quote the first 50 pilot stocks in proprietary sizes less than the SOES tier size, it is not permissible to do this while using the no dec feature.

The NASD recognizes a very limited exception to the use of the no dec feature when a market maker uses no dec while quoting smaller size in conjunction with the operation of the market maker's own auto-quote system. Specifically, market makers may reflect customer limit orders in sizes lower than SOES tier size while using the no dec feature, but they must immediately restate the SOES tier size using their own

automated quote update systems following the execution of the customer limit order.

Market makers are not permitted to continue to quote at less than the SOES tier size in any stock while using no dec.

### **Members Must Maintain Appropriate Size Quotes**

With the implementation of the SEC Rules, market makers began reflecting customer limit orders in their quotes, regardless of the minimum quote sizes required by Nasdaq. The SEC allowed the first 50 pilot stocks to be quoted in actual size, as low as 100 shares, and Nasdaq began decrementing the size of market makers' quotes following unpreferenced SOES executions. Accordingly, market makers for the first time have been required to actively monitor their posted size to make sure that they are complying with the various new rules and system features.

### **Size Obligations**

1) Market makers are permitted to quote actual size in the first 50 pilot stocks, unless they are using the no dec feature.

2) For stocks that are phased in under the SEC Rules, market makers are required to reflect better priced customer limit orders in their quotes, and to increase their size if they are at the inside and the customer order represents at least 10 percent of the market maker's quote size. Market makers may voluntarily choose to reflect customer limit orders in their quotes for stocks that have not yet been phased in under the SEC Rules.

3) Market makers who have their size decremented following a SOES execution may remain at that size until other SOES executions reduce their size to zero. When a quote is decremented to zero size, the Nasdaq automated quote refresh feature will refresh the market maker's quote to tier size if the market maker has chosen this feature. A market maker may also use its own manual or

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automated update system to refresh its quote to tier size or customer limit order size. If none of these alternatives is used, the market maker will be placed in a SOES closed status and would be deemed to have withdrawn from the stock if it has not refreshed its quote after five minutes.

4) Market makers who have had their size decremented by a SOES execution and who voluntarily update their price must also update their size to the SOES tier size at that time. Market makers may not update their price and leave less than the SOES tier size displayed. The new Quick Quote Update feature, available since June 24, 1997, with the Workstation 4/5 release, now permits market makers to update the size of their quotes quickly for this purpose.

### Aggregated Size Of Customer Limit Orders

Anytime a market maker is at the inside, or the inside market moves to the market maker's quote, the market maker's displayed price and size must reflect the aggregated size of all of its customers' limit orders.

For example, if a market maker receives three customer limit orders priced at 20 for 1,000, 2,000, and 1,000 shares, the SEC Rules require these orders to be

displayed. If 20 becomes the inside bid and the market maker is quoting 20, the market maker must update its quote size to at least 4,000 shares, reflecting the aggregation of the limit order sizes.

### Market Makers May Not Lock Or Cross The Market

Market makers are obligated to use reasonable means not to lock or cross the market, whether through their own quote or by sending an order into an ECN. "Reasonable means" has been interpreted to include a SelectNet order preferenced to the firm(s) at the bid or offer. This is especially important at the opening, and it is important that members monitor their quotes as well as any orders placed in ECNs to avoid locking or crossing the market during the opening. If these orders in the ECN are market maker orders, it is the obligation of the market maker to attempt to contact the other side prior to sending the order into the ECN and locking or crossing the market. ECNs are also required to use reasonable means to avoid locking or crossing the market, especially when the orders sent into Nasdaq emanate from a non-market maker or non-member.

### Members Must Mark ACT Reports

Since all market makers are now primary market makers and exempt from the short sale rule for Nasdaq

National Market<sup>®</sup> securities, when market makers effect a short sale using their primary market maker exemption, they must mark their Automated Confirmation Transaction Service (ACT<sup>SM</sup>) reports with "short sale exempt."

### Requests For Excused Withdrawal Status

Market makers that call Nasdaq Market Operations for an excused withdrawal should maintain, as a part of their recordkeeping requirements, supporting documentation for the reason they have requested the withdrawal. NASD Regulation examiners will request and review such documentation for excused withdrawal requests.

Questions regarding this information or marketplace rules in general may be directed to: Nasdaq MarketWatch at (800) 211-4953; Nasdaq Office of General Counsel at (202) 728-8294, or NASD Regulation, Market Regulation at (301) 590-6410.

Questions regarding system operations may be directed to: Nasdaq Market Operations at (800) 481-2732, or Nasdaq Trading and Market Services at (202) 728-8805. □

## NASD Regulation Reiterates Proper Use Of Form T

Recently, NASD Regulation staff has detected an increase in the improper use of Form T to report transactions in Nasdaq, over-the-counter equity, and listed securities. The staff reminds members that NASD rules provide that a Form T be used "exclusively as a back-up mode whenever electronic entry of trade data into ACT is not feasible due to system malfunctions or other unusual conditions." In the situation where there

is not a system malfunction or other unusual condition, a member is able to and should use ACT to report a transaction as late as 1:30 p.m. Eastern Time on the next business day (T+1). Therefore, the use of Form T should be a rare occurrence. To the extent that a member claims that system malfunctions or unusual conditions prevented the member from reporting a trade report electronically into ACT, the member

should document each such malfunction and condition contemporaneously with its occurrence.

The staff has also detected an increase in untimely Form T filings by members. NASD rules provide that all members must report on Form T, on a weekly basis, last sale reports of transactions in Nasdaq, over-the-counter equity, and listed securities that were not reported to

ACT, “for whatever reason.” Thus, in instances where a member executes a transaction on Monday and, for whatever reason, did not report the transaction into ACT by 1:30 p.m. Eastern Time on T+1, the member must report the transaction to NASD Regulation’s Market Regulation Department on Form T on or before the following Monday (this same Form T could also be used to report any other transactions executed by the member in the prior week but not reported to ACT, for whatever reason). A Form T filed with the Market Regulation Department on the following Tuesday, or any day thereafter reporting that transaction, could be viewed as conduct inconsistent with NASD trade reporting rules.

Lastly, NASD Regulation staff has detected an increase in incomplete and

inaccurate Form T filings by the members. A filed Form T takes the place of a transaction report transmitted through ACT. As such, a properly completed Form T must include all of the information that would otherwise be included in the electronic trade report, had it been electronically reported. This information includes, but is not limited to: the security symbol; the number of shares; the unit price (excluding commissions, markups, or markdowns); the date and time of execution; a symbol indicating whether the member represents the market-maker side or the order-entry side; a symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt, or cross; a symbol indicating whether the transaction is as principal or agent; the contra side executing broker; and other applicable trade-reporting modifiers. To the extent that a member

report uses a Form T to report the modification of a prior transaction (whether it was originally reported electronically to ACT or on Form T), all information concerning both the original transaction and modified portion must be clear on the Form T. The filing of a Form T in no way relieves a member of compliance with all applicable trade reporting, record keeping, and confirmation rules and regulations for the transactions reported thereon. NASD Regulation deems a Form T “reported” when it is received by the Market Regulation Department, not when it is transmitted, sent, or telecopied by the member.

Questions regarding the proper use of Form T may be directed to Peter Santori, Market Regulation, at (301) 208-2935. □

## Passive Market Making Procedures And Trading Restrictions Under Regulation M

Rule 103 of Regulation M, which has been in effect since March 4, 1997, maintains the core provisions of former SEC Rule 10b-6A relating to passive market making. In surveilling passive market making, NASD Regulation’s Market Regulation Department staff has found several instances where firms are not adhering to the requirements set forth under Rule 103, which may result in disciplinary action. Accordingly, in order to help ensure member firm compliance with Regulation M, NASD Regulation reminds members of the following procedures and trading restrictions related to passive market making.

Member firms that wish to be designated as a passive market maker must be aware of the following procedures. First, pursuant to NASD Rule 2710(b)(11), to determine whether a member is eligible to be a passive market maker, the managing underwriter must submit a request

for an Underwriting Activity Report to the NASD Regulation Corporate Financing Department. An Underwriting Activity Report must be requested for any Nasdaq security that is part of a distribution subject to Regulation M. If the security is subject to a one- or five-day restricted period according to the Underwriting Activity Report, then the distribution participants may be either excused from trading that particular stock during the restricted period or be designated as a passive market maker and comply with the passive market making restrictions for the duration of the restricted period. No later than the day prior to commencement of the restricted period, NASD Rule 4619(d)(1) requires the managing underwriter of a distribution to submit a Restricted Period Commencement Notification to Nasdaq Market Operations and NASD Regulation’s Market Regulation Department indicat-

ing whether distribution participants will be excused or designated as passive market makers. In addition, pursuant to NASD Rules 4623 and 2710(b)(12), the managing underwriter is required to submit a Regulation M Trading Notification to NASD Regulation’s Market Regulation and Corporate Financing Departments (whether a no-, one-, or five-day restricted period applied) no later than the close of business on the day the distribution is completed.

There are many rules and restrictions placed on passive market makers that require special attention during the trading day. Following are some of those restrictions:

**1. No Purchases Above The Highest Independent Bid**—Unless one of the exceptions noted in item 7 (listed below) applies, a passive market maker shall not execute a purchase at a price that

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exceeds the highest independent bid at the time of the transaction. This rule also applies to purchases on ECNs. A firm may purchase stock above the highest independent bid if the firm is left alone at the inside bid after the independent market makers in the issue have moved their bids down. In this instance, the passive market maker must effect such purchases at a price no higher than its quoted bid price. In addition, the passive market maker may only purchase an amount up to twice the maximum SOES order size applicable to the issue (e.g., 2 x 200, 2 x 500, 2 x 1000 shares) at such price level and must thereafter move its bid down to a level no higher than the highest independent bid. Also, if another passive market maker is setting the inside bid by itself, the firm may not purchase at the inside market and must only execute purchases at levels not exceeding the highest independent bid. Therefore, it is recommended that firms disable "preferences" on automatic execution systems (e.g., ACES® [Advanced Computerized Execution System®], SOES, or internal systems), since traders are not aware of executions through such automated systems until after the trade is completed and they receive an execution report. Each firm has the capability to disable preferences in ACES and SOES for individual stocks.

**2. No Improper Upticks**—A passive market maker shall not enter a bid at a level that exceeds the highest independent bid. Thus, a trader may not initiate a new bid above the highest independent bid or join another passive market maker at a level above the highest independent bid.

**3. No Improper Downticks**—Any time a passive market maker downticks, the trader shall not enter a bid at a level that exceeds the highest independent bid. A passive market maker should be aware of the level of the highest independent bid at all times and continue to move down to a level equal to or below the highest independent bid, even if there is

another passive market maker at a level above the highest independent bid.

**4. No Untimely Downticks**—If a passive market maker is left at the inside bid, the passive market maker may stay at that level until the firm purchases up to twice the maximum SOES order size applicable to that issue. Once the passive market maker has equaled or exceeded this limit, the market maker must immediately lower its bid to a level not exceeding the highest independent bid.

**5. Exceeding 30% ADTV Limit**—There is a net purchase limitation placed on each passive market maker. At any time during the trading day, a passive market maker shall not equal or exceed its net purchase limit (which is calculated to be 30% of the firm's Average Daily Trading Volume [ADTV] for the covered security or a minimum of 200 shares) without taking immediate action. If the 30% ADTV limit is equaled or exceeded, the passive market maker must either: (1) immediately withdraw its quotation from Nasdaq and contact the Market Regulation Department, or (2) immediately execute a sale that would bring the firm's net position for the trading day below the 30% ADTV limit. Under either event, the trader must take action within 30 seconds of exceeding the 30% ADTV limit.

**6. No High Bid At Open**—A passive market maker shall not quote a bid higher than the highest independent bid at the market open and should periodically review its quote level before the market opens.

**7. Exceptions To The Passive Market Making Requirements Issued By The SEC**—In addition to the restrictions discussed above, the SEC has issued two interpretive letters (dated July 19, 1995, and November 22, 1996) that permit passive market makers to effect purchases above the highest independent bid if the purchase is necessary to comply with the NASD's Limit Order

Protection Rule or the SEC's Limit Order Display Rule. First, a passive market maker may reflect a customer limit order in its bid pursuant to the SEC's limit order display rule that creates a new inside bid higher than the highest independent bid and effect purchases at such price up to the size of the displayed limit order. After the customer order has been filled, however, the passive market maker must immediately lower its bid to a level not exceeding the highest independent bid. Second, a passive market maker may effect purchases at a price above the highest independent bid in order to fulfill its Manning obligation, provided the passive market maker does not solicit any limit or market orders during the "qualifying period" and does not effect any transactions on the sell side of the market that would create, directly or indirectly, an obligation to purchase the security at a price above the highest independent bid. In this connection, however, SEC staff has stated that a passive market maker must cross any market order to buy, except a market order executed through SOES, with any non-displayed limit order to sell priced between the bid and ask that it holds before it may sell to the market order as principal.

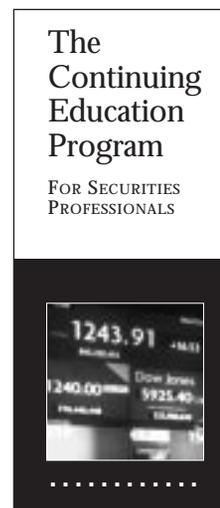
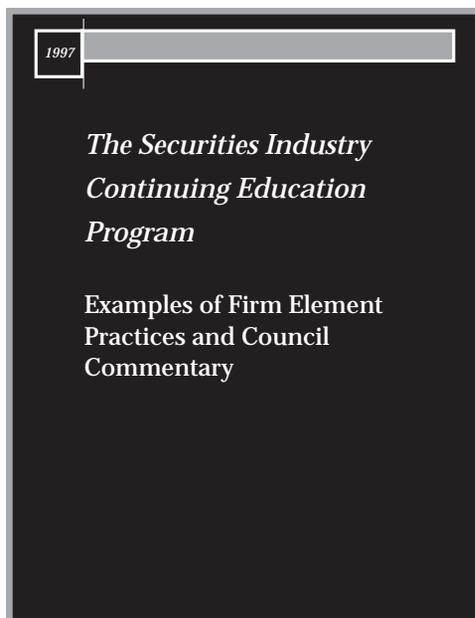
Firms are urged to fully educate traders and others responsible for passive market making activity and compliance on the complete nature and scope of these rules. In this regard, members should review SEC Release No. 34-38067 adopting Regulation M and SEC Release No. 34-38399 adopting the NASD amendments related to Regulation M. Also, members may refer to *NASD Notice to Members 97-10* (March 1997) for additional details. Questions regarding Regulation M may be directed to NASD Regulation's Market Regulation Department at (301) 590-6080. □

# Obtain New Continuing Education Materials !

## ***The Securities Industry/Regulatory Council on Continuing Education has just issued two publications of vital importance to NASD member firms.***

Just in time for firms to develop their 1998 Firm Element training plans, *Examples of Firm Element Practices and Council Commentary (Firm Element Practices)* provides a variety of approaches different broker/dealers have taken to comply with this regulatory requirement. At only \$10 per copy, this unique publication includes useful commentary on each firm's plan from the Council.

Also now available is the revised pamphlet—*The Continuing Education Program For Securities Professionals*. This pocket-sized booklet contains valuable information about the Securities Industry Continuing Education Program along with answers to frequently asked questions. The cost of the pamphlet is 35 cents per copy with a minimum order of 100 copies.



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# Corporate Financing Department Review Of Bridge Financing Arrangements

The Corporate Financing Department (the Department) wants members acting as underwriters to be aware of the Department's concern over the increasing number of bridge financing transactions occurring prior to the filing of IPOs. These bridge financings typically involve partners, shareholders, subordinated lenders, or "preferred customers" of the member firm arranging the bridge loan and proposing to underwrite the public offering, and result in the bridge lenders receiving significant amounts of securities or rights to acquire securities of the issuer. The Department believes that the compensation received for providing bridge loans is often disproportionate relative to the perceived risks for providing such short-term financing, and may result in disparate treatment of customers who are bridge lenders and public investors who purchase securities at the public offering price that have been grossly diluted by the bridge transaction. The Department also believes the loans made by bridge lenders should be recognized as business arrangements dependent on the member completing the public offering and creating a trading market for the securities received by the bridge lenders, rather than a bona fide investment in the issuer.

The Department's approach to the review of bridge financing transactions has been to carefully consider whether bridge lenders should be deemed to be within the definition of "underwriter and related persons" in the Corporate Financing Rule. The scope of the definition of "underwriter and related persons" is intended to facilitate the mandate of the NASD to set standards of fairness and reasonableness in connection with a member's activities as they relate to public offerings of securities. The Corporate Financing Rule defines "underwriter and related persons" as "underwriters, underwriter's

counsel, financial consultants and advisors, finders, members of the selling or distribution group, any member participating in the public offering, and any and all other persons associated with or related to and members of the immediate family of any of the aforementioned persons."

The NASD's filing with the SEC on the Corporate Financing Rule in 1991 indicates that the question of whether a person is "related to" any of the enumerated persons in the definition of "underwriter and related persons" is "determined by whether there is an investment or business relationship between the parties and is based on objective facts." Therefore, persons with an equity or creditor relationship with the member such as shareholders, partners, or subordinated lenders are considered underwriters and related persons.

The Department, in consultation with the Corporate Financing Committee (Committee), wants to clarify for members and their counsel that bridge lenders may be considered to have a business or investment relationship with a member if they repeatedly receive securities of issuers underwritten by the member at prices below the public offering price. Any determination that bridge lenders have a business or investment relationship with a member, and are therefore deemed to be underwriter and related persons, would be based on the repeated participation in loans necessary to facilitate a contemplated public offering. A course of conduct characterized by participation in multiple loan transactions is viewed by the Committee as a logical basis for determining that bridge lenders have established a business relationship with a member and should be deemed underwriter and related persons. Additionally,

the fact that bridge lenders receive "cheap stock" and "in the money" warrants of the issuer prior to the filing of an offering means that the NASD has a basis under the Corporate Financing Rule for examining the circumstances of the acquisition, the identity of the participants, and their relationships with the underwriter.

Once bridge lenders are identified as underwriter and related persons, the Department must analyze the factors in the Corporate Financing Rule for determining whether compensation received by underwriters and related persons should be considered underwriting compensation. The factors include: the timing of the transaction; the details of the services provided for which the compensation was received and the relation of the services to the public offering; the presence or absence of arm's length bargaining; the disparity between the price paid for the securities and the public offering price; the amount of investment risk assumed; and the relationship of the receipt of the securities to purchases by unrelated purchasers on similar terms at the same time.

After an analysis of these factors, the Department may find that the compensation received by the bridge lenders should be considered underwriting compensation received in connection with the public offering. In fact, Section (c)(4) of the Corporate Financing Rule includes a presumption that all securities acquired by underwriter and related persons within six months of the filing of a registration statement are underwriting compensation. The presumption may be rebutted by providing information related to the factors that support a finding that the securities should not be considered an item of compensation.

Members should note that if the amount of securities acquired by bridge lenders that are found to be underwriting compensation, together with any other securities proposed to be received by the underwriter (such as underwriter's warrants), exceeds the 10% Stock Numerical Limitation of the Corporate Financing Rule, they must be returned to the issuer at cost and without recourse before the Department will issue an

opinion of "no objections" in connection with the offering.

Finally, members are reminded that any transactions engaged in for the benefit of bridge lenders/selling security holders that involve distributing securities "off the shelf" on a delayed or continuous basis pursuant to SEC Rule 415 constitutes participation in a public offering. Registration statements relating to these

transactions are subject to filing with the Department (see *NASD Notice to Members 88-101*).

Questions on the Department's review of bridge financing arrangements may be directed to Richard J. Fortwengler, Associate Director, Corporate Financing, NASD Regulation, at (202) 974-2700. □

## Confirmation Disclosures: Payment-For-Order-Flow Practices And Yield-To-Maturity Calculations On Treasury Bills, Bonds, And Notes

SEC Rule 10b-10 (the Rule) requires that all purchase or sale transactions effected with or for customers be confirmed in writing. The rule also mandates that certain disclosures be made in this confirmation process. Broker/dealers are required to make certain disclosures regarding their payment-for-order-flow practices and yield-to-maturity calculations on Treasury securities.

The following information may be helpful to members in determining whether their confirmation disclosures are in compliance with the Rule.

### Payment For Order Flow Disclosure

In October 1995, the SEC amended the Rule to require additional confirmation disclosures indicating whether the broker/dealer receives payment for order flow in connection with the transaction and that the source and amount of the payment for order flow received in connection with the transaction will be furnished upon request of the customer.

The Rule allows members to use a "back-of-confirmation" disclosure that is generic, yet affirmative, in tone. The

following examples show how one statement satisfies the requirements of the Rule, while the other does not.

#### Example 1

"The firm receives remuneration for directing orders in equity securities to particular broker/dealers or market centers for execution. Such remuneration is considered compensation to the firm, and the source and amount of any compensation received by the firm in connection with your transaction will be disclosed upon request."

#### Example 2

"In some cases your broker receives remuneration for the equity order flow it routes for customer orders. The source and nature, if any payment for order flow is received, will be disclosed upon written request."

Example 1 *would* satisfy Rule 10b-10 disclosure requirements because the first sentence is a definitive statement that "the firm receives remuneration...". The second sentence "qualifies" the first sentence, stating that the source and amount of any compensation received will be disclosed to the customer upon request. If the firm did not receive payment for

order flow on the particular transaction, it would simply report "zero" compensation in response to the customer's inquiry.

Example 2 *would not* satisfy Rule 10b-10 disclosure requirements because the first sentence is not definitive. Statements such as "In some cases your broker receives..." or "Your broker may receive..." are not affirmative and therefore do not comply with the Rule.

Members that do not want to use a generic back-of-confirmation statement have the option of identifying each trade subject to payment-for-order-flow and using a "front-of-confirmation" disclosure that specifically identifies the trade as one for which payment-for-order-flow was received. An affirmative statement may be made on the front of the confirmation, *e.g.*, "We received payment-for-order-flow on this transaction. The source and nature of the payment will be disclosed upon written request."; or, the confirmation may contain a code that refers to a similarly definitive statement on the back of the confirmation.

*(Continued on page 30)*

Broker/dealers that never receive payment-for-order-flow have no disclosure requirement under SEC Rule 10b-10. However, the broker/dealer would still be required to comply with the disclosure requirements of SEC Rule 11Ac1-3. Rule 11Ac1-3 requires a broker/dealer to disclose to its customers the firm's policies as they pertain to payment-for-order-flow. This disclosure must be made at the time the account is opened and annually thereafter.

### Yield-To-Maturity Calculation On Treasury Bills, Bonds, And Notes

A question recently arose concerning whether Rule 10b-10 requires a broker/dealer to factor the markup/markdown or commission charged into the yield-to-maturity displayed on the confirmation.

Subsection (a)(5), which addresses debt securities transactions effected exclusively on the basis of a dollar price, requires that the yield-to-maturity be displayed

on the confirmation unless there is an exception provided in subsection (a)(5)(ii). Treasury bills, bonds and notes do not qualify for an exception.

Subsection (a)(6), which addresses debt securities transactions effected on the basis of yield, requires that the current yield, yield-to-maturity, or yield-to-call be displayed on the confirmation unless there is an exception provided in subsection (a)(6)(iii). Treasury bills, bonds, and notes do not qualify for an exception.

In addition, subsection (a)(6) requires that if the transaction is effected on a basis other than yield-to-maturity and the yield-to-maturity is lower than the represented yield, then both the yield-to-maturity and the represented yield must be disclosed.

Therefore, members are required to factor compensation (*i.e.*, markup, markdown, or commission) on Treasury bills, bonds, and notes into

the yield-to-maturity calculation for disclosure on the confirmation.

Members should note that this does not affect the requirement that the commission charged on an agency transaction on Treasury bills, notes, and bonds must be disclosed separately on the confirmation. Conversely, the markup/markdown charged on these same securities does not have to be disclosed separately on the confirmation.

Members are urged to review their confirmation disclosures for compliance with Rule 10b-10.

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

## NASD DISCIPLINARY ACTIONS

*In April, May, June, July, and August 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

### April Actions

**Eric Andre Clemons (Registered Representative, Irvine, California)** was fined \$65,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Clemons effected unauthorized transactions in customer accounts. Clemons also failed to follow a customer's instructions regarding the purchase of stock and provided a customer with an account statement that falsely reflected the account balance.

### May Actions

None

### June Actions

**Elliot Krausz Adler (Registered Representative, San Francisco, California)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adler received funds totaling \$1,350 from a public customer for the purchase of securities and failed to use the proceeds to purchase securities. Adler also failed to respond to NASD requests for information.

**Robert Ignacio Burnham (Registered Representative, San Francisco, California)** was fined \$10,000. The sanction was based on findings that Burnham signed the names of public customers to a delivery receipt and to checks totaling \$24,908.83 and submitted them to an insurance company.

**John Thomas Higley (Registered Representative, Folsom, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Higley failed to respond to NASD requests for information.

**Hayden James Lockhart, III (Registered Representative, Mililani, Hawaii)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lockhart created a fictitious insurance application for a public customer, forged an insurance agent's signature to the application, and submitted the application to his member firm. Furthermore, Lockhart forged a public customer's name to

an insurance application and submitted the application to his member firm. Lockhart also failed to respond to NASD requests for information.

**William David Stephens (Registered Representative, Redwood City, California)** was fined \$220,000, barred from association with any NASD member in any capacity, and ordered to pay \$41,585.98 in restitution to a member firm or customers. The sanctions were based on findings that Stephens received \$41,585.98 from public customers and misappropriated and converted the funds to his own use and benefit. Stephens also failed to respond to NASD requests for information.

**Windsor Reynolds Securities, Inc. (New York, New York)** was fined \$10,000. The sanction was based on findings that the firm opened 97 customer accounts in its New York office and effected 98 purchases and sales on behalf of customers before receiving required approval from the NASD to change its business.

### July Actions

**Michael Kenneth Anderson (Registered Representative, San Jose, California)** was fined \$70,468 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anderson participated in the sale of promissory notes to investors without giving prior written notification to his member firm.

**First California Capital Markets, Inc. (San Francisco, California) and Gerald Beldon Porter, Jr. (Registered Principal, San Rafael, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they

were fined \$27,000, 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 Porter, effected sales of securities to customers at prices that were not fair and reasonable taking into consideration all relevant circumstances. The findings also stated that Porter acted, and the firm permitted him to act, as a municipal securities principal without being registered as such.

**James Thomas Shanley (Registered Principal, Old Bridge, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Shanley consented to the described sanction and to the entry of findings that a member firm, acting through Shanley, opened 97 customer accounts and effected purchases and sales on behalf of the public customers prior to receiving required approval from the San Francisco DBCC to change its business.

## August Actions

None

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.

## April Actions

**Louis Fratkin (Registered Representative, Thousand Oaks, California)** was fined \$27,853.60, barred from association with any NASD member in any capacity, and ordered to pay \$5,570.72 in restitution to a member firm. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Fratkin forged a customer's signature on certain documents to generate the surrender of the customer's insurance policy and converted \$5,570.72 in proceeds for his own benefit.

**Daniel C. Montano (Registered Principal, Orange, California)** was fined \$10,000 and ordered to requalify by exam as a general securities principal. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Montano appeared on a television program and made recommendations regarding a stock while failing to provide a sound basis for evaluating the facts in regards to the stock, made exaggerated and unwarranted claims, and used unwarranted superlatives. Montano also made unwarranted forecasts of future events, made forecasts of future events that were not clearly labeled as forecasts, referred to results of previous specific recommendations, and implied comparable future results concerning his recommendation to short the stock.

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

## May Actions

**DuSean Berkich (Registered Principal, Irvine, California)** 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 30 business days. Without admitting or denying the allegations, Berkich consented to the described sanctions and to the entry of findings that a former member firm, acting through Berkich, determined that customer funds would be used to offset receivables from a general partner of an issuer instead of forwarding the funds promptly to the issuer. According to the findings, the funds were intended for investment in a limited partnership but instead, were deposited into the firm's general account.

**Gregory J. Vislocky (Registered Representative, Lake Oswego, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$3,500 and ordered to disgorge \$31,472.06. Without

admitting or denying the allegations, Vislocky consented to the described sanctions and to the entry of findings that he violated of the Board of Governors' Interpretation on Free-Riding and Withholding by failing to notify the insurer of an offering that he was associated with his member firm, by failing to notify his member firm that he had purchased shares in the conversion offering, and by selling half of his shares and transferring the other half within 150 days of the conclusion of the conversion offering. The findings also stated that Vislocky bought and sold shares in three other conversion offerings through privately negotiated transactions with a public customer and other parties and repaid personal loans made to him by the customer from the profits that resulted when those shares were later sold.

**Frederick M. Woolley (Registered Representative, Redlands, California)** submitted an Offer of Settlement pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Woolley consented to the described sanctions and to the entry of findings that he forged his manager's signatures on six separate documents.

## June Actions

**Coastline Financial, Inc. (Mission Viejo, California) and Donald Allyson Williams (Registered Principal, Mission Viejo, California)** were fined \$50,000, jointly and severally. In addition, the firm was expelled from NASD membership and ordered to repay, with interest, any notes mentioned in the complaint that remain outstanding. Williams was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Williams, induced the purchase of 63 secured promissory notes totaling \$1,101,260.89 in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

The action has been appealed to the Securities and Exchange Commission (SEC) and the sanctions, other than the expulsion and bar, are not in effect pending consideration of the appeal. However, the firm is permitted to effect unsolicited transactions on behalf of its existing customers during the pendency of the appeal.

## July Actions

**Amerivet-Dymally Securities, Inc. (Inglewood, California) and Elton Johnson, Jr. (Registered Principal, Panorama City, California)** submitted an Offer of Settlement pursuant to which they were fined \$20,250, jointly and severally. In addition, the firm was suspended of all underwriting activities for 30 days and Johnson was ordered to requalify by exam as a financial and operations 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 Johnson, effected transactions in securities and induced the purchase or sale of securities when the firm failed to have and maintain sufficient net capital. The finding also stated that the firm, acting through Johnson, failed to file in a timely manner MSRB Form G-37 in connection with four municipal securities underwritings sold by the firm on a firm commitment basis.

**Benjamin Antonio Chacon (Registered Representative, Dana Point, California)** 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, Chacon consented to the described sanctions and to the entry of findings that he caused the surrender of \$10,145.74 worth of paid-up additional insurance on the life insurance policy of a public customer and forged the customer's endorsement on the surrender check without the customer's knowledge or consent. The findings also stated that Chacon submitted

an application in the customer's name for a variable appreciable life policy that was not signed by the customer and applied \$2,385.89 of the proceeds from the surrender check toward the policy, thereby generating a commission.

**Lo-Shan Lee (Registered Representative, San Diego, California)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he opened a securities account with a member firm without informing his member firm of the existence of the account and/or the trading in the account and without informing the other firm of his association with his member firm.

**Daniel C. Montano (Registered Principal, Orange, California)** submitted an Offer of Settlement pursuant to which he was fined \$102,500 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Montano consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that resulted in his member firm's mishandling and/or misusing funds entrusted to the firm by prospective registered representatives that the firm agreed to sponsor for the purpose of their applying to take certain securities exams. The findings also stated that a member firm, acting under the direction and control of Montano, effected securities transactions while failing to maintain sufficient net capital.

## August Actions

**Yana Michelle Epstein (Registered Representative, Dove Canyon, California)** submitted an Offer of Settlement pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Epstein consented to the described sanctions and to the entry of findings that she provided false and misleading information to the NASD in response to NASD's request for information concerning the possible misuse of a customer's insurance proceeds.

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

## April Actions

**Robert Lloyd DenHerder (Registered Representative, Helena, Montana)** was fined \$27,549.41, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam. The NBCC affirmed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that DenHerder recommended and executed on behalf of a public customer the purchase and sale of securities in the customer's account without having reasonable grounds for believing such transactions were suitable for the customer. DenHerder recommended to and purchased on behalf of a public customer shares of a fund without affording the customer the benefit of letter of intent and breakpoint and inter-family discounts. Furthermore, DenHerder guaranteed the customer against loss by providing the customer with a \$39,059 promissory note as reimbursement for losses incurred by the customer in connection with his investments.

DenHerder appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**James R. Stock (Registered Representative, Gresham, Oregon)** was fined \$17,500 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Stock prepared and disseminated sales literature that failed to conform to standards regarding communications with the public.

**Gary S. Trammell (Registered Representative, West Linn, Oregon)** submitted an Offer of Settlement pursuant to which he was fined \$85,000 and barred from association

with any NASD member in any capacity. Without admitting or denying the allegations, Trammell consented to the described sanctions and to the entry of findings that he received a \$20,000 check from a public customer for the purchase of a variable annuity, deposited the check into his bank account, and used only \$7,000 of the funds to purchase the annuity for the customer. The findings also stated that Trammell failed to respond to NASD requests for information.

## May Actions

**Twila Lee Cherry (Registered Representative, Littleton, Colorado)** was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cherry filed a Form U-4 with the NASD in which she failed to disclose a felony conviction.

**Ronald Plateau (Registered Representative, Phoenix, Arizona)** was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Plateau obtained \$45,756.64 from public customers for investment purposes but only invested \$28,000 of these funds as directed by the customers. Furthermore, Plateau obtained \$1,500 from a public customer by stating that the customer owed him a service fee for his efforts in canceling the customer's annuity and investing the proceeds into another investment, when in fact, Plateau's member firm assessed no such charge for this service. Plateau also failed to respond to NASD requests for information.

**Mark Wallace (Registered Representative, Ballwin, Missouri)** was fined \$10,000 and required to requalify by exam. The sanctions were based on findings that Wallace effected purchases of stock in the accounts of public customers without their authorization.

## June Actions

**Mark P. Augustine (Registered Principal, Englewood, Colorado)** was fined \$5,000, jointly and severally, with a member firm, suspended from association with any NASD member as a financial and operations principal for 10 days, and required to requalify by exam as a financial and operations principal. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that a member firm, acting through Augustine, conducted a securities business while failing to maintain its minimum required net capital and filed an inaccurate FOCUS Part I report.

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

**Robert F. Blake (Registered Representative, Evergreen, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Blake consented to the described sanctions and to the entry of findings that he disseminated sales literature that failed to conform with the standards for communications with the public. The findings also stated that Blake made misrepresentations, exaggerated and unwarranted statements and claims, and omitted to disclose risks associated with investments in the stock and warrants of a drug company.

Blake's suspension will commence June 30, 1997 and will conclude July 7, 1997.

**Wayne D. Butler (Registered Representative, Tualatin, Oregon)** submitted a Letter of Acceptance, Waiver and Consent 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, Butler consented to the described sanctions and to the entry of findings that he recommended and sold to a public customer shares of stock and in connection with such sales, failed to provide prior written notice to his member firm describing in detail the proposed transactions and his proposed role therein and stating whether he had or might

receive selling compensation in connection with the transactions.

**Brian L. Gibbons (Registered Principal, Scottsdale, Arizona)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The U.S. Court of Appeals affirmed the sanctions following appeal of a May 1996 SEC decision. The sanctions were based on findings that Gibbons provided inaccurate and misleading information to the NASD staff in response to NASD requests for information.

**Harrison Douglas, Inc. (Aurora, Colorado), Douglas Wayne Schriener (Registered Principal, Aurora, Colorado), and Stephen John Hrynik (Registered Principal, Aurora (Colorado))** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally, and required to offer recession of monies raised from five non-accredited investors. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with a private offering for which the firm acted as underwriter, the firm, acting through Schriener and Hrynik, failed to sell exclusively to accredited investors as required under the exemption from registration in Section 4(2) and 4(6) of the Securities Act of 1933. The findings also stated that the firm, acting through Schriener and Hrynik, failed to disclose in the private offering memorandum that Hrynik, who signed the review contained in the memorandum, was not independent because he was employed at the firm as its chief financial officer.

**David J. Ramsdale (Registered Representative, Aurora, Colorado)** was fined \$675,000, barred from association with any NASD member in any capacity, and ordered to pay \$135,000 in restitution to customers. The sanctions were based on findings that Ramsdale obtained funds totaling \$135,000 from public customers for investment purposes, failed to follow the customers' instructions to purchase securities and, instead, used the funds for his own benefit. Furthermore, Ramsdale reimbursed a public customer with a promissory note for losses incurred in the customer's securities account. Ramsdale also failed to respond to NASD requests for information.

**William G. Sellens (Registered Representative, Greeley, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$6,250, suspended from association with any NASD member in any capacity for 10 business days, and required to pay \$4,987.75 in restitution to a customer. Without admitting or denying the allegations, Sellens consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities on margin when such recommendation was not suitable for the customer given her financial situation, needs, and investment objectives.

**Robert L. Stark (Registered Representative, Scottsdale, Arizona)** 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, Stark consented to the described sanctions and to the entry of findings that he deposited public customers' funds totaling \$494,329.67 into a personal savings account that he maintained for his benefit.

## July Actions

**Roger L. Zarling (Registered Representative, Tacoma, Washington)** was fined \$160,000, barred from association with any NASD member in any capacity, and required to pay \$32,000 in restitution to a member firm. The sanctions were based on findings that Zarling received checks totaling \$32,000 from public customers intended for investment in mutual funds, and instead, endorsed the checks and deposited the proceeds into his personal bank account.

## August Actions

**A.G. Edwards & Sons, Inc. (St. Louis, Missouri) and Bruce Reed (Registered Principal, Las Cruces, New Mexico)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. Reed also was required to requalify by exam as a branch manager by taking the Series 8 exam. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Reed, failed to supervise a registered representative in a manner designed to achieve compliance with NASD Rules pertaining to private securities transactions.

**Alden Capital Markets, Inc. (Denver, Colorado) and Robert Thayer (Registered Principal, Denver, Colorado)** 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 Thayer, conducted a securities business while failing to maintain its required net capital.

**Roy C. Cook (Registered Representative, Albuquerque, New Mexico)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity until he requalifies by exam in any representative or principal capacity. Without admitting or denying the allegations, Cook consented to the described sanctions and to the entry of findings that he signed firm documents without the signatories' authorization and consent.

**Charles William Duquette (Registered Representative, Beaverton, Oregon), Lewis H. Aytes (Registered Representative, Medford, Oregon), and William Alan Smith (Registered Principal, Central Point, Oregon)** submitted Letters of Acceptance, Waiver and Consent pursuant to which Duquette was fined \$50,000 and suspended from association with any NASD member in any capacity for 18 months. Aytes was fined \$100,000 and suspended from association with any NASD member in any capacity for 18 months and Smith was fined \$20,000 and required to provide certification from his member firm that he has undergone additional training to meet his supervisory responsibilities.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Duquette and Aytes recommended and sold limited partnership units to public customers at prices substantially in excess over the prices at which they were able to obtain the units. Furthermore, the NASD determined that, in connection with their solicitation of customers and recommendations to them, Duquette and Aytes failed to disclose material information to the customers about the offering. The findings also stated that Smith failed to reasonably review Duquette and Aytes' activities to ensure their compliance with the applicable NASD Rules.

Duquette's suspension began January 6, 1996 and concluded July 6, 1997.

Aytes' suspension began February 15, 1996 and concluded August 15, 1997.

**Matthew Alan Goldberg (Registered Representative, Glendale, Arizona)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goldberg consented to the described sanctions and to the entry of findings that he engaged in business outside of the scope of his employment with his member firm. The NASD found that Goldberg engaged in the offer and sale of securities without providing prior written disclosure to his member firm describing the proposed transactions and his role therein. The findings also stated that Goldberg disclosed inaccurate information on his Form U-4.

**Gary A. Hill (Registered Representative, Rio Rancho, New Mexico)** was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Hill received from public customers funds totaling \$630 for insurance premium payments and failed to forward the funds to his member firm.

**Patrick Charles Lawrence (Registered Representative, Bellevue, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lawrence consented to the described sanctions and to the entry of findings that, by using false book-keeping entries to the books and records of his member firm, he caused \$12,000 of the firm's monies to be deposited into securities accounts under his control, and used those monies for personal purposes, all without the knowledge or consent of the firm.

**Taek Yung Lee (Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$17,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he solicited a customer to provide a \$3,500 check for the purpose of purchasing securities in an initial public offering. The NASD found that Lee personally retrieved the check from the customer, signed and endorsed the check, deposited it into his brother's bank account, and made use of the customer's funds in a manner that was contrary to the customer's intention.

**Robert W. Lewis (Registered Principal, Englewood, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any representative capacity, with the right to reapply after one year, and barred from association with any NASD member in any principal or proprietary capacity, with a right to reapply after two years. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he used funds belonging to his member firm to which he may not have been entitled under his employment agreement with the firm.

**John F. Long (Registered Representative, Thornton, Colorado)** 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 five business days. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that he opened accounts and executed transactions in the accounts pursuant to the instructions from a third party without having the authorization of the beneficial owners of the accounts. The findings also stated that Long completed new account cards with information that he knew or should have known to be inaccurate.

**Sheila Marlene Mehrens (Registered Representative, Tucson, Arizona)** submitted an Offer of Settlement pursuant to which she was fined \$65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mehrens consented to the described sanctions and to the entry of findings that she obtained checks totaling \$13,000 made payable to a public customer, endorsed the checks, deposited them to a bank account under her control, and converted the funds to her personal use.

**Dennis Charles Murphy (Registered Representative, Boise, Idaho)** 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, Murphy consented to the described sanctions and to the entry of findings that he participated in securities transactions and failed to provide written notice to his member firm describing in detail the proposed transaction, his proposed role therein, and whether he had received or may receive selling compensation in connection with the trans-

action. The findings also stated that Murphy failed to respond to NASD requests for information.

**Peter A. Provence (Registered Principal, Pasadena, California)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any principal capacity for one year. Without admitting or denying the allegations, Provence consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a reasonable manner.

**Robert M. Samardich (Registered Representative, Missoula, Montana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$350,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Samardich consented to the described sanctions and to the entry of findings that he obtained possession of customer funds in excess of \$70,000 intended for investment in certificates of deposit. The NASD determined that Samardich put the funds to his own use and not for the purpose intended by the customers involved.

**Yee, Desmond, Schroeder and Allen, Inc. (Phoenix, Arizona), Stanley J. Allen, Jr. (Registered Principal, Scottsdale, Arizona), and James F. Desmond (Registered Principal, Phoenix, Arizona)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. In addition, the firm and Allen were fined \$7,500, 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 Allen, participated in the distribution of and accepted payment for securities in an offering made subject to a minimum purchase contingency and failed to forward payments to an escrow account that satisfied the requirements of SEC Rule 15c2-4. Furthermore, the NASD determined that the firm, acting through Allen and Desmond, failed to supervise registered and associated persons reasonably and failed to establish, maintain, and enforce adequate written supervisory procedures.

[District 4—Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota](#)

## April Actions

**Harold Nicholas Girrens (Registered Representative, Wichita, Kansas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Girrens failed to respond to NASD requests for information about his termination from a member firm.

**Jon Alan Hinman (Registered Representative, Des Moines, Iowa)** was fined \$9,654.95, barred from association with any NASD member in any capacity, and ordered to pay \$1,930.99 in restitution. The sanctions were based on findings that Hinman signed four checks drawn on the securities account of public customers and converted \$1,930.99 for his own use and benefit without the knowledge or consent of the customers.

**Roger Dale Meyer (Registered Representative, Joplin, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$13,500 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior written notice to and approval from his member firm.

**Mavis Chweelianneo Tan (Registered Representative, North Hollywood, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$12,250. Without admitting or denying the allegations, Tan consented to the described sanction and to the entry of findings that she failed to notify her member firm

that she had opened a securities account with another member firm. The findings also stated that Tan purchased shares of stock in contravention of the Board of Governors' Interpretation with respect to Free-Riding and Withholding.

**Jerry Mark Tuinenga (Registered Representative, Mound, Minnesota)** was fined \$250,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without the knowledge or consent of customers, Tuinenga converted \$41,762.89 and misused \$21,151.38 of their funds by either intercepting the funds or redeeming mutual fund shares and forging the customers' endorsements on the redemption checks. Tuinenga also failed to respond to NASD requests for information.

## May Actions

**Dale Lavern Bartz (Registered Representative, Marshall, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$42,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bartz consented to the described sanctions and to the entry of findings that she received from a public customer three checks totaling \$8,500 made payable to her member firm with instructions to apply the proceeds of the checks to the purchase of single premium annuity contracts. The NASD found that Bartz did not apply the funds as directed by the customer, and instead, without the knowledge or consent of the customer, wrongfully deposited the checks into her business bank account until she repaid the funds in full with interest at a later date.

**Donald Eugene Childers (Registered Representative, Leawood, Kansas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that he received a \$63,550 check from public customers made payable to a corporation he owned and controlled with instructions to invest the funds in securities products. Without the customers' knowledge and consent, Childers converted \$10,250 of the funds to his own use and benefit by paying various expenses of the corporation.

**Gary Richard Keller (Registered Representative, Apple Valley, Minnesota)** 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 30 days. Without admitting or denying the allegations, Keller consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information. The findings also stated that Keller engaged in private securities transactions without giving prior written notice to and/or receiving approval from his member firm. Furthermore, the NASD determined that Keller altered a document in response to an NASD request for information.

**Douglas W. Minshall (Registered Representative, Macon, Missouri)** 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, Minshall consented to the described sanctions and to the entry of findings that he submitted fictitious applications for life insurance.

**Patrick Blane Mueller (Registered Representative, Overland Park, Kansas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mueller failed to respond to NASD requests for information and to appear for an on-the-record interview.

**Samuel Gordon Smith, Jr. (Registered Representative, Lincoln, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$93,974.45 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 received five checks totaling \$18,794.89 from a public customer with instructions to

apply the proceeds of the checks to the purchase of variable products. The NASD found that Smith failed to apply the funds as instructed, and instead, without the customer's knowledge or consent, deposited the checks into his personal bank account and misused the customer's funds.

## June Actions

**Edward Stevenson Kirris, III (Registered Representative, Minneapolis, Minnesota)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirris consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information. The findings also stated that Kirris engaged in private securities transactions without giving prior written notice to and receiving prior approval from his member firm.

**Kevin Patrick Lynch (Registered Representative, Onalaska, Wisconsin)** 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 15 days. Without admitting or denying the allegations, Lynch consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on an annuity application and a financial planning agreement without the customers' knowledge or consent. The findings also stated that Lynch failed to disclose to the beneficiaries of the estate of a public customer the fees associated with preparing a financial plan and that by consenting to a financial plan, the amount of the beneficiaries' gifts would be reduced by said fees.

## July Actions

**Kay Leroi Walker (Registered Representative, Nauvoo, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$7,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information. The findings also stated that Walker received a \$10,000 check from a public customer for investment purposes, failed to apply the funds as intended, and instead, misused the customer's funds without the knowledge or consent of the customer.

**Tomer Matthew Yuzary (Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay \$50,114 in restitution to public customers. Without admitting or denying the allegations, Yuzary consented to the described sanctions and to the entry of findings that he placed an order to buy or sell securities without the knowledge or consent of public customers for whom the orders were placed. Furthermore, the NASD found that Yuzary made assurances to his member firm that order tickets for purchases submitted by another representative to his member firm were for actual customer accounts, although he had not personal knowledge on which to base such assurances. The findings also stated that Yuzary recommended and placed orders for purchases and sales of securities for public customers without having a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, financial situations, and needs.

## August Actions

**Peter Lloyd Anderson (Registered Representative, Shoreview, Minnesota)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Anderson consented to the described sanction and to the entry of findings that he engaged in improper outside business activity in that he sold and received compensation for insurance products

offered by non-approved insurance companies without giving prompt written notice to his member firm.

**Dickinson & Co. (Des Moines, Iowa), Theodore Marshall Swartwood (Registered Principal, New York, New York), and Thomas M. Swartwood (Registered Principal, Des Moines, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000 and fined \$1,000, jointly and severally, with another respondent. In addition, the firm, Theodore Swartwood, and Thomas Swartwood 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 Theodore and Thomas Swartwood, filed a proposed public offering of securities of its parent corporation with the NASD for review, and failed to timely appoint a public director to the parent corporation's board of directors and audit committed within 12 months of the effective date of the offering.

The findings also stated that the firm acted as placement agent for offerings and, during the contingency period of the offering, contravened SEC Rule 15c2-4 in that investors' monies were transmitted to the issuer's law firm and deposited in an account under the control of the issuer. Furthermore, the NASD determined that the firm sold units of an offering and omitted to state the material fact that the common stock and warrants of the offering were in jeopardy of being delisted from Nasdaq due to the offering's deteriorating financial condition.

**Gary Lester Eilefson (Registered Representative, New Brighton, Minnesota)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Eilefson consented to the described sanction and to the entry of findings that he engaged in improper outside business activity without giving prompt written notice to his member firm.

**Everest Securities, Inc. (Minneapolis, Minnesota) and Jeanne Alyce Kunkel (Registered Principal, Minneapolis, Minnesota)** were fined \$10,000, 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 U.S. Court of Appeals sustained the sanctions following appeal of an August 1996 SEC 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.

**Eddie Samuel Freeman, II (Registered Principal, St. Louis, Missouri)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Freeman consented to the described sanction and to the entry of findings that a member firm, acting through Freeman, made erroneous computations in computing its special reserve requirement and contravened SEC Rule 15c3-3 by withdrawing funds from its special reserve account without an accompanying reserve computation upon which the withdrawal was based. The findings also stated that the firm, acting through Freeman, conducted a securities business while failing to maintain its minimum required net capital and failed to prepare its books and records properly.

**Richard William Kelley (Registered Principal, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member as a general securities principal for two years, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative adequately and properly to assure compliance with applicable rules and regulations.

**Kent Wade Larsen (Registered Representative, Nevada, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Larsen consented to the described sanctions and to the entry of findings that he forged customers' signatures on forms relating to securities and non-securities insurance products without their knowledge or consent.

**Prime Investors, Inc. (Overland, Kansas), Kenneth James Wright (Registered Principal, Olathe, Kansas), and Michael Lyn Johnson, (Registered Principal, Lee's Summit, Missouri)**. The firm and Wright were fined \$150,000, jointly and severally. In addition, the firm was expelled from National Association of Securities Dealers, Inc. (NASD) membership and Wright was barred from association with any NASD member in any capacity. Johnson was fined \$50,000 and barred from association with any NASD member in any capacity, with the right to reapply after two years. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a September 1995 National Business Conduct Committee (NBCC) decision.

The sanctions were based on findings that the firm, acting through Wright and Johnson, sold unregistered securities and made material misrepresentations and omissions of fact in connection with the sale of those securities. The firm, acting through Wright, also misused customers' funds and engaged in several improper extensions of credit, including day trading in cash accounts and the use of a fictitious account to "park" stock to avoid sellout. Furthermore, the firm, acting through Wright and Johnson, sold securities that were not registered or exempt from registration and made material misstatements or omissions of fact in selling these securities. Moreover, the firm, acting through Wright, misused offering funds raised by placing monies in personal securities accounts, lending those monies to friends, employees, and customers, and using about \$77,000 of the monies to cover a debit balance owed by Wright and co-investors in a third-party securities account.

**Randall Arthur Radunz (Registered Representative, Minneapolis, Minnesota)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Radunz engaged in a private securities transaction without prior written notice to and approval from his member firm.

**James Alan Randall (Registered Representative, Bellevue, 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 60 days. Without admitting or denying the allegations, Randall consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on forms without their knowledge or consent.

**Mark Scott Savage (Registered Representative, Plymouth, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 25 days. Without admitting or denying the allegations, Savage consented to the described sanctions and to the entry of findings that he executed securities transactions in the accounts of public customers without their knowledge or consent of the customers.

**James Patrick Suiter (Registered Representative, McCook, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$250,000 in restitution to investors. Without admitting or denying the allegations, Suiter consented to the described sanctions and to the entry of findings that he participated in private securities transactions without written notification to and approval and/or acknowledgment from his member firm.

**Andrew Shih Wang (Registered Representative, Holmdel, New Jersey)** 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, Wang consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, he requested loans totaling \$10,512.03 from the customers' insurance policies, forged the customers' name on the checks, and deposited the checks into his personal bank account.

**Paul Martens Winn (Registered Representative, Branson, Missouri)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Winn failed to respond to NASD requests for information.

**Robin Eric Yessen (Registered Representative, Wellington, Kansas)** was fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$208,750 in restitution. The sanctions were based on findings that, without the knowledge or consent of a public customer, Yessen misused customer funds totaling \$208,750 for his personal use by withdrawing the funds from the customer's account and making the checks payable to himself rather than for the purposes intended by the customer. Yessen also failed to respond to NASD requests for information.

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

#### April Actions

**Patricia R. Duke (Registered Representative, Bastrop, Louisiana)** was fined \$183,000, barred from association with any NASD member in any capacity, and required to pay \$32,577.16 in restitution. The sanctions were based on findings that Duke received funds totaling \$7,000 from a public customer for investment in a mutual fund, failed and neglected to execute the purchase on the customer's behalf, and instead, invested the funds in an annuity without the customer's knowledge or consent. Furthermore, Duke received \$32,577.16 from public customers for investment purposes, failed to execute the purchases on the customer's behalf, and instead converted the funds for her own use and benefit without the customers' knowledge or consent. Duke also failed to respond to NASD requests for information.

**Arno O. Mayer (Registered Principal, Deerfield Beach, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Mayer consented to the described sanction and to the entry of findings that, in connection with a promotion, he prepared and distributed a sales script that was misleading and inaccurate and failed to adequately disclose to the investing public in correspondence and other communications his association with his member firm.

#### May Actions

**James C. Arnold (Registered Representative, Starkville, Mississippi)** was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$50,957.93 in restitution. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Arnold effected unauthorized transactions in customer accounts and converted customer funds totaling \$50,957.93 to his own use and benefit without the knowledge or consent of the customers. Furthermore, Arnold misused \$2,000 in customer funds without the knowledge or consent of the customers.

**George W. Cole (Registered Representative, Oklahoma City, Oklahoma)** submitted an Offer of Settlement pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for four weeks, and required to pay \$13,298 in restitution to a customer. Without admitting or denying the allegations,

Cole consented to the described sanctions and to the entry of findings that he failed to exercise due diligence in the offering of certain non-rated municipal bonds to two public customers by failing to ensure that the price paid for the securities was fair and reasonable in relation to the prevailing market conditions. The findings also stated that Cole recommended and engaged in certain purchase and sale transactions in the account of a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of the customer's financial situation, investment objectives, and needs. Furthermore, the NASD found that Cole sent sales literature to prospective customers that had not been approved by a principal of his firm.

**Donald D. LaCoste (Registered Representative, Lafayette, Louisiana)** submitted an Offer of Settlement pursuant to which he was fined \$3,000,000, barred from association with any NASD member in any capacity, and required to pay \$593,377.67 in restitution. Without admitting or denying the allegations, LaCoste consented to the described sanctions and to the entry of findings that he converted \$421,451.69 in customer funds to his own use and benefit and forged customer names to checks, change of address forms, surrender request forms, and insurance policy change forms. The findings also stated that LaCoste sent to a public customer a false confirmation reflecting the purchase of municipal bonds and misleading correspondence falsely describing a purchase of municipal bonds by the customer. Furthermore, the NASD determined that LaCoste altered documents to falsely reflect that certain municipal bonds had been purchased for a public customer and failed to amend his Form U-4 to reflect his affiliation with three member firms.

**Alfred E. Landolph, Jr. (Registered Representative, Los Angeles, California)** submitted an Offer of Settlement pursuant to which he was fined \$20,455. Without admitting or denying the allegations, Landolph consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Landolph purchased shares of stock in initial public offerings in accounts in which he had a beneficial interest that traded at a premium in the secondary market. The findings also stated that Landolph failed to notify his member firm in writing that he had established and maintained 30 securities accounts with 16 different member firms.

**Robert W. Morris (Registered Representative, Birmingham, Alabama)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Morris consented to the described sanction and to the entry of findings that he sent correspondence to public customers that contained false and misleading information. The findings also stated that Morris disseminated misleading municipal securities offering sheets to various member firms that falsely indicated that he was a member of the municipal bond department of his member firm.

#### June Actions

**Guy G. Clemente (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Clemente consented to the described sanctions and to the entry of findings that he shared in losses incurred in the account of a public customer.

**Ramon Guichard, Jr. (Registered Representative, Gretna, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, barred from association with any NASD member in any capacity, and required to pay \$1,457 in restitution. Without admitting or denying the allegations, Guichard consented to the described sanctions and to the entry of findings that he received \$1,457 from public customers as insurance premiums, failed to submit these funds to his

member firm on the customers' behalf and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

**Jeffrey J. Haddad (Registered Representative, Old Bridge, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$5,100 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Haddad consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer.

**Hartland Financial Management Corporation (Austin, Kentucky) and Paul C. Hayden (Registered Representative, Glasgow, Kentucky)** submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership and Hayden was fined \$30,000 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 the firm, acting through Hayden, conducted a securities business while failing to maintain its minimum required net capital. Furthermore, the NASD determined that, in an attempt to bring the firm's net capital into compliance, Hayden made capital contributions from his personal bank account when he did not have sufficient funds in his account. The findings also stated that Hayden became the sole shareholder and president of the firm and failed to become registered as a general securities principal within the requisite time period. Hayden also failed to respond to NASD requests for information.

**James R. Hayes (Registered Representative, Kingston, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that, in connection with the purchase of a variable appreciable life insurance contract, he sent correspondence to public customers that misrepresented that the premiums on the insurance contract would be paid for with the cash value and dividends from the customer's other insurance policies, when in fact, additional premium payments might have been required in the future. The findings also stated that Hayes submitted disbursement request forms to his member firm on behalf of a public customer and signed the customer's name to the forms without the customer's knowledge or consent.

**Jeffrey M. Schoenfield (Registered Representative, Kodak, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$7,431.11 in restitution. Without admitting or denying the allegations, Schoenfield consented to the described sanctions and to the entry of findings that he recommended and engaged in the purchase of securities in the account of a public customer and failed to disclose to the customer that the investments carried contingent deferred sales charges. The findings also stated that Schoenfield failed to fully, completely, and timely respond to NASD requests for information.

#### July Actions

**Sammy T. Dean (Registered Representative, Ridgeland, Mississippi)** 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, Dean consented to the described sanctions and to the entry of findings that he engaged in outside business activities without prior written notice to or approval from his member firm.

#### August Actions

**John P. Goldsworthy (Registered Representative, Harahan, Louisiana)** was fined \$50,000, barred from association with any NASD member in any capacity, and

required to pay \$499,744 in restitution to a member firm. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Goldworthy engaged in private securities transactions without providing prior written notice to and obtaining approval from his member firm.

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

**Ronald E. Overstreet (Registered Representative, Hattiesburg, Mississippi)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Overstreet received from a public customer an \$11,000 check as payment for insurance premiums, failed to submit these funds to his member firm on the customer's behalf, endorsed the check, and deposited the funds into his personal bank account, thereby converting the funds to his own use and benefit without the customer's knowledge or consent. Overstreet also failed to respond to NASD requests for information.

#### District 6—Texas

#### April Actions

**Bradford John Titus (Registered Principal, West Des Moines, Iowa) and Marcie Anne Milner (Registered Principal, Phoenix, Arizona)** were fined \$15,000, jointly and severally, and Titus was suspended from association with any NASD member in any capacity for 10 days. The SEC affirmed the sanctions following appeal of a December 1995 NBCC decision. The sanctions were based on findings that Titus and Milner failed to establish, maintain, and enforce required supervisory procedures.

#### May Actions

**Kenneth Winston Wainscott (Registered Representative, Pflugerville, Texas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wainscott failed to respond to NASD requests for information.

#### June Actions

**Hartman Securities, Inc. (Houston, Texas) and Allen Robert Hartman (Registered Principal, Houston, Texas)** were fined \$20,000, jointly and severally. In addition, the firm was suspended from NASD membership for two weeks and Hartman was suspended from association with any NASD member in any capacity for two weeks. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that the firm, acting through Hartman, failed to deposit and retain all customer funds in an escrow account during the offering of limited partnership interests until the contingencies specified in the offering memorandum had been met. Furthermore, the firm, acting through Hartman, violated its restrictive agreement with the NASD by effecting securities transactions in limited partnerships and conducting a securities business when it had agreed not to.

**Rogelio Davila Salazar (Registered Representative, Harlingen, Texas)** 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, Salazar consented to the described sanction and to the entry of findings that he effected a private securities transaction and failed to timely and completely respond to NASD requests for information.

#### July Actions

**Julius Berman (Registered Representative, Austin, Texas)** 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,

Berman consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

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

**Bennett Lee Jones (Registered Representative, Bedford, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500, suspended from association with any NASD member in any capacity for five business days, and ordered to disgorge \$1,159.05 in commissions. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he exercised discretionary power with respect to trading in option contracts in a customer's account without prior written authorization from the customer or written acceptance of such a discretionary account by a registered options principal.

**Richard Jon Zimmer (Registered Representative, Plano, Texas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zimmer failed to respond to NASD requests for information.

#### August Actions

**Steven Tetsuo Miller (Registered Representative, Irvine, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,711 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he participated in outside business activities and failed to provide prompt written notice to his member firm of such activities.

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

#### April Actions

**Jeffrey L. Schnell (Registered Representative, Belleair, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Schnell failed to respond to an NASD request for information.

**David A. Swanson (Registered Representative, Melbourne, Florida)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Swanson solicited and executed the purchase of investment company shares for public customers without disclosing to the customers that they would be required to pay a four percent sales charge.

#### May Actions

**Aragon Financial Services, Inc. (Brea, California), Douglas L. Lish (Registered Principal, Anaheim, California), and Thomas Cannon (Registered Representative, Pembroke Pines, Florida)** submitted Offers of Settlement pursuant to which the firm and Lish were fined \$10,000, jointly and severally, and Lish was required to requalify by exam as a general securities principal. In addition, the firm was required to retain an independent consulting firm to conduct a review of its compliance and supervisory procedures to determine their adequacy. Cannon was suspended from association with any NASD member in any capacity for three months, required to requalify by exam as a general securities representative, and required to disgorge \$3,000 in commissions

to a public customer. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Cannon recommended securities transactions to a public customer without having reasonable grounds for believing such recommendations were suitable for the customer based on facts disclosed by the customer regarding her tax status, investment objectives, financial situation, and needs. The findings also stated that Lish failed to detect that Cannon had made a series of allegedly unsuitable recommendations to a public customer. Furthermore, the NASD determined that the firm, acting through Lish, failed to establish or maintain adequate written supervisory procedures pertaining to the oversight of sales practices involving unsuitable recommendations.

**Robert E. Chason (Registered Representative, Orlando, Florida)** was fined \$20,000 and suspended from association with any NASD member in any capacity for 90 days and thereafter suspended until he requalifies by exam. The sanctions were based on findings that Chason made representations to a public customer and on behalf of a public customer regarding the value of the customer's account without having a factual basis for such representations.

**Richard D. Collner (Registered Principal, Cape Canaveral, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for 10 days, suspended from soliciting or effecting retail trades for six months, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Collner consented to the described sanctions and to the entry of findings that he recommended that public customers embark on a series of trades in their trust account without having reasonable grounds for believing that the recommendations were suitable based on the facts they disclosed as to their tax status, investment objective, financial situation, and needs.

Collner's suspensions began May 5, 1997. The 10-day suspension concluded May 14, 1997, and the 6-month suspension will conclude November 5, 1997.

**Crisanto M. Delgado (Registered Representative, Alpharetta, Georgia)** was fined \$108,000, barred from association with any NASD member in any capacity, and required to pay \$17,644.81 plus interest in restitution to a customer. The sanctions were based on findings that Delgado converted customer funds totaling \$17,644.81 to his own use and benefit. Delgado also failed to respond to an NASD request for information.

**Mark H. A. Drucker (Registered Representative, Henderson, Nevada)** was fined \$60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Drucker converted \$8,000 in customer funds to his own use and benefit. Drucker also failed to respond to NASD requests for information.

**Craig S. Fischer (Registered Representative, Boca Raton, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fischer failed to respond to NASD requests for information.

**H. Richard Gibbs-Tompkins (Registered Representative, Pensacola, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gibbs-Tompkins failed to respond to an NASD request for information.

**Martin J. Heninger (Registered Representative, Atlanta, Georgia)** was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, required to pay \$25,000 in restitution to a customer, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Heninger made false representations to a customer in response to concerns raised by the customer about an investment Heninger had recommended in a private offering.

**William J. Jakob, Jr. (Registered Principal, Marietta, Georgia)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jakob failed to respond to an NASD request for information.

**Seyed Hassan Jahanmiry (Registered Representative, Casselberry, Florida)** was fined \$1,000, suspended from association with any NASD member in any capacity for 90 days, and ordered to requalify by exam as an investment company and variable contracts products representative. The sanctions were based on findings that Jahanmiry, during the course of taking the Series 7 exam, had in his possession unauthorized materials containing formulas and other information relating to the subject matter areas covered by the exam.

**Jason MacKenzie Securities, Inc. (Atlanta, Georgia), J. Paul Jason (Registered Principal, Atlanta, Georgia) and James S. Heitzer (Registered Principal, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which the firm and Jason were fined \$60,000, jointly and severally, and the firm, Jason, and Heitzer were ordered to offer refunds to customers of excess markups. Jason was barred from association with any NASD member in any principal or supervisory capacity, with the right to reapply after five years, and Heitzer was fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Jason, conducted a securities business while failing to maintain its minimum required net capital, failed to maintain complete, current, and accurate books and records, and filed materially inaccurate FOCUS reports. The NASD also determined that the firm, acting through Jason, prepared inaccurate net capital computations, filed late annual audited financial reports, and failed to give notice to the NASD and the SEC of its net capital deficiencies. The findings also stated that the firm, acting through Jason, made improper use of customer funds, failed to timely transmit payment for a customer's securities purchases, failed to transmit promptly customer payment of mutual fund shares, and failed to supervise the pricing of customer purchases adequately.

Furthermore, the NASD found that the firm, acting through Jason, failed to disclose on customer confirmations the markups charged to customers with respect to 35 principal transactions, failed to record on order tickets either the time of entry or the time of execution, or both, failed to prepare order memoranda, and participated in 58 firm commitment underwritings in contravention of the terms of its restriction agreement with the NASD. The findings also stated that the firm, acting through Jason, failed to supervise a registered representative who effected transactions in his personal account that were beyond his financial means and that resulted in substantial violations of Regulation T and NASD margin rules. The NASD also found that the firm, acting through Heitzer, effected sales of common stock to public customers at unfair prices.

**Noble International Investments, Inc. (Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$5,000 and ordered to pay \$24,167.33 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 effected 11 principal transactions with public customers involving foreign corporate bonds at prices, with markups ranging from 5.53 to 90 percent, that were unfair and excessive taking into consideration all relevant circumstances.

**Darryl M. Osler (Registered Representative, Palm Beach Gardens, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$3,500 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Osler consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Frank S. Pellichino (Registered Representative, Augusta, Georgia)** was fined \$10,000 and suspended from

association with any NASD member in any capacity for six months. The sanctions were based on findings that Pellichino signed, without customer authorization, the signatures of public customers to forms that are used to evidence the customer's authorization for an agent to receive trailing commissions on property and casualty policies that had been assigned to but not initially sold by the agent.

**Michael A. Solomon (Registered Representative, Tamarac, Florida)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Solomon failed to pay an arbitration award and failed to respond to an NASD request for information.

**Kenneth T. Tripoli (Registered Representative, Boca Raton, 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, Tripoli consented to the described sanctions and to the entry of findings that he failed to respond timely to an NASD request for information.

### June Actions

**Jerry A. Hurni, Jr. (Registered Representative, Melbourne, Florida)** was fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Hurni made recommendations to a public customer that were not suitable for the customer based upon the facts disclosed by the customer as to his tax status, investment objective, financial situation, and needs. Furthermore, contrary to a public customer's instructions, Hurni utilized margin in the customer's account to purchase additional shares of stock without the customer's knowledge or authorization.

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

### July Actions

**Bruce Abramson (Registered Representative, Coconut Creek, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$17,785 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Abramson consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to and obtain prior written authorization from his member firm to effect these transactions.

**Louis T. Buonocore (Registered Representative, Staten Island, New York)** was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The NBCC imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Buonocore failed to respond to NASD requests to appear and give testimony.

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

**Falcon Trading Group, Ltd. (Boca Raton, Florida) and Thomas W. Hands (Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. In addition, the firm was fined \$2,500, jointly and severally with another respondent and Hands was required to requalify by exam as a financial and operations 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 Hands, conducted a securities business while maintaining insufficient net capital. The findings also stated that the firm, acting through Hands, filed an inaccurate FOCUS Part IIA report,

prepared an inaccurate net capital computation, and failed to give telegraphic notice of its net capital deficiency. Furthermore, the NASD determined that the firm breached its restrictive agreement.

**Bernard E. Ribordy (Registered Representative, St. Petersburg, Florida)** 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 60 days. Without admitting or denying the allegations, Ribordy consented to the described sanctions and to the entry of findings that he forged a public customer's signature on a change of representative form and submitted the form to his member firm without the knowledge or authorization of the customer.

**Michael John Vertin (Registered Principal, Roswell, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 10 days and required to requalify by exam as an investment company and variable contracts products principal. Without admitting or denying the allegations, Vertin consented to the described actions and to the entry of findings that he failed to provide prompt written notice to his member firm of his association with another company. The NASD also found that Vertin failed to provide his member firm with written notice of transactions with public customers through the other company.

### August Actions

**Kevin Thomas Calderbank (Registered Representative, New Port Richey, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Calderbank failed to respond to NASD requests for information.

**Victor Capote (Registered Representative, West Palm Beach, Florida)** 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, Capote consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on insurance applications and submitted these applications to his member firm. The NASD also found that Capote submitted a starter check with the customer's forged signature representing the initial premium payment for the policies.

**Nathan Cohen (Registered Representative, Hollywood, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,400 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prompt written notice to and obtain written approval from his member firm to participate in the transactions.

**Thomas Diggs, Jr. (Registered Principal, Hampton, Georgia)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. The sanctions were based on findings that Diggs effected the purchase of shares of stock in the securities accounts of public customers without their prior knowledge or authorization.

**Richard E. Epstein (Registered Representative, Coral Springs, Florida)** 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 15 business days. Without admitting or denying the allegations, Epstein consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm.

**Jack E. John (Registered Representative, Raleigh, North Carolina)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanc-

tions were based on findings that John obtained \$12,512.06 from a public customer intended for the purchase of securities and instead misused the funds without the knowledge or authorization of the customer. John also failed to respond to NASD requests for information.

**James G. Patton (Registered Representative, Duluth, Georgia)** 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, Patton consented to the described sanction and to the entry of findings that he recommended a series of equity transactions, including margin transactions in the investment account of a public customer that were not suitable based upon the customer's financial objectives and investment experience. The findings also stated that Patton entered a purchase order on margin for shares of stock in the account of a public customer when the margin agreement was not on file for the customer, and that he signed the agreement for the customer without the customer's consent.

**George L. Pelaez (Registered Representative, Tampa, Florida) and Robert J. Pelaez (Registered Principal, Tampa, Florida)** were fined \$80,000, jointly and severally, and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that a member firm, acting through the Pelaezes, submitted materially inaccurate FOCUS Part I and IIA reports and prepared inaccurate general ledger, trial balance, and net capital computations. In addition, the firm, acting through the Pelaezes, conducted a securities business while failing to maintain its minimum required net capital. Furthermore, after being asked by the NASD to provide documentation substantiating the addition to their firm's capital as reflected on a FOCUS report, the Pelaezes submitted two forged documents.

**Daniel S. Regan (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 Regan failed to respond to NASD requests for information.

**Alan C. Robert (Registered Representative, Coconut Creek, Florida)** was fined \$26,000, barred from association with any NASD member in any capacity, and ordered to pay \$1,200 in restitution to a member firm. The sanctions were based on findings that Robert obtained a blank check from his member firm, forged the signature of the branch manager, and converted the proceeds to his own use and benefit. Robert also failed to respond to an NASD request for information.

**Thomas L. Thomson, Jr. (Registered Representative, Coral Springs, Florida)** was fined \$58,750 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomson obtained from a public customer \$7,750 intended as insurance policy premiums and converted said funds to his own use and benefit. Thomson also failed to respond to NASD requests for information.

**Mack H. Uhl (Registered Representative, Grayland, Washington)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, required to pay \$10,000 in restitution to a customer, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Uhl consented to the described sanctions and to the entry of findings that he conducted a private securities transaction and failed to provide written notice to or obtain approval from his member firm.

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

## April Actions

**Michael Hamil (Registered Representative, Prospect Heights, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Hamil consented to the described sanction and to the entry of findings that he guaranteed a customer against loss in his account.

## May Actions

**Alaron Securities Corporation (Chicago, Illinois), Henry J. Coleman, IV (Registered Principal, Chicago, Illinois), Michael A. Greenberg (Registered Principal, Chicago, Illinois), and Steven Greenberg (Associated Person, Winnetka, Illinois)** submitted Offers of Settlement pursuant to which the firm was fined \$25,000. S. Greenberg was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days, and M. Greenberg was fined \$50,000, suspended from association with any NASD member in any capacity for five years, and barred from association with any NASD member in any principal capacity. Coleman was fined \$100,000 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 the firm, acting through Coleman and M. Greenberg, effected securities transactions while failing to maintain its minimum required net capital and allowed individuals to engage in the securities business without proper qualifications or registration. The NASD also found that the firm, acting through M. Greenberg and Coleman, failed to establish, maintain, and enforce adequate supervisory procedures. The findings also stated that the firm, acting through Coleman, maintained inaccurate net capital computations, filed inaccurate FOCUS Part I and II reports, and failed to abide by the terms of its restrictive agreement with the NASD in that the firm failed to receive approval from the NASD to change its clearing arrangements.

Furthermore, the NASD determined that the firm, acting through Coleman, failed to execute customers' orders to purchase or sell securities; failed to execute customers' trades at the prices, on the dates, or for the number of shares ordered by the customers; and falsely confirmed both verbally and in writing to the customers that their trades were executed as ordered. Moreover, the NASD found that the firm, acting through Coleman, charged customers commissions on trades that were not executed and margin interest calculated on money balances for trades that were not executed, misused customer funds by taking \$61,843.02 out of customers' accounts without their knowledge or consent, and used the funds for some purpose other than for the benefit of the customers. The findings also stated the firm, acting through Coleman, failed to comply with Securities and Exchange Commission (SEC) Rule 15c3-3 in that it accepted and held customer funds without setting up or making deposits in a special reserve bank account for the exclusive benefit of customers, and failed to notify the NASD or SEC of its failure to maintain such an account or to prepare a reserve computation. The NASD also determined that the firm, acting through Coleman, used letterhead that violated NASD standards and S. Greenberg engaged in the securities business without being qualified and registered.

**Richard Michael Berlin (Registered Representative, West Bloomfield, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$140,795, barred from association with any NASD member in any capacity, and required to pay \$24,159 in restitution. Without admitting or denying the allegations, Berlin consented to the described sanctions and to the entry of findings that he obtained customer checks totaling \$25,019.02 intended for the purchase of insurance policies, but retained the funds by signing the customers' names to the checks and deposited the funds in a bank account without their knowledge or consent. The findings also stated that Berlin failed to respond to NASD requests for information.

**Kerri A. Cox (Associated Person, Brooklyn, New York)** was fined \$2,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Cox failed to respond to NASD requests for information and to appear for an on-the-record interview.

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

**Daniel F. Gallagher (Registered Representative, Joliet, Illinois)** was fined \$30,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gallagher received a \$2,100 check from a public customer with instructions to invest the funds in a mutual fund. Gallagher failed to purchase shares of the mutual fund and instead, deposited the funds in an account with his member firm in which he had a beneficial interest and used the funds for some purpose other than for the benefit of the customer. Gallagher also failed to respond to an NASD request for information.

**Samantha R. Gallant (Registered Representative, Ferndale, Michigan)** was fined \$6,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gallant participated in the offer and sale of securities to a public customer on a private basis and failed to give prior written notice to and obtain prior written authorization from her member firm to engage in such activities.

**Hamilton Investments, Inc. (Chicago, Illinois)** was fined \$10,000. The National Business Conduct Committee (NBCC) imposed the sanction following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanction was based on findings that the firm failed to supervise a registered representative properly.

**Richard Allen Hill (Registered Representative, St. Clair Shores, Michigan)** was fined \$21,547.17 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without the knowledge or consent of public customers, Hill submitted to his member firm applications for life insurance in the customers' names and disbursement request forms authorizing his member firm to disburse funds in the form of loans from existing policies to pay premiums on new policies. Hill also failed to respond to NASD requests for information.

**David P. Kleber (Registered Principal, Miami, Florida); Helmut Meister (Registered Principal, Sands Point, New York); John P. McAuliffe (Registered Principal, Rochester, New York); Dennis J. Keohane (Registered Representative, San Francisco, California); Innocent K. Okeke (Registered Principal, Plano, Texas); Lindsey C. Riley (Registered Principal, Huntington Beach, California); Ignacio R. Failla (Registered Representative, Astoria, New York); Zeeshan S. Ali (Registered Representative, Iselin, New Jersey); Terry N. Johnson (Registered Representative, Forest Hills, New York); David N. Slavny (Registered Principal, Atlanta, Georgia); Victor S. Delucie (Registered Representative, San Francisco, California); Christopher S. Boggs (Registered Principal, San Francisco, California); Mark F. Reber (Registered Representative, West Chester, Pennsylvania); Thomas R. Garcia (Registered Representative, Grand Prairie, Texas); and Sean P. Neveitt (Registered Representative, LaJolla, California)** submitted Offers of Settlement pursuant to which Kleber was fined \$10,000, suspended from association with any NASD member in any capacity for four months, barred from association with any NASD member in any principal or supervisory capacity with a right to reapply after one year, and undertakes that even if he successfully reapplies, he will never act as a supervisor of traders or trading at any member firm. Meister was fined \$8,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify as a general securities principal. McAuliffe was

fined \$7,500 and suspended from association with any NASD member in any capacity for five business days. Keohane was fined \$7,000 and suspended from association with any NASD member in any capacity for three business days. Okeke was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Riley, Failla, Ali, Johnson, Slavny, Delucie, Garcia, and Boggs were each fined \$2,500 and suspended from association with any NASD member in any capacity for three business days. Reber was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Neveit was fined \$4,000 and suspended from association with any NASD member in any capacity for four business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Meister, McAuliffe, Keohane, Okeke, Riley, Failla, Ali, Garcia, Johnson, Slavny, Delucie, Boggs, and Neveit charged certain retail customers unfair prices, that included excessive markups and gross commissions or sales credits in connection with sales of securities and received gross commissions or sales credits exceeding 10 percent of the total dollar amount paid by the customers in the transactions. The findings also stated that Kleber and Meister failed to establish, implement, and enforce reasonable procedures designed to prevent the firm's retail customers from being charged unfair and fraudulently excessive markups and markdowns, and unfair and excessive gross commissions or sales credits in common stocks and warrants. Furthermore, the NASD determined that Reber failed to respond to NASD requests for information.

**Timothy Andrew Minich (Registered Representative, W. Lafayette, Indiana)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Minich failed to respond to NASD requests for information.

**Charles Eugene Porter (Registered Representative, Bloomington, Indiana)** submitted an Offer of Settlement pursuant to which he was fined \$2,000,000, barred from association with any NASD member in any capacity, and required to pay \$389,891.95 in restitution. Without admitting or denying the allegations, Porter consented to the described sanctions and to the entry of findings that he obtained checks totaling \$299,891.95 made payable to public customers and without the authorization, knowledge, or consent of the customers, he signed or caused their names to be signed to the checks, deposited the checks in an account in which he had an interest or controlled, and used the funds for some purpose other than for the benefit of the customers. The findings also stated that Porter received \$114,874.95 from public customers for investment purposes and, instead, without the knowledge or consent of the customers, used the funds for some purpose other than for the benefit of the customers. Furthermore, the NASD found that Porter failed to respond to NASD requests for information.

**Carl W. Spoerer, II (Registered Representative, Tolono, Illinois)** was fined \$5,000, suspended from association with any NASD member in any capacity for one year, ordered to disgorge \$8,122.50 to the NASD, and required to requalify by exam. The sanctions were based on findings that Spoerer purchased for his account shares of stocks that traded at a premium in the immediate aftermarket in contravention of the Board of Governors' Interpretation on Free-Riding and Withholding. Spoerer also opened securities accounts with various member firms and began purchasing and selling securities in the accounts while failing and neglecting to give written notice to his member firms that he was opening the accounts and failed to give written notice of his association with his member firms.

Spoerer's suspension began January 1, 1995, and concluded December 31, 1995.

**Nancy A. Swoffer (Registered Representative, Lake Orion, Michigan)** 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, Swoffer consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to give written notice to and receive written approval from her member firm prior to engaging in such activities.

**Kathleen Vanhof (Registered Representative, Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$145,000, barred from association with any NASD member in any capacity, and required to pay \$24,820.05 in restitution. Without admitting or denying the allegations, Vanhof consented to the described sanctions and to the entry of findings that she wrongfully obtained \$24,820.05 from the accounts of a public customer by obtaining two completed certificate of deposit/withdrawal forms with the customer's signature without the customer's knowledge or consent. The NASD found that Vanhof thereafter deposited the funds in an account in which she had a beneficial interest and used the funds for some purpose other than for the benefit of the customer. The findings also stated that Vanhof failed to respond to NASD requests for information.

**David Duane White (Registered Representative, Black Earth, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$259,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he obtained \$51,828.38 from public customers by directing certain bank employees to issue to him or an investment club partnership of which he was a partner, and over whose funds he had control, cashier's checks or money orders from portions of customer funds entrusted to him for investment without the knowledge or consent of the customers.

**World Equity Group, Inc. (Arlington Heights, Illinois) and John H. Mathues (Registered Principal, Lake Zurich, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$18,000, 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 Mathues, engaged in sales of common stock to public customers, failed to obtain signed suitability statements from the customers, and failed to provide risk disclosure documents to customers. The findings also stated that the firm, acting through Mathues, failed to establish, maintain, and enforce written supervisory procedures to prevent a violation of SEC Rule 15g.

## June Actions

**Donald Peter Carnaghi (Registered Representative, Clinton Twp., Michigan)** submitted an Offer of Settlement 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, Carnaghi consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to give prior written notice to and obtain written authorization from his member firm to engage in such activities.

**Thomas James Clem (Registered Representative, Mt. Clemens, Michigan), Thomas Roy Mazza (Registered Representative, Clinton Twp., Michigan), Brian Jerome Kurtz (Registered Representative, Sterling Hts., Michigan), and Michael Anthony Duby (Registered Principal, Brighton, Michigan).** Clem was fined \$47,100 and barred from association with any NASD member in any capacity. Mazza was fined \$56,300 and barred from association with any NASD member in any capacity. Kurtz was fined \$19,800 and barred from association with any NASD member in any capacity. Lastly, Duby was fined \$38,050 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that Clem, Mazza, Kurtz, and Duby participated in private securities transactions and failed to give prior written notice to and obtain

written authorization from their member firm to engage in such activities.

**Michael L. Cooperstock (Registered Representative, Whitmore Lake, Michigan)** 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, Cooperstock consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed and neglected to give prior written notice to and obtain written authorization from his member firm to engage in such activities.

**Joseph M. Darovec (Registered Representative, Bloomingdale, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Darovec consented to the described sanctions and to the entry of findings that he participated in outside business activities while failing to give prompt written notice to his member firm of his participation in such activities.

**D.H. Brush & Associates, Inc. (Chicago, Illinois) and Robert John Uhe (Registered Principal, Winnetka, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$97,000, 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 Uhe, allowed associated persons to be actively involved in the securities business without proper registration. The findings also stated that the firm retained \$72,000 in gross commissions generated by the associated persons.

**Herbert G. Frey (Registered Principal, Cincinnati, Ohio)** was suspended from association with any NASD member in any capacity for 180 days. The NBCC imposed the sanction following appeal of a Cleveland DBCC decision. The sanction was based on findings that Frey failed to pay an arbitration award entered in 1990.

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

**Hagos Kafil (Registered Representative, Kalamazoo, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$125,000, barred from association with any NASD member in any capacity, and required to pay \$21,000 in restitution. Without admitting or denying the allegations, Kafil consented to the described sanctions and to the entry of findings that he received checks totaling \$21,107.20 from public customers for investment purposes, failed to follow the customers' instructions, and used the funds for some purpose other than the benefit of the customers. The findings also stated that Kafil failed to respond to NASD requests for information.

**Joseph Frank Lerario (Registered Principal, Bloomingdale, Illinois)** 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, Lerario consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Steven F. Perdrie (Registered Principal, Port Jefferson Station, New York)** submitted an Offer of Settlement pursuant to which he was fined \$7,000 and required to pay \$15,000 in restitution to public customers. Without admitting or denying the allegations, Perdrie consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to and obtain written authorization from his member firm to engage in such activities. The findings also stated that Perdrie failed to give prompt written notice to his member firms that he was employed by and/or accepted compensation from outside business activities. Furthermore, the NASD determined that Perdrie

failed to promptly and accurately update his Form U-4 to reflect liens or unsatisfied judgments entered against him.

**PFS Investments, Inc. (Duluth, Georgia)** 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 to the entry of findings that it failed to establish, maintain, and/or enforce adequate written procedures that were reasonably designed to achieve compliance with NASD rules concerning private securities transactions or to otherwise supervise adequately its registered representatives and associated persons.

**Todd Scheel (Registered Representative, Orland Park, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$22,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scheel consented to the described sanctions and to the entry of findings that he permitted an individual to engage in the securities business and paid commissions to the individual when the individual was not effectively registered with the NASD. The findings also stated that Scheel failed to respond to NASD requests for information.

**Schonfeld Securities, Inc. (Jericho, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$9,700, ordered to remit \$8,115 in profits relating to transactions, and required to revise its written supervisory procedures relating to short-sale rules and conduct training sessions on the revised procedures with all relevant personnel after they have been developed. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate sales as short sales and failed to indicate on order tickets that these transactions were short sales.

**Gerald D. Vesner (Registered Representative, Doylestown, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$88,000, barred from association with any NASD member in any capacity, and required to pay \$17,570.84 in restitution to a member firm. Without admitting or denying the allegations, Vesner consented to the described sanctions and to the entry of findings that he received checks totaling \$17,570.84 payable to a public customer representing withdrawals from two variable annuity contracts and payment from an insurance policy maintained by the customer. The NASD found that Vesner endorsed his name or that of the customer on the checks, failed to remit the proceeds to the customers, and instead, retained the funds for his own use and benefit.

## July Actions

**Claudio M. Balestra (Associated Person, Somerville, New Jersey)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Balestra misused customer funds totaling \$168 intended for the payment of an insurance premium. Balestra also failed to respond to NASD requests for information.

**Eric R. Bauer (Registered Representative, Cincinnati, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bauer failed to respond to NASD requests for information.

**Raymond C. Bochert, Sr. (Registered Representative, Cortland, Ohio)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bochert received \$236 from public customers as insurance premium payments and failed to apply the funds as instructed by the customers or in any other manner for the benefit of the customers. Bochert also failed to respond to NASD requests for information.

**Rodney W. Causey (Registered Representative, Peoria, Illinois)** was fined \$175,000 and barred from association

with any NASD member in any capacity. The sanctions were based on findings that Causey obtained \$21,000 from a public customer for the purchase of a certificate of deposit, failed to follow the customer's instructions, and used the funds for some purpose other than for the benefit of the customer. Furthermore, Causey participated in private securities transactions without giving prior written notice to and receiving written approval from his member firm to engage in such activities. Causey also failed to respond to NASD requests for information.

**Matthew M. Chornoby (Registered Principal, Sterling Heights, Michigan)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chornoby received \$19,000 in personal checks from a public customer with instructions that the funds be held in a special account and returned to the customer upon request. Chornoby failed to follow said instructions, in that he deposited the funds in an account in which he had a beneficial interest and used the funds for some purpose other than the benefit of the customer.

**Raymond Richard India (Registered Representative, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam. Without admitting or denying the allegations, India consented to the described sanctions and to the entry of findings that he executed, on a discretionary basis, index options transactions in a customer's account without obtaining written authorization from the customer to exercise discretion in his account. The findings also stated that India recommended and effected index options transactions in the customer's account in the absence of a reasonable basis for believing that the recommendations were suitable for the customer in light of the customer's investment objectives, experience, financial situation, or needs.

**Atif A. Joseph (Registered Representative, 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 Joseph failed to respond to NASD requests for information and to appear for an on-the-record interview.

**Vladik Kaminsky (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 Kaminsky failed to respond to NASD requests for information.

**William H. Westerman (Registered Representative, Rosedale, Indiana)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Westerman received \$111 from a public customer for the purchase of a life insurance policy and failed to follow the customer's instructions in that he used at least \$39 of the funds for purpose other than for the benefit of the customer. Westerman also failed to respond to NASD requests for information.

## August Actions

**Daniel John Knight (Registered Representative, Noblesville, Indiana)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Knight 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](#)

## April Actions

**Mark A. Shear (Registered Representative, Staten Island, New York)** was fined \$7,500 and barred from

association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Shear knowingly provided false and misleading information in response to an NASD request for information.

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

**Jerry L. Sickels (Registered Representative, Pittsburgh, Pennsylvania)** was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contracts products representative. The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Sickels sold life insurance policies to two public customers, reflected on the application that another agent was the agent who made the sale, and submitted the applications to his member firm without disclosing that he had in fact sold the insurance policies and had signed the agent's name on the applications. Furthermore, Sickels received four checks issued by his member firm to the other agent representing commissions and, without the agent's knowledge or consent, signed the agent's name on the checks, negotiated the checks, and used the funds for his own benefit.

Sickels' suspension commenced August 3, 1994, and concluded February 3, 1995.

## May Actions

**David A. Arnold (Registered Representative, Wexford, Pennsylvania)** 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, Arnold consented to the described sanctions and to the entry of findings that he falsely represented to customers that a mailing address he had established was the business address of his employer. Furthermore, the NASD found that Arnold affixed to three withdrawal request forms a public customer's signature, without authorization, and thereafter submitted the requests to his member firm. The findings also stated that Arnold falsified a public customer's endorsement on checks totaling \$14,900 and deposited the checks in his personal bank account. Arnold also failed to respond to NASD requests for information.

**J. Paul Boyle (Registered Principal, Bala Cynwyd, Pennsylvania)** was fined \$30,000, suspended from association with any NASD member in all securities principal capacities for two years, and required to requalify by exam as a general securities principal. The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Boyle failed to exercise reasonable care to verify his member firm's purported capital contributions and assets that resulted in the filing of inaccurate FOCUS Part I and IIA reports with the NASD. Moreover, Boyle failed to give timely notice of his firm's net capital deficiencies, failed to timely retain a financial and operations principal for his firm, and failed to file a Form U-5 for an individual within the required 30-day period.

**Christopher M. Finan (Registered Representative, McLean, Virginia)** was fined \$10,000 and required to requalify by exam as a general securities representative. The sanctions were based on findings that Finan executed unauthorized transactions in the accounts of public customers.

**Mark C. Goldner (Registered Representative, Larksville, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$125,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goldner consented to the described sanctions and to the entry of findings that, without the authorization or consent of public customers, he

caused his member firm to issue policy loan and dividend checks against the insurance policies of the customers, forged the purported endorsements of the customers on the checks, and deposited the checks in his bank account. The findings also stated that Goldner caused the address of record for the insurance policies of public customers to be changed to that of the office in which he was employed. The NASD also determined that Goldner forged the endorsement of a former employee of his member firm on commission checks, and negotiated such checks without the employee's knowledge or authorization. Furthermore, the NASD found that Goldner forged a public customer's signature on applications for a life insurance policy and for the conversion of the customer's existing policies, without the authorization or consent of the customer.

**Eliezer Gurfel (Registered Representative, Washington, DC)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Gurfel forged an individual's endorsement on four checks, negotiated the checks, and converted the proceeds to his own use and benefit.

**David B. Kistler (Registered Representative, Jacobus, 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, Kistler consented to the described sanctions and to the entry of findings that he forged signatures purporting to be those of a customer on two letters authorizing \$500 in payments to him by an insurance company.

**Jay D. Lebowitz (Registered Representative, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lebowitz consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written notice to his member firm describing the transactions, his role therein, and stating whether he would receive selling compensation. The findings also stated that Lebowitz failed to respond to NASD requests for information.

**Michael G. Murphy (Registered Representative, Pine Hill, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he recommended to public customers and effected in their account purchases of securities that were speculative in nature without having a reasonable basis to believe the securities were suitable for the customers. The findings also stated that Murphy failed to disclose various risks associated with the securities and made a statement regarding future appreciation in the price of a security for which there was no reasonable basis in fact.

## June Actions

**John D. Attalienti (Registered Representative, Mt. Kisco, New York), Harvard H. Lee (Registered Principal, Clarksburg, New Jersey), Randolph E. Beigel (Registered Principal, N. Kingstown, Rhode Island), Rodney D. Cooper (Registered Representative, Olivette, Missouri), and Brendan D. Hart (Registered Principal, Norwood, Massachusetts)** submitted Offers of Settlement pursuant to which Attalienti was fined \$100,000 and barred from association with any NASD member in any capacity, Lee was fined \$250,000 and barred from association with any NASD member in any capacity, Beigel was fined \$150,000 and barred from association with any NASD member in any capacity, Cooper was fined \$100,000 and barred from association with any NASD member in any capacity, and Hart 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 Lee, Beigel, Cooper, and Hart recruited and trained inexperienced registered representatives to aggressively telemarket low-priced, speculative securities recommended by their member firm to the public. According to the findings, Attalienti, Lee, Beigel, Cooper, and Hart then directed, fostered, or induced the registered representatives to engage in abusive sales practices by including baseless price predictions about the stock, making material misrepresentations and omitting negative material information during sales presentations to customers, discouraging or prohibiting registered representatives from independently researching the stocks, and by discouraging or prohibiting registered representatives from processing unsolicited customer sell orders. Moreover, the NASD found that Beigel, Cooper, and Hart individually engaged in the abusive sales practices during presentations to their customers. The findings also stated that Lee, Beigel, and Hart directed registered representatives whom they supervised to engage in unauthorized trading and Beigel and Hart directly engaged in unauthorized trading. The NASD also determined that Lee, Beigel, Cooper, and Hart failed to establish, implement, and enforce reasonable procedures to deter or prevent the abusive sales practices by the registered representatives.

**Covato/Lipsitz, Inc. (Pittsburgh Pennsylvania) and Alfred I. Lipsitz (Registered Principal, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent and an Offer of Settlement pursuant to which they were fined \$40,000, jointly and severally. In addition, Lipsitz was barred from association with any NASD member in any principal capacity and from performing any principal, supervisory, or managerial functions with any NASD member. Lipsitz is also barred from maintaining a proprietary interest in any NASD member except that he may maintain (1) a non-controlling, investment interest in a member whose stock is publicly traded and subject to the reporting requirements of Section 12(g) of the Securities Exchange Act of 1934, (2) an investment interest in an employee stock ownership plan or similar plan which does not confer voting rights upon individual participants in the plan or provided he relinquishes any individual voting rights, and (3) a non-voting interest in Covato/Lipsitz, Inc. or any successor to the firm if he sells or transfers a portion of the stock of the firm representing total voting control of the corporation to another person or entity and if he is still the sole owner of the stock, he is required to place all of the stock in a voting trust. Furthermore, Lipsitz must requalify by exam as a general securities representative.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lipsitz, effected securities transactions when the firm failed to maintain its minimum required net capital, failed to reflect certain liabilities on its books and records, prepared an inaccurate net capital computation, and filed inaccurate FOCUS Part I reports. Furthermore, the NASD found that the firm, acting through Lipsitz, failed to timely notify the SEC or the NASD on each occasion when it failed to maintain the minimum required net capital and engaged in a fraudulent course of conduct whereby they intentionally or recklessly failed to record on the firm's books and records the outstanding balance on a line of bank credit the firm maintained. The NASD also found that the firm, acting through Lipsitz, failed to record on its books and records the existence of and balance in a bank account, failed to reflect on its books and records that the bank held a security interest in a \$37,000 CD as collateral for advances made to the firm on the line of credit it maintained at the bank, and failed to properly treat the face amount of the encumbered CD as a non-allowable asset in preparing the firm's monthly net capital computations. The findings stated that the firm, acting through Lipsitz, failed to disclose in an offering memorandum or in any supplement thereto that the general partner and/or affiliates of the general partner could purchase units in the offering, the maximum amount of units the general partner could purchase or that purchases by the general partner and/or affiliates of the general partner could be used to close the offering. The NASD

also determined that the firm, acting through Lipsitz, failed to conduct an in-person compliance meeting or interview with two representatives of the firm.

**Neil Guthrie (Registered Representative, Gretna, Virginia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Guthrie consented to the described sanctions and to the entry of findings that he failed to notify and obtain approval from his member firm regarding his solicitation and acceptance of monies from three customers to invest in investments unrelated to his member firm. The findings also stated that Guthrie prepared and provided receipts to two customers that misrepresented the true investments of the customers' monies. Furthermore, the NASD determined that Guthrie diverted customer funds to his personal home appliance and apparel wholesale business and other unspecified investments contrary to his verbal and written representations to the customers.

**O'Connor & Company (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he 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 entered a series of transactions into the Small Order Execution System (SOES) that, when aggregated, exceeded the SOES maximum order size requirements. The findings also stated that the firm failed to establish, maintain, and enforce supervisory procedures that would have enabled it to ensure compliance with NASD rules.

**Albert J. Scibilia (Registered Representative, Hagerstown, Maryland)** 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, Scibilia consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in customer accounts.

**Nicholas F. Stranges (Registered Representative, Harrisburg, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$11,700, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Stranges consented to the described sanctions and to the entry of findings that he submitted to his member firm annuity applications for public customers on which he had recorded incorrect birth dates to secure the payment of larger commissions than otherwise would have been paid on the annuity purchases.

## July Actions

**Scott R. Gnesda (Registered Representative, Jeannette, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gnesda consented to the described sanctions and to the entry of findings that he affixed to insurance forms and checks the initials, signatures, and endorsements of public customers and deposited the checks in his personal bank account without their authorization.

**Richard O. Pilardi (Registered Representative, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pilardi consented to the described sanctions and to the entry of findings that he induced a public customer to affix her daughters' signatures on insurance policy applications and thereafter submitted such applications to his member firm as authentic without the authorization of the customer's daughters. The findings also stated that Pilardi affixed a customer's signature on forms requesting loans totaling \$489 and submitted such forms to his member firm. Furthermore, the NASD determined that Pilardi

affixed the customer's endorsement on checks and caused such checks to be applied to insurance premium payments, and submitted a request to change the customer's address of record to his home address without the customer's authorization.

## August Action

**Albert E. Depew (Registered Representative, Butler, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contract products representative. Without admitting or denying the allegations, Depew consented to the described sanctions and to the entry of findings that he recommended to a public customer the exchange of an annuity and told the customer that the surrender charge would be \$800, told the customer that the \$2,500 surrender charge reflected on a statement was incorrect when he knew or should have known that the \$2,500 charge was the correct charge and had no reasonable basis for stating that it was incorrect.

The NASD also found that Depew submitted to his member firm a policy delivery receipt bearing his own signature and the purported signature of a customer when he knew the annuity had not been delivered to the customer and that the customer's signature was not genuine.

**James C. Garcia (Registered Representative, Virginia Beach, Virginia)** was fined \$20,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the sanctions following appeal of a Washington District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Garcia failed to respond to NASD requests for information.

**Richard J. Manning (Registered Representative, Pittsburgh, Pennsylvania)** 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, Manning consented to the described sanctions and to the entry of findings he recommended and effected, in the account of a public customer, transactions that were excessive in size and frequency in view of the financial circumstances and the character of the account, and without having reasonable grounds to believe that the transactions were suitable for the customer. The findings also stated that Manning engaged in acts and practices that were designed to conceal trading losses in the account of a public customer and deceive the customer about the status of his account. Furthermore, the NASD determined that Manning gave a check or caused a check to be given to a public customer and falsely represented to the customer that the check represented profits or earnings from trading in the customer's account. The NASD also found that Manning provided an altered statement he owned that overstated the value of the annuity.

**Jeffrey R. Streamer (Registered Representative, West Chester, Pennsylvania)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Streamer failed to respond to NASD requests for information.

**Josef B. Villanasco (Registered Representative, Annandale, Virginia)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Villanasco failed to respond to NASD requests for information.

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)

## April Actions

**Wilhelmina Emma Burris (Registered Representative, Corning, New York)** submitted an Offer of Settlement pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burris consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

**Elliot L. Levine (Registered Representative, Plainview, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$9,096.79 in restitution to a member firm. Without admitting or denying the allegations, Levine consented to the described sanctions and to the entry of findings that he caused \$9,096.79 of policyholders' funds to be misused in that he caused the withdrawal of funds from customer insurance accounts to pay insurance premiums on other client accounts.

**Michael Malaga (Registered Representative, Edison, New Jersey)** 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, Malaga consented to the described sanction and to the entry of findings that he executed a series of unauthorized transactions in customer accounts. The findings also stated that Malaga made unsuitable investment recommendations for, and executed excessive trades in the accounts of public customers. Furthermore, the NASD determined that Malaga impeded his firm's supervisory efforts to detect his violative activity.

**Serafin Martinez (Registered Representative, North Arlington, New Jersey)** 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, Martinez consented to the described sanctions and to the entry of findings that he signed a public customer's name on a \$8,000 check made payable to the customer, deposited the check in his personal bank account, and converted the proceeds for his own use.

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

**Norm Rabinovich (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rabinovich consented to the described sanctions and to the entry of findings that he arranged to have an imposter take the Series 7 exam on his behalf. The findings also stated that Rabinovich failed to respond to NASD requests to appear for an on-the-record interview. Furthermore, the NASD determined that Rabinovich filed a Form U-4 that failed to disclose his employment with another member firm.

**Michael T. Rother (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was fined \$20,710.45 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rother consented to the described sanctions and to the entry of findings that he engaged in a scheme to defraud pursuant to which he opened a fictitious brokerage account, arranged to have correspondence, including account statements concerning the fictitious account, sent to his residential address, and purchased and sold stock in his own account and the fictitious account without paying for the transactions. Furthermore, the NASD found that Rother improperly received and negotiated checks relating to sales of a stock in his own account and the fictitious account. The

findings also stated that Rother failed to respond to NASD requests for information.

**Robert A. Stabile (Registered Principal, Bayshore, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$8,200 in restitution to a customer. Without admitting or denying the allegations, Stabile consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to or obtaining approval from his member firm. The findings also stated that Stabile entered into private securities transactions with a public customer upon the premise of funding a private adoption and instead, used the funds for personal purposes. Furthermore, the NASD found that Stabile engaged in outside business activities without providing prior written notification to his member firm and failed to follow customer instructions to cancel an insurance policy.

**United Daniels Securities Inc. (Orlando, Florida) and Willie Daniels (Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$50,000, jointly and severally, and ordered to disgorge \$66,586, jointly and severally. In addition, the firm was expelled from NASD membership and Daniels was 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 the firm participated in municipal underwritings at a time when it was not registered as a broker/dealer with the NASD. The findings also stated that Daniels, acting through the firm, engaged in municipal underwritings even though he was not registered as a municipal securities principal.

## May Actions

**Robert James Baptist, Jr. (Registered Representative, Southport, Connecticut)** 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 20 business days. Without admitting or denying the allegations, Baptist consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers.

**Glen Jeff Bennett (Associated Person, New York, New York)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bennett arranged to have an imposter take the Series 7 exam on his behalf. Bennett also failed to respond to NASD requests for information.

**Brian Bond (Registered Representative, Woodbury, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to disgorge \$1,050 in commissions. Without admitting or denying the allegations, Bond consented to the described sanctions and to the entry of findings that he purchased warrants in a public customer's account without the customer's prior knowledge or consent.

**Michael F. Burke (Registered Representative, Rye, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 45 days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Burke consented to the described sanctions and to the entry of findings that he exercised discretion in the account of public customers without first obtaining written authorization from the customers. The findings also stated that Burke failed to properly mark customer order tickets in that the tickets were marked "unsolicited" when they should have been marked "discretionary."

**Oliver Lu (Registered Representative, 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 Lu failed to respond to NASD requests for information.

**Jules L. Marx (Registered Representative, South Orange, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for five business days, and required to pay \$27,750 plus interest in restitution to public customers. Without admitting or denying the allegations, Marx consented to the described sanctions and to the entry of findings that he effected private securities transactions with public investors without providing prior written notice to and receiving written approval from his member firm. The NASD also found that Marx used his member firm's stationery in connection with the private securities transactions without the firm's prior knowledge or approval.

**Russell D. Perlmuter (Registered Representative, Flushing, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Perlmuter consented to the described sanctions and to the entry of findings that he used a fictitious name when a customer called his member firm to complain about a trade.

**Leon E. Procopio (Registered Representative, Glen Cove, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Procopio failed to respond to NASD requests for information.

**John J. Puglisi (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for 30 business days, required to requalify by exam as a general securities representative, and required to pay \$15,000 to a public customer. Without admitting or denying the allegations, Puglisi consented to the described sanctions and to the entry of findings that he effected in the accounts of public customers purchase and sale transactions without the customers' knowledge, authorization, or consent.

## June Actions

**David Kippins (Registered Representative, Brooklyn, New York)** was fined \$270,594 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kippins recommended transactions to a public customer when he did not have a reasonable basis to believe that the recommendations were suitable for the customer in light of the customer's stated investment objectives and financial needs. Furthermore, Kippins induced a public customer to sign a letter authorizing the redemption of shares of a government fund and converted \$38,500 of the proceeds to his own use and benefit without the prior knowledge or consent of the customer. Kippins also failed to respond timely to NASD requests for information.

**Ruslan Rapoport (Registered Representative, Brooklyn, New York)** was fined \$7,500, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam. The sanctions were based on findings that Rapoport failed to respond to NASD requests to appear for an on-the-record interview.

**Barry Charles Wilson (Registered Principal, Bloomfield, New Jersey)** was fined \$25,000 and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that a member firm, acting through Wilson, conducted a securities business while failing to maintain minimum required net capital, filed an inaccurate FOCUS Part I report, failed to maintain the required minimum balance in the firm's customer reserve account, and failed to immediately notify the NASD of its net capital deficiencies.

## July Actions

**William Pierce Carroll (Registered Representative, Cutchogue, New York)** was fined \$195,000, barred from association with any NASD member in any capacity, and ordered to pay \$35,000 in restitution to a public customer. The sanctions were based on findings that Carroll received a \$35,000 check from a public customer for the purchase of shares of a common stock and failed to deposit the funds into the customer's account or invest them on the customer's behalf. Instead, Carroll endorsed the check and converted the monies to his own use. Carroll also failed to respond to NASD requests for information.

**Scott W. Kliewe (Registered Representative, Upper Saddle River, New Jersey)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kliewe failed to respond to NASD requests for information.

**Robert John Lancellotti (Associated Person, Valley Cottage, New York)** was fined \$26,562.50. The sanction was based on findings that Lancellotti purchased units of a hot issue that traded at a premium in the immediate after-market in contravention of the Board of Governors Free-Riding and Withholding Interpretation. Lancellotti also opened a brokerage account at a member firm and executed a securities transaction in the account without notifying the firm in writing that he was associated with another member firm.

**Edward A. McKay, Jr. (Registered Principal, New York, New York)** was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that McKay failed to respond timely to NASD requests for information.

**John Michael Novichonek (Registered Representative, St. James, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Novichonek failed to respond to NASD requests for information.

**Angel Emilio Rivera (Registered Representative, Staten Island, New York)** was fined \$75,344.98, barred from association with any NASD member in any capacity, and required to pay \$11,068.98 in restitution to a customer. The sanctions were based on findings that Rivera received an \$11,060.90 check from a public customer for investment in a mutual fund and, instead, without the prior knowledge, authority, or consent of the customer, deposited the check into his personal bank account and converted the monies of his personal use. Rivera also failed to respond to NASD requests to appear for an on-the-record interview.

**Stratton Oakmont, Inc. (Lake Success, New York)** was fined \$20,000 and ordered to submit to the NASD, and thereafter utilize in its settlement agreements, a form of Offer of Settlement containing non-disclosure and confidentiality clauses, if any, acceptable to the NASD. The firm also was required, upon request by the NASD in connection with the NASD's investigative duties, to identify customers that should be released from settlement agreements that impose conditions on a customer's ability to provide information to the NASD. The SEC affirmed the sanctions following appeal of an April 1996 NBCC decision. The sanctions were based on findings that the firm prepared, utilized, and executed agreements when settling customer complaints that preclude, restrict, or condition customers' ability to cooperate with the NASD in connection with its investigation of customer complaints. The firm also failed to release a public customer from the restrictive provisions of a settlement agreement that precluded, restricted, and/or conditioned the customer from cooperating in an NASD investigation.

**Peter Wang (Registered Representative, Union City, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wang consented to the

described sanctions and to the entry of findings that, while taking the Series 7 exam, he was in possession of unauthorized material related to the exam.

## August Actions

**Broadcorn Capital Corporation (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$11,500. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it permitted officers to participate as members of the firm's Board of Directors without general securities principal registrations and without the prerequisite requirements for a general securities principal. The findings also stated that the firm did not register a municipal securities principal although it was engaged in a municipal securities business.

**BZW Securities Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which it 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 failed to report trades on the Automated Confirmation Transaction Service (ACT) within 90 seconds and failed to append the late indicator. Furthermore, the NASD found that the firm failed to identify accurately the time of execution on order tickets and failed to time stamp order tickets, or the time was otherwise unavailable or did not agree with the time submitted to ACT. The findings also stated that the firm reported transactions when it was not required to do so, incorrectly identified itself as the market maker in its reports, and transmitted Nasdaq National Market Transactions to ACT late. The NASD also determined that the firm failed to establish, maintain, and enforce written supervisory procedures to prevent the above violations.

**Anthony Carnevale (Registered Representative, Florham Park, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carnevale consented to the described sanctions and to the entry of findings that, during the course of taking the Series 7 exam, he was in possession of notes containing formulas and information that had been the subject of questions on the exam.

**Kellen M. Carson (Registered Representative, Glenhead, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$582,905, barred from association with any NASD member in any capacity, and ordered to pay \$60,408 in restitution to a member firm. Without admitting or denying the allegations, Carson consented to the described sanctions and to the entry of findings that he caused \$116,581 from his member firm's pending account to be converted by placing the monies into five accounts that he controlled.

**Edward Catalanello (Registered Representative, Metuchen, New Jersey)** 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, Catalanello consented to the described sanctions and to the entry of findings that he forged the name of an insurance customer on disbursement request forms and caused disbursements to be made from the customer's life insurance policies to pay for premiums on other policies without the customer's prior knowledge or consent.

**Ashley T. Collen (Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$329,425 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collen consented to the described sanctions and to the entry of findings that he engaged in the sale of private securities transactions to public investors, without providing prior written notice to, and receiving written approval from his member firm.

**D.H. Blair & Co., Inc. (New York, New York) and Alfred S. Palagonia (Registered Representative, Quogue, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$25,000, jointly and severally, and ordered to disgorge \$10,230.25, jointly and severally. Palagonia was required to requalify by exam as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Palagonia, sold shares of stock that traded at a premium in the immediate aftermarket to a restricted account.

The findings also stated that the firm, acting through Palagonia, failed to obtain and/or maintain the registered representative's signature introducing the restricted account, and failed to ascertain the occupation of one of the spouses in a jointly held account, the name and address of the spouse's employer, and whether the spouse was an associated person of another member firm. The NASD also determined that the firm failed to adequately enforce its written supervisory procedures relating to the review and approval of the restricted account in question.

**David Martin Dickey (Registered Representative, Bridgewater, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dickey consented to the described sanctions and to the entry of findings that he filed a Form U-4 with a member firm and failed to disclose an arrest and conviction which, if disclosed, would have caused him to be statutorily disqualified.

**Paul Alexis Drayton (Registered Representative, Brooklyn, New York)** was fined \$196,250 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Drayton converted customer funds totaling \$25,250 by opening accounts in a public customer's name and using false addresses for the customer. In addition, Drayton falsified records by failing to disclose on a Form U-4 his criminal history. Drayton also failed to respond to NASD requests to appear for an on-the-record interview.

**Audrey Klein-Kapneck (Registered Representative, Livingston, New Jersey)** submitted an Offer of Settlement pursuant to which she was fined \$29,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to disgorge \$58,874.76. Without admitting or denying the allegations, Klein-Kapneck consented to the described sanctions and to the entry of findings that she failed to provide written notification, to her member firm and the executing member firm, of her association with the member firm prior to opening an account with the executing firm. Furthermore, the NASD determined that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Klein-Kapneck purchased and sold shares of hot issues that traded at a premium in the immediate aftermarket.

**Scott Kliewe (Registered Representative, Marco Island, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Kliewe consented to the described sanctions and to the entry of findings that he charged certain retail customers unfair prices in transactions where the gross commissions were approximately 30 percent of the principal amount of the transactions. The findings also stated that Kliewe failed to respond timely to NASD requests for information.

**William J. Lucadamo (Registered Representative, Bayside, New York)** was fined \$62,500, suspended from association with any NASD member in any capacity for 15 business days, and required to requalify by exam in all capacities requiring qualification except Series 3. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Lucadamo misrepresented and omitted material

facts to public customers and recommended investments in stock without having a reasonable basis to believe that his recommendations were suitable for the customers. In addition, Lucadamo effected purchase transactions in customer accounts without their prior authorization or consent. Furthermore, Lucadamo exercised discretion in a customer's account without written authorization.

**McFadden, Farrell & Smith, L.P. (New York, New York) and Alan M. Green (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$100,000, jointly and severally. Green was also suspended from association with any NASD member in any supervisory capacity for three months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Green, failed to establish, maintain, and enforce adequate written supervisory procedures.

Furthermore, the NASD determined that the firm, acting through Green, failed to register employees, failed to register employees in a timely manner, and failed to register an employee who was not engaged in an investment banking or securities business. The findings also stated that the firm, acting through Green, failed to maintain and preserve copies of the initial Form U-4 applications and failed to maintain and preserve appropriate documentation on employees with personal brokerage accounts at other broker/dealers. The NASD found that the firm, acting through Green, failed to respond to an NASD request for information in a timely manner and negligently submitted documents containing inaccurate information.

**Merrill Lynch Government Securities of Puerto Rico, S.A. (Hato Rey, Puerto Rico)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it conducted a securities business while failing to maintain its minimum required net capital.

**William R. Papandrea (Registered Representative, North Babylon, New York)** was fined \$10,000, barred from association with any NASD member in any capacity, and ordered to pay \$600 in restitution to a customer. The sanctions were based on findings that Papandrea signed a customer's name on a \$600 refund check, deposited the check into his account, and converted the funds for his personal use without the customer's knowledge or consent.

**Herbert Morton Paul (Registered Representative, North Woodmere, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$14,531.25. Without admitting or denying the allegations, Paul consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a premium in the immediate aftermarket, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Paul failed to notify his current member firm that he had opened an account with a former member firm and failed to notify the member firm he purchased the securities through of his association with his member firm. Furthermore, the NASD found that Paul purchased stock without giving prior written notice to his member firm.

**Chi Ming Szeto (Registered Representative, Brooklyn, New York)** 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, Szeto consented to the described sanctions and to the entry of findings that he effected securities transactions in the accounts of public customers without their prior knowledge or authorization. The NASD also found that Szeto caused the mailing addresses on the accounts of public customers to be changed to his own address or an address that he controlled without the customers' prior knowledge or authorization. The findings also stated that Szeto caused checks totaling \$880 to be issued from the accounts of public customers and converted the proceeds to his own use.

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

**Tradition (Government Securities) Inc. (New York, New York) and Dennis William Savitsky (Registered Principal, North Bellmore, New York)** 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 the firm, acting through Savitsky, permitted individuals to engage in the securities business and to function as government securities representatives without being registered with the NASD.

**Edward Veisman (Registered Representative, Brooklyn, New York)** was fined \$20,000 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 Veisman failed to respond to NASD requests for information.

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

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)

## April Actions

**Michael S. Burbridge (Registered Representative, South Easton, Massachusetts)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Burbridge withheld and misappropriated \$2,113 in customer funds for his own use and benefit without the knowledge or consent of the customers. Burbridge also failed to respond to NASD requests for information.

**John F. Chester, Jr. (Registered Representative, North Kingston, Rhode Island)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chester failed to respond to NASD requests for information about his termination from a member firm.

**Chester J. Dudzik, Jr. (Registered Representative, Darien, Connecticut)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dudzik failed to respond to NASD requests for information about customer complaints.

**Robert W. Main, Jr. (Registered Representative, Bedford, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and ordered to requalify by exam as a general securities representative. Without admitting or denying the allegations, Main consented to the described sanctions and to the entry of findings that he engaged in a course of conduct while handling customer accounts that was contrary to the best interests and welfare of the customers. According to the findings, Main caused transactions involving the liquidation and reinvestment of investment company shares with undue frequency and without reasonable justification.

## May Actions

**James M. Burness (Registered Representative, Dublin, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$4,500 and sus-

pend from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Burness consented to the described sanctions and to the entry of findings that knowing of a system problem which he did not report to his firm, he repeatedly placed orders for customers over his firm's proprietary trading system over a three-day period at limit prices that he knew, or had reason to believe, were extremely advantageous to the customers and extremely disadvantageous to the firm.

**David J. Hall (Registered Representative, Standish, Maine)** 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, Hall consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving prior written notice to his member firm describing in detail the proposed transactions, his role therein, and whether he received selling compensation in connection with the transactions.

**Phoenix Equity Planning Corporation (Enfield, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to register at least three individuals who were functioning in a principal capacity.

## June Actions

**Thomas P. Battista (Registered Representative, Springfield, Vermont)** 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, Battista consented to the described sanctions and to the entry of findings that, without the knowledge or consent of the customers or his member firm, he failed to remit policyholder payments totaling \$932 from four public customers intended for automobile insurance premiums and converted the monies to his own use and benefit.

**David Paelet (Registered Principal, Madison, Connecticut)** 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 30 days. Without admitting or denying the allegations, Paelet consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to his member firm of such transactions.

## July Actions

None

## August Actions

**Richard R. Desrochers (Registered Representative, Las Vegas, Nevada)** 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, Desrochers consented to the described sanctions and to the entry of findings that he prepared and submitted to his member firm fictitious check disbursement forms allegedly on behalf of policyholders which caused his member firm to issue checks totaling \$7,811.51, payable to policyholders. The NASD found that Desrochers forged the policyholders' signatures, deposited the checks into his personal bank account, and misappropriated the proceeds to his own use and benefit.

**Paul S. Dolan (Registered Representative, Revere, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,000,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry of findings that he solicited and received

from investors at least \$2,300,000 and falsely represented to the investors that their funds would be invested either in a money market fund, which never existed, or tax-free government bonds, that were never purchased. The findings also stated that Dolan misappropriated and converted \$2,214,522 of the funds to his own use and benefit.

**Craig S. Gioia (Registered Representative, Highland, New York)** was fined \$10,000. The sanction was based on findings that Gioia made an improper guarantee of a customer account against loss.

**Kevin J. McCarthy (Registered Principal, Bow, New Hampshire)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCarthy forged a payroll check intended for a registered representative at his member firm and converted the funds for his own use and benefit.

**Alan M. Santos-Buch (Registered Representative, South Norwalk, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Santos-Buch consented to the described sanctions and to the entry of findings that he signed and delivered to a public customer a memorandum that stated that the customer's account would be guaranteed against losses. The findings also stated that Santos-Buch stated to the same customer that they shared an investment relationship which allocated financial responsibility for certain changes in the value of the account to him under certain circumstances.

**David J. Yorwerth (Registered Representative, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Yorwerth consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice to his member firm describing, in detail, the proposed transactions, his role therein, and how he would be compensated for the transactions.

## Market Regulation Committee

### April Actions

**KO Securities, Inc. (Seattle, Washington) and Terrance Y. Yoshikawa (Registered Principal, Seattle, Washington)** were fined \$10,000, jointly and severally. In addition, the firm was suspended from proprietary trading and market making for five business days and Yoshikawa must attend a compliance conference with Market Regulation staff. The National Business Conduct Committee (NBCC) affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that the firm and Yoshikawa concealed the true ownership of a common stock on five occasions to prevent the firm from falling below its minimum required net capital. Furthermore, in an attempt to reduce the risk of, or to prevent the firm from experiencing net capital difficulties, the firm and Yoshikawa sold the stock from the firm's inventory account to two accounts at the firm owned by Yoshikawa, and shortly thereafter repurchased the stock into the firm's inventory account at an agreed upon time and at essentially the same terms.

This action has been appealed to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal.

**Albert A. Matani, Jr. (Registered Representative, Boca Raton, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Matani failed to respond to NASD requests for information and testimony.

## May Actions

**Joshua A. Ader (Registered Representative, Long Beach, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ader failed to respond to NASD requests to provide documents, information, and testimony.

**Duke & Co, Inc. (New York, New York), Lawrence A. Rosenberg (Registered Principal, Brooklyn, New York), and Salvatore Saporito (Registered Representative, Brooklyn, New York)**. The firm and Saporito submitted an Offer of Settlement pursuant to which the firm was fined \$25,000 and ordered to implement supervisory procedures. Saporito was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. In a separate decision, Rosenberg was fined \$5 million and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the firm and Saporito consented to the described sanctions and to the entry of findings that the firm, acting through Saporito and Rosenberg, manipulated trading in a security that created actual and apparent active trading in the security and raised the price of the security for the purpose of inducing the purchase or sale of the security by others. The findings also stated that the firm, acting through Saporito and Rosenberg, actively bid for, purchased, and solicited securities while the firm was acting as broker or dealer participating in a distribution of securities. Furthermore, the NASD determined that the firm and Rosenberg failed to establish and maintain an effective supervisory system and failed to enforce supervisory procedures.

**Valentin V. Sotir (Registered Representative, Ridgewood, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sotir failed to respond to NASD requests to provide testimony in connection with an ongoing investigation.

## June Actions

**ACAP Financial, Inc. (Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,800, required to remit \$250 in profits relating to transactions, and required to revise its written supervisory procedures relating to short sales. When the new supervisory procedures have been developed, the firm must conduct training sessions on the revised procedures with all relevant personnel. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions of a Nasdaq National Market security and failed to make affirmative determinations and report the trades to the Automated Confirmation Transaction Service (ACT) with short-sale indicators.

**Martin J. Cunnane, Jr. (Registered Representative, Yonkers, New York)** was fined \$40,000 and suspended from association with any NASD member in any capacity for three years. The NBCC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Cunnane opened accounts for three public customers and executed purchase transactions in a common stock without the customers' authorization and consent.

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

**John J. Fiero (Registered Principal, Jersey City, New Jersey)** was fined \$20,000 and suspended from association with any NASD member in any capacity for six months. The NBCC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Fiero failed to provide on-the-record testimony to the Market Regulation Committee.

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

**Fahnestock & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it did not retain the original trade information that was reported to ACT in its history file. The NASD also determined that the firm reported the time for transactions to ACT prior to the execution time on the order ticket. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to detect and deter trade reporting violations.

**Gordon & Co. (Newton, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to file any conventional option position reports with the NASD as required by NASD Rule 2860(b)(5)(A) for its customers and/or proprietary accounts.

**Hamilton Partners L.P. (Hamilton, Bermuda)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it exceeded the allowable options position limits. The findings also stated that the firm failed to maintain and enforce supervisory procedures to prevent the violations described above.

**Mark Andrew Heitner (Registered Representative, Forest Hills, New York)** 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 five business days. Without admitting or denying the allegations, Heitner consented to the described sanctions and to the entry of findings that he engaged in manipulative, deceptive, and fraudulent conduct by intentionally and recklessly causing Nasdaq trades to be reported late. The findings also stated that Heitner backed away from an order to buy stock.

**Herzog Heine Geduld, Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000 and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered quotations in securities on The Nasdaq Stock Market that exceeded the parameters for maximum allowable spreads pursuant to NASD Rule 4613(d).

**Mayer & Schweitzer, Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$18,500, required to attend a compliance conference with NASD Regulation staff, and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered quotations in securities on The Nasdaq Stock Market that exceeded the parameters for maximum allowable spreads pursuant to NASD Rule 4613(d).

**Morgan Stanley & Co., Inc. (New York, New York)** submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to report conventional options positions for any of its accounts as required by the NASD.

**SC Securities Corporation (Dallas, Texas)** submitted an Offer of Settlement pursuant to which the firm was fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to establish and maintain an effective supervisory system, to enforce supervisory procedures, and to reasonably supervise its registered representatives.

**Trimark Securities, L.P. (White Plains, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$20,000 and required to submit to the NASD all procedures and steps that it will implement to ensure compliance with the NASD's trade reporting regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report trades to ACT when in fact, these trades were done with other member firms and ACT participants. Furthermore, the findings stated that the firm reported an incorrect buy/sell indicator in transactions and reported trades that were not required to be reported.

**Troster Singer Corporation (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$22,500 and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it entered quotations in securities on The Nasdaq Stock Market that exceeded the parameters for maximum allowable spreads pursuant to NASD Rule 4613(d).

**Troster Singer Corporation (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$16,000 and required to conduct a rule education class for its traders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered or maintained quotations in The Nasdaq Stock Market that caused a locked and/or crossed market condition to occur in eight securities.

## July Actions

**Thomas Joseph Browne, Jr. (Registered Representative, Forest Hills, New York), Bartholomew Cornell Haring (Registered Representative, Staten Island, New York), and Gregory John Mouen (Registered Representative, New York, New York)**. Browne was fined \$25,000 and barred from association with any NASD member in any capacity. Haring was fined \$4,100 and barred from association with any NASD member in any capacity. Mouen was fined \$7,100 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown, Haring, and Mouen engaged in manipulative, deceptive, or other fraudulent activities in connection with the purchase or sale of securities.

**Brooklyn Capital & Securities Trading, Inc. (Brooklyn, New York) and David Rybstein (Registered Principal, Brooklyn, New York)** were fined \$58,000, jointly and severally. The firm was suspended from NASD membership for one year and required to reapply for membership. Rybstein was suspended from association with any NASD member in any capacity for one year and must requalify by exam. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a January 1996 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm and Rybstein employed manipulative and deceptive devices in trading of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and NASD rules.

**Sidney C. Eng (Registered Principal, Mill Valley, California)** was fined \$75,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Eng knowingly purchased shares of stock while in possession of material, non-public 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.

**Lowell C. Schatzer (Registered Principal, New York, New York), Robert F. Catoggio (Registered Representative, Staten Island, New York), and Ronan S. Garber (Registered Representative, Highland Beach, Florida)** submitted Offers of Settlement pursuant to which

Schatzer and was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$4,161,362 in restitution, jointly and severally, with a member firm. Catoggio was fined \$50,000 and barred from association with any NASD member in any capacity. Garber was fined \$120,000 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, by means of manipulative, deceptive, and other fraudulent devices and contrivances, Schatzer, Catoggio, and Garber effected a series of transactions in common stock that created actual and apparent active trading in the stock or raised the stock's price. The findings also stated that Garber effected transactions in, and induced others to effect transactions in a stock that were not fair and reasonable and were not reasonably related to the prevailing market price of the stock. Garber also engaged in and induced others to engage in deceptive and fraudulent devices and contrivances in connection with the transactions. Furthermore, the NASD determined that Schatzer failed to establish and maintain an effective supervisory system, failed to enforce supervisory procedures, and failed to respond to NASD requests to appear for testimony. The NASD also found that Garber failed to timely respond to NASD requests to appear for testimony.

## August Actions

**Alfred Berg, Inc. (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 reported transactions late without the proper modifier, reported transactions incorrectly with a modifier, failed to report transactions, and reported transactions when not required to be reported. The findings also stated that the firm reported a transaction with the incorrect price, reported transactions with the improper volume, reported transactions with execution times that were different than those reflected on the order tickets, and failed to enter a time stamp on an order ticket reflecting the execution time for a transaction. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to detect and deter trade reporting violations.

**Gilford Securities, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported or failed to report Nasdaq National Market Securities and Over-The-Counter Equity Securities to the ACT, contrary to the provisions of Marketplace Rules 4632 and 6620.

**Lew Lieberbaum & Co., Inc. (Garden City, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$80,000 and required to attend a compliance conference. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT late and executed transactions prior to the market opening and prior to the market close. The NASD also determined that transactions between the firm and other market makers were reported to ACT with no contra side information and a bunched report was reported without using a modifier. The findings also stated that the firm failed to time stamp order tickets, canceled trades were not maintained, and reported transactions as bunched without indicating it on the order tickets. Furthermore, the NASD found that the firm failed to establish, maintain, or enforce written supervisory procedures with respect to trade reporting.

**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 \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of

findings that it failed to file any conventional option position reports with the NASD.

**Westport Resources Investment Services, Inc. (Westport, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported Nasdaq Securities to the Automated Confirmation Transaction Service contrary to the provision of Marketplace Rules 4632 and 4642 in that it failed to report Nasdaq transactions within 90 seconds after execution and did not designate the transactions as late with a modifier. The NASD

also found the firm aggregated individual executions into Nasdaq-listed security transactions reports but failed to designate the reports with the appropriate modifier, and order tickets did not indicate that the executions were bunched for trade reporting purposes.

**Whale Securities Co., L.P. (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 violated the NASD Marketplace Rules in that transactions were reported to ACT without a modifier, were improperly aggregated, and were reported with incorrect volumes. The

NASD also found that trades were reported late without using the modifier, a trade done on a cash/next day settlement basis was reported the regular way, and transactions were not reported to ACT. The findings also stated that the firm violated SEC Rule 17a-3 and Marketplace Rules in that transactions did not indicate original time of entry or execution, order tickets were missing, and order tickets were not time stamped with execution times. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures concerning trade reporting.

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