

Notices to Members

October 1998

Notices

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NASD Notice to Members 98-81

NASD Regulation Requests Comment On Whether Some Rules Should Be Repealed As Obsolete Or Amended To Provide Institutional Customer Exception; **Comment Period Expires November 30, 1998**

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is requesting comment from members and other interested persons as to whether any National Association of Securities Dealers, Inc. (NASD[®]) rules or By-Laws should be repealed because they are now obsolete or whether particular rules should distinguish between retail and institutional customers in their application.

Questions concerning this *Request For Comment* may be directed to Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8982.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by **November 30, 1998**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission.

NASD Regulation Request For Comment 98-81

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Background And Discussion

The NASD Regulation Office of General Counsel is undertaking a review of the NASD rules and By-Laws for the following purposes: (1) to determine if there are obsolete or otherwise unnecessary rules that could be repealed or that should be modernized in light of technological or industry developments; or (2) to determine if particular rules should distinguish between retail and institutional customers in their application. The overarching principles in this review will be to ensure that NASD rules promote balanced and effective self-regulation of the securities industry in order to protect investors and ensure market integrity, taking into account

costs and technological advances. NASD Regulation invites members and other interested parties to submit suggestions for its review. Members will be notified of any rule changes that are proposed as a result of this review.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500

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NASD Regulation, Inc.

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REGULATION

An NASD Company

NASD Notice to Members 98-82

SEC Approves Amendments To Automated Confirmation Transaction Service And Transaction Reporting Rules

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On September 14, 1998, the Securities and Exchange Commission (SEC) approved rule amendments that are designed to integrate transaction information reported to the Automated Confirmation Transaction ServiceSM (ACTSM) operated by The Nasdaq Stock Market, Inc. (Nasdaq[®]) with order information reported to the newly approved Order Audit Trail SystemSM (OATSSM).¹

Questions regarding the rule changes may be directed to the National Association of Securities Dealers, Inc. (NASD[®]) via phone at (888) 700-OATS or (301) 590-6503, or via e-mail at oatssc@nasd.com.

Discussion

In March 1998, the SEC approved new NASD Rules 6950 through 6957 (the OATS Rules²). OATS is designed to provide NASD Regulation, Inc. (NASD RegulationSM) with the ability to reconstruct markets promptly, conduct efficient surveillance, and enforce NASD and SEC rules. The SEC has directed that OATS must provide an accurate, time-sequenced record of orders and transactions from the receipt of an order through its execution.³ To accomplish this, NASD Regulation will combine information submitted to OATS with transaction data reported by members through ACT and quotation information disseminated by Nasdaq.⁴

The SEC has approved amendments to the NASD transaction reporting and ACT rules to require members to submit transaction data to ACT that will be integrated with order information reported to OATS.⁵ The amended rules affect Nasdaq National Market[®], Nasdaq

SmallCapSM, and Nasdaq Convertible Debt Securities. The ACT trade data and the OATS order information will be used to construct an integrated audit trail. Under the amended rules, all trade reports for OATS-eligible securities entered into Nasdaq's ACT system will be required to have a time of execution expressed in hours, minutes, and seconds. The trade reports also will be required to have a unique order identifier sufficient to allow a comparison of the information contained in the trade report with data submitted to OATS. In addition, the rule amendments codify the requirement that all ACT participants, including those that use third parties to submit trade report information to Nasdaq, must obtain and use a unique Market Participant Symbol for trade reporting and audit trail purposes.

The rule amendments will be implemented in tandem with the effective dates for implementation of the OATS Rules. The OATS Rules will become effective according to the following schedule:

- Phase 1: By March 1, 1999, electronic orders received by Market Makers and Electronic Communication Networks (ECNs) must be reported.
- Phase 2: By August 1, 1999, all electronic orders must be reported.
- Phase 3: By July 31, 2000, all non-electronic, or manual, orders must be reported.

The text of the rule changes as well as other information about OATS is available on the NASD Regulation Web Site (www.nasdr.com).

Endnotes

¹See Securities Exchange Act Release No. 40437 (September 14, 1998), 63 FR 50272 (September 21, 1998) (File No. SR-NASD-98-60).

²See *Notice to Members 98-33* for a complete description of the OATS Rules.

³See *In the Matter of National Association of Securities Dealers, Inc., Securities Exchange Act Release No. 37538* (August 8, 1996); Administrative Proceeding File No. 3-905, at 7-8.

⁴ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

⁵The amended rules are Marketplace Rules 4632, 4642, 4652, 6120, and 6130.

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NASD Notice to Members 98-83

SEC Approves Rule
Change Relating To
Standards For Individual
Correspondence; Effective
November 16, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On August 26, 1998, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD[®]) Rule 2210 to require that written or electronic communications prepared for a single customer be subject to the general standards and those specific standards of NASD Rule 2210 that prohibit misleading statements, but not to the specific standards of the rule that prescribe specific disclosure nor the filing and review requirements. The amendments will take effect on November 16, 1998.

Questions concerning this *Notice* may be directed to Thomas A. Pappas, Director, Advertising Regulation, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-8330, and Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Discussion Background

NASD Rule 2210 imposes various requirements on member communications with the public, designed to ensure that those communications are fair, balanced, and not misleading. Rule 2210 does not expressly apply to the content of correspondence (*i.e.*, a communication to only one person). In addition, there is no definition of correspondence in the NASD rules, even though members are required to supervise the use of correspondence by their associated persons under Rule 3010.

NASD Regulation has taken the position that a document prepared for use with a single customer, and not for dissemination to the general public, is not "sales literature" as that term is defined in NASD Rule 2210. However, NASD Regulation believes that applying particular standards in Rule 2210 to correspondence is

appropriate and would enable the staff to bring enforcement actions on the basis of clear violations of certain proscribed behavior.

Discussion

NASD Regulation believes that certain statements pose similar dangers regardless of whether they are communicated to one person or many persons. NASD Regulation recognizes that correspondence is highly individualized in nature and that much correspondence (unlike advertising and sales literature) is directed by registered representatives (RRs) to customers with whom RRs already have an established relationship. At the same time, NASD Regulation believes that clarifying how Rule 2210 applies to correspondence would provide better guidance to the membership and help to assure that investors are adequately protected with respect to the communications they receive individually. The amendments therefore subject correspondence to the general standards and those specific standards of Rule 2210 that prohibit misleading statements, but not to the standards of the rule that prescribe specific disclosure. Members will not have to file correspondence with the NASD for review.

The amendments create a category defined as "communications with the public" to include the current definitions of "advertisement" and "sales literature," and a new definition of "correspondence." "Correspondence" is defined as "...any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public." In determining when a written or electronic communication is prepared for delivery to a single current or prospective customer, members should consider, and the staff of NASD Regulation will

examine, among other things, the form and content of the communication. Thus, a written or electronic communication addressed to a single current or prospective customer, the content of which is substantially identical to that of written or electronic communications sent to one or more other current or prospective customers, is a form letter, not "correspondence." Because form letters are considered "sales literature" under Rule 2210, they would be subject to all of the general and specific standards of Rule 2210.

The amendments subject individual correspondence to the general standards under subparagraph (d)(1) and the following specific standards under subparagraph (d)(2) of Rule 2210:

- subparagraph (d)(2)(C), which prohibits exaggerated, unwarranted, or certain other specific claims or opinions;
- subparagraph (d)(2)(E), which prohibits certain offers of free services;
- subparagraph (d)(2)(F), which prohibits certain claims for research services;
- subparagraph (d)(2)(G), which prohibits certain hedge clauses;
- subparagraph (d)(2)(J), which prohibits the implication of endorsement or approval by regulatory organizations;
- the provision of subparagraph (d)(2)(L) that prohibits the characterization of income or investment returns as tax exempt or tax free in certain circumstances; and
- subparagraph (d)(2)(N), which prohibits predictions and projections of investment results. All of these specific provisions derive from members' general obligations not to make

statements that are misleading or without a reasonable basis in fact.

Individual correspondence **will not** be subject to the following specific standards of Rule 2210:

- subparagraph (d)(2)(A), which requires the inclusion of certain information regarding members' names;
- subparagraph (d)(2)(B), which requires that a member disclose specified information to the customer when making a recommendation;
- subparagraph (d)(2)(D), which requires the inclusion of certain statements regarding testimonials;
- subparagraph (d)(2)(H), which applies to advertisements for the recruitment of sales personnel;
- subparagraph (d)(2)(I), which requires certain disclosures regarding periodic investment plans;
- subparagraph (d)(2)(K), which requires the identification and disclosure of sources other than the member for certain statistical tables, charts, graphs, or other illustrations;
- the provisions of subparagraph (d)(2)(L) that require the inclusion of clarifying information regarding claims of tax free or tax exempt returns; and
- subparagraph (d)(2)(M), which requires the inclusion of certain information when making comparisons of investment alternatives.

The amendments do not change the current application of Rule IM-2210-1. Therefore paragraph (a) of that rule (interpretation regarding collateralized mortgage obligations) has been amended to clarify that only advertisements and sales literature are covered by the interpretation.

Finally, the amendments also incorporate several minor technical changes that are non-substantive in nature.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 2210. Communications with the Public

(a) Definitions - Communications with the public shall include:

(1) Advertisement--For purposes of this Rule and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, video-tape display, signs or billboards, motion pictures, telephone directories (other than routine listings), electronic or other public media.

(2) Sales Literature--For purposes of this Rule and any interpretation thereof, "sales literature" means any written or electronic communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(3) Correspondence--For purposes of this Rule and any interpretation thereof, "correspondence" means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

Cross Reference - Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member.

(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use, shall be maintained for a period of three years from the date of each use.

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Rule) shall file its initial advertisement with the Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.

(B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) [or (B)] of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in [those] that subparagraph[s], with any registered securities exchange having standards comparable to those contained in this Rule.

(4)(A) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department and/or the District Committee, at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure as contained in the Rule 9000 Series.

(5) In addition to the foregoing requirements, every member's [advertising] advertisements and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

(A) Advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member;

(B) Advertisements or sales literature which do no more than identify the Nasdaq symbol of the member and/or of a security in which the member is a Nasdaq registered market maker;

(C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

(D) Material sent to branch offices or other internal material that is not distributed to the public;

(E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 shall not be considered a prospectus for purposes of this exclusion;

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, unless such advertisements are related to direct participation programs or securities issued by registered investment companies.

(7) Material which refers to investment company securities or direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of subparagraphs (1) and (2).

(d) Standards Applicable to Communications with the Public

(1) General Standards

(A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause

the [advertising or sales literature] communication to be misleading.

(B) Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such [literature] communications, members must bear in mind that inherent in investments are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.

(D) In judging whether a communication or a particular element of a communication may be misleading, several factors should be considered, including but not limited to:

(i) the overall context in which the statement or statements are made. A statement made in one context may be misleading even though such a statement could be [perfectly] appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

(ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media

used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

(iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner [obviously] can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be [worse] more confusing than too little information. Likewise, material disclosure relegated to legends or footnotes [realistically] may not enhance the reader's understanding of the communication.

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

(A) Necessary Data. Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with paragraph (f). Sales literature shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.

(B) Recommendations.

(i) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:

a. that the member usually makes a market in the securities being recom-

mended, or in the underlying security if the recommended security is an option, [and/]or that the member or associated persons will sell to or buy from customers on a principal basis;

b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

(ii) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

(iii) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

(iv) Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the infor-

mation specified in subparagraph (iii). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

(C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

(D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in [the] advertisements or sales literature [communication]:

(i) The testimonial may not be representative of the experience of other clients.

(ii) The testimonial is not indicative of future performance or success.

(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.

(iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.

(E) Offers of Free Service. Any statement in communications with the public to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such

report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.

(F) Claims for Research Facilities. No claim or implication in communications with the public may be made for research or other facilities beyond those which the member actually possesses or has reasonable capacity to provide.

(G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are misleading or are inconsistent with the content of the material.

(H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

(I) Periodic Investment Plans. Advertisements and sales literature [Communications with the public] should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.

(J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the

securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.

(L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References in advertisements and sales literature to tax free/tax exempt current income must indicate which income taxes apply or which do not unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

(M) Comparisons. In making a comparison in advertisements or sales literature, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insur-

ance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.

(N) Predictions and Projections. In communications with the public, investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.

IM-2210-1. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) General Considerations

For purposes of the following guidelines, the term "collateralized mortgage obligation" (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as "real estate mortgage investment conduits" (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The term CMO and REMIC are now used interchangeably. In order to prevent [a communication about] advertisements and sales literature regarding CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following:

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use the proprietary names for CMOs as they do not adequately identify the product. To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

(2) Educational Material

In order to ensure that customers are adequately informed about CMOs members are required to offer to customers educational material which covers the following matters:

- (A) A discussion of CMO characteristics as investments and their attendant risks;
- (B) An explanation of the structure of a CMO, including the various types of tranches;
- (C) A discussion of mortgage loans and mortgage securities;
- (D) Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on value and prepayment

rates), tax considerations, minimum investments, transactions costs and liquidity;

(E) Questions an investor should ask before investing; and

(F) A glossary of terms that may be helpful to an investor considering an investment.

(3) Safety Claims

A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.

(4) Claims About Government Guarantees

(A) Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are "government guaranteed" securities. A government agency issue could instead be characterized as government agency backed. Of course, private-issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.

(B) If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.

(5) Simplicity Claims

CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.

(6) Claims About Predictability

A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.

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NASD Notice to Members 98-84

Broker/Dealer And Agent Renewals For 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The 1999 National Association of Securities Dealers, Inc. (NASD[®]) broker/dealer and agent registration renewal cycle begins in early November. This program simplifies the registration renewal process through the payment of one invoiced amount that will include fees for NASD personnel assessments, NASD branch offices, New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), Pacific Exchange (PSE), and Philadelphia Stock Exchange (PHLX) maintenance fees. The invoice also includes state agent renewal fees and state broker/dealer renewal fees. Members should read this *Notice* and the instruction materials to be sent with the November invoice package to ensure continued eligibility to do business in the states effective January 1, 1999. Any renewal processing changes subsequent to the publishing of this *Notice to Members* will be provided to you in a *Special Notice to Members*.

Questions concerning this *Notice* may be directed to the CRD/PD Gateway Call Center at (301) 869-6699.

Initial Renewal Invoices

On or around November 9, 1998, initial renewal invoices will be mailed to all member firms. The invoices will include fees for NASD personnel assessments, NASD branch-office fees, NYSE, Amex, CBOE, PSE, and PHLX maintenance fees, state agent renewal fees, and state broker/dealer renewal fees. The NASD must receive full payment of the November invoice **no later than December 11, 1998**.

NASD personnel assessments for 1999 will be based on the number of registered personnel with an approved or conditional NASD

license on or before December 31, 1998. That personnel assessment is currently \$10.00 per person. The NASD branch office assessment fee is \$75.00 per branch based on the number of active branches as of December 31, 1998.

Agent renewal fees for NYSE, Amex, CBOE, PSE, PHLX, and state affiliations are listed in a matrix enclosed with each invoice. The matrix includes a list of broker/dealer renewal fees for states that participate in the broker/dealer renewal program. NYSE, Amex, CBOE, PSE, and PHLX maintenance fees—collected by the NASD for firms that are registered with those exchanges as well as the NASD—are based on the number of NYSE-, Amex-, CBOE-, PSE-, and PHLX-registered personnel employed by the member.

If a state does not participate in this year's broker/dealer renewal program, members registered in that state must contact the state directly to ensure compliance with renewal requirements. In addition, some participating states may require steps beyond the payment of renewal fees to complete the broker/dealer renewal process. Members should contact states directly for further information on state renewal requirements.

Payment of the initial invoice should be either in the form of a check made payable to NASD Regulation, Inc. (NASD RegulationSM) or by bank wire transfer. The check should be drawn on the member firm's account, with the firm's Central Registration Depository (CRDSM) number included on the check. Submit the check, along with the top portion of the invoice, and mail in the return envelope to:

NASD Regulation, Inc.
Finance Department - Renewals
15201 Diamondback Drive
Rockville, MD 20850

To ensure prompt processing, the renewal invoice payment should not be included with other forms or fee submissions. Members are advised that failure to return full payment to the NASD by the December 11, 1998, deadline could cause a member to immediately become ineligible to do business in the states effective January 1, 1999.

Filing Forms U-5

Members may avoid paying unnecessary renewal fees by filing Forms U-5 for agents terminating in one or more jurisdiction affiliations. Due to the positive feedback received by the NASD by its member firms that used post-dated Forms U-5 for renewals, the NASD will again accept post-dated agent termination notices on the Forms U-5. From November 2 to December 11, the NASD will accept and process Forms U-5 (both partial and full terminations) with **post-dated dates of termination**. Under this procedure, if the Form U-5 indicates a termination date of December 31, 1998, an agent may continue doing business in a jurisdiction until the end of the calendar year without being assessed renewal fees for that jurisdiction. Please ensure that Forms U-5 are filed by the renewal deadline date of December 11, 1998. **Also, post-dated Forms U-5 cannot be processed if the date of termination is after December 31, 1998.**

Members should exercise care when submitting post-dated Forms U-5. The NASD will process these forms as they are received but cannot withdraw a post-dated termination once processed. To withdraw a post-dated termination, a member would have to file a new Form U-4 **after** the termination date indicated on the Form U-5.

The NASD encourages members having access to the Firm Access Query System (FAQS) to use electronic filings for the submission of all

Forms U-5 and Page 1s of Form U-4. FAQS offers several advantages to firms in this regard, including the ability to **immediately** process terminations, ensure in-house control over agent registrations, and reduce normal and express mailing costs, as well as long-distance telephone charges. FAQS also allows members to quickly and efficiently handle the large filing volumes that typically occur at this time every year. Because of that, the NASD will provide an additional service to FAQS users by expanding the on-line user hours for November and December 1998. The system will be operational from 7 a.m. to 11 p.m., Eastern Time (ET), Monday through Friday, and will also be available on Saturdays from 9 a.m. to 5 p.m., ET, during these months.

Filing Forms BDW

The CRD Phase II program, now in its ninth year, allows firms requesting terminations (either full or state only) to file their Forms BDW with the CRD to avoid the assessment of renewal fees in those jurisdictions that are designated on the Form BDW, **provided that the jurisdiction is a CRD Phase II participant**. Currently, there are six jurisdictions that are not participating in Phase II. They are:

- Michigan
- Puerto Rico
- American Stock Exchange
- Chicago Board Options Exchange
- New York Stock Exchange
- Pacific Exchange

Firms requesting termination in any of the above-listed jurisdictions must submit a Form BDW directly to the jurisdiction as well as to the CRD.

The deadline for receipt of Forms BDW by the CRD for firms desiring to terminate an affiliation before year-end 1998 is December 11, 1998. This same date applies to the filing of Forms BDW with the jurisdictions that are not participating in Phase II. Post-dated Forms BDW filed with the CRD **will be** accepted and processed in the same manner as post-dated Forms U-5.

Removing Open Registrations

The initial invoice package will include a roster of firm agents whose NASD registration is either terminated or purged due to the existence of a deficient condition for more than 180 days, **but** who have an approved registration with a state. This roster should aid in the reconciliation of personnel registrations prior to year's end. Firms may terminate obsolete state registrations through the submission of Forms U-5 or reinstate the NASD licenses through the filing of Page 1s of Forms U-4. No roster will be included if a firm does not have agents within this category.

Final Adjusted Invoices

On or about January 11, 1999, the NASD will mail final adjusted invoices to its members. These invoices will reflect the final status of firm and agent registrations as of December 31, 1998. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the initial invoice mailing will be made in this final reconciled invoice. If a member has more agents and/or branch offices registered at year's end than it did on the November invoice date, additional fees will be assessed. If a member has fewer agents and/or branch offices registered at year's end than it did in November, a credit/refund will be issued.

Included with this adjusted invoice will be the member renewal rosters that will list all renewed personnel with the NASD, NYSE, Amex, CBOE, PSE, PHLX, and each state. Persons whose registrations are approved in any of these jurisdictions during November and December will be included in this roster, while registrations that are pending approval or are deficient at year's end **will not** be included in the renewal process. Firms will also receive an NASD branch-office roster that lists all

branches for which they have been assessed.

This year's final invoice package will also include a breakdown of fees by billing code for firms that use billing codes in the registration process. This breakdown will aid firms in their internal research and allocation of fees.

Firms then will have approximately two months in which to reconcile any discrepancies on the renewal ros-

ters. All jurisdictions should be contacted directly in writing. Specific information and instructions concerning the final adjusted invoice package will appear in the January 1999 issue of *Notices to Members*, as well as on the inside cover of the renewal roster. Firms may also refer to their renewal edition of the *CRD/PD Bulletin* for details concerning the renewal process.

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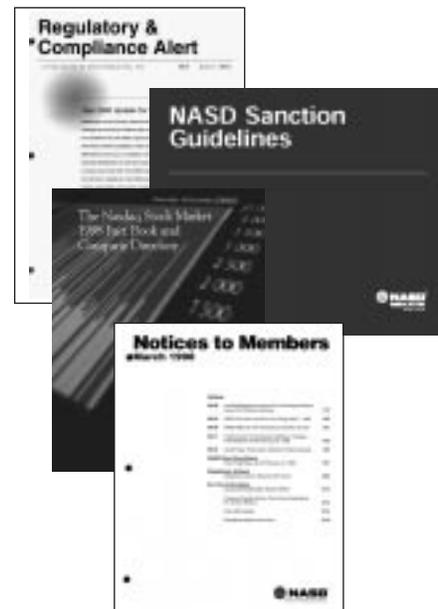
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- * **THE NASDAQ STOCK MARKET FACT BOOK & COMPANY DIRECTORY**- A useful resource for shareholders, corporations, investors, and others, this book offers extensive data about the performance of the Nasdaq market, Nasdaq companies, and their securities.
- * **NASD NOTICES TO MEMBERS** - Remain informed of every step of the regulatory process, including fee changes and Board of Governors actions, with this NASD monthly newsletter.



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NASD Notice to Members 98-85

SEC Approves Rule Changes Regarding Electronic Communication Networks, Locked And Crossed Markets, And Members' Obligation To Provide Nasdaq With Certain Information

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On September 22, 1998, the Securities and Exchange Commission (SEC) approved amendments to the National Association of Securities Dealers, Inc. (NASD[®] or Association) rules regarding Electronic Communications Networks (ECNs) and locked and crossed markets. The SEC also approved a new rule regarding information requests made by Nasdaq[®] to NASD members. Specifically, the rule changes: (1) amend NASD Rule 4623 to specify the manner in which ECN orders that have a reserved size must interact with incoming SelectNetSM messages; (2) amend Rule 4613(e) to specify the manner in which quotations that are entered into Nasdaq at or after 9:25 a.m. and that lock or cross the market on the opening, must be resolved at the market's opening; and (3) add Rule 4625, which will require members that participate in The Nasdaq Stock Market[®] to provide information to Nasdaq departments and staff when information is so requested. The rule changes are effective November 1, 1998.

Questions concerning this *Notice* may be directed to John Malitzis, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8245.

Background

With the implementation of the SEC's Order Handling Rules in early 1997, a number of ECNs have been integrated into the Nasdaq market. Under SEC Rule 11Ac1-1(c)(5) (the ECN Rule) which was adopted as part of the SEC's Order Handling Rules, a Nasdaq Market Maker must reflect in its public quotes any superior prices that the Market Maker privately quotes in an ECN. The ECN Rule provides an alternative to this public quote display requirement, under which a Market Maker may comply with the ECN Rule if the ECN in which the Market Maker is privately quoting has:

- established a link to Nasdaq by displaying the best ECN prices in Nasdaq's quote montage; and
- provided access through Nasdaq to such publicly displayed prices.

To accommodate this alternative, Nasdaq created the "SelectNet Linkage" that allows: 1) ECNs to display their best prices from Market Makers and other ECN subscribers in the Nasdaq quote montage, including the inside market display; and 2) market participants to access those prices by sending orders to an ECN through SelectNet. The NASD is adopting the following rule changes in light of Nasdaq's experience with the integration of ECNs into the market.

Reserved Size

The NASD is adopting amendments to NASD Rule 4623 to establish the manner in which orders that have a reserved size and that are entered into an ECN must interact with SelectNet orders that are sent to an ECN.

Subsequent to the inclusion of ECNs into the market, Nasdaq has observed locked and crossed markets¹ occurring in connection with the use of "reserved" size orders in ECNs. Specifically, an ECN may display a portion of a customer order (*e.g.*, 1,000 shares) while maintaining a significantly larger portion of the order in reserve (*e.g.*, 10,000 shares). It is Nasdaq's experience that often a Market Maker will send a large SelectNet order (*e.g.*, 20,000 shares) to the ECN to take out the displayed and reserved portion of the ECN order so that the Market Maker may move its quote without locking/crossing the market. The ECN's system may be programmed, however, so that the incoming SelectNet order interacts only with the displayed portion of the ECN order, not the reserved and displayed portions of such order (*i.e.*, the 20,000 share SelectNet message will

execute against the displayed 1,000 shares only, not the full 11,000 shares). Thus, a Market Maker often is unable to take out the entire ECN order -- except in pieces and through multiple executions. After using reasonable means to avoid locking/crossing the market by—for example—sending SelectNet messages to the ECN to take out the quotation, the Market Maker often will enter a quotation that locks/crosses the market. These locked/crossed markets may last for a significant period and disrupt the marketplace.

The NASD is amending NASD Rule 4623 to address this issue. Under the amendment, if an ECN displays in Nasdaq a customer order having a reserved size and a market participant attempts to access the ECN's Nasdaq-displayed order by sending (via a Nasdaq-provided means) an order that is larger than the ECN's Nasdaq-displayed size, the ECN must execute the Nasdaq-delivered order: 1) up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or 2) up to the size of the ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ECN order (including the reserved size and displayed portions). Thus, in the above example where the ECN is displaying 1,000 shares and holding 10,000 shares in reserve and the Market Maker sends the ECN a SelectNet order for 20,000 shares, the ECN would be required to execute 11,000 shares—the full size of the order in the ECN.

Locked/Crossed Markets

Nasdaq has observed instances of Market Makers and ECNs entering orders at 9:29 a.m. (when quotations

are not firm) that lock/cross the market and then leaving these orders in place at 9:30 a.m. when the quotations become firm and the market opens. Often times the Market Maker or ECN will not take action to attempt to resolve the lock/cross when the market opens. This effectively locks/crosses the market on the opening and disrupts the opening process.

In light of this situation, the NASD is amending Rule 4613(e). Amended Rule 4613(e) provides that if a Market Maker or ECN enters a quotation at or after 9:25:00 a.m. Eastern Time and the quotation locks or crosses the market on the opening, it is the obligation of that Market Maker or ECN to take action immediately when the market opens to avoid the lock or cross. The rule specifies that the Market Maker or ECN must take such take action (*e.g.*, by sending a SelectNet order to the quotation it will lock/cross, or by taking down its quotation, if appropriate) when the market opens at 9:30:00 a.m., but in no case later than 30 seconds thereafter (*i.e.*, 9:30:30 a.m.). The 30-second period is intended to give a Market Maker or ECN an opportunity to send a SelectNet message to the party that it will lock/cross at a point in time when quotations are firm (*i.e.*, at or after 9:30:00 a.m.).

For example, at 9:28:35 a.m., the market in Stock QRST is 20 x 20 3/16, and MMAB is displaying an offer of 20 3/16. At 9:29:45 a.m., MMCD enters a bid of 20 3/16 thereby locking the market. MMCD is obligated to attempt to resolve the lock as soon as the market opens (but no later than by 9:30:30 a.m.) by, for example, sending a SelectNet message to MMAB.

Although market participants should always monitor their pre-opening quotations to ensure that they do not lock/cross the market on the open-

ing, the amended rule: (1) provides a benchmark of 9:25:00 a.m., at which time market participants must start monitoring their quotations to determine whether they are entering locking/crossing quotations; (2) delineates which party must take action to resolve the lock/cross when the market opens; and (3) provides a benchmark of 9:30:30 a.m., by which time the market participant must take action to resolve the locked/crossed market situation.

Nasdaq Information Requests

Finally, the NASD is adopting Rule 4625 regarding members' obligation to supply Nasdaq with certain information when so requested. Nasdaq's MarketWatch and Market Operations departments have day-to-day responsibilities for administering various NASD and SEC rules, as well as carrying out duties delegated to them by the Association. For example, Nasdaq's MarketWatch Department is responsible for initiating trading halts and monitoring locked and crossed market situations, while Nasdaq's Market Operations Department is responsible for reviewing ITS trade-through complaints, clearly erroneous transactions, and requests for excused withdrawals or reinstatements from unexcused withdrawals. In order to properly administer a particular rule or to carry out a departmental function, Nasdaq staff often must obtain information on a real-time basis from market participants. For example, when monitoring for locked and crossed markets, Nasdaq MarketWatch routinely will contact the parties to the lock or cross (*e.g.*, a Market Maker and/or ECN) to request relevant information.² Staff then will review this information on a real-time basis and assist in resolving the locked or crossed market situation.³

Currently there is no explicit authority in the NASD's rules that allow Nas-

daq staff to request information from members, although members generally have voluntarily complied with such requests in the past. Thus, the NASD is adopting Rule 4625, which authorizes Nasdaq staff to request information in specific circumstances and obligates members to comply with such requests. Under Rule 4625, Nasdaq staff may request from a member information directly related to: a SEC or NASD rule that the Nasdaq department is responsible for administering; or to other duties/responsibilities imposed on the Nasdaq department by the "Plan of Allocation and Delegation of Function by the NASD to Subsidiaries" or otherwise delegated by the Association to such department. Members should note that, under Rule 4625, a failure to provide information in a timely, truthful, and/or complete manner, could subject the member to disciplinary action.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 4623. Electronic Communications Networks

(a) The Association may provide a means to permit electronic communications networks ("ECN"), as such term is defined in SEC Rule 11Ac1-1(a)(8), to meet the terms of the [electronic communications network] ECN display alternative provided for in SEC Rule 11Ac1-1(c)(5)(ii)(A) and (B) ("ECN display alternative"). In providing any such means, the Association shall establish a mechanism that permits the [electronic communications network] ECN to display the best prices and sizes of orders entered by Nasdaq market makers (and other entities, if the [electronic communications network] ECN so chooses) into the [electronic communications network] ECN, and allows any NASD member the electronic

ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An [electronic communications network] ECN that seeks to utilize the Nasdaq-provided means to comply with the [electronic communications network] ECN display alternative shall:

(1) demonstrate to the Association that it qualifies as an [electronic communications network] ECN meeting the definition in the SEC Rule;

(2) be registered as a[n] NASD member;

(3) enter into and comply with the terms of a Nasdaq WorkStation Subscriber Agreement, as amended for ECNs;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the [electronic communications network] ECN so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the [electronic communications network] ECN, and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ECN; and

(5) provide an automated execution, or if the price is no longer available, an automated rejection of any order routed to the [electronic communications network] ECN through the Nasdaq-provided display alternative.

(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an ECN-displayed order by sending an order that is larger than the ECN's Nasdaq-

displayed size and the ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the ECN shall execute such Nasdaq-delivered order:

(1) up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or

(2) up to the size of the ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ECN order (including the reserved size and displayed portions).

No ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term "reserved size" shall mean that a customer entering an order into an ECN has authorized the ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

Rule 4613. Character of Quotations

(a) - (d) No Change

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to or greater than the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to or less than the bid quotation of another market maker entering quotations in the same security.

The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker or ECN that enters a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30:00 a.m.

(2) A market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule 4613, a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

(3) For purposes of this [paragraph] rule, the term "market maker" shall include:

(i) any NASD member that enters into an [electronic communications network] ECN, as defined in SEC Rule 11Ac1-1(a)(8), a priced order that is displayed in The Nasdaq Stock Market; and

(ii) [Such term also shall include] any NASD member that operates the [electronic communication network] ECN when the priced order being displayed has been entered by a person or entity that is not a[n] NASD member.

Rule 4625. Obligation to Provide Information

(1) A NASD member operating in or participating in the third market, The Nasdaq Stock Market, or other Nasdaq-operated system, shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(a) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(i) a locked or crossed market;

(ii) a trade reported by a member or ECN to the Automated Transaction Confirmation Service ("ACT"); or

(iii) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to NASD Rule 4120 and IM-4120-1; or

(iv) a quotation that appears not to be reasonably related to the prevailing market.

(b) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, provision of a joint industry plan (e.g., ITS, UTP, CTA,

and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(i) a clearly erroneous transaction, pursuant to NASD Rule 11890;

(ii) a request to reconsider a determination to withhold a primary market maker designation, pursuant to NASD Rule 4612;

(iii) a request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 4730, 5106 and 6350;

(iv) the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890;

(v) an ACT input error;

(vi) an equipment failure; or

(vii) a request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624.

(2) A failure to comply in a timely, truthful, and/or complete manner with a request for information made pursuant to this rule may be deemed conduct inconsistent with just and equitable principles of trade.

Endnotes

¹A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

²Staff may request information on the identity of the customers, trade information, the reason for the lock or cross (e.g., system

error), and other information related to the locked or crossed market situation.

³In addition to the locks and crosses, there are other instances when staff must gather information from Market Makers and ECNs on a real-time basis. For example, Nasdaq MarketWatch may need to contact a Market Maker or ECN to determine quickly if a trade, quotation, or series of trades appear-

ing to be aberrations, were caused by a malfunction of a computer system (which could pose a threat to the integrity of Nasdaq from a technological perspective) or by some other source.

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NASD Notice to Members 98-86

Columbus Day, Veterans Day, And Thanksgiving Day: Trade Date–Settlement Date Schedule

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Columbus Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 12, 1998. On this day, The Nasdaq Stock Market[®] and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Oct. 2	Oct. 7	Oct. 9
5	8	12
6	9	13
7	13	14
8	14	15
9	15	16
12	15	19
13	16	20

Note: October 12, 1998, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 12, will be combined with transactions made on the previous business day, October 9, for settlement on October 15. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 12.

Veterans Day And Thanksgiving Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Veterans Day, Wednesday, November 11, 1998, and Thanksgiving Day, Thursday, November 26, 1998. On Wednesday, November 11, The Nasdaq Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed in observance of Veterans Day. All securities markets will be closed on Thursday, November 26, in observance of Thanksgiving Day.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Nov. 4	Nov. 9	Nov. 11
5	10	12
6	12	13
9	13	16
10	16	17
11	16	18
12	17	19
19	24	27
20	25	30
23	27	Dec. 1
24	30	2
25	Dec. 1	3
26	Markets Closed	—
27	2	4

Note: November 11, 1998, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on November 11 will be combined with transactions made on the previous business day, November 10, for settlement on November 16. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on November 11.

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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NASD Notice to Members 98-87

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of August 24, 1998

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of August 24, 1998, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ABLC.GA	American Builders & Contractors Inc	10.625	05/15/07
AFGH.GA	Affinity Group Holding Inc.	11.000	04/01/07
ALAI.GA	Aladdin Gaming/Cap Corp.	13.500	03/01/10
APFC.GA	American Pacific Corp.	9.250	03/01/05
APFC.GA	American Pacific Corp.	9.250	03/01/05
APLO.GA	AP Holdings Inc.	11.250	03/15/08
APLO.GA	AP Holdings Inc.	11.250	03/15/08
ARGI.GD	American Restaurant Group Inc.	11.500	02/15/03
ARSL.GA	Ameristeel Corp.	8.750	04/15/08
ARUC.GA	Accuride Corp.	9.250	02/01/08
AVS.GA	Avistion Sales Co.	8.125	02/15/08
BCC.GA	Boise Cascade Corp.	9.875	02/15/01
BCC.GB	Boise Cascade Corp.	9.450	11/01/09
BCC.GC	Boise Cascade Corp.	9.900	03/15/00
BCC.GD	Boise Cascade Corp.	9.850	06/15/02
BCC.GE	Boise Cascade Corp.	7.350	02/01/16
BOP.GA	Boise Cascade Office Products Corp.	7.050	05/15/05
CE.GE	CalEnergy Co.	6.960	09/15/03
CE.GF	CalEnergy Co.	7.230	09/15/05
CHK.GG	Chesapeake Energy Corp.	9.625	05/01/05
CIOF.GA	Chiles Offshore LLC/Fin Corp.	10.000	05/01/08
CMCO.GA	Columbus McKinnon Corp.	8.500	04/01/08
CR.GG	CalEnergy Co.	7.520	09/15/08
CR.GH	CalEnergy Co.	8.480	09/15/28
EGHI.GA	Elgar Holdings Inc.	9.875	02/01/08
ENGL.GD	Engle Homes Inc.	9.250	02/01/08
FKNC.GA	Frank's Nursery & Crafts Inc.	10.250	03/01/08
FOHO.GA	Fort Howard Corp.	9.000	02/01/06
FTZH.GA	Fitzgerald Gaming	12.250	12/15/04
GBND.GA	General Binding Corp.	9.375	06/01/08
GTAR.GD	Globalstar LP/Cap Corp.	11.500	06/01/05
GW.GA	Grey Wolf Inc.	8.875	07/01/07
HPII.GA	Home Products Intl Inc.	9.625	05/15/08
HTHR.GA	Hawthorne Financial Corp.	12.50	12/31/04
ICGS.GA	ICG Services	10.000	02/15/08
ICIX.GD	Intermedia Communications Inc.	8.500	01/15/08
IHK.GB	Imperial Holly Corp.	9.750	12/15/07
IIXC.GB	IXC Communications Inc.	9.000	04/15/08
KMCT.GA	KMC Telecom Holdings Inc.	12.500	02/15/08
LIEV.GA	LIN Television Corp.	8.375	03/01/08
LNGS.GA	LIN Holdings Corp.	10.000	03/01/08
LNR.GA	LNR Property Corp.	9.375	03/15/08
LNR.GA	LNR Property Corp.	9.375	03/15/08
LO.GA	Local Financial Corp.	11.000	09/08/04
LWN.GC	Loewen Group Intl. Inc.	7.500	04/15/01
MEAL.GB	Metallurg Inc.	11.000	12/01/07
MEDA.GA	Medaphis Corp.	9.500	02/15/05
MKHU.GA	Market Hub Partners Inc.	8.250	03/01/08
MPN.GB	Mariner Post-Acute Network Inc.	9.500	04/01/06

Symbol	Name	Coupon	Maturity
MRNR.GA	Mariner Health Group	9.500	04/01/06
MTUM.GA	Mentus Media Corp.	12.000	02/01/03
MUI.GA	Metals USA	8.625	02/15/08
NTHC.GA	Northland Cable Television Inc.	10.250	11/15/07
NXLK.GB	Nextlink Communications Inc.	9.000	03/15/08
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
PMSI.GA	Prime Medical Services Inc.	8.750	04/01/08
PMWI.GB	Pagemart Wireless Inc.	11.250	02/01/08
PRRJ.GA	Perry-Judds Inc.	10.625	12/15/07
PSAI.GA	Pediatric Services of America Inc.	10.00	04/15/08
PSIX.GA	PSINet Inc.	10.00	02/15/05
QWST.GC	Qwest Communications Intl. Inc.	8.290	02/01/08
RSLU.GA	RSL Communications PLC	9.125	03/01/08
SFXE.GA	SFX Entertainment Inc.	9.125	02/01/08
SILA.GA	Silver Cinemas Intl. Inc.	10.500	04/15/05
SPF.GC	Standard Pacific Corp.	8.000	02/15/08
SPVI.GA	Spectra Vision Inc.	11.500	10/01/01
SYAU.GA	Stanadyne Automotive Corp.	10.250	12/15/07
SYPT.GA	Syratech Corp.	11.000	04/15/07
TSO.GA	Tesoro Petroleum Corp.	9.000	07/01/08
TWA.GD	Trans World Airlines Inc.	11.375	03/01/06
TWA.GE	Trans World Airlines Inc.	10.250	06/15/03
UNTA.GA	United Artists Theaters Co.	9.750	04/15/08
UNTA.GB	United Artists Theaters Co.	10.062	10/15/07
WPSN.GC	Westpoint Stevens Inc.	7.875	06/15/08

As of August 24, 1998, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ACCP.GA	American Cap Corp.	8.400	06/15/93
AMIC.GC	Americold Corp.	11.500	03/01/05
ARGI.GA	American Restaurant Group Inc.	12.000	09/15/98
ARGI.GB	American Restaurant Group Inc.	13.000	09/15/98
ARGI.GC	American Restaurant Group Inc.	13.000	09/15/98
CHK.GF	Chesapeake Energy Corp.	10.500	06/01/02
FERL.GC	Ferrellgas LP/Finance Corp.	10.000	08/01/01
JORE.GA	Jorgensen Earle M Co. Del New	10.750	03/01/00
LIEV.GA	LIN Television Corp.	8.375	03/01/08
LNGS.GA	Lin Holdings Corp.	10.000	03/01/08
LPET.GA	La Petite Holdings Corp.	9.625	08/01/01
LQI.GA	La Quinta Inns Inc.	9.250	05/15/03
MRNR.GA	Mariner Health Group	9.500	04/01/06
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
OEH.GA	Orient Express Hotels Inc.	10.250	09/01/98
RYL.GA	Ryland Group Inc.	10.500	07/15/02
SPVI.GA	Spectra Vision Inc.	11.500	10/01/01
SPVI.GA	Spectra Vision Inc.	11.500	10/01/01
TEP.GB	Tucson Electric Power Co.	8.125	09/01/01
TEP.GC	Tucson Electric Power Co.	7.550	03/01/02
TEP.GC	Tucson Electric Power Co.	7.550	03/01/02

Symbol	Name	Coupon	Maturity
TEP.GD	Tucson Electric Power Co.	7.650	05/01/03
TEP.GD	Tucson Electric Power Co.	7.650	05/01/03
TRIP.GA	Trangle Pacific Corp. Del	10.500	08/01/03
VNCI.GA	Vencor Inc.	10.125	09/01/01
VNCI.GA	Vencor Inc.	10.125	09/01/01
WYDM.GA	Wyndam Banking Inc.	13.625	09/15/98

As of August 24, 1998, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
CHCA.GD	CRBR.GA	Chancellor Radio Broadcasting Co.	9.375	10/01/04
VNCI.GA	HIL.GA	Hill Haven Corp. New	10.125	09/01/08

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation (NASD RegulationSM), at (301) 590-6451.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq[®] Market Operations, at (203) 385-6310.

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NASD Notice to Members 98-88

Underwriting Compensation In Public Offerings

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) is issuing this *Notice to Members* to remind members that compensation received by members in public offerings of securities is to be determined through negotiation with the issuer offering the securities. Consistent with long-standing policy, it is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to engage, directly or indirectly, in any conduct that discourages the competitive activities of other member firms. This includes, but is not limited to, directly or indirectly engaging in any conduct that inhibits competition in the pricing of services offered by members including conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence, constrain, or inhibit the freedom of a member or person associated with a member to price its services competitively.

Questions regarding this *Notice* may be directed to Gary Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8104.

Discussion

The National Association of Securities Dealers, Inc. (NASD[®]) Rule 2710(c) prohibits a member or person associated with a member from receiving compensation or participating in a public offering of securities if the underwriting compensation in connection with the public offering is unfair or unreasonable. NASD Regulation's Corporate Financing Department (Department) has direct responsibility for the review of underwriting compensation. The Department reviews public offerings before their effective dates and aggregates all items of value proposed to be received by underwriters and related persons. Total compensation is then

reviewed and a determination is made as to whether the compensation is fair and reasonable.

The pricing of underwriting compensation, including the gross spread on offerings, is determined by the issuer and the underwriter through negotiation, subject to NASD Regulation's review to ensure that it is fair and reasonable. NASD Regulation has noted a high degree of price uniformity in gross spreads charged by underwriters in initial public offerings of corporate equity securities. NASD Regulation considers it important to remind members that there is no standard level of underwriting compensation. Prices should be determined through competition and the level of underwriter compensation on a given transaction should be the product of negotiation between the issuer and the underwriter. The exchange of current price information among competitors in this context may raise serious anti-competitive concerns. Any attempt improperly to influence another member in its pricing is a violation of NASD Rule 2110.

As set forth in IM-2110-5, it is NASD Regulation's long-standing policy that it is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices of such member with any other member or associated person; to direct or request another member to alter a price; or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or other conduct that retaliates against or discourages the competitive activities of another market participant. While IM-2110-

5(5) specifically permits member firms to engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws, this exclusion does not permit member firms to engage in conduct that discourages the competitive activities of other firms.

Member firms should review their practices and procedures regarding the pricing of their services in public offerings to ensure that such pricing results from appropriate negotiation with the issuer, and that conduct of the type noted above is prohibited. A finding of such conduct will result in disciplinary action. Member firms should also review their supervisory

procedures regarding underwriting compensation to ensure that the requirement for free negotiation of fees is emphasized to all relevant employees and that procedures exist to identify any questionable activity.

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Disciplinary Actions

Disciplinary Actions Reported For October

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rule-making Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, October 19, 1998. The information relating to matters contained in this *Notice* is current as of the end of September 23.

Firms and Individuals Fined

B. Riley & Company, Inc. (Los Angeles, California) and **Bryant R. Riley (Registered Principal, Pacific Palisades, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,000, 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 Riley, reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, and with applicable NASD rules relating to the designation of supervisory personnel, trade reporting, and recordkeeping.

J. B. Oxford & Company (Beverly Hills, California) and **Stephen M. Rubenstein (Registered Principal, Chatsworth, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$20,000, jointly and severally. In addition, the firm

was fined \$5,000, jointly and severally, with another individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Rubenstein, failed to maintain margin requirements in certain customer accounts of its day traders. The findings also stated that the firm, acting under the direction and control of another individual, failed to compute accurately the amount required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers and failed to deposit the amount required to be deposited into the account no later than one hour after the opening of banking business on the second following business day.

Olsen Payne and Company (Salt Lake City, Utah) and **James Dean Payne (Registered Principal, Salt Lake City, Utah)** submitted an Offer of Settlement pursuant to which they were censured and fined \$16,000, 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 Payne, reported transactions through ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm, acting through Payne, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD rules regarding trading ahead of customer limit orders, and short-sale rules.

Portfolio Management, Inc. (Little Rock, Arkansas) and **Samuel L. Bowman, III (Registered Principal, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which they were censured and fined

\$14,500, 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 Bowman, allowed the entry of proprietary trades through the Small Order Execution System (SOES) into an account controlled by Bowman. The findings also stated that the firm, acting through Bowman, failed and neglected to establish, maintain, and enforce proper supervisory procedures governing the entry of trades through SOES.

Securities America, Inc. (Omaha, Nebraska) and **Thomas Gerard Zielinski (Registered Principal, Omaha, Nebraska)** submitted an Offer of Settlement pursuant to which they were each censured and fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Zielinski failed to take steps reasonably designed to ensure that a branch manager carried out his supervisory responsibilities over registered persons in a reasonable manner under the attendant circumstances, or that the registered persons ceased their participation in unsupervised sales of unapproved promissory notes away from the member firm. The findings also stated that the firm failed to establish adequate written procedures or unwritten procedures to ensure the reasonable supervision of a registered representative to ensure that he was reasonably performing his supervisory duties over the activities of registered persons in regard to their compliance with the applicable NASD rules.

Sy Leavitt Company, Inc. (Escondido, California), William L. Atkinson (Registered Principal, Carlsbad, California), Thomas G. Scalzo, Jr. (Registered Principal, Loma Linda, California), and

William J. Schurmann (Registered Principal, Escondido, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$10,625, 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 under the direction and control of Atkinson, Scalzo, and Schurmann, participated in a contingency offering of securities and withdrew funds received from public customers from the bank escrow account to which they had been deposited before the terms of the contingency were met.

Firms Fined

Columbia Hospital Securities Corporation (Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed individuals to maintain their representative registrations with the firm, although they were not at all times actively engaged in the securities business of the firm. The findings also stated that the firm failed and neglected to achieve compliance with the Firm Element of the Continuing Education Requirements in that the firm failed to prepare adequate written training plans and failed to maintain adequate records documenting the content and completion of training programs by registered persons.

Empire Securities Incorporated of Washington (Spokane, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in viola-

tion of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and record-keeping.

Interstate/Johnson Lane Corporation (Charlotte, North Carolina) submitted an Offer of Settlement pursuant to which the firm was censured, fined \$10,000 and ordered to disgorge \$62,640 to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make and keep current a list of political contributions to officials of issuers. The findings also stated that the firm failed to list political contributions made by a registered representative and engaged in prohibited municipal securities business with the city of Charlotte, North Carolina.

Needham & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received customer limit orders to buy and to sell stock, and failed to execute contemporaneously the customer orders after it bought or sold shares for its own market-making account. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. Furthermore, the NASD determined that when the firm acted as principal for its own account, it failed to provide written

notification to a customer that the price to the customer was an average of the trade prices reported by the firm to ACT. In addition, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules regarding trade reporting, Securities and Exchange Commission (SEC) Order Execution Rules, Best Execution, Anti-Competitive Practices, and SOES.

Normandy Securities, Inc. (Scarsdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$10,000, and required to undertake revision of the firm's written supervisory procedures relating to firm quote compliance in a manner not unacceptable to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered Market Maker, the firm was presented an order at the firm's published bid or published offer in an amount up to its published quotation size and failed to execute the orders thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC and NASD firm quote rules.

Individuals Barred or Suspended

Jeremy David Alk (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$31,000, and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Alk consented to the described sanctions and to the entry of findings that he wrote checks drawn on a nonprofit social organization totaling \$4,203 and, without authorization, used \$4,000 of the funds for his personal benefit.

Vincent Au (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify as a general securities representative by taking the Series 7 exam prior to again acting in any registered capacity with the NASD. Without admitting or denying the allegations, Au consented to the described sanctions and to the entry of findings that he wired funds to a public customer in an attempt to settle a customer complaint away from the firm, without the knowledge and consent of his member firm.

Vincent Alan Beck (Registered Representative, Wayne, New Jersey) was censured, fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Beck received a \$118 check from a public customer for insurance premium payments, failed to apply the funds toward the insurance premiums, endorsed the check, and converted the monies to his own personal use. Beck also failed to respond to NASD requests for information.

Dean K. Birkelo (Registered Representative, Colorado Springs, Colorado) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 30 days. The Denver District Business Conduct Committee

(DBCC) imposed the sanctions following an order of remand by the National Business Conduct Committee (NBCC). Without admitting or denying the allegations, Birkelo consented to the described sanctions and to the entry of findings that he engaged in a private security transaction and failed to provide prior written notice to his member firm.

Nicholas Robert Borissoff (Registered Representative, Concord, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$70,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borissoff consented to the described sanctions and to the entry of findings that he recommended to public customers and effected in their accounts the purchase and sale of securities which transactions were unsuitable for the customers in light of their size and frequency and in light of the facts disclosed by customers as to their other security holdings and their financial situations and needs. The findings also stated that Borissoff participated in private securities transactions while failing to give prior written notification of these transactions to his member firm.

Paul Francis Byrne (Registered Principal, Red Bank, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for five months, and required to comply with the regulatory computer-based training of the Regulatory Element of the Continuing Education Requirements beginning within two months of his reentry into the securities industry. Without admitting or denying the allegations, Byrne consented to the described sanctions and to the entry of findings that he failed to exercise his supervisory obligations adequately. According to the find-

ings, Byrne allowed the use of scripts or sales presentations by registered representatives at his member firm that were materially false and misleading in that, among other things, they did not contain disclosure of risk factors or negative factor information, and created a wholly optimistic picture as to the likely success of an investment. In addition, the NASD found that some of the scripts included inaccurate or materially incomplete information about the issuers of the securities being sold, and some provided for improper price predictions or comparisons among unrelated securities.

Arthur Emil Cohen (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,000 plus interest in restitution. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he requested that a check in the amount of \$15,000 be issued against the securities account of a public customer, obtained the check, endorsed it with the purported endorsement of the customer and his own endorsement, and deposited the check into his bank account, without the customer's prior authorization. The findings also stated that Cohen caused \$14,000 to be transferred from the securities account of one customer to the bank account of another customer without the prior authorization of the first customer.

Mitchell John Dabo, Jr. (Registered Principal, Hollister, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Dabo participated in the

purchase of limited partnership interests without providing prior written notification to his member firm.

James Michael Dean (Registered Representative, Atlanta, Georgia) was censured, fined \$185,245.50, barred from association with any NASD member in any capacity, and ordered to pay \$14,549.10, plus interest in restitution to a public customer. The sanctions were based on findings that Dean forged the signature of a public customer on a letter of authorization in order to convert the public customer's funds to his own use and benefit; without the customer's knowledge or authorization, Dean deposited the checks into an unauthorized account, had checks drawn against the unauthorized account, and converted the proceeds of those checks to his own use and benefit.

In addition, Dean deposited a public customer's checks in an undisclosed securities account at another member firm and did not provide written notification to his member firm nor did he advise the executing firm of his association with another, caused checks made payable to himself and others in the amount of \$14,549.10 to be drawn against the account. Dean also failed to respond to NASD requests for information.

Peter F. Drewek (Registered Representative, Baltimore, Maryland) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Drewek failed to respond to NASD requests for information.

Eric Scott Elkins (Registered Representative, Vincennes, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$360,000, barred from association with any NASD member in any

capacity, and ordered to pay \$57,029.98 in restitution. Without admitting or denying the allegations, Elkins consented to the described sanctions and to the entry of findings that he obtained a total of \$57,029.98 in checks drawn on bank accounts of public customers, which funds represented the proceeds of mutual fund liquidations for the customers. The NASD determined that Elkins, without the knowledge or consent of the customers, caused the checks to be deposited in bank accounts and/or mutual fund accounts maintained in his name, and used the funds for some purpose other than for the benefit of the customers. Elkins also failed to respond to NASD requests for information.

Michael Peter Finn (Registered Representative, Babylon, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted material facts in connection with his recommendations of securities to public customers. The findings also stated that Finn made fraudulent price predictions to customers in connection with his recommendations and made an unauthorized transaction in the account of a public customer.

Edward Golick (Registered Principal, Del Mar, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Golick failed to respond to NASD requests to appear for an on-the-record interview.

George Glen Hartberg (Registered Principal, Los Angeles, California) and **John Wesley Hartberg (Registered Principal, Los Angeles, California)** were each censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that they failed to respond to NASD requests for information.

Donald Martin Hogan, Jr. (Registered Representative, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hogan consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Christopher Edward Jann (Registered Representative, Centereach, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to retake the Regulatory Element of the Continuing Education Requirements before reassociating with an NASD member. The sanctions were based on findings that Jann solicited members of the public to become customers of his member firm and purchase stock offered by the firm, and in connection with such solicitation, made certain representations about the securities and the offering that he knew, or should have known, to be false and misleading and omitted information that he knew, or should have known, to be material to the investment decision of the persons he solicited.

Maurice Henry Jedda (Registered Representative, Great Neck, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined

\$40,000, barred from association with any NASD member in any capacity, and required to offer proof to the NASD that recession totaling \$345,000 was made to public customers. Without admitting or denying the allegations, Jedda consented to the described sanctions and to the entry of findings that he effected private securities transactions for public customers without prior written notification to his member firm. The findings also stated that not only did Jedda fail to notify his member firm of his own personal investment of \$75,000 in a private securities transaction, but he also actively attempted to conceal this information from the firm.

Ronald Mills Johnston (Registered Representative, Rockford, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$346,110.40 in restitution. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to give written notice of his intention to engage in such activities to his member firms and to receive written approval from the firms to engage in such activities.

Bernadette Jones (Registered Representative, Pomona, California) was censured, fined \$3,500, barred from association with any NASD member in any capacity, and ordered to pay \$2,516.56 in restitution to a member firm. The National Adjudicatory Council (NAC) imposed the sanctions following the review of a Los Angeles DBCC decision. The sanctions were based on findings that Jones received \$6,000 from a public customer for the purpose of purchasing a life insurance policy. Jones submitted an application for a

different insurance policy with a money order for \$1,483.44 to her member firm and misused the remainder of the funds received from the customer for her own use and benefit. In addition, Jones submitted a Form U-4 to her member firm that contained false and misleading information.

Gloria Anita Jordan (Registered Representative, Brooklyn, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jordan failed to respond to NASD requests for information.

Ian Tamer Kideys (Registered Representative, Los Angeles, California) was censured, fined \$84,811.37, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Kideys participated in private securities transactions, for which he received compensation, and failed to provide prior written notification to, or obtain written approval from, his member firm.

Mark Kevin Lammers (Registered Representative, Tucson, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Lammers 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 and therefore failed to receive written approval from his firm. The findings also stated that Lammers made misrepresentations and omissions in his solicitation of securities to public customers.

Donald Clewell Maier (Registered Principal, Monte Sereno, California) was censured, fined \$39,750, suspended from association with any NASD member in any capacity for 30 business days, and ordered to requalify by exam before reassociating with an NASD member firm. The sanctions were based on findings that Maier participated in private securities transactions without providing prior written notification to his member firm and filed an annual questionnaire with his firm that contained false information concerning private placements and unregistered securities.

Douglas John Mangan (Registered Representative, Massapequa, New York) was censured, fined \$120,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Mangan created a false and inaccurate customer securities account statement and caused his member firms' records to indicate falsely the customer's address as his own without the knowledge, consent, or authorization of the customer. Mangan also failed to respond to NASD requests to appear for an on-the-record interview.

Wayne Albert McIntosh (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, McIntosh consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation and failed to provide prior written notice to, or receive prior authorization from, his member firm.

David C. McLaurin (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, McLaurin consented to the described sanctions and to the entry of findings that he completed and signed a Form U-4 that contained inaccurate information. The findings also stated that McLaurin provided his member firm with a false college diploma that he had created on his personal computer.

Arlesta Mae Meyers (Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that she provided materially incomplete information to the NASD in response to requests for information.

Jose Reynaldo Moreno (Registered Representative, Phoenix, Arizona) was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam before reassociating with any NASD member firm. The sanctions were based on findings that Moreno failed to respond completely to NASD requests for information.

Mike D. Nolan (Registered Representative, Denham Springs, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$700,000, barred from association with any NASD member in any capacity, and

required to demonstrate that full restitution has been made to the appropriate parties. Without admitting or denying the allegations, Nolan consented to the described sanctions and to the entry of findings that he received checks and cash totaling \$116,550 from public customers for the purpose of investing in medical receivables, failed and neglected to invest these funds on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Nolan failed to respond to NASD requests for information.

Allen R. Prewitt (Registered Representative, Bradenton, Florida) was censured, fined \$10,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following its review of an Atlanta DBCC decision. The sanctions were based on findings that Prewitt provided false information on a Form U-4.

Anthony Eugene Priolo (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days and required to requalify as a general securities representative by taking the Series 7 exam before ever functioning again in that capacity. Without admitting or denying the allegations, Priolo consented to the described sanctions and to the entry of findings that he prepared documentation for the accounts of public customers containing information which he knew or should have known to be inaccurate.

Ivan A. Radowitz (Registered Representative, Jamesburg, New Jersey) submitted a Letter of Acceptance, Waiver and Consent

pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radowitz consented to the described sanctions and to the entry of findings that he endorsed and deposited a public customer's rollover check in the amount of \$7,780.05 into his personal bank account, without the consent or knowledge of the customer. The findings also stated that Radowitz misappropriated \$200 in cash from another public customer, which represented a partial premium payment from the customer for a new policy.

Joel Jacob Reznick (Registered Representative, Wheeling, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Reznick consented to the described sanctions and to the entry of findings that he purchased shares of stocks for the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the account.

Christopher Lee Rice (Registered Representative, Buffalo Grove, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,506.83, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Rice consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In addition, Rice executed unauthorized margin transactions in the account of public customers without the customers'

knowledge, authorization, or consent that the transactions were done on margin rather than in the customers' cash account.

Cheryl Ann Rodgers (Registered Representative, Dallas, Texas) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rodgers failed to respond to an NASD request for testimony.

Jeffrey L. Salzwedel (Registered Principal, Tualatin, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$107,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Salzwedel consented to the described sanctions and to the entry of findings that he made unsuitable recommendations for the purchase and/or sale of various securities in the accounts of public customers without having reasonable grounds for believing that such recommendations were suitable for these customers in view of the number of shares purchased and held, the nature of the recommended securities, the concentration of securities held in the accounts, and the customers' specific financial situations, circumstances, and needs.

Michael Dennis Shaw (Registered Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Shaw consented to the described sanctions and to the entry of findings that he effected the purchase of units in an initial public offering (IPO) for the account of a public customer without the customer's knowledge or consent.

Joseph Anthony Simonell (Registered Representative, Rancho Palos Verdes, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Simonell consented to the described sanctions and to the entry of findings that he sent letters to investment product companies stating that he had recently conducted an investor seminar at which the companies' products were mentioned. The letters offered the companies the opportunity to participate in the seminars and referenced receipt from a local restaurant itemizing purported expenses he incurred. The NASD found that Simonell had not conducted a seminar nor had he incurred any expenses. Simonell received checks from two of the firms for \$100 and \$200, cashed the checks, and deposited the funds into his bank account.

John S. Smoot, Jr. (Registered Representative, Jackson, Tennessee) submitted an Offer of Settlement pursuant to which he was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,300 in restitution to the appropriate parties. Without admitting or denying the allegations, Smoot consented to the described sanctions and to the entry of findings that he received payments from public customers for the purchase of, and as payment on, various homeowner's insurance policies, automobile insurance premiums and a life insurance policy, failed and neglected 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. Smoot also failed to respond to NASD requests for information.

John J. Squeri, Jr. (Registered Representative, Atlantic Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Squeri consented to the described sanctions and to the entry of findings that he executed the sale of shares of securities in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Squeri contacted another customer, a resident of the state of Georgia, and identified himself as another registered representative in an attempt to obtain information from the customer for his new account form. The NASD determined that Squeri contacted this person when his registration to conduct business within and from the state of Georgia was suspended.

William Kevin Stewart (Registered Principal, Cape Girardeau, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he failed to respond completely to an NASD request for information.

Michael Taliercio (Registered Representative, Brooklyn, New York), James Garofalo, Jr. (Registered Representative, Flushing, New York), Robert Francis Smith (Registered Representative, Gaithersburg, Maryland), April Wiener (Registered Representative, Plainview, New York), and Edward Sparacio (Registered Representative, Brooklyn, New York) submit-

ted Offers of Settlement pursuant to which Taliercio was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Garofalo was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam prior to becoming associated with any NASD member, and Smith was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam prior to becoming associated with any NASD member. Wiener was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam prior to becoming associated with any NASD member firm, and Sparacio was censured, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam prior to becoming associated with any NASD member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Taliercio, Garofalo, Smith, Wiener, and Sparacio made baseless and improper price predictions to public customers regarding speculative securities, and Taliercio, Garofalo, and Smith made materially false and misleading statements. The findings also stated that Taliercio, Garofalo, Smith, and Sparacio made misrepresentations as to specific issuers, and Taliercio and Garofalo claimed to have access to inside information. Moreover, the NASD found that Taliercio, Wiener, and Sparacio engaged in unauthorized trading, Taliercio and Sparacio made unfounded comparisons between unrelated securities, and Taliercio improperly failed to execute or discouraged sell orders, made false and misleading representations as to the risk of investing in a speculative

security, and engaged in unsuitable trading in a customer's account. Furthermore, the NASD determined that Garofalo and Wiener made false promises to limit losses to customers, and Wiener and Sparacio promised to make up losses with new trading. Garofalo and Smith failed to execute a sell order. Garofalo, Smith, and Sparacio provided false testimony to the NASD. Sparacio told a public customer to disregard information in prospectuses and falsified records as to customers' financial conditions.

Ada Lai Yin Tam (Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tam consented to the described sanctions and to the entry of findings that she falsified her Form U-4 applications by failing to include her prior association with a member firm and by stating that she was employed for over two years at a member firm where she had never been employed. The findings also stated that Tam impersonated another representative in order to obtain privileged and confidential information about an investigation and, provided false information to the NASD concerning her prior employment and securities industry compensation in response to a written request for information.

Rooney Thomas (Registered Representative, Coral Springs, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he failed to enter sell orders per public

customers' instructions and guaranteed the customers against losses in their account. The findings also stated that Thomas received \$21,000 from a public customer for investment purposes and never invested the money as instructed, and instead, deposited the check in his personal bank account. Thomas also failed to respond to NASD requests for information.

Spiro George Tsotsos (Registered Principal, Upper Brookville, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Tsotsos consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD.

Richard Leroy Valentine (Registered Representative, Goddard, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Valentine consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to and written approval and/or acknowledgment from his member firm.

Christiaan P. Van Der Put (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Van Der Put consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Jeffrey Mark Vassallo (Registered Representative, Munster, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vassallo consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he submitted disbursement request forms to his member firm for the purpose of causing policy loans and/or the surrender of paid-up additional insurance to be made against insurance policies owned by the customer with the proceeds to be used in payment of the premiums for the second insurance policy owned by the customer.

Kelly Ray Webb (Registered Representative, Gilbert, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Webb consented to the described sanctions and to the entry of findings that he placed inaccurate information on order tickets that were submitted to an NASD member in connection with securities transactions. The findings also stated that Webb effected an unauthorized transaction in public customer accounts and effected mutual fund purchases for a public customer in amounts that, if aggregated, would have caused the account to be eligible for reduced sales charges.

Ted Daniel Wells (Registered Representative, Kennesaw, Georgia) was censured, fined \$5,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanction following its review of an Atlanta DBCC decision. The sanctions were based on

findings that Wells effected the sale of warrants for the account of a public customer without the customer's prior knowledge or authorization.

Jere Thomas Wickert (Registered Principal, Chicago, Illinois) was censured, fined \$9,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Wickert recommended and effected index options transactions in customers' accounts without the knowledge, consent, or authorization of the customers and in the absence of a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, experience, financial situations, or needs.

Bryan Scott Zimmerman (Registered Representative, Land O'Lakes, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Zimmerman consented to the described sanctions and to the entry of findings that he faxed a letter to a public customer that failed to conform to NASD prospectus requirements and included information regarding an IPO in which he made an unwarranted price prediction.

Individuals Fined

Graciela Armendariz (Registered Principal, El Paso, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$25,000, and ordered to requalify as an investment company and variable contracts products representative by taking and passing the Series 6 exam prior to acting again in any registered capacity. Without admitting or deny-

ing the allegations, Armendariz consented to the described sanctions and to the entry of findings that, while associated with a member firm, Armendariz made payments of commissions received in connection with the sale of variable annuity products to an individual who was registered with another member firm that was not authorized to sell variable annuity products in the state where the sales took place. These payments were made without prior oral or written authorization from the member firm.

Kevin Michael Dunnigan (Registered Representative, Kalispell, Montana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Kalispell consented to the described sanctions and to the entry of findings that he recommended investments to public customers without having reasonable grounds for believing that such recommendations were suitable for these customers in view of the nature of the recommended investments, the facts disclosed by these customers as to their other security holdings, their financial situations, circumstances, objectives, and needs.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of September 23, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Hattier, Sanford & Reynoir, L.L.P. (New Orleans, Louisiana) and Gus A. Reynoir (Registered Principal, New Orleans, Louisiana) were censured and fined \$10,000, jointly and severally. The sanctions were based on findings that the firm, acting through Reynoir, participated in the sale of municipal bonds and provided public customers with confirmations that failed to meet the requirements of MSRB Rule G-15. The firm, acting through Reynoir, issued confirmations that failed to disclose the lower of the yield to call or yield to maturity, the fact that the securities were initially offered at an "original issue discount", failed to disclose the fact that the securities were subject to the alternative minimum tax, and the fact that the securities were unrated. In addition, this decision serves as a Letter of Caution as to the firm, acting through Reynoir, for engaging in municipal securities sales transactions with public customers at prices that were unfair and unreasonable, taking into consideration all relevant factors.

The firm and Reynoir have appealed to the NAC and the sanctions are not in effect pending consideration of the appeal.

Robert Charles Madrid (Registered Representative, Blue Island, Illinois) was censured and fined \$10,000. The sanctions were based on findings that Madrid executed securities transactions in the account of a public customer without the customer's knowledge, authorization, or consent and in the absence of written or oral authorization discretion in the account.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Joel Dean Moore (Registered Principal, Redding, California) was censured and fined \$11,900. The sanctions were based on finding that Moore recommended to public customers and effected for the customers' account the purchase of securities without having reasonable grounds for believing that such recommendations were suitable for the customers based upon the facts disclosed by the customers as to their other securities holdings and their financial situation and needs.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Philip J. Schiller (Registered Principal, Highland Park, Illinois) was censured and fined \$57,747.30. The sanctions were based on findings that Schiller purchased securities in IPOs that traded at a premium in the immediate aftermarket in violation of the NASD's Free-Riding and Withholding Interpretation.

Schiller has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Kevin Harrison Stricklin (Registered Principal, Cranston, Rhode Island) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Stricklin, in recommending and urging public customers to buy speculative and/or unseasoned securities, made baseless price predictions and/or predictions of returns. In addition, Stricklin, in connection with the purchases of securities, made untrue statements of material facts and/or omitted to state material facts necessary to make the statements by them, in

light of the circumstances in which they were made, not misleading.

Stricklin has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint.

Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Gregory Alan Casady (Registered Principal, Kansas City, Missouri)

was named as a respondent in an NASD complaint alleging that he executed unauthorized transactions in customer accounts without the customers' prior knowledge, authorization, or consent. The complaint alleges that Casady utilized the proceeds from the sale of a stock to cover the purchase of the same stock. The complaint also alleges that Casady failed to respond to NASD requests for information.

Daniel Joseph DiPoalo (Registered Representative, Matawan, New Jersey) was named as a respondent in an NASD complaint alleging that he received \$144,850.58 in funds from public customers for investment purposes and, contrary to the customer's instructions and without their knowledge, failed to invest the funds and, instead, converted the funds by depositing them in his own personal accounts. The complaint alleges that DiPoalo has repaid two of the customers a total of \$26,000, and that

his employer firm has reimbursed the customers all but \$44,531.32 for the funds misappropriated by DiPoalo. The complaint also alleges that DiPoalo failed to respond to NASD requests for information.

Kai Fang (Registered Representative, Flushing, New York) was named as a respondent in an NASD complaint alleging that he guaranteed a public customer against loss. The complaint alleges that Fang paid \$2,798.40 in a personal check to the customer as reimbursement for the loss incurred in the customer's account.

Deborah W. Henke (Registered Representative, Newbury Park, California) was named as a respondent in an NASD complaint alleging that she met with public customers to discuss opening an investment account and preparing an investment plan, requested and received approximately \$4,900 in U.S. Treasury Bonds from the customers, and was never heard from again, despite repeated attempts by the customers and others to contact her. The complaint alleges that Henke never returned the U.S. Treasury Bonds to the customers. The complaint also alleges that Henke failed to respond to NASD requests for information.

Christopher Thomas McNamara (Registered Representative, Dix Hills, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted material information in the course of soliciting public customers to purchase securities. The complaint alleges that McNamara effected transactions in public customer accounts without the prior authorization and consent of the customers. The complaint also alleges that McNamara predicted the future price of securities to public customers without having a reasonable basis for his predictions. The

complaint alleges that McNamara failed to contact a public customer in order to permit the customer to give instructions regarding his account, and failed to follow customer instructions to sell securities.

Rocco Anthony Vignola (Registered Representative, Bohemia, New York) was named as a respondent in an NASD complaint alleging that he forged a public customer's signature on an application for an insurance policy in the customer's name and submitted the application, without the customer's knowledge or authorization. The complaint alleges that Vignola also forged the customer's signature on a check for \$908, which reflected the customer's credit resulting from the cash surrender of a separate insurance policy, and used a portion of the proceeds of that check to pay for the aforementioned unauthorized insurance policy.

James Thomas Walsh (Registered Representative, Commack, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material facts to public customers, in order to induce the customers to purchase securities. The complaint alleges that Walsh made fraudulent price predictions in connection with his recommendations to public customers to purchase securities. The complaint also alleges that Walsh effected a transaction in the account of a public customer, without the prior authorization of the customer.

Joseph A. Watters (Registered Representative, Monroeville, Pennsylvania) was named as a respondent in an NASD complaint alleging that he conducted private securities transactions without giving prior written notice to, or receiving approval from, his member firm. The complaint alleges that Watters rec-

ommended that a public customer purchase a promissory note, without having reasonable grounds for believing that this recommendation and resulting transaction was suitable for the customer on the basis of her financial situation, investment objectives, and needs. The complaint also alleges that, in connection with the offer and sale of the aforementioned promissory note, Watters made misrepresentations to the public customer.

James Clark Williams (Registered Representative, Bloomsburg, Pennsylvania) was named as a respondent in an NASD complaint alleging that he received checks totaling \$166,560 from a public customer for the purpose of paying an insurance premium and purchasing securities. The complaint alleges that each of the checks was drawn to the order of James C. Williams at his request, that he negotiated each of the checks, and that he did not remit the proceeds of the checks to the customer's insurance company, nor did he otherwise cause the proceeds to be applied to the purposes for which the customer intended. The complaint also alleges that Williams mailed documents to the customer purporting to be account statements issued by the insurance company for the customer's investments, when in fact, the statements were false in that they were not issued by the insurance company and the customer did not have such accounts with the insurance company.

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD

Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Aequus Equities, Inc., New York, New York (August 31, 1998)

Alliance Asset Group, Inc., Englewood Cliffs, New Jersey (August 31, 1998)

Biscayne Capital LLC, New York, New York (August 31, 1998)

Fedick & Company, Inc., Easton, Connecticut (August 31, 1998)

Great Lakes Capital, Inc., Vero Beach, Florida (August 31, 1998)

McCormick-O'Mara Securities Co., New York, New York (August 31, 1998)

Nationwide Asset Management Corporation, Laguna Hills, California (August 31, 1998)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

First Cambridge Securities Corp., New York, New York (September 15, 1998)

First United Equities Corp., New York, New York (September 3, 1998)

J.S. Securities, Inc. (a/k/a First National Equity Corp.), Point Pleasant Beach, New Jersey (August 10, 1998)

Marsh, Block & Company, Inc., New York, New York (August 21, 1998)

Matrix Securities Corporation, Garden City, New York (August 20, 1998)

Meyers Pollock Robbins, Inc., New York, New York (August 24, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Alonzo, Arthur Andrew, Boca Raton, Florida (August 21, 1998)

Bonetti, Guiseppe, Brooklyn, New York (September 3, 1998)

Briganti, Nicholas Anthony, Brooklyn, New York (August 24, 1998)

Cohen, Jason Alan, Searingtown, New York (September 3, 1998)

Corso, Mark A., Brooklyn, New York (September 22, 1998)

Domin, Michael, Forest Hills, New York (September 15, 1998)

Mahon, Kevin Michael, Manalapan, New Jersey (August 21, 1998)

Smith, Brian Mark, Douglasville, Georgia (September 18, 1998)

Steel, Todd Coleman, Coral Springs, Florida (August 24, 1998)

Swayzee, Jerry, Boulder, Colorado (September 15, 1998)

Traynor, Douglas K., Pound Ridge, New York (September 3, 1998)

Weinstein, Howard, Port Washington, New York (September 3, 1998)

NASD Regulation Fines Olde Discount Corp. \$1.35 Million; Founder Ernest Olde Also Fined \$500,000 and Suspended

NASD Regulation fined Olde Discount Corporation \$1.35 million and censured it in connection with the firm's sales practices, including the distribution and use of improper advertising and promotional literature. Ernest J. Olde, the firm's former President and Chairman, was fined an additional \$500,000, suspended from the securities industry for 18 months, and censured. Both Olde Discount and Ernest Olde neither admitted nor denied NASD Regulation's findings.

As part of a coordinated regulatory effort, the Securities and Exchange Commission (SEC) also announced settlements with Ernest Olde and Olde Discount. In April 1993, Olde Discount began a major national print, radio, and television advertising campaign to promote "commission-free" trading. The first program featured the firm's "Smart Trade Account." Olde Discount advertised that through this account, investors with at least \$500,000 in cash or securities could buy or sell 1,000 or more shares of common stock worth at least \$5 a share, without being charged "markups, markdowns, or commission fees of any kind."

Later, in June 1994, Olde Discount began advertising a second program – SmartTrading – saying that any purchase of 1,000 or more shares of an Olde Discount recommended stock would be "commission-free – without markups of any kind." At the time, Olde Discount wrote and distributed a brochure, SmartTrade, Commission-less Trading Account, which explained how it could afford to offer this advantage. The firm answered its own question – "So, what is the catch?" – by stating: "Quite simply, there is none." The

brochure further explained that the firm would absorb the costs of these commission-less trades in the hope that customers would use the firm's other services, such as margin accounts.

In fact, although not disclosed in the advertising, Olde Discount and its registered representatives derived economic benefits from this "commission-free" trading. For example, the firm often derived revenue by capturing the spread between a stock's bid and ask price – and the broker was paid a portion of the spread in the form of sales credits. NASD Regulation found that Olde Discount's brokers failed to tell many investors that the firm actually made money on "commission-free" trades, even when they asked.

NASD Regulation found that both Olde Discount and Ernest Olde – who was involved in, and oversaw the adoption of most of the firm's advertising and compensation policies – violated the National Association of Securities Dealers' advertising rules because the firm and "its brokers' communications with the public failed to provide a sound basis for evaluating the facts in regard to the services characterized as 'commission-free' or 'commission-less' offered by the firm."

NASD Regulation also found that beginning in the fall of 1992, through August 1995, Olde Discount's registered representatives engaged in a series of fraudulent practices, including: churning, unauthorized trading, misrepresentations, omissions of material facts, and unsuitable recommendations. A consequence of Olde Discount's compensation, production, hiring, and training practices created an environment in which these violations occurred, NASD Regulation found. The SEC

sanctioned Olde Discount and Ernest Olde for this conduct and required the firm to waive statute of limitations defenses for certain arbitration claims by its customers.

Furthermore, NASD Regulation found that Ernest Olde failed to establish supervisory systems that could have prevented this conduct and was a cause of the firm's violations.

Ernest Olde was also separately sanctioned for failing to cooperate with an NASD Regulation's investigation, as all registered brokers and brokerage firms are required to do. NASD Regulation found that Ernest Olde failed to produce documents and information in a timely fashion and improperly refused to complete his on-the-record testimony after NASD Regulation declined to limit its questioning of him to one questioner per topic.

Twelve months of Ernest Olde's 18-month NASD Regulation suspension will run concurrently with his SEC suspension, and the remaining six months will be served thereafter. He is also required to take certain requalification examinations before he can re-enter the securities industry.

As part of the settlement, Olde Discount must, for the next 12 months, pre-file all of its advertisements that relate to commissions or charges to customers, markups, or broker/firm compensation with NASD Regulation.

This action resulted from an investigation by NASD Regulation's Enforcement and Advertising Regulation Departments. NASD Regulation also thanked the SEC for its assistance in this case.

NASD Regulation Fines DLJ \$100,000 For Trading Halted Stock

NASD Regulation announced that it has fined Donaldson, Lufkin & Jenrette Securities \$100,000 for executing a trade of a New York Stock Exchange (NYSE) listed security during a trading halt imposed by The Nasdaq Stock Market® and the NYSE. The firm was also censured.

The security in question was traded in the third market. Over-the-counter trading of exchange-listed securities is commonly known as third-market trading. Third-market transactions are effected by NASD member brokerage firms and are reported to Nasdaq®.

On January 29, 1997, Nasdaq and the NYSE halted trading in the security at 9:31 a.m., based on news that the company planned to restate its earnings. Trading did not resume until 2:02 p.m. on January 31, 1997.

NASD Regulation found that DLJ arranged buy and sell orders for a total of 6,511,900 shares of the company's stock on behalf of 29 separate customer accounts during the trading halt. The firm transmitted the orders – which had already been matched together – to an offshore, non-NASD member brokerage firm that completed them as a crossing transaction.

Offshore brokerage firms are located outside of the United States and, therefore, are not required to be members of the NASD.

DLJ, which neither admitted nor denied NASD Regulation's findings, was sanctioned for violating the NASD's rule that states no broker or brokerage firm "shall, directly or indirectly, effect any transaction in a security as to which a trading halt is currently in effect."

NASD Regulation Sanctions Hibbard, Brown Branch Managers

NASD Regulation today announced a decision by its District 9 Business Conduct Committee (DBCC) barring three former Hibbard, Brown & Co. branch managers from the securities industry and fining them a total of \$245,000 for operating a boiler room and for committing numerous sales practice violations. Hibbard was expelled from the NASD in 1994.

After a 14-day hearing, the DBCC found that Hibbard was a "classic boiler room operation" and that the three branch managers of Hibbard's Pittsburgh, Wayne, and Lancaster, PA offices were "integral cogs" in the fraudulent sales system. According to the decision, Hibbard's boiler room evolved directly from one set-up by its predecessor, the now defunct First Jersey Securities.

The three branch managers are:

- Steven D. Goodman – Barred, fined \$75,000 for his role in operating Hibbard's Pittsburgh, PA branch, and censured.
- Albert J. Ford – Barred, fined \$95,000 for his role in operating Hibbard's Wayne, PA branch, and censured.
- Douglas F. Andrews – Barred, fined \$75,000 for his role in operating the Lancaster, PA branch, and censured.

The DBCC found Goodman, Ford, and Andrews perpetuated the fraud by recruiting young, inexperienced brokers and training them to use highly aggressive, cold calling techniques to sell low-priced, speculative securities. All three were found to have encouraged Hibbard's brokers to use misleading sales literature and scripts during sales presentations to customers.

The decision also found that all three committed egregious sales practices abuses, including: providing baseless price predictions, misrepresentations, and unwarranted hyperbole about the securities they were selling. Ford also engaged in a pattern of unauthorized trading in the accounts of three customers.

To date, NASD Regulation's reviews of Hibbard's sales practices in its Pennsylvania, New Jersey, Kansas, and Missouri branch offices have resulted in a total of 41 formal disciplinary actions, including: 20 individuals who were barred from the securities industry, 3 individuals who were barred from acting as supervisors, 18 individuals who were suspended, and fines of more than \$2.3 million.

Initial actions, such as this, by NASD Regulation disciplinary committees are final after 45 days, unless they are appealed to NASD Regulation's National Adjudicatory Council (NAC), or called for review by the NAC. The sanctions are not effective during this period. If the decision in this case is appealed or called for review, the findings may be increased, decreased, modified, or reversed.

NASD Regulation Continues Microcap Market Focus; Complaints Name Brokers At Greenway Capital and Kensington Wells

NASD Regulation today announced that it has filed complaints in two microcap fraud cases. A total of 23 brokers at Greenway Capital and Kensington Wells, Inc., were named in the two separate complaints.

In both cases, NASD Regulation's complaints allege a series of fraudulent practices and the extensive use of abusive and high-pressure "boiler room" sales tactics to sell low-priced speculative securities to retail investors.

Greenway Capital Corp.

At Greenway Capital Corp., a now defunct New York, NY, brokerage firm that was also known as Cortlandt Capital Corp., 11 brokers – including the firm's President, John J. Margiotta; and one of its owners, Fred R. Luthy – were charged with a variety of sales practice and supervisory violations. Also named in the complaint are: Alan J. Mandel, Jason A. Prussing, James J. Crimi, Jeffrey S. Geoghegan, Javier Hernandez, James Morrill, Joseph A. Ricci, Cosmo Scali, and Joseph S. Tarulli.

NASD Regulation charged seven of the 11 brokers with fraud in connection with the April 1996 underwriting of Dialysis Corporation of America (DCA). Based on interviews with investors across the country, and after investigating customer complaints against the firm and its brokers, NASD Regulation uncovered evidence of numerous instances of unauthorized trading, misrepresentations, and the use of illegal boiler room sales tactics. For example, many investors complained that Greenway's brokers threatened to cancel their purchases of the initial public offering (IPO) if the investors refused to make additional investments in DCA.

The complaint also charges that many investors had their purchases canceled when they refused to buy additional DCA shares in the aftermarket.

In addition, NASD Regulation charged that the owners of certain favored accounts – such as former Greenway brokers, a relative of a current Greenway broker, and a former girlfriend of a Greenway broker – were permitted to purchase securities (both stock and warrants) in the IPO, and then sell them back to Greenway for a quick profit. These

customers were not required to purchase DCA shares in the aftermarket.

The complaint alleges that in the DCA offering Greenway used young, inexperienced brokers to sell low-priced, highly speculative securities to retail customers through boiler room sales tactics such as: trading without customer authorization; making material misrepresentations including making baseless price predictions; omitting material information; guaranteeing future stock performance; failing to execute customer orders; and not executing orders promptly.

NASD Regulation also charged six of the 11 brokers with unauthorized trading in connection with Greenway's dealings in several "house stocks," including: Hariston Corporation, Consolidated Western & Pacific Resources, Smartel Communications Corp., and J.B. Oxford Holdings, Inc. House stocks are generally viewed as those that have been underwritten by a single brokerage firm in circumstances where that firm is in control of much of the company's outstanding shares and dominates the aftermarket trading. The complaint alleges a series of violations with respect to these stocks, including: unauthorized trading; material misrepresentations and omissions; baseless price predictions; falsifying firm records; failing to follow customer instructions to sell securities; misusing customer funds; and violating state Blue Sky laws.

Greenway is not named in the complaint because the Securities and Exchange Commission (SEC) revoked its securities industry registration on June 19, 1998. The complaint does not allege any wrongdoing on the part of the issuers.

Previously, seven other Greenway brokers were barred from the securities industry and agreed to pay a total of \$1.2 million in fines as a result of NASD Regulation's investigation. Three of the seven – Jack Basile, Joseph Lanni, and Giuseppe Temperino – also consented to findings that they arranged for impostors to take their Series 7 qualification exams. The remaining four were: Rocco Basile, Peter DelBalso, Giuseppe Bonetti, and Salvatore Panetta.

The Greenway complaint was issued by NASD Regulation's District 10 Office in New York.

Kensington Wells, Inc.

In a separate complaint, NASD Regulation charged 12 former brokers of the now defunct Long Island brokerage firm Kensington Wells, Inc. with a wide range of sales practice abuses. The complaint alleges that the 12 brokers, who were based at Kensington Wells' Mineola, NY headquarters, participated in or facilitated a boiler room operation through a series of fraudulent sales practices and other misconduct from April 1994 through October 1996.

Named in the complaint are: Joel Grant, Steven Orandello, James McInerney, Steven Stecklow, Victor Difrisco, Steven Jaross, Edwin Lawrence, Kevin Loomis, Edward Stock, Craig Redding, Gary Redding, and Michael Newman.

According to the complaint, the sales practice violations occurred in connection with Kensington Wells' underwriting of the IPOs of Xchem International, Inc.; Universal Automotive Inc.; and VideoLan Technologies, Inc. The brokers are alleged to have engaged in unauthorized trading; baseless or improper price predictions; making

improper comparisons to other stocks; tying the purchase of IPOs to a commitment to buy stock in the aftermarket; guaranteeing customers against loss; promising to make up losses with new trades; and refusing to execute or aggressively discouraging orders to sell stocks, immediately before and after the IPOs.

At least 60 investors were victimized through fraudulent practices, the complaint said.

Both complaints demand that the respondents forfeit the profits that

were illegally obtained and make restitution to defrauded investors. The complaint does not allege any wrongdoing on the part of the issuers.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondents before drawing any conclusion

regarding the allegations in the complaint.

Under NASD rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

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For Your Information

OATS Update

IMPORTANT! Non-Market Makers in Nasdaq securities are NOT required to submit an Order Audit Trail SystemSM (OATSSM) Subscriber Initiation and Registration Form to the NASD until after January 1999. Only Market Makers in Nasdaq securities and ECNs were required to submit the Form by September 14, 1998.

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