

Regulatory & Compliance Alert

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Web CRD Deploys On Schedule

On August 16, NASD Regulation, Inc. (NASDRSM) deployed, as scheduled, its new, state-of-the-art, registration and licensing system—Web CRDSM. The Internet-based system supports all functionality of the 18-year old Legacy system that it replaces, plus it delivers enhanced registration and licensing functionality. The new, Web-based CRD system is vastly more capable than the Legacy CRD system. It will truly revolutionize the registration and licensing process and virtually eliminate paper filings and communications. Its relational database structure, based on the new uniform registration forms, will make CRD information, through reporting and data downloads via the Web, far more useable. The elimination of paper filings and duplicative information from amendments (through system completeness checks) will streamline and expedite the licensing process. Web CRD leverages the Internet and provides proven technology to ensure data integrity and security for all system users.

Continued on page

3



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contents

NASD REGULATION, INC.

1 COVER STORIES

- Web CRD Deploys On Schedule
- Web-Based FOCUS Launched Ahead of Schedule; System To Be Used For Upcoming Third-Quarter Filings
- Year 2000 Readiness Program
- Year 2000 Investor Kit
- Decimalization Update

11 SECURITIES CONFERENCE

- District Directors Securities Conference Open Forum

15 ADVERTISING REGULATION

- Ask The Analyst
- Request For Comments On Proposed Amendments To Advertising Regulation Rules

17 CORPORATE FINANCING

- Corporate Financing To Consider Requests For Exemption Related To Direct Participation Program Compensation

22 REGULATORY SHORT TAKES

- NASD Regulation Cautions That Firms Should Disable Their SOES Preferecing Feature During Passive Market Making
- Use Of Optical Storage Technology
- National Adjudicatory Council Provides Guidance On Sanctions Imposed In Egregious Unauthorized Trading Cases
- Market Regulation Compliance Report Cards

25 QUALIFICATIONS/TESTING/CONTINUING EDUCATION

- Questions And Answers Regarding Requirements For Equity Traders And The Series 55 Examination
- Qualifications Update
- Continuing Education Open Meeting In Chicago
- Testing Update
- Certification Testing & Continuing Education Delivery Location List

33 NASD DISCIPLINARY ACTIONS

54 REGULATORY & COMPLIANCE ALERT INFORMATION

Web CRD Deploys On Schedule, from page 1

The first month of deployment for Web CRD has been both a productive and a challenging one. Even with the system performance issues that users have experienced during peak user hours, the number of filings processed is far exceeding that of the same period last year. From deployment on August 16 through August 31, 1999, Web CRD processed over 65,000 registration filings, 77 percent of the total number of filings processed in the entire month of August 1998. To date, over 116,000 registration approvals have been processed and 165,000 approvals granted (a 37 percent increase over the same period last year). More than 24,000 firm and regulator users have been entitled to use Web CRD.

With the implementation of Web CRD, new electronic uniform registration forms were also introduced. The new forms consist of formatting and technical changes to make them consistent with the Web-based approach of Web CRD. The new forms incorporate Disclosure Reporting Pages (DRPs) customized to elicit information relevant to a particular type of disclosure event. The new uniform Forms U-4, U-5, BD, and BDW are available for review or printing on the NASD Regulation Web Site at www.nasdr.com.

Certain broker/dealer information contained in the Legacy CRD system was not converted to Web CRD. That information includes: Disclosure (Schedule DRPs), Direct/Indirect Owners (Schedules A and B), Control/Financial Information, Industry Arrangements, and Affiliated Firms. A broker/dealer is required to refile this information when it files

its first electronic Form BD amendment in Web CRD, but not later than December 15, 1999. If this missing information is not filed at the time of the first amendment, the filing will not pass the completeness check built into Web CRD to ensure that all mandatory fields for the Form BD are completed. For more information regarding Form BD and the electronic refiling, which is discussed in SEC Release 34-41594, File No. S7-16-99 (July 2, 1999), see the Securities and Exchange Commission (SEC) Web Site at www.sec.gov.

Comprehensive information on Web CRD is available on the NASDR Web Site at www.nasdr.com. This includes the new uniform registration forms, the Web CRD Tutorial, the Web CRD functional navigation guides, an updated Regulators' Directory, the BD Refile templates and timelines, CRD publications, and other information pertinent to the new Web CRD system. To reach the CRD and Web CRD Internet Pages of the Site, click on "Members Check Here" and then on "Central Registration Depository".

With access to Web CRD available through the Internet, NASDR is striving to provide the highest level of security possible and has put many security measures in place. Every firm must identify an Account Administrator whose responsibilities include enabling Web CRD user accounts for the firm, re-setting passwords, assigning Web CRD privileges, unlocking user accounts, and instructing users as to how to change initial passwords. For any entitlement questions or assistance, please contact the Gateway Call Center at

(301) 212-8181. Also, if you are not yet entitled, please contact the Call Center at the above number to obtain the required forms for entitlement.

Web CRD is available Mondays through Fridays from 7 a.m. to 11 p.m., Eastern Time (ET). The Gateway Call Center is available from 8 a.m. to 8 p.m., ET, to answer questions, research issues, or provide assistance. You may contact the Gateway Call Center at: (301) 212-8181 or via e-mail at webcrd@nasd.com.

The August 16th release of Web CRD is just the beginning. NASD Regulation is committed to the continuous improvement of Web CRD through a series of scheduled releases that enhance investor protection, respond to changes in the industry and the regulatory environment, improve ease of use, and leverage technological advances.

Questions about this article may be directed to Janis Paulikas, CRD/Public Disclosure, NASD Regulation, Inc., at (301) 590-6184.
NASD Regulation is pleased to announce

Web-Based FOCUS Launched Ahead of Schedule; System To Be Used For Upcoming Third-Quarter Filings

that it launched the new Web-Based FOCUS application ahead of schedule and is available for member firms' use beginning with the upcoming third-quarter FOCUS filings (due October 25th). This new system replaces PC FOCUS. **Members must use this new system to submit upcoming third-quarter FOCUS filings.**

Web-based FOCUS allows members to conveniently submit FOCUS filings over the Internet to NASD Regulation. Following are questions and answers about the new system. Questions not addressed here may be directed to 800-321-NASD.

Q. Will Web-Based FOCUS be available for the October 25th form filing deadline?

A. Yes, it is now available for members that provide FOCUS filings to NASD Regulation. Please note, however, that the PC FOCUS application, which operates through Sprint, will not be available for the filing. To ensure that all members make the transition to this new Web-based platform and take advantage of Year 2000 readiness system issues, Sprint will not be available.

Q. How does a member firm access the new system?

- A. To access Web-Based FOCUS, input the following Internet address in your Internet browser address window:
https://regulationformfiling.nasdr.com.
(Note: Firms must be entitled to access Web-Based FOCUS. See next question to learn how.)

Q. How does a member prepare for Web-Based FOCUS?

- A. To prepare for the transition member firms should already have completed and submitted the Regulation Applications User Accounts Acknowledgment Form (UAAF) and Regulation Applications Administrator Entitlement Form (RAEF). To request a copy of these forms, please call 800-321-NASD or send an e-mail to *nasdregfiling@nasd.com.*

Q. Why is PC FOCUS being replaced?

- A. NASD Regulation is replacing all applications for member regulatory filings with Web-based applications for filing over the Internet. (See next question to read some of the advantages of this new system.)

Q. What are the advantages of moving to a Web-Based FOCUS system versus PC FOCUS?

- A.
- Members will be able to view and access previous filings online.
 - Immediate verification of receipt.
 - No need to load software on the PC.
 - Filing from any PC versus only being able to file from the PC loaded with PC FOCUS software.
 - User Name/Password will be used to logon to the Web-based system versus PIN numbers.

Q. What if I have additional questions?

- A. Call 800-321-NASD or send an e-mail to:
nasdregfiling@nasd.com.

Check the NASD Regulation Web Site (www.nasdr.com) for updated information.

Remember: The 1999 third-quarter FOCUS filings must be submitted through the new Web-Based FOCUS application.

Year 2000 Readiness Program

Effective communication is important as broker/dealers work to assure investors that the industry is appropriately addressing Year 2000 issues. To facilitate communication, the NASD has developed a program that will give members the opportunity to disclose their Year 2000 progress to investors, customers, the general public, and other interested parties.

The NASD Year 2000 Readiness Program will allow members to display a Year 2000 readiness letter on the NASD and NASDR Web Sites (www.nasd.com and www.nasdr.com, respectively). These letters are intended to provide information that will serve to inform the investing public of their broker/dealers' ability to handle Year 2000 problems and keep their money and assets safe. Visitors to the Year 2000 Web Pages on these Web Sites will be able to search by firm name or broker/dealer number.

Member firms may voluntarily provide the NASD with a statement of their Year 2000 readiness that is furnished on company letterhead and signed and authorized by senior management. NASD Executive Representatives of member firms were sent an e-mail in August directing them to a sample letter. This sample letter and guidelines are still available for viewing on the NASD and NASDR Web Sites. However, each firm is solely responsible for the content of its own Year 2000 readiness letter and may customize this letter as necessary.

The NASD reserves the right to refuse any letters that do not comply with the objectives of this initiative.

Readiness letters should be mailed to the NASD, where originals will be imaged and displayed on the Internet. This information will be collected and available to the public through the end of this year.

The Letter Submission Guidelines below should be followed:

- ❖ Each broker/dealer firm must submit separately.
- ❖ Unsigned and/or incomplete letters will not be accepted.
- ❖ Letters should be no longer than one page in length.
- ❖ The CRD file number must be that of the broker/dealer firm submitting the letter. Enter your firm's CRD file number on the letter. The CRD file number is needed to record companies that have responded to this initiative.
- ❖ Letters are to be signed by those authorized to sign FOCUS reports.
- ❖ It is recommended that each broker/dealer firm submitting a letter keep a copy for its files.
- ❖ Return your firms' letter by September 30, 1999, using the mailing on the next page:

NASD Year 2000 Program Office
Attn: Year 2000 Readiness Initiative
15201 Diamondback Drive
Rockville, MD 20850

- ❖ All letters will be made available to the public.
- ❖ Letters received after September 30, 1999, will be updated on the Web Sites on a monthly basis.
- ❖ Member firms may update their letters after their initial submission. The updated letter will replace that firms' original letter.

If you have further questions or need assistance in completing this effort, please contact the Year 2000 Member Services Support Program Office at (888) 227-1330 or at the e-mail address y2k@nasd.com.

Readiness Project Frequently Asked Questions

Q. Does NASD or NASDR require us to submit a letter?

- A. No. Participation is not required of members. This service is offered at no charge to members that wish to use this opportunity to make their Year 2000 readiness status known to investors, their customers, the general public, and the securities industry.

Q. Can I fax my letter to the NASD?

- A. No. Please send only original documents by mail. Faxed documents will not be accepted since they tend to be of low quality in appearance and difficult to scan.

Q. When will this Web Site service be available, and when will letters be online to view?

- A. This service should be available in the next month or so or as soon as we begin receiving letters to display. Letters received after September 30 will be added to the Web Sites in monthly updates.

Q. What are my legal responsibilities if I submit my own custom-worded letter?

- A. Members are welcome to submit letters of their own construction or to use the NASD sample provided to members. In either case, firms must accept sole legal liability for the content of the documents. Firms may wish to consult with a legal professional prior to submitting their letter to the NASD.

Q. Should I submit a copy of the letter to the SEC, as done for the Form BD-Y2K submitted in April?

- A. No. The NASD is offering its members this service using the NASD and NASDR Web Sites to make this information public. Form BD-Y2K filings are 'as of' specific dates and are available on the SEC Web Site. The NASD service will allow members to keep their progress and readiness current for investors to view.

Year 2000 Investor Kit

The NASD Year 2000 Program Office, with the SEC, the Securities Industry Association (SIA), and the Investment Company Institute, have developed a Year 2000 Investor Kit with valuable communications for investors. It includes checklists, frequently asked questions, resources, and other general information that address investors' concerns about the Year 2000 challenge. The Kit is available on the NASD and NASDR Web Sites (www.nasd.com and www.nasdr.com) and was mailed to NASD member firms this summer. NASD members may want to share this information in discussing Year 2000 issues with its customers. If you have questions about the Kit, please contact the NASD Year 2000 Program Office by e-mail at y2k@nasd.com or by calling toll-free at (888) 227-1330.

Decimalization Update

With nine short months until the SEC-proposed June 30, 2000, industry conversion from fractional to decimal trading, the NASD continues its education campaign to help members prepare. Decimalization refers to the conversion of all securities industry systems from fractional to decimal pricing.

The NASD Decimalization Program Management Office (Program Office) kicked off its industry education and awareness campaign in May. Since then, many of the details related to decimal trading have taken shape, providing insight into what the industry can expect before, during, and after the conversion. For a general discussion of Decimalization, see the Summer 1999 issue of the *Regulatory & Compliance Alert, NASD Special Notice to Members 99-39*, or visit the Decimalization Web Pages at www.nasd.com.

The SIA is coordinating the industry conversion, with the General Accounting Office (GAO) taking on a monitoring role. The Program Office is actively working with the SIA to help define specifications, implementation strategies, and fallback scenarios. A joint effort is also underway to define what to test, the best approach to industry testing, as well as to examine and resolve outstanding issues. Further, the NASD has been working toward complying with the SEC-proposed conversion date of June 30, 2000, and is committed to an on-time industry-wide conversion, keeping in mind the NASD mission to maintain market integrity, protect investors, and ensure the readiness of member firms.

The SIA Committees

The SIA formed several industry-wide committees on Decimalization, on which the NASD, other exchanges, and several member firms participate.

The SIA formed a Senior Decimalization Committee, comprised of representatives from across the industry, including the NASD. The Senior Committee provides guidance on the conversion and recommendations to the SEC. The Senior Committee is supported by four industry-wide subcommittees: Implementation, Testing, Market Data Vendors, and Communications. The NASD participates on all of the subcommittees, and chairs the Implementation Subcommittee. The NASD will report to members on a regular basis about any major findings and industry-wide initiatives.

Implementation

The Implementation Subcommittee has been working to define and compile industry specifications for both the technical and business sides. The technical specifications, how decimal pricing will look, and what formats each exchange will support, provide important information for member firms that need to remediate code. The SIA is collecting these formats, and posting them on its Web Site at www.sia.com. The Decimalization Program Office has posted the available Nasdaq-Amex Market Group specifications (including new vendor formats) in the Specifications section on the Program Office Web Pages at www.nasd.com.

The SEC asked the SIA to submit formal written implementation, testing, and communication plans to converting the industry to decimal pricing. The Implementation Subcommittee has drafted a plan, which includes a three-phased implementation. In the phase-in, a limited number of securities listed on the major markets would be traded in decimals for five weeks, from July 3, 2000, through August 4, 2000. This means that members' systems must be able to process fractions and decimals by that time.

In the second phase of the proposed implementation plan, all securities would be traded in decimals for eight weeks, from August 7, 2000, through September 29, 2000. During this time an evaluation team, made up of representatives from exchanges/markets, member firms, market data vendors, and clearing corporations, would collect data and analyze how the industry is handling decimal trading. The evaluation team would examine functionality, message traffic, and operational aspects of decimal trading. Based on the findings, this evaluation team would make a recommendation to the SEC as to whether the industry is prepared to go to full implementation of decimal trading.

Non-Mandated Point-to-Point Testing

The Testing Subcommittee is recommending that each exchange/market work within best business practices to encourage members to test the functionality of decimals, once each

exchange or market is ready to test. Testing will not involve scripts. Each market will notify the firms that should test, and schedule testing dates beginning in March 2000. Exchanges/markets would then report completion status results to the SIA, and that data would in turn be handed off to the SEC, as proof of industry readiness for conversion. If the SEC approves the recommendation, this means there would be no mandate on testing as with Year 2000.

Note: The Testing Subcommittee will publish a "How To Test Guide" soon.

The SRI Study

The SIA commissioned a study to look at trading securities and options in decimal increments. SRI Consulting, Inc., completed this study in May 1999. The SRI study, which has been widely supported by the SIA Decimalization committees, projects message traffic increases of 231 percent for Nasdaq[®] equities and 305 percent for equity options at a penny increment, by year-end 2001. Traffic increases are predicted primarily in quoting and cancel messages. The SRI study is available on the Web at www.sia.com.

Other Factors

For the options exchanges, these numbers may be conservative, as they do not consider industry events like the expected entrance of new exchanges in March 2000, or the impact of multiply listed options. The Options Pricing Reporting Authority (OPRA) has revised the SRI numbers to project volume of 90,000 messages per second by year-end 2001. The

industry expects to process just under 5,000 messages per second by the end of this year. Bridging the gap between the two numbers may not be operationally feasible by June 30, 2000, so the industry must make some business decisions about what capacity numbers to assume. With the SEC's approval, the options exchanges have commissioned SRI Consulting to do an additional 12-week study to provide some mitigation tactics for dealing with the projected message volume. The results of the study are expected in November, and could result in some business and trading rule changes. Preliminary results will be presented at the September Decimals Conference.

The Nasdaq-Amex Market Group is working on validating the SRI study, and expects to have capacity assumptions by the September Conference.

How The NASD Can Help Members Prepare

The Program Office has developed a schedule of high-level milestones to help member firms convert to decimal pricing by the June 30, 2000, guidelines. This schedule is available on the Web at www.nasd.com. Members may also call the toll-free number (888-227-1330) to request a brochure about Decimalization. We will also publish *Notices to Members* and *more Regulatory & Compliance Alert* articles, post frequent Web Site updates, and participate in various industry conferences, including SIA meetings, and the October NASD Regulation annual Fall Securities Conference in Seattle (for NASDR conference

information, see the NASDR Web Site: www.nasdr.com).

The Program Office has developed sample project plans for member firms to use in their conversion efforts. Plans are available on the Web at www.nasd.com, or by calling the toll-free number: (888) 227-1330. At this point, members should be completing their analysis

of affected applications, and preparing to remediate or replace code and/or applications.

Questions about this article may be directed to the Program Office at (888) 227-1330 or via e-mail at decimals@nasd.com. Members may also check the Program Office Web Pages on the NASD Web Site at www.nasd.com. The Program Office updates the Web Site frequently as information becomes available.

SECURITIES CONFERENCE

District Directors Securities Conference Open Forum

At the May 19-21, 1999, NASD Regulation Spring Securities Conference, an open forum was conducted with NASD Regulation District Office Directors and home office executives. Conference attendees, primarily representatives of NASD members, asked a number of questions encompassing a variety of subjects. This article is the second in a two-part series to capture many of the questions and the answers provided during this session. Part 1 appeared in the Summer 1999 issue of the *Regulatory & Compliance Alert*.

Participating in the forum were: Mary Alice Brophy, Executive Vice President, Member Regulation; Daniel M. Sibears, Senior Vice President and Deputy, Member Regulation; Bill Jackson, District Director, Cleveland District Office; David Leibowitz, Senior Vice President and District Director, New York District Office; John Nocella, Senior Vice President and District Director, Philadelphia District Office;

Willis Riccio, Vice President and District Director, Boston District Office; Carla Romano, Vice President and District Director, Chicago District Office; Alan Wolper, District Director, Atlanta District Office; and Bernerd Young, Associate District Director, Dallas District Office. Note that questions and answers have been edited for clarity and length. Considering the forum in which the answers were provided, readers should not rely on this article as definitive guidance or formal interpretive advice.

Written requests for interpretive advice may be directed to the NASD Regulation Office of General Counsel at (202) 728-8071. Questions about this article may be directed to Daniel M. Sibears, Member Regulation, NASD Regulation, Inc., at (202) 728-8221.

Note: The NASDR annual Fall Securities Conference will be held October 20-22, 1999, in Seattle at the Sheraton Seattle.

Q. How should the mail review be handled in outlying, nonregistered branch offices, or for example, in someone's home? Does the mail need to be reviewed in those offices?

A. The requirements to supervise and review correspondence applies to main offices, OSJs, registered branches, and non-registered locations. The location of the office and the number of persons working from a particular location do not alter a firm's duty in this area. As a result, all firms must have explicit policies and procedures in place to review mail, correspondence, sales literature, and other communications.

Q. What is the percentage of complaints received by the NASD via the Internet versus hard copy or regular mail?

A. The NASD provides a mechanism through which complaints may be filed via the Internet. Although investors are increasingly using this medium, we still believe a much larger percentage of customer complaints come through the mails. The NASD gets quite a number of complaints that arrive through the Web; complaints submitted via the Web, however, are still a relatively small percentage of the overall complaints that come in to the NASD.

Q. Does the NASD have a way to determine 'hits' on the Web Site whether a visitor is a client or a broker/dealer?

A. No. However, when someone files a complaint, the NASD asks for certain information which generally alerts us as to whether the individual is a bona fide customer or not.

Q. Our firm recently received an inquiry from the NASD concerning best execution for fixed income securities. Does the best execution theory apply to debt securities? What's the NASD's view?

A. The general concept of best execution clearly applies. The ability to ensure best execution will be enhanced as more information is captured through, for example, FIPS, the MSRB reporting systems, and other mandatory reporting.

Q. Many firms that allow broker order entry provide personal portable computers to their brokers. If those brokers are able to enter trades from a remote location, does this become a satellite location? If so, how would one license this scenario?

A. The NASD does not, within its rules, have a definition for a satellite location. And an order entry on a personal computer of a broker who otherwise works out of a specific location probably would not produce a branch registration. Obviously, it is incumbent upon every firm to have a good understanding of the work performed at each location. Looking forward, the issue becomes how the SEC and the NASD define a branch office and the impact that technological advances have on this issue.

Q. Can you comment on what rules—those rules termed 'obsolete'—might be amended?

A. There is a major NASD initiative underway to identify and eliminate or amend obsolete rules. As a part of that effort, some issues have surfaced with respect to how we

should distinguish institutional from retail customers. We're really early on in the comment period about that, so, the NASD would not predict what changes will occur. However, it is likely that many changes will take place.

Q. Has the NASD thought about different ways, perhaps, to examine an institutional firm versus a retail firm?

A. The NASD is in the midst of a process to revolutionize its examination program. The NASD's program has grown from a "one size fits all" mode, which worked well for the organization for many years. This does not work as well for the NASD now. With as much diversity among the firm membership, and as much specialization and different types and sizes of firms, we are in the process now of literally changing the way we do our examinations. The new

program addresses how to deal with specialized firms differently, and how to incorporate more technology into the process. This is intended to have NASD examiners spend less time on-site and more time off-site, leading to having better regulatory intelligence tools and performing examinations in a less obtrusive manner.

Q. Does that include having specialized examiners?

A. There will probably always be a need for NASD Regulation to be generalists and have a solid knowledge of the broad spectrum of the industry. However, with that said, it is likely that the NASD's future is more specialization, perhaps within District Offices, perhaps within regions, depending on what the specialties are, and nationally as well.

ADVERTISING REGULATION

questions

Ask The Analyst

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

Correspondence

Q. Under NASD Notice to Members 98-83 correspondence is defined as a communication prepared for delivery to a single current or prospective customer. Does this mean that any letter or e-mail that goes to more than one person meets the definition of sales literature? If not, at what point does a communication become sales literature?

A. Currently, any communication such as a letter or e-mail message sent to more than one person is deemed to be “sales literature” under the definition set forth in NASD Conduct Rule 2210(a)(2).

Q. Does NASD Regulation have any percentage guidelines as to what would be an appropriate sample size for review of correspondence under NASD Conduct Rule 3010(d)?

A. Although there is no percentage guideline for sampling correspondence, *NASD Notice to Members 98-11* regarding Rule 3010(d) does provide a list of “Guidelines for Supervision and Review.” In part, these guidelines advise member firms creating procedures for the review of correspondence to consider their structure, the nature, and size of their business, and whether procedures must be tailored to different segments of their business or to different types of representatives. Members should review carefully *Notices to Members 98-11* and *99-03* before establishing procedures for the sampling of correspondence.

Q. Does NASD Regulation expect member firms to monitor “internal” correspondence such as communications between a branch manager and the firm’s main office the same way as correspondence with customers?

A. NASD Conduct Rule 3010(d) only refers to correspondence with the public relating to a member firm’s investment banking or securities business. Members are

reminded that the requirements of NASD Conduct Rule 2210 may apply to internal correspondence if the correspondence itself is distributed to members of the public, or if information in the correspondence is communicated to members of the public, particularly if the information concerns the desirability of owning a specific security.

Stocks/Research Reports

Q. If a communication to customers is deemed to be a recommendation, what additional procedures or information is required?

A. For advertisements or sales literature, the member firm has several obligations pursuant to NASD Conduct Rule 2210(d)(2)(B) as follows:

- ❖ the registered principal reviewing the communication for compliance must ensure that the firm has a reasonable basis for the recommendation;
- ❖ the communication must provide, or offer to provide upon request, available investment information supporting the recommendation; and,
- ❖ recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

In addition, the communication must disclose in specific terms several potential conflicts of interest that may exist between the member firm and the issuer of the security. Boiler plate language indicating the member firm “may or

may not make a market in these securities” in itself does not fully satisfy the requirements. The potential conflicts requiring disclosure are, as applicable:

- ❖ that the member firm recommending the securities usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, or that the firm or its associated persons will sell to or buy from customers on a principal basis;
- ❖ that the firm 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; and,
- ❖ that the firm was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

Broker/Dealer Use Only Material

Q. Would an advertisement appearing in a publication such as Registered Representative magazine be subject to the standards for communications with the public set forth in NASD Conduct Rule 2210?

- A. Because this type of publication is available to individuals who are not registered with NASD member firms, this type of advertisement is subject to the same standards as any other advertisement, including the standards for approval, recordkeeping,

filing, and content set forth in NASD Conduct Rule 2210.

Filing Requirements And Electronic Communications

Q. Our Web site simply describes our firm, the securities we offer, and the qualifications of our principals. Do we have to file the site with the Department for review?

- A. The filing requirements for this type of Web site are identical to those for any other advertisement as defined in NASD Conduct Rule 2210(a)(1). If the NASD member firm has never filed with the Department, it must file the Web site 10 days prior to first use and must continue to pre-use file all advertisements for a period of one year. The year starts on the date the firm’s first filing is received by the Department. If the firm has already completed this one-year filing requirement, the products discussed in the Web site will dictate whether all or part of the site must be filed. If the Web site discusses options, collateralized mortgage obligations, or an investment company performance ranking for which the firm has created a customized subcategory, the firm must file the relevant portions of the site 10 days prior to first use. In addition, if the Web site discusses mutual funds, unit investment trusts, variable insurance products, government securities, or direct participation programs, the firm must file the relevant portions within 10 days of first use. See NASD Conduct Rules 2210(c) and 2220(c) for all of the filing requirements and possible exemptions.

Request For Comments On Proposed Amendments To Advertising Regulation Rules

The NASD is requesting comments from members and other interested parties on proposed amendments to modernize, simplify, and clarify the rules governing member communications with the public. The comment period expires on October 29, 1999.

One of the most significant aspects of the proposal is to exempt all member firm communications to institutional investors from internal pre-use firm approval and NASD filing requirements. Form letters and group e-mail to existing customers and fewer than 25 prospective retail customers also would be eligible for this exemption. Additionally, the proposal would exempt article reprints and certain press releases regarding investment companies from the filing requirements and simplify the content standards applicable to member communications.

See NASD Notice to Members 99-79 for more specific information. To submit your comments visit the NASDR Web Site's (www.nasdr.com) Request For Comments Web Page.

CORPORATE FINANCING

Corporate Financing To Consider Requests For Exemption Related To Direct Participation Program Compensation

NASD Conduct Rule 2810 prohibits members from participating in a public offering of direct participation program (DPP) and real estate investment trust (REIT) securities if the organization and offering expenses, including the compensation payable to members, is not fair and reasonable. Members must file information with NASD Regulation's Corporate Financing Department (the Department) concerning public DPP or REIT offerings in which they participate.

Members and their associated persons may receive continuing compensation, but only

according to stringent standards. In 1997, NASD Regulation requested public comment on a proposal to revise the compensation structure permitted under the Rule. The proposal was intended to promote compensation arrangements that would more closely align the interests of members and their customers, by codifying new standards to permit members to receive service fees and trail commissions. All those who commented on the *Notice* supported this goal, but they did not believe that the proposed amendments would best achieve it. Among the concerns raised was the possibility that the proposed amend-

ments would not adequately take into account different DPP and REIT structures.

Largely in response to these comments, NASD Regulation has decided not to codify specific rules for the receipt of service fees and trail commissions. Instead, NASDR will encourage innovation in compensation structures for DPPs and REITs through its exemptive process under the Rule 9600 Series, which allows the Department to grant exemptions on a case-by-case basis.

The Department will therefore consider requests by members for exemptions from NASD Rule 2810 for service fees and trail commissions in connection with a public offering of DPP or REIT securities. Among the factors that the Department will consider are the following:

- ❖ in general, the extent to which the member has demonstrated that the compensation arrangement (including the source and structure of payment of the service fee and trail commission) is fair and reasonable;
- ❖ whether participating firms will only receive a service fee if they provide specific, continuous investor services; and
- ❖ the conditions under which trail fees will be paid, particularly if the program or trust does not provide a meaningful return to investors.

Questions about this article may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc., at (202) 974-2700.

REGULATORY SHORT TAKES

NASD Regulation Cautions That Firms Should Disable Their SOES Preferencing Feature During Passive Market Making

NASD Regulation recently imposed sanctions against a firm for a passive market making violation that resulted from an automatic execution. NASD Regulation found that the firm violated Rule 10b-6A when it automatically purchased a security at a price above the highest independent bid during the two-day cooling-off period when such activity was prohibited. Rule 10b-6A has since been replaced by Rule 103 of Regulation M.

Under former Rule 10b-6 (now Regulation M), persons participating in a distribution of securities, including issuers, underwriters, dealers, and affiliated purchasers were prohibited from bidding for or purchasing a security until they had completed their participation in such distribution. Rule 10b-6A, however, permitted NASD market makers to continue to engage in market making in a security while participating in a distribution of that security, i.e., passive

market making, subject to certain conditions. One of these conditions was that a passive market maker's bid could not exceed the bid of a market maker not participating in the distribution, i.e., the "independent" bid. In addition, a passive market maker was prohibited from purchasing securities above the highest independent bid during the two-day cooling-off period prior to the start of the distribution.

In the recent disciplinary case, the firm's posted bid was equal to the independent bid of market makers not participating in the distribution. The firm violated the Rule, however, when it purchased shares through a preferenced automatic execution in the Small Order Execution SystemSM (SOESSM) at a price that exceeded the highest independent bid. SOES accepts orders that may be "preferenced" or directed to a particular market maker, and it automatically executes those orders at the inside market price, or the best price available in the market at the time of the transaction. In the recent disciplinary case, the firm failed to disable its SOES preferencing feature and it automatically purchased shares at the inside bid—which was above the highest independent bid for the security—while

engaged in passive market making of the security during the two-day cooling-off period when such purchases are prohibited. The firm was not aware of the purchase until after the automatic execution had occurred, and it quickly canceled the trade. After considering the firm's attempts to remedy the problem and the other mitigation present, NASD Regulation ordered that a Letter of Caution be imposed against the firm. In so doing, NASD Regulation cautioned, however, that its decision "should not be read to suggest that violations of the passive market making rules warrant relatively light sanctions." Rather, it emphasized that members should take care to disable their SOES preferencing features before engaging in passive market making.

Members may refer to the September 1997 edition of the *NASD Regulatory & Compliance Alert*, Vol. 11, No. 3, for further discussion on passive market making procedures and trading restrictions under Regulation M.

Questions about this article may be directed to NASDR's Market Regulation Department at (301) 590-6410.

Use Of Optical Storage Technology

As a reminder, any member firm considering using optical storage technology must notify its designated examining authority (DEA) prior to employing such technology [SEC Rule 17a-4(f)(2)(i)]. Records required to be maintained by SEC Rules 17a-3 and 17a-4, including

order tickets and confirmations, may be maintained via micrographic media (microfilm, microfiche) or electronic storage media (optical disk, CD-ROM) if such media meets specific conditions [see SEC Rule 17a-4(f)(2)(ii) for details]. However, records required by SEC

Rules 15g-2 and 15g-9 (“penny stock” rules) are specifically excluded from electronic storage of any type.

In addition, SEC Rule 17a-4(f)(3)(vii) requires that member firms exclusively using electronic storage technology for some or all of its record preservation must have arrangements with at least one third-party, down-load provider. The provider must submit an agreement to the member firm’s DEA which will permit the SEC and appropriate DEA to access the firm’s records when needed.

Any notices and representation(s) required by SEC Rule 17a-4(f)(2)(i) and 17a-4(f)(3)(vii) should be directed to:

*NASD Regulation, Inc.
Member Regulation
1735 K Street, NW, 6th Floor
Washington, DC 20006-1500
or facsimile to:
(202) 728-8341*

Members are encouraged to review the aforementioned Rules, as well as *NASD Notices to Members 97-43* and *43-47* for further clarification.

Additional questions may be directed to your local NASD Regulation District Office or to the Member Regulation Department at (202) 728-8221.

National Adjudicatory Council Provides Guidance On Sanctions Imposed In Egregious Unauthorized Trading Cases

Registered representatives who effect unauthorized transactions risk the likelihood of having severe sanctions imposed against them. In general, unauthorized trading involves a registered representative effecting purchases or sales for a customer’s account without permission or in a manner inconsistent with a previously agreed upon trading strategy. When a finding of unauthorized trading is made, the NASD Sanction Guidelines recommend that an adjudicator impose sanctions that correspond to the level and severity of the misconduct. The Sanction Guidelines recommend, in an ordinary case of unauthorized

trading, suspending the registered representative in all capacities for 10 to 30 days, and further suggest that in “egregious” cases the adjudicator should “consider a longer suspension (of up to two years) or a bar.”

Although the Sanction Guidelines do not define what constitutes an “egregious” case, a number of decisions issued by the National Adjudicatory Council (NAC) indicate that there are three broad categories of egregious conduct. The first is quantitatively egregious unauthorized trading, where the sheer number of unauthorized transactions warrants the

imposition of weighty sanctions. The second involves unauthorized trading that is egregious because it is accompanied by certain aggravating misconduct, *e.g.*, where the registered representative attempted to conceal the misconduct or hinder an investigation, or where he or she has a history of effecting unauthorized transactions. The third category involves qualitatively egregious unauthorized trading, discussed below.

The first NAC decision to make an express finding of qualitatively egregious unauthorized trading was *In re Ted D. Wells*, Complaint No. C07970045 (NAC July 24, 1998). In that case, the NAC found that the respondent's admittedly intentional misconduct—from which he benefited to the detriment of his customer—was so antithetical to his duty to his customer that public interest would be served by barring him from the securities industry, notwithstanding that he effected only a single unauthorized trade and had no disciplinary history.

Recently, the NAC decided another case involving allegations of unauthorized trading. In *In re Daniel S. Hellen*, Complaint No. C3A970031 (NAC June 15, 1999), the NAC

found that the respondent had effected three unauthorized transactions in three customer accounts. The NAC imposed a \$25,000 fine and a two-year suspension after determining that the respondent had engaged in qualitatively egregious conduct.

The NAC's *Hellen* decision elaborates on the principles underlying the sanctions imposed in *Wells* (and other cases involving qualitatively egregious unauthorized trading). In brief, the NAC explained that two factors are relevant to its determination as to whether unauthorized trading was qualitatively egregious. The first concerns the strength of the evidence that the trades at issue were unauthorized. The second concerns the evidence relating to the respondent's motives. In finding the conduct of the respondent in *Hellen* to be qualitatively egregious, the NAC relied on highly persuasive circumstantial evidence that the respondent acted in direct contradiction to his customers' express instructions to their detriment. In addition, the NAC noted that the respondent had engaged in a pattern of using high-pressure sales tactics and a combination of delaying tactics and obstacles calculated to dissuade and obstruct the customers in their efforts to reverse unauthorized transactions.

Market Regulation Compliance Report Cards

On September 24, 1998, staff of the Market Regulation Department (Market Regulation) of NASD Regulation began making available quantitative reports for each NASD member firm concerning its compliance with trade

reporting, firm quote, and best execution. The reports are being provided to firms as a compliance aid to assist them in ensuring that they are submitting transaction reports in a timely manner, handling SelectNetSM liability

orders in compliance with the Firm Quote Rule, providing best execution to its customers, and, if necessary, taking appropriate measures to improve its performance in these areas. Each report contains information for the previous calendar month and is available on the 24th of each month or the first business day after the 24th if that day falls on a weekend or holiday.

The reports are available to view at www.nasdaqtrader.com; however, given the proprietary nature of the firm-specific reports, a firm must subscribe to the Proprietary Trading Data section of the Web Site to access any of the reports. For a detailed description of each of the reports and subscription information, please call Nasdaq Subscriber Services at (800) 777-5606. Although these reports are designed and

intended to be a preventive compliance tool, the information contained in these reports may indicate the existence of rule violations that may be pursued by Market Regulation staff depending on the circumstances. Accordingly, NASD Regulation strongly recommends that members subscribe to the compliance report cards in order to enhance their supervisory procedures.

If you have any questions concerning the Trade Reporting report card, call Patricia Casimates, Market Regulation, NASD Regulation, Inc., at (301) 590-6447.

If you have any questions concerning the Firm Quote Compliance or Best Execution report cards, call Joe McDonald, Market Regulation, NASD Regulation, Inc., at (301) 212-3835.

QUALIFICATIONS/TESTING/CONTINUING EDUCATION

Questions And Answers Regarding Requirements For Equity Traders And The Series 55 Examination

NASD Regulation has received a number of inquiries from member firms and registered representatives regarding the registration requirements for equity traders. NASDR is publishing the following questions and answers to provide the membership with additional guidance on the scope of this new registration rule.

Background

Effective April 1, 1998, NASD Regulation amended its rules to require representatives who trade equity securities in The Nasdaq Stock Market® (Nasdaq) and/or the over-the-counter (OTC) market to register as equity traders. NASD Rule 1032(f) established a new registration category (ET) and qualification examination (Series 55) for equity traders.

Specifically, NASD Rule 1032(f) states that a representative must register as a “Limited Representative—Equity Trader” if the representative is engaged in proprietary trading or the execution of transactions on an agency basis in equity, preferred, or convertible debt securities. The Rule also applies to persons who directly supervise those who are engaged in such proprietary trading or execution of agency transactions. However, the Rule does not require registration if the person is associated with a member whose trading activities are conducted principally on behalf of a registered investment company.

To register as an equity trader, the representative must be registered as a General Securities Representative or a Limited Representative—Corporate Securities and must pass the Series 55 examination. The Rule includes a grace period and allows persons who were acting as Nasdaq or OTC equity traders when the Rule became effective to have two years to pass the Series 55 examination. The NASD announced the approval of the amendments in *NASD Notice to Member 98-17* and an extension of the filing period in *NASD Notice to Members 98-60*.

Since the new Rule became effective, NASD Regulation has processed approximately 17,000 requests for the Series 55 examination, with at least 90 percent of the candidates receiving the extended expiration date of May 1, 2000. As of July 31, 1999, over 5,300 traders have taken this examination. NASD Regulation staff continues to monitor the test content, under the direction of an industry

group, to ensure that the questions are current and accurate.

Administrative Requirements

- Q 1. What examinations or registrations would satisfy the prerequisite requirement for the Series 55?*
- A. The prerequisite requirement can be satisfied if the representative has passed any of the following examinations:
- ❖ Series 7—General Securities Representative Examination
 - ❖ Series 17—U.K. Module of the Series 7 Examination
 - ❖ Series 37/38—Canadian Module of the Series 7 Examination
 - ❖ Series 62—Corporate Securities Representative Examination
- Q 2. A person who is actively engaged in activities requiring registration as an equity trader is registered under Series 7 or 62 and Series 55, but is not a registered principal. Must the immediate line supervisor of this person be registered under Series 55?*
- A. Yes. This is specifically required by the Rule.
- Q 3. A broker/dealer requests the Series 55 examination for its traders and they receive the extension until May 1, 2000. The broker/dealer, however, does not make such a request for the traders' direct supervisors. What impact does the failure to request the Series 55 examination for*

questions

these supervisors have on the broker/dealer's ability to trade Nasdaq and/or OTC equity securities?

- A. Such supervisors are required to qualify promptly. Failure to do so may result in the broker/dealer having to cease trading Nasdaq and/or equity securities. These situations will be reviewed on a case-by-case basis and may result in formal disciplinary action.

Q 4. A registered representative originally had the two-year grace period and then transfers to another firm. What will happen to the two-year grace period when the new firm attempts to register the registered representative for the Series 55 examination?

- A. The grace period will continue to be available to the candidate upon transferring to another member firm. In other words, the candidate will continue to have until May 1, 2000 to pass the examination.

Q 5. A broker/dealer requested the Series 55 examination for its traders, and the traders were granted the extended grace period. What impact would the termination of these traders have on the broker/dealer's ability to continue to trade Nasdaq and/or OTC equity securities?

- A. This broker/dealer will have to cease trading Nasdaq and/or OTC equity securities until it registers a trader who has passed the Series 55 examination or received the extension until May 1, 2000 while at another firm.

Q 6. How long must a registered representative wait before retaking the Series 55 examination after each failure?

- A. Candidates who have been granted the two-year grace period for the Series 55 examination must wait 30 days after each failed attempt before retaking the Series 55 examination. If the candidate fails the Series 55 examination more than three times, the waiting period continues to be 30 days, rather than the 180-day waiting period normally required after the third and all subsequent failures. This exemption applies ONLY to the Series 55 examination, and it is ONLY for those candidates who have been granted the two-year grace period. The normal waiting periods apply in all other circumstances.

Q 7. If a registered representative who originally had been granted the two-year grace period until May 1, 2000 fails the Series 55 examination, will the registered representative's registration still continue to reflect the same May 1, 2000 expiration date?

- A. Yes. Upon requesting the re-exam, the registered representative's valid window for the Series 55 examination will have the May 1, 2000 expiration date.

Q 8. Does the NASD provide any training materials for candidates to study for the Series 55 examination?

- A. The NASD has published a study outline that lists the topics and rules tested on the Series 55. This study outline can be ordered from NASD MediaSourceSM,

at (301) 590-6142. In addition, the *Nasdaq Trader Manual* contains valuable information covered on the test and is available as a viewable and printable document on the Nasdaq Trader Web Site at www.nasdaqtrader.com. Neither publication is intended, however, to be the sole training material for the examination.

- Q 9. If it is determined that a member has failed to adequately supervise an equity trader and allowed this person to act in a capacity for which the person was not registered, how will such violations be treated?*
- A. Violations of the equity trader registration requirements will be reviewed on a case-by-case basis and may result in formal disciplinary action.

Proprietary (Principal) Transactions

- Q 10. A person processes one or more principal transactions for the investment account of the member by personally calling or electronically communicating with the contra-side to the principal transaction. Is this person "engaged in proprietary trading" and therefore required to be registered as a Series 55 representative, even if the transaction is subsequently compared/confirmed by the member's clearing firm?*
- A. Yes. A person who executes a transaction for any account in which the member has a direct or indirect interest by sending the trade to the member's trading desk or to

another member for execution is "engaged in proprietary trading" and thus, is subject to the equity trader qualification and registration requirements.

- Q 11. A person processes simultaneous principal transactions for customers of the member by personally calling or electronically communicating with the contra-side to the principal transaction. Is this person "engaged in proprietary trading" and therefore required to be registered as a Series 55 representative?*
- A. Yes. The person is "engaged in proprietary trading" because processing simultaneous principal transactions for customers means that the person's firm executes transactions for the member's investment account with both the customer buy and sell orders when the cross takes place.

- Q 12. A person processes one or more principal transactions for the investment account of the member or processes simultaneous principal transactions for customers of the member by communicating the order to the member's clearing firm which then calls or electronically communicates with the contra-side to the principal transaction. Is this person "engaged in proprietary trading" and therefore required to be registered as a Series 55 representative?*
- A. Yes. The person is "engaged in proprietary trading" because the person is making all of the trading decisions and the order is being executed for the member's

investment account, even though the order is sent to the member's clearing firm for execution.

Q 13. A fully disclosed broker/dealer is trading Nasdaq and/or OTC equity securities for its proprietary account. The proprietary trading decisions are made by the president of the broker/dealer. The trades are submitted to its clearing firm for execution; the broker/dealer is not directly involved with the execution. Would the president be subject to the equity trader registration requirements?

A. Yes. The president of the broker/dealer would be subject to the requirements of NASD Rule 1032(f) because as a proprietary trader, he is making the trading decision and placing the firm's capital at risk, even though the trades would be submitted to the clearing firm for execution.

Q 14. Does the definition of "equity trader" include those proprietary traders whose primary activities are in exchange-listed securities?

A. Yes. NASD Rule 1032(f) explicitly covers proprietary traders who effect any transactions in equity, preferred, or convertible debt securities in the Nasdaq or OTC markets, including those proprietary traders who effect transactions in exchange-listed securities in the OTC or "third" market. For purposes of this Rule, "program" or "basket" traders would be considered proprietary traders.

Agency Transactions

Q 15. What constitutes executing a customer transaction on an "agency basis"?

A. A customer transaction is executed on an "agency basis" when the order is executed with another broker/dealer without the intervention of a principal account at the firm where the order is executed.

Q 16. A person processes one or more agency transactions for customers of the member by personally calling or electronically communicating with the contra-side to the agency transaction. Is this person required to be registered as a Series 55 representative, even if the transaction is subsequently compared/confirmed by the member's clearing firm? Does NASD Rule 1032(f) provide for a de minimis exemption?

A. The person is "engaged in the execution of transactions on an agency basis," and would, therefore, be required to be registered as a Series 55 representative. The rule does not contain a de minimis exemption.

Q 17. A person processes agency transactions for customers of the member by personally calling or electronically communicating with the contra-side to the agency transaction with which the member has a payment-for-order-flow arrangement. Is this person "engaged in the execution of transactions on an agency basis" and therefore required to be registered as a Series 55 representative?

questions

A. The person would be required to be registered as a Series 55 representative. The “payment-for-order-flow arrangement” issue is not a factor that is taken into consideration in this situation.

Q 18. A person processes one or more agency transactions for customers of the member by communicating the order to the member’s clearing firm which then calls or electronically communicates with the contra-side to the agency transaction. Is this person required to be registered as a Series 55 representative?

A. No. The person is not involved with the trading decision, nor is the person engaged in the “execution of transactions on an agency basis.” Rather, he or she is acting as an order processor.

Q 19. A person, on behalf of an introducing member, processes agency transactions for customers of the member by communicating the orders to the member’s clearing firm. The member’s clearing firm thereafter completes the transaction in-house, by, for example, buying or selling as a market maker in the security or completing the transaction as a dual agency trade with one of its customers. Is this person required to be registered as a Series 55 representative?

A. No. The trading decisions are made by the clearing firm.

Q 20. A person at a member firm enters and executes the firm’s agency OTC orders with the market maker with the best offering price. Is this person required to be registered as a Series 55 representative?

A. Yes. The person is effecting agency trades with the market maker.

Trading/Execution Systems

Q 21. Would a trader who executes equity transactions for customers through an ECN be subject to the equity trader registration and qualification requirements?

A. Yes. The trader is executing a trade on an agency basis.

Q 22. A person enters an order into the Small Order Execution System (SOES). Is that person required to register as an equity trader?

A. Yes. SOES provides for the automatic execution of orders in Nasdaq securities. By entering an order into SOES, the person is “executing a trade.”

Q 23. A person enters an order into SelectNet. Is that person required to register as an equity trader?

A. Yes. SelectNet allows Level 3 users to direct, negotiate, and execute orders in Nasdaq securities with market makers. By entering an order into SelectNet, the person is “executing a trade.”

Order (Entry) Processing

Q 24. A broker/dealer maintains clearing agreements with three firms. The personnel at the broker/dealer randomly choose one of the three with which to effect customer transactions in Nasdaq or OTC securities. Would these persons be required to register as equity traders?

A. If these persons forward all customer orders to the clearing firms for execution, they would not be required to register as equity traders, since they are not “executing transactions.

Q 25. An order entry firm sends an order to a market maker and the market maker executes the trade with a contra party. The order entry firm has the right to reject the trade in ACT. Does the representative at the order entry firm have to qualify as an equity trader?

A. No. The representative at the order entry firm does not have to register as an equity trader because he or she is not involved with the terms or execution of the order even though the firm may decide to reject the order in ACT.

Q 26. A broker/dealer uses an electronic order entry system to relay its customers’ orders to the firm’s clearing broker for execution. Would a registered representative who accepts customer orders and inputs them in the order entry system be subject to the Series 55 requirements?

A. No. The registered representative is not effecting the trades in the Nasdaq or OTC markets.

International Markets

Q 27. A person sells foreign equity securities to U.S. institutions in the United States on an agency basis. The trades are executed on a computer system connected directly to the foreign stock exchange. Would this person need to qualify as an equity trader under NASD Rule 1032(f)?

A. Since the trade is executed on a foreign exchange, the Series 55 requirement would not apply. However, a person who sells foreign equity securities to U.S. institutions in the United States must be registered as a general securities or corporate securities representative.

Q 28. Are listed stock traders who effect after-hours transactions in foreign markets engaged in OTC trading, and therefore, subject to the Series 55 requirement?

A. No. NASD Rule 1032(f) is not intended to include trading activity conducted in foreign markets.

Q 29. Does the definition of “equity trader” include persons in foreign offices who effect transactions in non-U.S. securities in non-U.S. markets that are reported to a non-U.S. exchange or regulatory body?

- A. No. NASD Rule 1032(f) is intended for traders executing transactions in covered securities in The Nasdaq Stock Market or domestic OTC market.

Convertible Debt Securities

Q 30. A fixed income broker/dealer not involved with convertible issues periodically purchases equity securities for the firm's investment account with excess corporate funds. Would this firm be subject to the requirements for NASD Rule 1032(f)?

- A. Yes. Proprietary traders are required under the Rule to register as equity traders. Note that this Rule does not have a de minimis exemption; therefore, one or more proprietary trades would require the trader to be registered as an equity trader.

Q 31. Are bond traders who effect a small number of transactions in convertible securities included in the definition of equity trader?

- A. Yes. There is no de minimis exemption for bond traders who do an occasional small dollar volume business in convertible securities.

Q 32. A trader whose primary business is trading straight debt securities will occasionally trade the straight debt securities as units that include a warrant component, or the trader will trade the warrant itself. Would the trader be subject to the Series 55 requirement?

- A. When the unit is sold with both components, the trader would not be subject to the Series 55 requirement because NASD Rule 1032(f) applies only to transactions in equity, preferred, or convertible debt securities. However, if the components are separated, the trader who sells the warrant would be required to register as an equity trader if the warrants trade on Nasdaq or the over-the-counter market.

Miscellaneous

Q 33. Are a member's "buy side" traders who act solely on behalf of advisory accounts under management by the member included in the definition of "equity trader"?

- A. Yes. NASD Rule 1032(f) only exempts traders whose activities are conducted on behalf of an affiliated investment company that is registered under the Investment Company Act of 1940. This exemption does not apply to traders for advisory accounts managed by a member.

Q 34. A member firm runs a day-trading operation where customers can execute their own Nasdaq trades directly with a specific market maker. Would the supervisor at this firm be required to pass the Series 55 examination?

- A. Yes. Member firms that provide their customers with the ability to execute their trades through a Nasdaq execution service must ensure that such trades comply with SEC and NASD rules. The member is responsible for honoring all executions that

occur and for effectively monitoring and supervising the entry of such orders. Therefore, the supervisors at such firms must satisfy all applicable NASD qualification and examination requirements, including the requirements of NASD Rule 1032(f).

Q 35. The traders at a broker/dealer act as broker's brokers. They do not conduct business with public investors. They only transact business with other brokers to find contra parties for convertible debt transactions. Are they required to register as equity traders?

A. Yes. They are committing their firm's capital when they find the contra party with which the trade can be done. They are "engaged in proprietary trading."

Q 36. The manager of a broker/dealer's securities lending desk is responsible for checking the availability and rates of securities the broker/dealer needs to borrow to facilitate its trading strategies by contacting securities lending desks where the broker/dealer maintains prime broker accounts. Is the manager required to register as an equity trader?

A. No. The manager is borrowing the securities, not buying or selling them.

Q 37. Does NASD Rule 1032(f) contain any exemptions for firms that do a limited amount of business in Nasdaq and or over-the-counter equity securities?

A. No. Member firms must comply with the requirements of this Rule regardless of the volume of their business.

Q 38. Are listed stock traders who sometimes execute transactions in 19c-3 securities in the Nasdaq market included in the definition of "equity trader"?

A. Yes. The definition of "equity trader" in NASD Rule 1032(f) includes all traders who execute any transactions in equity, preferred, or convertible debt securities in the Nasdaq or OTC markets. No exemption is provided to traders whose primary trading activities take place on a securities exchange and who only occasionally execute transactions in Nasdaq or OTC.

Q 39. Are institutional salespersons who report trades executed by their firm's traders for the salespersons' customers included in the definition of "equity trader"?

A. No. The mere reporting of trades does not bring institutional salespersons within the scope of the Rule. If, however, institutional salespersons effect transactions on behalf of their institutional customers in the Nasdaq or OTC markets, then they are acting as traders and must qualify through the Series 55 examination.

Questions regarding the equity trader qualification requirements and the Series 55 examination, may be directed to one of the following persons in NASD Regulation's Testing and Continuing Education Department: Carole B. Hartzog, Lead Qualifications Analyst, at (301) 590-6696; Elaine P. Warren, Senior Qualifications Analyst, at (301) 590-6135; or Eva E. Cichy, Qualifications Analyst, at (301) 208-2789.

Qualifications Update

The implementation of Web CRD will result in changes to the NASD qualification programs and procedures. Below is a brief description of these changes.

Series 8 Replaced By Series 9 And Series 10

Since it became effective in 1980, the General Securities Sales Supervisor Examination (Series 8) has been administered in two parts with 100 questions each, and is graded on the basis of two group scores. A candidate must receive at least a 70 percent score in Options (the Options Group) and at least 70 percent in Part 2 plus Municipal Securities (the General Group) to receive a passing grade on the Series 8.

Effective with the rollout of Web CRD, the Series 8 will be converted into two separate

examinations; Series 9 will be the Options Group and Series 10 will be the General Group. A candidate will be required to pass both exams to qualify as a General Securities Sales Supervisor or Branch Office Manager. Each passed exam will remain valid for a period of two years. Below is the subject matter covered on the Series 9 and Series 10.

To register a candidate on Web CRD as a General Securities Sales Supervisor, the position(s) SU and/or BM must be requested. Valid windows for both the Series 9 and Series 10 will be opened. The score for each test will be posted on Web CRD and upon passing both, the candidate's SU and/or BM position(s) will be approved. A candidate who fails either examination will be able to reschedule only the failed exam by requesting either the Series 9 or Series 10.

Exam	Topic	Number of Questions	Testing Time	Exam Fee
Series 9	Regulation of Options	55	1 1/2 Hrs.	\$50
Series 10	Municipal Securities Regulation	145	4 Hrs.	\$60
	Sales Supervision			
	Account Supervision			
	Compliance, Recordkeeping, and Financial Responsibility			
	Regulations Affecting the Operation of Securities Markets			

120-Day Exam Windows

Since the automation of the NASD examination programs in 1979, enrollment windows have been valid for 90 days for all examinations with the exception of the Series 6 that had a 120-day window. Effective with the implementation of Web CRD, all exam windows will be valid for 120 days. Note that this change will not affect the waiting period between failed attempts.

No “Exam Only” Requests

On an initial examination request, Web CRD will capture the position code for the registra-

tion category being opened. A member will not be able to schedule an examination only. For example, to register a new candidate as a general securities representative, the request for the GS position will trigger the Series 7 window to open. However, in the Web CRD environment, when requesting a re-exam, an exam series number will be required.

The following persons in NASD Regulation’s Testing and Continuing Education Department may be contacted for additional information about qualifications and testing: Eva Cichy at (301) 208-2789; Carole Hartzog at (301) 590-6696; and Elaine Warren at (301) 590-6135.

Continuing Education Open Meeting In Chicago

The Securities Industry/Regulatory Council on Continuing Education (Council) will hold its next open meeting for industry firms in Chicago on Thursday, October 14, from 3:00 p.m. to 5:30 p.m. Firms located in the Chicago area will receive personal invitations to the open meeting sometime in September.

The meeting in October will be the latest in a series of open meetings held by the Council. The particular goal of this meeting will be to obtain input from firms on topics such as:

- ❖ Preparing the Annual Needs Analysis and Written Training Plan.
- ❖ Creating a training program for supervisors.
- ❖ Tracking and documenting Firm Element compliance.

- ❖ Training ideas and resources.
- ❖ Undertaking the Firm Element Needs Analysis.
- ❖ Writing the Training Plan.
- ❖ Documenting Firm Element implementation.
- ❖ Firm Element training materials used.
- ❖ How firms are using any Firm Element resources available from vendors or SROs.

The meeting will be comprised of a series of roundtable discussions facilitated by members of the Firm Element Committee of the Council at which firms can share their experiences and challenges in complying with the Firm Element. Results of the discussions will then be shared with all in attendance. The Firm

Element Committee will use the input to help all firms comply with the Continuing Education Rules through Council publications or other media.

Questions about the Continuing Education Open Forum or NASD Regulation's Continuing Education Program may be directed to John Linnehan, Continuing Education, NASD Regulation, Inc., at (301) 208-2932, or Daniel M. Sibears, Member Regulation, NASD Regulation, Inc., (202) 728-8221.

Testing Update

Excellence In Service Award For Sylvan Centers

NASD Regulation has established a Sylvan Technology Center (STC) Excellence in Service Award Program in 1999 for those

STCs that consistently achieve excellence in the areas of customer service and performance.

The awards are made in April, July, October, and January for the previous calendar quarter beginning in April 1999.

The Excellence in Service Award winners for the second quarter are:

★ **Consecutive Quarter Winners**

- | | | |
|--------------------------------|--------------------|--------------------|
| ★ Sacramento (Fair Oaks), CA | Spokane, WA | Puyallup, WA |
| ★ Franklin, TN | La Mesa, CA | Anaheim Hills, CA |
| ★ Albuquerque, NM | Jacksonville FL | Temple Terrace, FL |
| ★ Dothan, AL | Woodbury, MN | Duluth, MN |
| ★ Pittsburgh (North Hills), PA | Oklahoma City, OK | Littleton, CO |
| ★ Helena, MT | Cuyahoga Falls, OH | Charlotte, NC |
| ★ Fox Point, WI | Troy, MI | East Brunswick, NJ |
| ★ Orlando, FL | Watertown, NY | Lexington, MA |
| ★ Phoenix, AZ | St. Louis, MO | Chicago, IL |
| ★ Memphis, TN | Whitehall, NY | San Francisco, CA |
| ★ Indianapolis, IN | Union, NJ | Richmond, BC, CN |
| ★ Hamden, CT | Glendale, CA | |
| ★ Melville, NY | | |

Appointment Scheduling At Local Sylvan Centers

At a recent meeting with members of the Sylvan Franchise Owners Association, the topic of scheduling appointments at local centers was discussed. Two important facts emerged from the discussion:

1. *Scheduling appointments at the local center can provide for more flexibility in appointment times. Local center staff has closer control of the appointment scheduling software to better serve candidate needs. They also have the authority to extend a center's hours to accommodate more appointments.*
2. *Local center staff are able and willing to schedule group appointments. In order to schedule a group appointment at a local level, two conditions must be met:*
 - ☛ The group is limited to a maximum of 20 candidates.
 - ☛ Candidate names and Social Security numbers must be provided at the time of scheduling. The center staff cannot block spaces without the candidate information.

Note: Group scheduling services will, of course, also continue to be provided by NASDR's Field Support Services (FSS) team. FSS can be reached at (800) 999-6647. The Sylvan franchise owners are committed to providing NASD members, and their candidates, with the best service possible. The franchise owners encourage us to make use of the local services available.

Attention Detroit Area Candidates

An alternative to testing at the Troy or Livonia centers in Michigan is Windsor, Ontario, Canada. Located just across the U.S./Canadian border, the Windsor testing location is convenient for Detroit-area candidates. Visit the Test Center Locations Web Page for the address and phone number for the Windsor, Ontario location.

Testing And Continuing Education - Year 2000

NASD Regulation and Sylvan have taken all necessary steps to ensure that their respective delivery systems are Y2K compliant. We believe, therefore, that testing and continuing education delivery will proceed seamlessly into 2000. There may be localized problems, such as power outages, but they are not expected to be widespread.

Security Procedures And Storage Of Personal Belongings At Sylvan Testing Centers

Sylvan Technology Centers place a great deal of emphasis on the security of the client's test, and security in the testing environment.

Upon arrival at the testing center, candidates must read, thumbprint, and sign a Rules of Conduct Form. These forms are returned to NASD Regulation at the end of each month to become part of a permanent file. Candidates who refuse to sign and thumbprint the Rules of Conduct Form will not be permitted to test.

After the candidate returns the Rules of Conduct Form to the Test Center Administrator, one form of official, government-issued, valid identification bearing a photo (or a physical description of the candidate in states without photograph driver's licenses), and a signature must be presented. The name on the identification should match the name of the candidate as he or she is registered with the NASD. Candidates with recent, legal name changes will need to provide official, original documentation of the change (for example, an original marriage license).

Before entering the testing room, candidates will be asked to place all personal belongings, including programmable digital watches, and purses/wallets in a locker. Non-programmable, non-financial calculators are permitted in the testing room. The candidate will maintain the key to the locker until the testing or continuing education session has been completed. Candidates should keep in mind that the size of the lockers in most centers is not large. Briefcases and/or portable computer equipment may not fit in the lockers provided. Larger items, and those items of value that the candidate may not feel comfortable placing in a locker, should not be brought to the testing center.

Audio and video recording equipment is located in the testing room. Sylvan Technology Centers archive the tapes to be reviewed by Sylvan corporate personnel, and forwarded to NASD Regulation if inappropriate behavior is suspected.

ADA Testing: Re-Schedules And The Cancellation Of Accommodations

When special testing accommodations have been approved by NASD Regulation, the Sylvan Special Accommodations Department coordinates the necessary resources to provide appropriate accommodations for the candidate.

If the candidate wishes to re-schedule or cancel an appointment, the firm's Registration Department must contact the NASD Special Accommodations representative at (800) 999-6647, Option 3, to ensure that the approved accommodations will be re-arranged for the new testing or continuing education session date.

The process, as described in the paragraph above, must be re-initiated by the firm's Registration Department to get a new appointment scheduled. Do not use the Sylvan Telephony System, local Sylvan Technology Center, or the Sylvan Call Center for this purpose.

Any questions regarding special accommodations for candidates should be directed to the NASD Regulation Special Accommodations Coordinator at (800) 999-6647, Option 3.

Sylvan Appointment Scheduling During November And December 1999

Due to an anticipated increase in volume, demand for appointments at Sylvan Testing Centers is expected to peak during the months

of November and December 1999. Sylvan is taking a proactive approach to ensure that centers have the capacity to handle the increased volume of business. However, NASD Regulation encourages candidates who will require continuing education and testing appointments during the

November/December timeframe to schedule appointments as far in advance as possible.

For more information, contact Linda Christensen, Member Regulation, at (610) 627-0377.

Certification Testing & Continuing Education Delivery Location List

Current as of September 1999

Alabama

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

Alaska

Anchorage	907-563-6601
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Arizona

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

Arkansas

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

California

Anaheim	714-637-7894
Atascadero	805-462-8308
Brea	714-255-1141
Culver City (5601 W. Slausen)	310-337-6696
Culver City (5731 W. Slausen)	310-337-6696
Diamond Bar	909-861-1146
Fremont	510-745-8192
Gardena	310-329-1844
Glendale	818-545-7383
Irvine	949-552-3487
LaJolla	619-454-4384
Piedmont	510-428-4123

Rancho Cucamonga	909-944-9763
Redlands	909-792-2145
Riverside	909-353-8600
Sacramento (Fair Oaks)	916-961-7323
San Diego	619-481-3648
San Francisco (Market St.)	415-882-1212
San Francisco (W. Portal St.)	415-681-3769
San Jose	408-257-7699
Santa Rosa	707-528-6000
Walnut Creek	925-934-3099
Westlake Village	805-495-6367

Canada

Calgary	403-777-1365
Halifax	902-422-7323
Montreal	514-876-8818
Richmond BC	604-231-1966
Whitby	905-404-1818
Windsor	519-974-8747
Winnipeg	204-988-5050

Colorado

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

Connecticut

Glastonbury	860-659-0400
Hamden	203-287-9677

Mississippi

Jackson 601-366-6400

Missouri

Ballwin 314-394-7742
 Creve Coeur 314-997-1555
 Gladstone 816-468-7901
 Springfield 417-882-0740
 St. Joseph 816-671-9900

Montana

Billings 406-259-1659
 Helena 406-443-9205

Nebraska

Columbus 402-564-2862
 Omaha 402-334-9449

Nevada

Las Vegas 702-876-4090
 Reno 702-829-2700

New Hampshire

Concord 603-228-2911
 Portsmouth 603-433-6800

New Jersey

East Brunswick 732-390-4040
 Fairlawn 201-475-1670
 Hamilton Township 609-631-9794
 Union 908-964-2862

New Mexico

Albuquerque 505-296-0609

New York

Albany 518-869-6119
 Amherst/Buffalo 716-565-0570
 Brooklyn Heights 718-222-1277
 East Syracuse 315-433-9038
 Garden City 516-746-7367
 Ithaca 607-277-4821
 Melville 516-845-9063
 NYC Manhattan Area 212-760-1137
 NYC Midtown Area 212-809-5509
 NYC Wall Street Area 212-809-5509
 Rego Park 718-997-6356
 Rochester 716-385-4810
 Staten Island 718-980-3079
 Vestal 607-798-1715
 Wappingers Falls 914-298-8378
 Watertown 315-788-2588
 White Plains 914-289-0437

North Carolina

Asheville 828-253-4224
 Charlotte 704-364-7758
 Gastonia 704-853-2038
 Greensboro 336-288-1311
 Greenville 252-756-0342
 Raleigh 919-846-1933

North Dakota

Bismarck 701-224-1171
 Fargo 701-293-1234

Ohio

Cincinnati 513-671-7030
 Columbus (Henderson Rd.) 402-564-2862
 Cuyahoga Falls 330-929-6554
 Dayton 937-435-8417
 Hilliard 614-529-4232
 Lima 419-331-7323
 Mentor 440-255-0055
 New Berlin WI 414-796-0808
 Niles 330-652-1886
 Reynoldsburg 614-864-4090
 Strongsville 440-238-0530

Oklahoma

Oklahoma City 405-947-6248
 Tulsa 918-249-0820

Oregon

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

Pennsylvania

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

Puerto Rico

Hato Rey 787-753-6394

Rhode Island

Cranston 401-942-8552

South Carolina

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

South Dakota

Sioux Falls 605-338-1446

Tennessee

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

Texas

Abilene 915-698-7858
Amarillo 806-359-1037
Arlington 817-572-6690
Austin 512-441-1978
Beaumont 409-899-9798
Corpus Cristi 512-993-3793
Dallas 972-385-1181
El Paso 915-587-7323
Houston (Saturn Ln) 281-488-6144
Lubbock 806-785-4400
Mesquite 972-686-3310
Midland 915-520-9418
San Antonio 210-494-7263
Sugar Land 281-491-9200
Waco 254-772-2467

Utah

Orem 801-226-5544
Salt Lake City 801-581-8733

Vermont

Williston 802-872-0845

Virgin Islands

St. Croix 340-773-5751

Virginia

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

Washington

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

West Virginia

South Charleston 304-744-4144

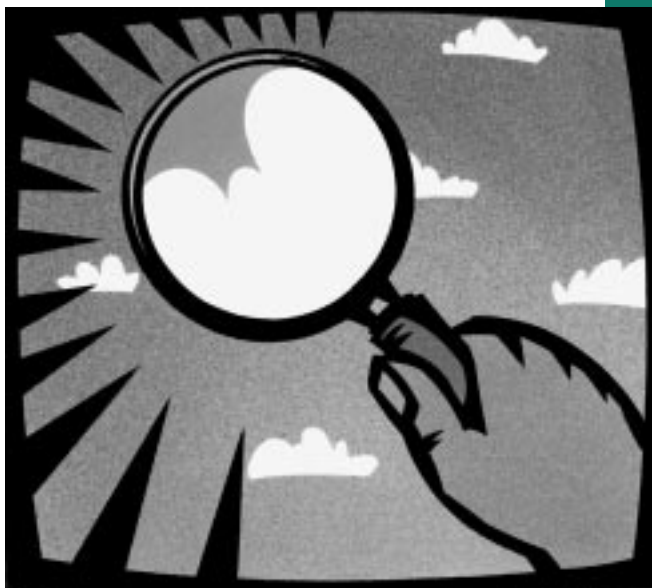
Wisconsin

Fox Point 414-540-2223
New Berlin 414-796-0836
Racine 414-554-9009

Wyoming

Casper 307-235-0070

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*Pricing for New York searches may be higher because of state court fees.

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Member
Benefits

Why should your firm conduct employment background searches?

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- Companies lose more than \$15 billion a year to employee theft.
- On average, employees embezzle more than \$125,000.
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For just \$42* and within 1 to 4 days, you can verify:

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- Social Security Number

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800-281-1250

To take advantage of these savings, be sure to mention your NASD membership.



NASD DISCIPLINARY ACTIONS

NASD Disciplinary Actions

In July and August 1999, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

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

July Actions

Gregory Paul Maggipinto (CRD #1042789, Registered Representative, San Jose, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Maggipinto effected securities transactions in the account of a public customer without the prior knowledge or consent of the customer.

Maggipinto has appealed this action to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01970025)

August Actions

Ivan Douglas Bauer (CRD #1715502, Registered Representative, Penryn, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$52,900, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bauer consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notification to, and obtaining approval from, his member firm. (NASD Case #C01980021)

Patrick Albert Beadle (CRD #2707932, Registered Representative, Oakland, California) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Beadle failed to respond to NASD requests for information. (NASD Case #C01980019)

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

Leonard John Ialeggio (CRD #254515, Registered Representative, Danville, California) was censured, fined \$15,000, and ordered to requalify by exam as a general securities representative. The U.S. Court of Appeals for the Ninth Circuit denied Ialeggio's petition for review of a May 1998 SEC decision and affirmed the sanctions imposed. The sanctions were based on findings that Ialeggio submitted expense vouchers to his member firm's parent company and received payment for travel expenses totaling \$8,502.50, to which he was not entitled. Ialeggio also induced the company to pay \$35,000 for his country club dues, a payment to which he was not entitled. (NASD Case #C01930044)

Gene Alex Jung (CRD #2807594, Registered Representative, San Francisco, California) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jung submitted a Form U-4 in which he failed to disclose his criminal convictions. (NASD Case #C01990001)

Thomas F. White & Co., Incorporated (CRD #7661, San Francisco, California), Robert Thomson Angle (CRD #811495, Registered Principal, San Francisco, California), and Peter William Shea (CRD #420778, Registered Principal, Alameda, California) submitted an Offer of Settlement pursuant to which they were censured and fined \$20,000, jointly and severally, and the firm and Angle were separately fined \$30,000, 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 Angle and Shea, failed to establish and implement adequate written supervisory procedures in order to detect and prevent unsuitable transactions with respect to the accounts of public customers and to supervise an individual's activities in connection with those accounts. The findings also stated that the firm, acting through Angle, entered into settlement agreements with customers that contained confidentiality clauses which prohibited or discouraged those customers from discussing the settlements with or disclosing the underlying facts to the NASD and other regulators. (NASD Case #C01980016)

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

July Actions

Richard Vu Nguyen (CRD #2488905, Registered Representative, Fullerton, California) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$32,499 in restitution to public customers. The sanctions were based on findings that Nguyen executed transactions through a member firm while not registered with the NASD. Nguyen also failed to respond completely to NASD requests for information and failed to appear for an interview with the NASD staff. (NASD Case #C02980028)

Fernando Patricio Rodriguez (CRD #1587712, Registered Principal, Long Beach, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$14,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rodriguez consented to the sanctions and to the entry of findings that a public customer brought cash payments totaling \$800 to Rodriguez for the purpose of paying Individual Retirement Account fixed annuity premiums. The NASD determined that, instead, Rodriguez converted the \$800 to his personal use. (NASD Case #C02990032)

Frederick Douglass Smith (CRD #2167780, Registered Representative, Los Angeles, California) was censured, fined \$151,431.35, barred from association with any NASD member in any capacity, and ordered to pay \$14,286.27, plus interest, in restitution to public customers. The sanctions were based on findings that Smith received funds totaling \$14,286.27 from public customers for investment purposes, failed to invest the customers' funds, and instead, converted the funds to his personal use and benefit. (NASD Case #C02980070)

Talley King & Co., Inc. (CRD #31043, Irvine, California), Paul Douglas King (CRD #1794109, Registered Principal, Irvine, California), and Richard William Talley, (CRD #442208, Registered Principal, Santa Barbara, California) submitted an Offer of Settlement pursuant to which they were censured and fined \$90,000, jointly and severally, and suspended from participating in direct participation program offers and/or sales for 30 days. In addition, the firm was required to offer rescission to certain investors and provide proof of the rescission offers to the NASD, and to retain an independent consultant to review the firm's procedures and policies, recommend appropriate corrective measures, and submit a final report setting forth all procedures adopted and implemented to ensure compliance with the NASD's rules. 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 King, effected securities transactions and induced the purchase and sale of securities when the firm failed to maintain sufficient net capital. Also the firm, acting under the direction and control of King and Talley, offered and sold investments in a contingent offering of limited partnership interests, failed to deposit and retain customer funds in

separate escrow accounts until the minimum number of units had been sold, and offered and sold securities to public customers for which a registration statement was not filed and in effect with the SEC and for which no exemptions were applicable. The findings also stated that the firm, acting under the direction and control of King, failed to maintain and preserve required records and failed to establish written supervisory procedures reasonably designed to carry out the firm's business, specifically its direct participation programs. (NASD Case #C02980071)

August Actions

Kenneth Dean Gilkison (CRD #1243962, Registered Representative, Simi Valley, California) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gilkison misappropriated funds totaling over \$5,000 from his member firm's budget accounting and reporting system accounts for his personal use by making numerous automated teller machine cash withdrawals to pay personal expenses and, without authorization, paid himself fees for "office management." Gilkison also cashed a check that he received from an attorney who sublet part of his firm's office space, which should have been deposited in the firm's account, and used at least a portion of the funds to pay personal expenses. (NASD Case #C02980074)

La Jolla Capital Corporation n.k.a. Pacific Cortez Securities Incorporated (CRD #24341, San Diego, California) and Harold Bailey Gallison (CRD #1040211, Registered Principal, Las Vegas, Nevada). The firm and Gallison were censured, barred from engaging in penny stock transactions in any capacity, fined \$297,380, jointly and severally, fined \$50,000 each individually, and required to present proof of restitution or rescission to their damaged customers, jointly and severally. Gallison was also barred in all principal and supervisory capacities, and suspended in all capacities for 30 days. The sanctions were based on findings that the firm and Gallison violated the SEC's penny stock rules by failing to make adequate disclosure to their customers who purchased penny stocks. In addition, the firm and Gallison failed to establish, maintain, and enforce written procedures reasonably designed to detect and prevent violations of the penny stock rules. (NASD Case #C02960001)

Brian Chulyoung Lee (CRD #2677650, Registered Representative, Chino Hills, California) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lee failed to respond to NASD requests for information. (NASD Case #C02980080)

Michael Anthony Dupre Lucarelli (CRD #2253171, Registered Representative, Los Angeles, California) was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lucarelli filed a false and

misleading Form U-4 with the NASD that failed to disclose a customer complaint charging him and the firm with which he was then employed with fraudulently obtaining \$225,000 to open a securities account and with conversion of that sum. (NASD Case #C02980055)

Machelle Rene May (CRD #2506083, Registered Representative, San Diego, California) was censured, fined \$210,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to her member firm in the amount of \$5,000. The sanctions were based on findings that May made unauthorized electronic transfers totaling \$42,208.67 from her firm's payroll account to her own bank account, failed to enter the transfers in her firm's records, and converted the funds to her personal use. (NASD Case #C02990003)

Socorro Maria Mendez (CRD #2858757, Registered Representative, Santa Ana, California) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mendez failed to respond completely and timely to an NASD request for documents and to appear for testimony. (NASD Case #C02980094)

Victoria Jean Williams (CRD #713566, Registered Representative, Sunset Beach, California) was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Williams solicited a securities investor of \$1,000 from a public customer, provided the customer with an "Explanation of Investment" form as a receipt, and misled the customer into believing that this was an investment in a securities fund. Instead, Williams improperly caused the customer's funds to be deposited into the account of her landlord without the customer's knowledge or consent and repaid the customer at a later date. (NASD Case #C02980053)

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

July Actions

Anthony Joseph Barbera, Jr. (CRD #2404631, Registered Representative, Ocean Township, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Barbera consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the customers' prior authorization, and misrepresented to a customer that he would not pay sales charges on transactions in his account. The findings also stated that Barbera made misstatements to the NASD in connection with an investigation. (NASD Case #C3A970019)

Milton Royal Barnes III (CRD #1427439, Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for nine months, and required to pay restitution in the amount of \$115,000 to public customers. Without admitting

or denying the allegations, Barnes consented to the sanctions and to the entry of findings that he effected transactions in the account of a public customer that were excessive in size and frequency, made recommendations to public customers that were unsuitable for them in view of their financial situation and needs, and offered to settle with the customers financially without advising his member firm of that offer. (NASD Case #C3A960030)

Black & Company, Inc. (CRD #95, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$32,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, while acting in the capacity of lead manager in an initial public offering (IPO), and acting through various registered representatives, obtained checks from public customers on deposit for the purchase of shares of common stock in the IPO prior to the effective date of registration of the stock. The findings also stated that the firm reflected the time of execution on order tickets as a time later than the time the transactions were reported to Nasdaq®, and executed transactions for its own inventory account at the same price or at a price better than pending customer limit orders. In addition, the NASD determined that the firm failed to reflect immediately customer limit orders in its market-making quotations. (NASD Case #C3B990015)

Emanuele Robert Cardaci (CRD #2592992, Registered Principal, Farmingville, New York) submitted an Offer of Settlement 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, Cardaci consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material information to public customers in connection with his solicitation of customers to purchase securities. The findings also stated that Cardaci, in connection with his solicitation of customers to purchase securities, predicted the future prices of securities without having a reasonable basis, effected transactions in public customer accounts without the customer's prior authorization, and failed to execute a public customer's sell order. Furthermore, the NASD found that Cardaci engaged in a series of securities transactions that were not economically beneficial to the customer but were economically beneficial to Cardaci. (NASD Case #C3A990013)

Todd Alan Endicott (CRD #2561038, Registered Representative, Golden, Colorado) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Endicott paid approximately \$20,000 to an employee of two affiliated insurance companies as a reward for the referral of her employers' securities business to him. (NASD Case #C3A980060)

Ronald Ira Gross (CRD #860452, Registered Principal, Paradise Valley, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 45 days, and required to requalify as a Series 6 investment company

and variable contracts products representative. Without admitting or denying the allegations, Gross consented to the sanctions and to the entry of findings that he engaged in private securities transactions and business activities outside the scope of his relationship with his member firm without giving his firm prior written notice. (NASD Case #C3A990032)

Roy Wayne Helgeson (CRD #2662543, Registered Representative, St. Helens, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$8,000, and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Helgeson consented to the described sanctions and to the entry of findings that he signed and submitted a Form U-4 that contained a false answer in that he did not disclose a bankruptcy petition, and failed to file amendments to his Form U-4 to disclose an investigation by the state of Oregon, a civil action that alleged violations of federal and state securities laws, and the bankruptcy petition. (NASD Case #C3B990016)

Christopher John Kelley (CRD #2267149, Associated Person, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he completed and signed a Form U-4 and failed to answer truthfully all of the questions asked of him. According to the findings, when asked if he had ever been arrested or charged with a felony, Kelley answered in the negative when, in fact, he was arrested, charged, and pleaded guilty to two felonies. (NASD Case #C3A990028)

Alan Edward Koeneman (CRD #273104, Registered Representative, Tucson, Arizona) 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, Koeneman consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. The findings also stated that Koeneman engaged in business activities outside the scope of his employment with a member firm without providing prompt written notice of these activities to his firm. (NASD Case #C3A990030)

Donald Lewis Turney (CRD #2409226, Registered Representative, Babylon Village, New York) was censured, fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$64,849.50, plus interest, in restitution to a public customer. The sanctions were based on findings that Turney solicited members of the public to become customers and to purchase securities by making material misrepresentations and by omitting to disclose material information about the securities. Turney also projected the future price of a security to a customer without having a reasonable basis, and executed unauthorized transactions in the accounts of public customers. Turney also failed to

follow a customer's instructions to sell stock. (NASD Case #C3A970071)

Michael Allen Usher (CRD #734581, Registered Principal, Greeley, Colorado) was censured, fined \$25,000, barred from association with any NASD member as a general securities principal, and ordered to disgorge \$3,914.70, plus interest, in commissions. The sanctions were based on findings that Usher conducted a securities business while his and his broker/dealer's registrations were suspended.

Usher has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A980069)

Louis Alberto Williams, Jr. (CRD #2120870, Registered Representative, Tucson, Arizona) 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. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without written authorization and acceptance of the accounts as discretionary. The findings also stated that Williams entered erroneous information on order tickets with respect to certain transactions in which he exercised discretion without written authority. (NASD Case #C3A970028)

August Actions

Robert Gary Amos (CRD #1024719, Registered Representative, Selah, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$15,000. Without admitting or denying the allegations, Amos consented to the described sanctions and to the entry of findings that he failed to provide prompt written notice to either of his member firms that he would be accepting compensation for the sale of viatical settlements, which was outside the scope of his relationship with his employers. (NASD Case #C3B990024)

Bradly J. Denham (CRD #2727078, Registered Representative, Billings, Montana) 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, Denham consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. (NASD Case #C3B990023)

John Steven DeSane (CRD #2653943, Registered Principal, Mt. Sinai, New York) was censured, fined \$175,880, barred from association with any NASD member in any capacity, and ordered to pay restitution to public customers in the total amount of \$57,748.25, plus interest. The sanctions were based on findings that DeSane made material misrepresentations and omissions in order to

induce public customers to purchase securities and made fraudulent price predictions in connection with his recommendations to, and solicitation of, customers to purchase securities. In addition, DeSane effected transactions in the account of a public customer without the prior authorization of the customer and failed to follow customer instructions to execute a sell order. (NASD Case #C3A980071)

David Clark Gossling (CRD #2545451, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$23,600, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Gossling consented to the described sanctions and to the entry of findings that he engaged in an outside business activity for compensation without providing his member firm with prompt written notice. (NASD Case #C3A990034)

Matthew Christopher Hawley (CRD #2560308, Registered Principal, Sleepy Hollow, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$80,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to pay \$316,001.00 in restitution to public customers. Without admitting or denying the allegations, Hawley consented to the described sanctions and to the entry of findings that he made material misrepresentations and failed to disclose material facts to public customers in order to solicit them to purchase securities. The findings also stated that Hawley made fraudulent price predictions to public customers in connection with his recommendations and solicitations to purchase securities, and effected transactions in the accounts of public customers without the prior authorization of the customers. Hawley also failed to execute a sell order as instructed by a public customer. (NASD Case #C3A990001)

John Anthony Massaro (CRD #2629695, Registered Representative, Smithtown, New York) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that Massaro made material misrepresentations, failed to disclose material facts, made fraudulent price predictions to public customers in connection with his solicitation to purchase securities, and effected transactions in the accounts of public customers without the prior authorization of the customers. The findings also stated that Massaro failed to execute sell orders as instructed by public customers and failed to respond to NASD requests for information. (NASD Case #C3A980076)

Edward Alloyisus McGilly, Jr. (CRD #2339846, Registered Principal, Saint James, New York) was censured, fined \$125,000, barred from association with any NASD member in any capacity, and ordered to pay \$113,721.25 in restitution to public customers. The sanctions were based on findings that McGilly made material misrepresentations and omitted to disclose material information in connection with the purchase and sale of securities. McGilly also provided public customers with price predictions without having a reasonable basis for making such projections, and effected transactions in the accounts of public customers without the customers' prior authorization and consent. (NASD Case #C3A980042)

Scott Evans McVicker (CRD #2275303, Registered Representative, Littleton, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, McVicker consented to the described sanctions and to the entry of findings that he received funds from a public customer intended for the purchase of a variable annuity, failed to forward these funds to the member firm with which he was then registered, and instead, forwarded the annuity application and the funds to an individual associated with the broker/dealer with which he had made application to become registered. The findings also stated that McVicker participated in a private securities transaction without providing his member firm with prior written notice.

McVicker's suspension began July 19, 1999, and will conclude at the close of business on August 18, 1999. (NASD Case #C3A990041)

National Securities Corporation (CRD #7569, Seattle, Washington) and Steven Alan Rothstein (CRD #818658, Registered Principal, Wilmette, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$51,000, and Rothstein was censured and fined \$30,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm sold shares of an initial public offering that traded at a premium in the secondary market (a "hot issue") to investment partnerships and corporations and other like accounts without obtaining information on all persons having a beneficial interest in the accounts or obtaining assurances of counsel or accountant ensuring no restricted individuals had a beneficial interest in the accounts. In addition, the NASD found that the firm, acting through Rothstein, granted selling concessions, discounts, or other allowances to public customers involved in initial public offerings and permitted certain customers to obtain prices below the public offering price. The NASD also found that the firm reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting, failed to accept transactions within 20 minutes of the trade being reported to ACT, and failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations. (NASD Case #C3B990020)

Mark Desean Odom (CRD #2194790, Registered Representative, Redmond, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and required to pay restitution to public customers in the total amount of \$5,685. Without admitting or denying the allegations, Odom consented to the described sanctions and to the entry of findings that he recommended purchases and sales in the joint account of public customers without having reasonable grounds for believing such transactions were suitable for the customers in light of the facts disclosed by them as to their other security holdings, and their financial situation, objectives, and needs, and in light of the nature of the equities recommended, and the

concentration of specific equities in the account created by Odom's recommendations. (NASD Case #C3B990018)

Eric Eugene Scherrer (CRD #2652030, Associated Person, Denver, Colorado) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Scherrer filed a Form U-4 with the NASD that failed to disclose that he had been charged with criminal felonies. (NASD Case #C3A990005)

James Thomas Walsh (CRD #2493819, Registered Representative, Commack, New York) was censured, fined \$150,000, barred from association with any NASD member in any capacity, and ordered to pay \$50,875, plus interest, in restitution to public customers. The sanctions were based on findings that Walsh made material misrepresentations and failed to disclose material facts to public customers in order to induce them to purchase securities. In addition, Walsh made fraudulent price predictions to the customers in connection with his recommendations and effected a transaction in a public customer's account without the prior authorization of the customer. (NASD Case #C3A980044)

Heath Robert Youell (CRD #474764, Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$300,000, barred from association with any NASD member in any capacity, and ordered to pay \$54,959 in restitution to a public customer. Without admitting or denying the allegations, Youell consented to the described sanctions and to the entry of findings that he deposited \$54,959 of a public customer's funds into a bank account under his control. Rather than purchase mutual funds for the customer as instructed, the NASD found that Youell used the funds for his own benefit without the authorization of the customer. (NASD Case #C3B990025)

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

July Actions

Donna Marie Andres (CRD #1892251, Registered Representative, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which she was censured, fined \$17,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Andres received checks totaling \$1,500 payable to her member firm, and without the knowledge or consent of her firm, endorsed the checks, deposited them into a bank account she controlled, and converted the funds to her own use and benefit. (NASD Case #C04990017)

John Arthur Eastin (CRD #2682834, Registered Representative, Joplin, Missouri) 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, Eastin consented to the described sanctions and to the entry of findings that he received a \$2,000 cashier's check from a public customer

to purchase securities, failed to invest the monies as instructed, and without the knowledge or consent of the customer, converted the funds to his own use and benefit. The findings also stated that Eastin received an \$8,000 check from the customer, misused the funds in that he failed to make the investment as directed and retained the uncashed check until a later date, without the knowledge or consent of the customer. (NASD Case #C04990022)

Robert Courtney Temple II (CRD #2499499, Registered Representative, Salina, Kansas) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Temple failed to respond to NASD requests for information. (NASD Case #C04980074)

August Actions

Berthel Fisher & Company Financial Services, Inc. (CRD #13609, Cedar Rapids, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report written customer complaints received as required by the NASD, and failed to report specific disclosure events within 10 business days to the NASD. The findings also stated that the firm failed to file amended Forms U-4 and U-5 for the individuals subject to the complaints within 30 days of becoming aware of the facts or circumstances giving rise to a need for the amendments. (NASD Case #C04990026)

Dedric Hillery Gill, III (CRD #1935821, Registered Representative, Cedar Creek, Nebraska) 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 20 days, and ordered to pay restitution of \$36,150. Without admitting or denying the allegations, Gill consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing all forms of notice required by the NASD. (NASD Case #C04990028)

Patrick Kelton Roberts (CRD #2906143, Registered Representative, Van Buren, Arkansas) 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, Roberts consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04990025)

[District 5 - Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee](#)

July Actions

Alfred Robert Heiman (CRD #1962530, Registered Representative, Oklahoma City, Oklahoma) submitted an Offer of Settlement pursuant to which he was censured,

fined \$7,500, suspended from association with any NASD member in any capacity for three months, and ordered to pay disgorgement of \$31,606. Without admitting or denying the allegations, Heiman consented to the described sanctions and to the entry of findings that he was the recipient of stock in IPOs through accounts in which he had a beneficial interest and these securities later traded at a premium in the secondary market (hot issues). The findings also stated that Heiman opened securities accounts with other member firms, and prior to opening such accounts or placing initial orders, failed to notify his member firm in writing that he had established and maintained such accounts, and failed to inform the executing firms in writing of his association with a member firm. Heiman also failed to notify his member firm that he had established securities accounts with an investment adviser prior to the execution of the initial transactions in these accounts. (NASD Case #C05990006)

Frank James Hutton (CRD #2357906, Registered Representative, Brandon, Mississippi) was censured, fined \$757,500, barred from association with any NASD member in any capacity, and ordered to pay restitution in the amount of \$101,525.11. The sanctions were based on findings that Hutton sold stock out of the joint account of public customers, without the authorization of the customers, and forged their signatures on a check for almost the entire proceeds of the sale in the amount of \$29,971.70. The findings also stated that in order to conceal his conversion of these funds, Hutton caused the customers' address to be changed in his member firm's records so that they would not receive their account statement, prepared a fictitious account statement that failed to disclose the sale of the securities from their account, and mailed it to the customers. Furthermore, Hutton effected withdrawals totaling \$96,552.40 from the joint account of other public customers, converted the funds to his own use and benefit by forging the customers' signatures on checks, and maintaining possession of the funds, without the customers' knowledge or consent. Hutton also put through a false change of address for the customers in his firm's records and told the customers they would be receiving account statements only every six weeks. In addition, Hutton failed to respond to NASD requests for information. (NASD Case #C05980017)

Daniel Ray Kirkley (CRD #1167528, Registered Representative, Tuscaloosa, Alabama) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$155,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirkley consented to the described sanctions and to the entry of findings that he received \$11,000 from a public customer for the purpose of investing in mutual funds, failed and neglected to execute the purchases on the customer's behalf, and instead, converted the \$11,000 to his own use and benefit, without the customer's knowledge or consent. (NASD Case #C05990015)

Rene Reyes (CRD #2063715, Registered Representative, New Orleans, Louisiana) 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, Reyes consented to the described sanctions and to the entry of findings that he received a check for \$5,000 from a public customer to invest in IPOs, failed to invest these funds on the customer's behalf, and instead, converted the funds to his own use and benefit, without the customer's knowledge or consent. The findings also stated that Reyes failed to notify his member firm, in writing, that he had established and maintained securities accounts with other member firms, and failed to inform those firms of his association with a member firm. Reyes also failed to respond to NASD requests for information. (NASD Case #C05980007)

August Actions

Block Trading, Inc. (CRD #36666, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and expelled from NASD membership. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in securities business when its net capital was below the required minimum and, acting through certain of its representatives, distributed a private placement memorandum to investors that contained false and misleading financial information and provided false and misleading information to prospective investors of the firm. The findings also stated that the firm, acting through certain representatives, failed to prepare and maintain accurate books and records in that false and misleading entries were made to the firm's general ledger and false and inaccurate FOCUS Part II filings were made in connection with the entries to conceal the firm's negative net capital position. The findings also stated that the firm, acting through certain representatives responsible for accounting and financial reporting, failed and neglected to provide notification that its net capital was below the required minimum. (NASD Case #C05990031)

Cara Wagner Clarke (CRD #2871723, Registered Representative, Maysville, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$13,250, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Clarke consented to the described sanctions and to the entry of findings that she received \$750 from a public customer for the purpose of depositing \$100 in the customer's Roth Individual Retirement Account and \$650 in the customer's cash account. The NASD found that Clarke failed and neglected to deposit the \$650 in the cash account and, instead, deposited the amount in an account that she controlled, thereby converting the \$650 to her own use and benefit, without the customer's knowledge or consent. (NASD Case #C05990020)

Jeffrey Feridun Gencay (CRD #1601133, Registered Representative, Knoxville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$136,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gencay consented to the described sanctions and to the entry of findings that he received \$25,200 in checks from public

customers for the purpose of investing in securities, failed and neglected to execute, or promptly execute, the purchase of securities, and instead, deposited the checks into an account that he controlled, and retained the funds until a later date, thereby misappropriating \$25,200, without the knowledge or consent of the customers. (NASD Case #C05990028)

Ronald Ray Hutchinson (CRD #1206688, Registered Representative, Lawton, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Hutchinson consented to the described sanctions and to the entry of findings that he received a check in the amount of \$358.32 from a public customer as a premium payment on her insurance policies, misused the customer funds by failing and neglecting to timely remit the payment to his member firm, and instead, deposited the customer's check into his personal bank account, without the customer's knowledge or consent, and then submitted premium payments totaling \$353.01. (NASD Case #C05990027)

Johnson Rice & Company L.L.C. (CRD #19524, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$7,500 jointly and severally with an individual, and fined an additional \$18,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to require all covered employees to complete the Firm Element of the Continuing Education requirement; failed to conduct an annual compliance meeting; and failed to establish, maintain, and enforce proper supervisory procedures governing contingency offerings, ACT trade reporting, locked and crossed market procedures, and harassment of traders. The findings also stated that the firm failed to indicate on limit order tickets the order terms and conditions to reflect that they were "not held" orders, failed to designate trades as short sales by including the appropriate .S modifier, and failed to denote on the firm's books and records an affirmative determination that the subject securities could be borrowed. Furthermore, the NASD determined that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, failed to designate securities trades as late, and failed to report Nasdaq National Market® securities transactions accurately. The NASD also determined that the firm, in connection with a contingency offering, failed to establish a proper bank escrow account and continued to sell partnership interests after the offering termination date. (NASD Case #C05990022)

Sedgwick Investments, Inc. (CRD #35045, Memphis, Tennessee), Michael Joseph Reilly (CRD #2150716, Registered Principal, Spokane, Washington), Pattie Jane Robinson (CRD #2484162, Registered Representative, Memphis, Tennessee), and William Ellett Allen (CRD #2916388, Associated Person, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Reilly were censured and fined \$12,500, jointly and severally, and Reilly was suspended from association with any NASD member in any capacity for two weeks. Robinson and Allen were each censured, fined \$5,000, and suspended from

association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that while associated with the firm, Robinson was actively engaged in the management of the firm's securities business, prior to her becoming registered with the NASD in any principal capacity and engaged in the firm's securities business prior to becoming registered in any capacity with the NASD. The findings also stated that Allen was associated with the firm and was actively engaged in the management of the firm's securities business as a financial and operations principal prior to his becoming registered with the NASD in the appropriate capacity, and that the firm, acting through Reilly, its president, failed to ensure that all persons who were actively engaged in the firm's securities business, or in the management thereof, were properly registered with the NASD. In addition, the NASD determined that the firm failed to establish, maintain, and enforce supervisory procedures that would ensure the proper registration of persons actively engaged in the firm's securities business, or in the management thereof, and the firm, acting through Reilly, failed and neglected to complete a training needs analysis and to develop a written formal training plan concerning the Firm Element of the Continuing Education Program. (NASD Case #C05990025)

District 6 - Texas

July Actions

Terry Don Rader (CRD #369900, Registered Principal, 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 Rader failed to respond to NASD requests for information. (NASD Case #C06980015)

August Actions

Cari Diane King (CRD #2483508, 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 King failed to respond to NASD requests for information and documentation regarding funds inadvertently deposited by her employer into her personal account which she refused to return. (NASD Case #C06980026)

Samuel Jeffrey Rhoades (CRD #2277634, Registered Principal, Bellaire, Texas) submitted a Letter of Acceptance, Waiver, and Consent 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, Rhoades consented to the described sanctions and to the entry of findings he created fictitious monthly account statements relating to a public customer and then forwarded those fictitious monthly account statements to the customer. Rhoades also failed to respond to an NASD request to provide testimony. (NASD Case #C06990009)

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

July Actions

Darren Joseph Dietrich (CRD #1814017, Registered Representative, Plant City, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Dietrich consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without obtaining prior written authorization from the customer to exercise said discretion, or having the account accepted in writing as a discretionary account by his member firm. (NASD Case #C07990034)

Philip Sidney Gassman (CRD #1569242, Registered Representative, Miami, 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 10 business days. Without admitting or denying the allegations, Gassman consented to the described sanctions and to the entry of findings that he exercised discretionary power in a public customer's account without obtaining prior written authorization from the customer, and without having the account accepted as a discretionary account by his member firm. (NASD Case #C07990028)

Wayne Ralph Horne (CRD #1740513, Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any supervisory capacity for 15 days. Without admitting or denying the allegations, Horne consented to the described sanctions and to the entry of findings that he failed to supervise an individual adequately so as to be able to detect the unsuitable recommendations the individual made with respect to public customers. (NASD Case #C07980045)

Stuart Gordon Horowitz (CRD #2942375, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Horowitz consented to the described sanctions and to the entry of findings that he failed to amend a Form U-4 to disclose that he was the subject of an investigation by the Florida bar and his license to practice law had been suspended. Horowitz also failed to respond to NASD requests for information. (NASD Case #C07980027)

Pier Luccarelli (CRD #1902896, Registered Principal, Fairfax, Virginia) was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that, on several occasions, Luccarelli falsely told a public customer that the value of securities accounts as set forth in the customer's monthly account statements was incorrect, and misled the customer as to the true current value of the accounts. (NASD Case #C07980077)

Jeffrey Tod Marshall (CRD #2043618, Registered Representative, Atlanta, Georgia) was censured, fined \$35,750, barred from association with any NASD member in any capacity, and ordered to pay \$150 in restitution. The sanctions were based on findings that Marshall received a \$150 check with an application from an individual to become associated with his member firm. Rather than submitting the application and check to his member firm, Marshall cashed the check and converted the proceeds to his own use and benefit. Marshall also failed to respond to NASD requests for information. (NASD Case #C07980066)

John Anthony Miller (CRD #1985176, Registered Representative, Cape Coral, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$520,000, barred from association with any NASD member in any capacity, and ordered to pay \$99,794.42 in restitution to his member firm. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he recommended to public customers that they invest in a fixed rate annuity through a life insurance company, made misrepresentations to the customers regarding the rate of return of the investment, and received checks totaling \$100,236.52 from the customers for the annuities. The NASD determined that Miller deposited the checks in a bank account he had created in the name of the insurance company, made several monthly interest payments to some of the customers, and converted the remainder of the customers' funds to his own use. (NASD Case #C07990039)

Gregory John Pocock (CRD #1060326, Registered Principal, Roswell, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pocock consented to the sanctions and to the entry of findings that he forged his estranged wife's signature on checks totaling \$12,375, drawn from their joint brokerage account. (NASD Case #C07990030)

Robert Andrew Saxe (CRD #2435726, Registered Representative, St. Petersburg, Florida) was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 30 business days, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Saxe misrepresented the rating of certain municipal securities to a public customer in connection with the purchase of municipal securities and failed to respond to NASD requests for information.

Saxe's suspension commenced with the opening of business on June 21, 1999, and concluded at the close of business on August 2, 1999. (NASD Case #C07980048)

Timothy A. Smith (CRD #2263079, Registered Representative, St. Cloud, Florida) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith breached his member firm's internal policies by accepting \$2,000 in cash from a public customer for an investment in a mutual fund, failed to

record the transactions on the branch office trade blotter, and failed to process the transaction through his firm's headquarters. Smith also caused his member firm's books and records to be inaccurate by failing to follow the firm's internal policies and procedures regarding the receipt, recording, and processing of customer funds. (NASD Case #C07980080)

August Actions

David Briggs (CRD #1275493, Registered Representative, Hollywood, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 18 months, and required to disgorge \$7,659.14 in referral fees to public customers. Without admitting or denying the allegations, Briggs consented to the described sanctions and to the entry of findings that he engaged in private securities transactions. According to the findings, Briggs failed to provide written notice to his member firm that he was referring customers who sought to purchase shares of securities away from the firm and was being compensated for the referrals, nor did he obtain approval from his member firm for these activities. (NASD Case #C07990040)

Luis Bulas, Jr. (CRD #1684464, Registered Principal, Coral Gables, Florida) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bulas failed to respond to NASD requests for information. (NASD Case #C07990005)

Suzanne Hobbie (CRD #1268699, Registered Principal, Tampa, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hobbie consented to the allegations and the entry of findings that she failed to submit accurate Forms U-4 that disclosed unsatisfied judgments ordered against her. (NASD Case #C07990042)

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

July Actions

Douglas Arthur Dill (CRD #2097574, Registered Representative, Lakewood, Ohio) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dill failed to respond to NASD requests for information. (NASD Case #C8B980023)

Matthew Barry Eliscu (CRD #2739848, Registered Representative, Chicago, Illinois) 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 10 business days. Without admitting or denying the allegations, Eliscu consented to the sanctions and to the

entry of findings that he purchased call option contracts in his personal cash account at his member firm at a total cost of \$1,824.50, failed to have sufficient funds to pay for the transactions at the time they were effected, and failed to make full payment for the transactions until a later date. (NASD Case #C8A990042)

Garvey William Fox, Jr. (CRD #2166036, Registered Representative, New York, New York), Matthew John Kehoe (CRD #2509976, Registered Representative, New York, New York), Glen O'Hare (CRD #2202811, Registered Representative, Staten Island, New York), and Matthew Jed Hirsch (CRD #2166037, Registered Representative, New York, New York) submitted Offers of Settlement pursuant to which Fox was censured, fined \$76,000, and barred from association with any NASD member in any capacity. Kehoe and O'Hare were each censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days, and Hirsch was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Fox, Kehoe, O'Hare, and Hirsch purchased securities for the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in said accounts. The findings also stated that Fox failed to follow customers' instructions to sell securities. (NASD Case #C8A970017)

David Harris Shapiro (CRD #2586431, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shapiro consented to the described sanctions and to the entry of findings that a former member firm, acting through Shapiro, solicited customers for the purchase of an IPO, received payments for the purchase of interests in the IPO prior to the effective date of the offering, failed to ensure that individuals were qualified and registered in the appropriate capacity with the firm prior to permitting them to engage in the investment banking or securities business and to function as representatives, failed to comply with the terms of its restrictive agreement by participating in the solicitation of a firm commitment underwriting of an IPO offering, and operated a branch office without notifying the NASD. The findings also stated that the firm, acting through Shapiro, entered into an agreement with another member firm whereby orders or indications for the purchase of the IPO would be executed by the other firm without written discretionary authorization of the public customers. The NASD also determined that the firm, acting through Shapiro, failed to record these customer orders on its blotters or make any other records. In addition, the former firm failed to maintain the minimum required net capital, prepared inaccurate trial balances and net capital computations, and filed an inaccurate FOCUS Part IIA Report with the NASD. (NASD Cases #C8A980097 and C8A990014)

August Actions

James Burling Chase (CRD #368743, Registered Principal, Milwaukee, Wisconsin) submitted an Offer of Settlement pursuant to which he was censured and fined \$20,000. Without admitting or denying the allegations, Chase consented to the described sanctions and to the entry of findings that a member firm, acting through Chase, effected securities transactions when the firm failed to maintain its minimum required net capital, prepared inaccurate trial balances and net capital computations, and filed inaccurate FOCUS Part IIA reports with the NASD. The findings also stated that the firm, acting through Chase, failed to comply with the terms of its restrictive agreement when the firm processed more proprietary transactions in its inventory than permitted and also received and held customer securities in violation of the agreement. Furthermore, the NASD determined that the firm, acting through Chase, failed to employ a properly qualified financial and operations principal. (NASD Case #C8A990009)

Jeff Lynn Clark (CRD #2195163, Registered Representative, Wyandotte, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$52,900, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he received monies totaling \$6,580 from public customers for the purpose of paying insurance premiums, and checks totaling \$2,000 from a public customer that were to be deposited in her fixed annuity account. The NASD determined that Clark failed to follow the customers' instructions, and without the customers' knowledge or authorization, used the funds for his own benefit or for some purpose other than the benefit of the customers. (NASD Case #C8A990051)

Jeffrey Scott Koch (CRD #2459924, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$88,750, barred from association with any NASD member in any capacity, and ordered to pay restitution to a public customer in the amount of \$3,750, plus interest. Without admitting or denying the allegations, Koch consented to the described sanctions and to the entry of findings that he accepted an order to purchase shares of securities from a public customer, and received checks totaling \$3,750 for payment of the securities. The NASD found that, instead of executing the purchase order as directed, Koch created a false confirmation of the purchase, mailed the false confirmation to the customer as evidence of an executed transaction when no such transaction had ever occurred, endorsed the checks, deposited them into his personal bank account, and used the funds for his own benefit. In addition, Koch failed to respond completely to NASD requests for information. (NASD Case #C8B990018)

Daniel Lawrence Kouba (CRD #1254972, Registered Representative, Hillsboro, Wisconsin) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kouba consented to the described sanctions

and to the entry of findings that he engaged in private securities transactions, and failed and neglected to provide prior written notice to, and obtain prior written authorization from, his member firm to engage in the transactions. (NASD Case #C8A990018)

George Cornelius LeFlore (CRD #1173833, Registered Representative, Dixmore, Illinois) was censured, fined \$55,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that LeFlore received a check in the amount of \$5,209.95 from insurance customers with instructions to use such funds to correct problems with their insurance policies and to get a better return. LeFlore failed to follow said instructions and used the funds for some purpose other than for the benefit of the customers until he returned the funds at a later date. LeFlore also failed to respond to NASD requests for information. (NASD Case #C8A980065)

Orenstein Securities, Inc. (CRD #26511, Milwaukee, Wisconsin) and William Henry Orenstein (CRD #2057208, Registered Principal, Milwaukee, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that in connection with the sale of limited partnership interests, the firm, acting through Orenstein, failed to specify in the private placement memoranda a time by which all of the units had to be sold, failed to return investors' funds or take other appropriate action when all units were not sold by the stated date, withdrew funds from an account prior to the required number of units being sold in bona fide transactions, and failed to escrow funds properly. Moreover, the NASD found that the firm, acting through Orenstein, failed to disclose on a private placement memorandum the maximum number of units that Orenstein, one of the general partners, could purchase, failed to specify on another memorandum the maximum number of units Orenstein could purchase and the amount of supplemental financing he could secure in the event that all units were not sold. In addition, the firm, acting through Orenstein, filed inaccurate FOCUS IIA reports with the NASD in that, among other things, the reports overstated the firm's excess net capital. (NASD Case #C8A990048)

Patterson Travis, Inc. (CRD #16540, Woodmere, New York), David Thomas Travis (CRD #448950, Registered Principal, Englewood, Colorado), and Judah Liev Wernick (CRD #1633006, Registered Principal, Woodmere, New York) submitted an Offer of Settlement pursuant to which the firm, Travis, and Wernick were censured and fined \$10,000, jointly and severally, and ordered to comply with undertakings which include, among other things, submitting a written agreement to the NASD. The written agreement will clearly delineate all of the terms of an arrangement including, but not limited to, a detailed list of expenses, by category, which are the obligation of the firm and those which are the obligation of Wernick or some other entity of the firm. The agreement will also permit the NASD to review the financial documentation and information concerning the payment of expenses of the entity and/or the individual paying the firm's expenses for the New York office. The firm and Wernick were fined an addi-

tional \$30,000, jointly and severally, and Wernick was fined an additional \$20,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member in any managerial or supervisory capacity for 60 days thereafter. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, directly and acting through Travis and Wernick, received payments for the purchase of securities from public customers prior to the effective date of an initial public offering. The findings also stated that the firm, directly and acting through Wernick, failed to execute promptly customer orders to purchase or sell shares of common stock and failed to promptly and/or accurately report its transactions in the stock. (NASD Case #C8A980095)

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

July Actions

Tyrone Antoine Bennett (CRD #2783238, Associated Person, Downingtown, Pennsylvania) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bennett failed to respond to NASD requests for information. (NASD Case #C9A980045)

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

Gabbert has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9A980044)

Noah Peter Grassi (CRD #2928628, Registered Representative, Ardmore, Pennsylvania) 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, Grassi consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning matters relating to the termination of his employment by a member firm. (NASD Case #C9A990020)

Eliezer Gurfel (CRD #1409216, Registered Representative, Washington, DC) was censured and barred from association with any NASD member in any capacity. The SEC affirmed the findings of the NAC that Gurfel forged, or caused to be forged, the signature of the firm's president on commission checks totaling \$9,625.64, and converted the proceeds to his own use.

Gurfel has appealed this action to the U.S. Court of Appeals for the D.C. Circuit and the sanctions, other than the bar, are not in effect pending consideration of the appeal. (NASD Case #C9B950010)

Luanne Christine Lembo (CRD #2469080, Registered Representative, Orlando, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Lembo consented to the described sanctions and to the entry of findings that she signed the name of a public customer to a letter requesting the wire transfer of funds, without the customer's knowledge or consent. (NASD Case #C9B990001)

Pryor, McClendon, Counts & Co., Inc. (CRD #11002, Philadelphia, Pennsylvania) and Malcolm Dermott Pryor, Sr. (CRD #368534, Registered Principal, Villanova, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, 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 Pryor, failed to evaluate and prioritize its training needs and failed to develop a written training plan as required by the NASD's Continuing Education Requirements, failed to administer Firm Element Continuing Education to all employees subject to such training, and failed to maintain adequate records documenting the content of programs administered pursuant to the Firm Element Continuing Education Requirements. The findings also stated that, in connection with its participation as an underwriter in offerings of securities that traded at an immediate premium in the secondary market, the firm effected sales to investment partnership or corporation accounts without complying with one of the two alternatives under NASD IM-2110-1(f)(1), and the firm and Pryor failed to ensure that the firm had obtained the information for the accounts required by one of the two alternatives before the trades were executed. Furthermore, the firm sold securities issued in a public offering that traded at an immediate premium in the secondary market to an account prohibited from purchasing any "hot issue", and the firm, acting through Pryor, failed to establish and maintain adequate written supervisory procedures pertaining to the Firm Element provisions of the NASD's Continuing Education Requirement and the NASD Board of Governors' Free-Riding and Withholding Interpretation. (NASD Case #C9A990015)

Timothy Lee Rose (CRD #2314205, Registered Representative, Maryland Heights, Ohio) 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, Rose consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in writing concerning his apparent negotiation of checks received from a public customer. (NASD Case #C9A990024)

David Lewis Swartzendruber (CRD #2185516, Registered Representative, Telford, Pennsylvania) 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 four months. Without admitting or denying the allegations, Swartzendruber consented to the

described sanctions and to the entry of findings that while employed with a member firm, he opened a securities account in his name with another member firm, and failed to notify his employing firm in writing that he had opened the account, and failed to disclose to the executing member firm his association with another firm. The findings also stated that Swartzendruber made false and misleading statements to his member firm regarding the disposition of certain securities held in a personal brokerage account. (NASD Case #C9A990023)

Christiaan Pieter Van Der Put (CRD #2921664, Associated Person, Pittsburgh, Pennsylvania) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Van Der Put forged and falsified a document concerning the duration and nature of his employment with a member firm and his salary for the purpose of obtaining credit. (NASD Case #C9A980035)

August Actions

Nicholas Bosco (CRD #2176953, Registered Principal, Colts Neck, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$12,500, suspended from association with any NASD member in any capacity for 60 days, barred from association with any NASD member in any principal capacity, and required to pay \$40,687 in restitution, jointly and severally. Without admitting or denying the allegations, Bosco consented to the described sanctions and to the entry of findings that a member firm, acting through Bosco, effected transactions in common stock as principal at prices that were unfair and unreasonable taking into consideration all of the relevant factors. The findings also stated that the firm, acting through Bosco, violated terms of its restrictive agreement by engaging in "penny stock" transactions; conducting business in a manner that required it to maintain net capital of not less than \$100,000; participating in "firm-commitment" underwritings; and effecting more principal trades than permitted in the agreement. (NASD Case #C9A990033)

Bartholomew Frank Bruno (CRD #2163217, Registered Principal, Forest Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$12,500, suspended from association with any NASD member in any capacity for 60 days, barred from association with any NASD member in any principal capacity, and ordered to pay restitution of \$40,687, jointly and severally, to public customers. Without admitting or denying the allegations, Bruno consented to the described sanctions and to the entry of findings that a member firm, acting through Bruno, effected transactions in common stock as principal at prices that were unfair and unreasonable taking into consideration all of the relevant factors. The findings also stated that the firm, acting through Bruno, violated terms of its restrictive agreement by engaging in "penny stock" transactions; conducting business in a manner that required it to maintain net capital of not less than \$100,000; participating in "firm-commitment" underwritings; and effecting more principal trades than permitted in the agreement. (NASD Case #C9A990031)

Timothy Robert Calkins, Jr. (CRD #2469112, Registered Representative, Tobyhanna, Pennsylvania) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Calkins failed to respond to NASD requests for information. (NASD Case #C9A990011)

Carmen Robert Chimera (CRD #2585370, Registered Representative, Rockville, Maryland) 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 14 days, which shall be deemed to have been served by virtue of the 14-day suspension imposed against him by his member firm. Without admitting or denying the allegations, Chimera consented to the described sanctions and to the entry of findings that he allowed another registered representative to sign variable annuity applications as the registered representative of record, falsely indicating that the representative had sold the variable annuities, when, in fact, they had been sold by Chimera. (NASD Case #C9B990010)

Anthony Frederick DiMaria (CRD #2286669, Registered Principal, Shirley, New York) 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 10 days. Without admitting or denying the allegations, DiMaria consented to the described sanctions and to the entry of findings that a member firm, acting through DiMaria, violated the terms of its restrictive agreement by engaging in "penny stock" transactions; conducting business in a manner that required it to maintain net capital of not less than \$100,000; participating in "firm-commitment" underwritings; and effecting more principal trades than permitted in the agreement. (NASD Case #C9A990028)

Timothy James Ennis (CRD #837093, Registered Representative, New Hope, Pennsylvania) 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 10 days. Without admitting or denying the allegations, Ennis consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the account of a public customer and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs. The findings also stated that Ennis exercised discretion in the customer's account without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. (NASD Case #C9A990034)

Mark Angelo Gassoso (CRD #2590007, Registered Principal, Old Bridge, New Jersey) 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 10 days. Without admitting or denying the allegations, Gassoso consented to the described sanctions and to the entry of findings that a member firm, acting through Gassoso, violated the terms of its restrictive agreement by engaging in

"penny stock" transactions; conducting business in a manner that required it to maintain net capital of not less than \$100,000; participating in "firm-commitment" underwritings; and effecting more principal trades than permitted in the agreement. (NASD Case #C9A990032)

Hanna Grzedzicakawalek (CRD #2610590, Registered Representative, Glen Cove, New York) submitted an Offer of Settlement pursuant to which she was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$1,784 in restitution. Without admitting or denying the allegations, Grzedzicakawalek consented to the described sanctions and to the entry of findings that she received a \$1,479 cash payment from a public customer to pay the annual premium for a life insurance policy, never transmitted this payment to the insurance company, and, instead, deposited the money in her personal bank account and began making monthly premium payments of \$135 on the customer's policy. The findings also stated that Grzedzicakawalek made a total of \$810 of such payments and converted the remaining \$669 to her own use and benefit without the customer's knowledge or consent. In addition, Grzedzicakawalek received insurance checks totaling \$1,115.39 payable to public customers representing premium refunds from canceled life insurance policies. Rather than transmitting these payments to the customers, the NASD determined that Grzedzicakawalek endorsed the checks, deposited them in her personal bank account, and then converted the resulting funds to her own use and benefit, without the customers' consent or authority. Grzedzicakawalek also failed to respond to NASD requests for information. (NASD Case #C9B990002)

Richard John Nicola (CRD #2376561, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$16,500, suspended from association with any NASD member in any capacity for 60 days, barred from association with any NASD member in any principal capacity, and required to pay \$40,687 in restitution, jointly and severally. Without admitting or denying the allegations, Nicola consented to the described sanctions and to the entry of findings that a member firm, acting through Nicola, effected transactions in common stock as principal at prices that were unfair and unreasonable taking into consideration all of the relevant factors. The findings also stated that the firm, acting through Nicola, violated terms of its restrictive agreement by engaging in "penny stock" transactions; conducting business in a manner that required it to maintain net capital of not less than \$100,000; participating in "firm-commitment" underwritings; and effecting more principal trades than permitted in the agreement. In addition, the firm, acting through Nicola, violated SEC penny stock transaction and disclosure rules and failed to properly prepare order tickets and confirmations for stock transactions. (NASD Case #C9A990030)

Adam Bruce Salberg (CRD #1746502, Registered Representative, Rockway, New Jersey) 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 60 days. Without admitting or denying the allegations, Salberg consented to the described sanctions and to the entry of findings that he forged a public customer's name on an account application by cutting and pasting the customer's signature from another document without the customer's knowledge or consent. (NASD Case #C9B990012)

District 10 - The five boroughs of New York City

July Actions

Cressida Capital, Inc. a/k/a Norfolk Securities Corp. (CRD #32352, New York, New York) and Jeffrey Allen Van Blarcom (CRD #1971041, Registered Principal, Mahwah, New Jersey) were censured and fined \$50,000, jointly and severally. Van Blarcom was fined an additional \$50,000, individually, and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Van Blarcom, failed to timely report or otherwise inform the NASD of statistical and summary information regarding customer complaints. In addition, the firm, acting through Van Blarcom, failed to establish, maintain, and enforce written supervisory procedures designed to ensure compliance with the NASD customer complaint reporting requirements, and failed to respond to NASD requests for documents. Furthermore, the firm, acting through Van Blarcom, permitted individuals to continue to perform duties as registered persons when they had failed to comply with the Regulatory and Firm Elements of the NASD's Continuing Education rules. Moreover, the firm, acting through Van Blarcom, failed to delegate responsibility for compliance with the Firm and Regulatory Elements; failed to maintain written procedures for compliance with the Firm and Regulatory Elements; failed to maintain written supervisory procedures that would mandate an annual needs analysis, a written training plan, and implementation plan; and failed to maintain books and record to demonstrate compliance with the Firm Element, including the maintenance of a written needs analysis, a written training plan, the materials used in training, and a list of dates of training sessions.

The action has been called for review by the NAC and Van Blarcom appealed this action to the NAC. The sanctions are not in effect pending consideration of the appeal. (NASD Cases #C10960043, C10960161, and C10970019)

Anthony John DiMaria (CRD #2288257, Registered Representative, Bronx, 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, DiMaria consented to the described sanctions and to the entry of findings that he had an impostor take and complete the Series 62 exam on his behalf. (NASD Case #C10990067)

Joseph John Esposito, Jr. (CRD #2811005, Registered Principal, Howard Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined

\$25,000, suspended from association with any NASD member in any capacity for two years, and, in the event he becomes registered with a member firm after his suspension, he shall not be permitted to continue such association unless that firm has adopted and implemented compliance programs and procedures with respect to Esposito which include monitoring his phone conversations and correspondence and reviewing his order tickets and account documentation for 12 months. Without admitting or denying the allegations, Esposito consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documentation. (NASD Case #C10990019)

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

Lawrence has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10980088)

Salvatore Charles Marchiano (CRD #1395812, Registered Principal, Morganville, New Jersey) 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, Marchiano consented to the sanctions and to the entry of findings that he failed to cooperate with an NASD investigation concerning allegations that he had an impostor sit for and complete the Series 24 exam on his behalf. (NASD Case #C10990079)

Neil Randolph Post (CRD #1423171, Registered Principal, Douglaston, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,393, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam in all capacities. If Post fails to requalify, he will be suspended from acting in each such capacity until each exam is successfully completed. Without admitting or denying the allegations, Post consented to the described sanctions and to the entry of findings that he accepted trades for a public customer's account at his member firm from a third party whom he believed had the authority to enter trades for that account, failed to receive a written power of attorney conveying authority to the third person, and should not have accepted these trades and executed them. The findings also stated that Post prepared and entered into a written agreement with the public customer, without his member firm's knowledge or approval, to settle the customer's complaints regarding alleged losses which resulted from the aforementioned securities transactions. (NASD Case #C10990078)

Kirk Francis Ruffler (CRD #2580976, Registered Representative, Perrineville, New Jersey) submitted a

Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$110,000, barred from association with any NASD member in any capacity, and ordered to pay \$42,988.50 in restitution to public customers. Without admitting or denying the allegations, Ruffler consented to the described sanctions and to the entry of findings that he effected securities transactions in the accounts of public customers without the knowledge, consent, or authorization of the customers. Ruffler also failed to follow customer orders to sell securities and failed to respond to NASD requests for information and/or documentation. (NASD Case #C10990082)

Ricardo Mario Saltalamachea (CRD #1825946, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Saltalamachea consented to the sanctions and the entry of findings that, in an attempt to obtain a public customer's decision concerning a miscommunicated purchase and sale order, he made misstatements about his ability to cancel and re-bill a purchase into his own account, as well as repeatedly calling the customer and his wife in an attempt to resolve the matter. (NASD Case #C10990080)

Robert John Savala (CRD #2261797, Registered Principal, Holmdel, New Jersey) 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, Savala consented to the sanctions and to the entry of findings that he solicited public customers to invest approximately \$96,686.12 with a non-member entity for the stated purpose of investing in short-term U.S. Treasury Bills and for purchasing investment company shares. Savala deposited the customers' funds in a bank account he controlled and used the proceeds for his own purposes. The findings also stated that Savala prepared false statements for the accounts of public customers reflecting investment positions when, in fact, no such investment positions existed. (NASD Case #C10990073)

Drew Edgar Schaefer (CRD #1199891, Registered Principal, Manasquan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$25,000. Without admitting or denying the allegations, Schaefer consented to the sanctions and to the entry of findings that he failed to report to the NASD statistical and summary information regarding customer complaints that his member firm had received. (NASD Case #C10990061)

August Actions

Solomon Jack Algazi (CRD #2162632, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Algazi consented to the described sanctions and to the entry of findings that, during the course of an on-the-record

interview, he failed to respond in a timely and complete manner with respect to questions asked of him by the NASD concerning his employment with a member firm. (NASD Case #C10990104)

Nicholas Mario Antonelli (CRD #2459572, Registered Representative, Hauppague, New York) and Alexander Velez (CRD #2366712, Registered Representative, Brentwood, New York) submitted an Offer of Settlement pursuant to which Antonelli was censured, fined \$7,000, suspended from association with any NASD member in any capacity for 45 days, and required to pay \$2,000, plus interest, in restitution to a public customer; Velez was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay restitution in the amount of \$2,000, plus interest, to the customer. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Antonelli and Velez failed to obey public customers' instructions to sell securities. The findings also stated that Antonelli engaged in unauthorized transactions, failed to obey his customer's instructions to sell securities, and prepared inaccurate books and records. In addition, Velez prepared inaccurate Forms U-4. (NASD Case #C10980093)

Paul Joseph Cilmi (CRD #2138510, Registered Principal, Brooklyn, New York) was censured, fined \$50,000, barred from association with any NASD member in any capacity and ordered to disgorge earnings in the amount of \$207,006.84. The sanctions were based on findings that Cilmi had an impostor take the Series 24 qualifications exam on his behalf. Cilmi also failed to appear for an on-the-record interview. (NASD Case #C10980123)

Thomas Anthony DiEdwardo, Sr. (CRD #2524146, Registered Representative, Kenilworth, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$28,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$6,000 to the NASD. Without admitting or denying the allegations, DiEdwardo consented to the described sanctions and to the entry of findings that, while associated with a member firm, he placed telephone calls to a public customer during which he used obscene language. The findings also stated that DiEdwardo arranged to have an impostor take the Series 7 qualification exam on his behalf. (NASD Case #C10990090)

John Philip DiGiacomo (CRD #2023333, Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, barred from association with any NASD member in any principal or supervisory capacity, barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member in any capacity (other than any principal or supervisory capacity) after a period of two years, and ordered to make restitution to his former member firm in the initial principal amount of \$44,258, plus interest. Without admitting or denying the allegations, DiGiacomo consented to the described sanctions and to the entry of findings that, as proprietary trader for his member firm and in an effort to conceal substantial net short positions in his trading

account, DiGiacomo created and submitted fictitious buy order tickets purporting to cover approximately the net short positions. (NASD Case #C10980046)

Robert Fitzpatrick (CRD #842159, Registered Principal, Trumbull, Connecticut) was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. The NAC imposed the sanctions following appeal of a New York DBCC decision and a cross-appeal by the NASD's Department of Enforcement. The sanctions were based on findings that Fitzpatrick failed to respond to NASD requests for information in a timely manner.

Fitzpatrick has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10970176)

Andrew Harold Geyer (CRD #1908957, Registered Representative, Kings Park, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Geyer consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, securities transactions in the account of a public customer without the knowledge or consent of the customer. Geyer also failed to respond to NASD requests for information. (NASD Case #C10990050)

Ross Scott Greenberg (CRD #1892294, Registered Representative, Kings Park, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by taking the Series 7 exam prior to acting again in that capacity. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that he purchased shares of securities in a public customer's account without the customer's prior knowledge or consent. The findings also stated that Greenberg made material misrepresentations to the customer regarding the use of margin, how it works, the high level of risk involved using this strategy, and lulled the customer into accepting and/or ratifying the unauthorized purchase of shares of a security. (NASD Case #C10990114)

Gregory Eliot Hall (CRD #2450067, Registered Principal, 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 Hall failed to respond to NASD requests to appear for an on-the-record interview and to produce documents. (NASD Case #C10980094)

Gerard William King (CRD #1840274, Registered Representative, Metuchen, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay disgorgement of \$148,511.41. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that he accepted bribes, in the form of shares of common stock, and, in

return for the bribes, sold shares of the common stock to public investors. King also failed to appear for an on-the-record interview. (NASD Case #C10990094)

Vincent Francis Laurino (CRD #2483765, Registered Representative, Old Bridge, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for two days. Without admitting or denying the allegations, Laurino consented to the sanctions and to the entry of findings that he sold a fixed annuity to public customers without the prior authorization or knowledge of his member firm. (NASD Case #C10990093)

Robert Mogavero (CRD #2449762, Registered Representative, Hypoluxo, Florida) was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge commissions in the amount of \$35,765.45 to the NASD. The sanctions were based on findings that Mogavero arranged to have an impostor take the Series 7 and Series 63 exams on his behalf. Mogavero also failed to appear for an on-the-record interview. (NASD Case #C10990016)

Boris Rentzer (CRD #2591601, Registered Representative, Staten Island, 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 Rentzer failed to respond to NASD requests to provide testimony. (NASD Case #C10980057)

Security Dealers Guild, Inc. (CRD #28437, Tarrytown, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted order tickets that either contained inaccurate time stamps or no time stamps whatsoever, failed to include the appropriate notation as to the underlying accounts into which the trade was to be divided on order tickets, and failed to include a notation as to whether the trade, from the customer's viewpoint, was being done "long" vs. "short." The findings also stated that the firm failed to include an affirmative determination as to the firm's ability to borrow the underlying security on order tickets for short sales, failed to include the trade price reported to Nasdaq in customer confirmations for trades done on a risk basis, and the difference, if any, between the trade reported price to Nasdaq and the net price to the customer in the transaction. Furthermore, the NASD determined that the firm failed to include the amount of markup, markdown, or similar remuneration on confirmations for trades done on a riskless basis, or disclosed an inaccurate amount of markup/markdown to the customer, and had no written supervisory procedures in place to address the topics of trade reporting, marking of customer sell order tickets "long" vs. "short," and making appropriate affirmative determination and denoting same on order tickets. (NASD Case #C10990103)

Joseph Salvatore Tarulli (CRD #2629825, Registered Representative, Staten Island, 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 Tarulli failed to respond to NASD requests for information. (NASD Case #C10980102)

Adam Alexander Townsend (CRD #2072351, Registered Representative, Hoboken, New Jersey) 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, Townsend consented to the described sanctions and to the entry of findings that he executed trades in the amount of \$38,263.75 in the accounts of public customers without the customers' prior knowledge or consent. The findings also stated that Townsend settled a customer complaint con-

cerning an unauthorized transaction by sending a check in the amount of \$1,406.25 to a public customer without his firm's knowledge or consent. (NASD Case #C10990092)

Anthony Edward Verello (CRD #2578981, Registered Representative, Brooklyn, New York) was censured, fined \$55,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Verello provided false information on an employment application by failing to disclose that he had been arrested on a charge of felony burglary in the third degree and had pled guilty to a misdemeanor criminal trespass charge. Verello also failed to respond to NASD requests for information. (NASD Case #C10980081)

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

July Actions

William Henry Ball (CRD #1924039, Registered Representative, Lisbon, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ball consented to the described sanctions and to the entry of findings that he collected a total of \$3,190.76 in cash from insurance policyholders for the payment of premiums, provided the policyholders with receipts, but failed to apply the money to pay the premiums on variable and other insurance products. The NASD found that, instead, Ball misappropriated the funds and improperly converted the funds for his own use and benefit. (NASD Case #C11990019)

Warren Howard Lamond, Jr. (CRD #1251644, Registered Representative, Brookline, Massachusetts) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lamond failed to respond to NASD requests for information in connection with a customer complaint. (NASD Case #C11980005)

August Actions

Jeffrey Rowe Jones (CRD #2069103, Registered Representative, Baldwinsville, 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 Jones failed to respond to NASD requests for information. (NASD Case #C11980015)

Enforcement Department

July Actions

Victor Joseph Difrisco (CRD #1922218, Registered Representative, Gaithersburg, Maryland) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Difrisco consented to the sanctions and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers and required that customers purchase aftermarket shares as a condition of purchasing IPO units. (NASD Case #CAF980031)

Andrew Todd Greene (CRD #1943281, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended

from association with any NASD member in a supervisory capacity for 50 days, and required to requalify by passing the Series 24 exam prior to serving in a supervisory capacity with a member firm. Without admitting or denying the allegations, Greene consented to the described sanctions and to the entry of findings that he failed to exercise his supervisory obligations adequately by failing to require that persons under his control prepare scripts that presented a fair and balanced picture of risk factors or negative information relating to investments in securities. (NASD Case #CAF990003)

Edward James Stock, Jr. (CRD #2379991, Registered Representative, Nesconset, New York) 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 30 days. Without admitting or denying the allegations, Stock consented to the described sanctions and to the entry of findings that he caused unauthorized transactions to be made in the account of a public customer, and required that another customer purchase aftermarket shares as a condition of purchasing IPO units.

Stock's suspension began July 1, 1999 and concluded at the close of business on July 30, 1999. (NASD Case #CAF980031)

Victor Ming Wang (CRD #1982694, Registered Principal, New York, New York) and Gregg Adam Thaler (CRD #1836166, Registered Principal, New York, New York) were each censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wang and Thaler failed to appear for on-the-record interviews and to provide testimony. (NASD Case #CAF980030)

August Actions

Jeffrey Stuart Brewer (CRD #2790875, Registered Representative, Princeton, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brewer failed to respond to NASD requests to testify and to produce documents. (NASD Case #CAF980097)

Thomas John Dalton (CRD #1182680, Registered Principal, Levittown, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$40,000, suspended from association with any NASD member in any capacity for three months, required to requalify by exam for the Series 7, 24, and 63 registrations before again acting in those capacities, and required to qualify by exam for the Series 55 registration before acting in that capacity. In addition, Dalton must cooperate with the NASD in connection with its prosecution of a formal action to include meeting with the staff and preparing for testimony, and appearing and testifying truthfully in that action. Without admitting or denying the allegations, Dalton consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he charged public customers markups and markdowns greater than five percent above his firm's contemporaneous cost, totaling approximately \$457,764.59. The findings also stated that Dalton, acting on behalf of his firm, charged public customers markups or markdowns greater than 10 percent above his firm's contemporaneous cost, totaling approximately \$282,740.64. Furthermore, the NASD found that, in connection with transactions, Dalton failed to disclose to the customers that the prices at which the firm was engaging in these transactions with its customers were not reasonably related to the prevailing market price of these securities; effected transactions that were unfair and unreasonable taking into consideration all of the relevant factors; induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent

devices or contrivances; made untrue statements of material fact, omitted to state necessary material facts; and engaged in acts, practices, or a course of business which operated as a fraud or deceit upon persons. (NASD Case #CAF990002)

James Anthony McInerney (CRD #2179456, Registered Representative, Centerport, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity with the right to reapply in five years. Without admitting or denying the allegations, McInerney consented to the described sanctions and to the entry of findings that he either refused or failed to execute sell orders placed by public customers, and bought and/or sold securities for the accounts of customers without obtaining the customers' authorization. McInerney also required that customers purchase aftermarket shares as a condition of purchasing initial public offering units. (NASD Case #CAF980031)

Market Regulation Committee

July Actions

American Fronteer Financial Corporation (CRD #1398, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the Fixed Income Pricing SystemSM (FIPSSM) in violation of applicable securities laws and regulations regarding trade reporting and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding FIPS. (NASD Case #CMS990047)

Comprehensive Capital Corp., (CRD #6215, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$33,500, required to submit revised written supervisory procedures to the NASD, and ordered to pay restitution to public customers in the amount of \$1,052.24, plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The NASD also determined that the firm failed to establish, maintain, and enforce adequate written supervisory procedures regarding ACT compliance, annual review/internal audits, best execution, limit order protection, SEC order execution rules, registration of traders and supervisors, trade reporting, the Small Order Execution SystemSM (SOESSM), anti-competitive issues, books and records, and locked and crossed markets. (NASD Case #CMS990048)

GFI Group, Inc. (CRD #19982, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. (NASD Case #CMS990046)

Legg Mason Wood Walker, Inc. (CRD #6555, Baltimore, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which it was censured and fined

\$16,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The findings also stated that the firm failed, where it acted as principal for its own account, to provide written notification disclosing to its customers the correct reported trade price, the price to the customer, and the difference, if any, between the reported trade price and the price to the customer, and also failed to provide written notification disclosing its capacity in transactions. In addition, the NASD determined that the firm failed to contemporaneously execute customer limit orders after it traded each subject security for its own market-making account at prices that would satisfy each customer limit order, and failed to immediately publish in its public quotation customer limit orders, each of which were at a price that would improve its public quote in each security. Furthermore, the NASD found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for each subject security, and buy and sell in such market so that the resultant price to its customers was as favorable as possible under the prevailing market conditions. The firm also failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable rules regarding trade reporting, recordkeeping, the SEC's Order Handling Rules, Limit Order Protection Interpretation, best execution, the use of SOES, and anti-competitive practices. (NASD Case #CMS990040)

Olde Discount Corporation (CRD #5979, Detroit, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$38,500, and ordered to pay restitution to public customers in the total amount of \$580.63, plus interest. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute protected customer limit orders after it transacted in each security for its own market-making account at a price that was equal to or better than each such customer limit order, and, in the execution of customer orders, failed to use reasonable diligence to ascertain the best inter-dealer market for the securities so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to display customer limit orders in its public quote immediately, where each such order was at a price better than the firm's public quote or at a price equal to its public quote when such quote was priced equal to the national best bid or offer in such security and that order represented more than a de minimis change in relation to the size associated with the firm's bid or offer. In addition, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and the NASD rules concerning trade reporting, limit orders, ACT reporting requirements, the conducting of an annual review and internal audits, best execution requirements, limit order protection, the SEC's Order Handling Rules, the registration of associated persons with the NASD, trade reporting, the use of SOES, recordkeeping, locked and crossed markets, and the issues identified in the SEC's 21(a) Report concerning the NASD. (NASD Case #CMS990050)

Triad Securities Corporation (CRD #11363, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was 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 violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures to ensure compliance with the NASD rules regarding trade reporting. (NASD Case #CMS990045)

August Actions

Donaldson, Lufkin & Jenrette Securities Corp. (CRD #7554, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to FIPS in violation of applicable securities laws and regulations regarding transaction reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to transaction reporting of high yield corporate bonds to the NASD. (NASD Case #CMS990063)

Eric Thomas Landis (CRD #2605896, Registered Principal, Weston, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$35,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Landis consented to the described sanctions and to the entry of findings that, acting in his capacity as a trader for a member firm, he engaged in manipulative, deceptive and/or fraudulent conduct by intentionally executing and reporting fictitious transactions to the Nasdaq National Market at or near the close of the market for the purpose of artificially affecting the reported last sale prices in the securities. The findings also stated that Landis intentionally published and circulated reports of purchase and sale transactions that he knew were fictitious and non-bona fide. (NASD Case #CMS990061)

McDonald & Company Securities, Inc. n.k.a. McDonald Investments Inc. (CRD #566, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$7,500, and required to provide restitution, plus interest, of \$7,931.40 to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it sold shares of securities to public customers and, at the time that the transactions were executed, failed to use reasonable diligence to ascertain the best inter-dealer market for the securities so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. (NASD Case #CMS990064)

Tucker Anthony Incorporated (CRD #837, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$16,000, and ordered to pay restitution and interest of \$497.09 to public customers. 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 and SelectNetSM in violation of applicable securities laws and regulations regarding trade reporting, customer orders, and limit orders. The firm failed to use reasonable diligence to ascertain the best inter-dealer markets for securities so that the resultant prices to the customers were as favorable as possible under prevailing market conditions and failed to display immediately customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to the orders. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to trade reporting, ACT rules, locked and crossed markets, the use of SOES, anti-competitive practices, the Limit Order Protection Interpretation, and the SEC's Order Handling Rules. (NASD Case #CMS990055)

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If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Rosa A. Maymi, Editor, *Regulatory & Compliance Alert (RCA)*, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8981.

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