

Disciplinary Actions

Disciplinary Actions Reported For April

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of March 2001.

Firm Fined, Individual Sanctioned

Magellan Securities, Inc. (CRD #15986, Harper Woods, Michigan) and Terry Michael Laymon (CRD #304342, Registered Principal, Grosse Pointe Woods, Michigan) submitted an Offer of Settlement in which they were fined \$40,500, jointly and severally. In addition, the firm was censured and Laymon was suspended from association with any NASD member in any capacity for 30 days, with the proviso that within the 30-day suspension period, he may spend a portion of one day on the premises of his member firm solely to complete the payroll for the employees of the firm, and for no other purpose. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Laymon, prepared inaccurate blotters, ledgers, trial balances, and net capital computations, filed inaccurate Focus Part IIA reports with the NASD, and failed to comply with the terms of a restrictive agreement when the firm accepted and held customer funds for the purchase of limited partnerships and deposited the funds into its general operating account or a "Client Trust Account." The findings also stated that the firm, acting through

Laymon, failed to open a Special Reserve Bank Account for the Exclusive Benefit of Customers and failed to compute its special reserve requirement. Furthermore, the NASD found that the firm and Laymon received a total of \$266,595.39 from public customers for the purchase of interests in limited partnerships and commingled the funds with the firm's operating funds, improperly used the funds prior to purchasing such interests, and failed to use \$10,417 as directed or return the funds to the customer until directed to do so by the NASD.

Laymon's suspension will begin April 16, 2001, and will conclude at the close of business May 15, 2001. (NASD Case #C8A000060)

Firms and Individuals Fined

Barclay Investments, Inc. (CRD #6159, New York, New York) and Basil Constantine Williams (CRD #717300, Registered Principal, Englewood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$25,000, 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 Williams, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules pertaining to the registration of principals and establishing a record of each person who had supervisory responsibilities and to identify qualifications it deemed important in determining whether a supervisor can fulfill his/her assigned responsibilities. The findings also stated that the firm, acting through Williams, allowed an

individual to function as a principal when he was not so registered with the NASD. (NASD Case #C11010005)

Market Square Securities Trading, Inc. (CRD #43401, Boca Raton, Florida) and Kenneth Glen Strom (CRD #709395, Registered Principal, Lake Forest, Illinois) submitted an Offer of Settlement in which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Strom, caused agency transactions for a non-public customer to be effected through the Small Order Execution SystemSM (SOESSM) and failed to qualify Strom as a limited representative equity trader prior to allowing him to execute transactions in equity, preferred or convertible debt securities other than on a securities exchange in connection with proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such transactions. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rule 4730. (NASD Case #C8A000064)

United Planners' Financial Services of America (CRD #20804, Scottsdale, Arizona) and Vaughn Sheldon Olthouse (CRD #501382, Registered Principal, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000 and Olthouse was censured and fined \$20,000. Without admitting or denying the allegations, the respondents consented to the

described sanctions and to the entry of findings that the firm, acting through Olthouse, failed to inspect each office of supervisory jurisdiction annually and to establish in the firm's written supervisory procedures a schedule for the periodic inspection of the firm's branch offices. The NASD also found that the firm, acting through Olthouse, failed to conduct annual compliance interviews with each registered representative; failed to prepare a needs analysis and written training plan annually; and failed to implement a firm element continuing education program for its covered persons. The findings also stated that the firm, acting through Olthouse, failed to report customer complaints and the settlement of arbitrations to the NASD. (NASD Case #C3A010006)

W.R. Hambrecht & Co., LLC (CRD #45040, San Francisco, California) and William R. Hambrecht (CRD #234793, Registered Principal, San Francisco, California) were censured and fined \$15,000, jointly and severally. The sanctions were based on findings that the firm, acting through Hambrecht, engaged in securities sales activities in contravention of a written agreement with the NASD that required the firm to refrain from engaging in such activities until it received approval from the NASD. (NASD Case #C01000011)

Firms Fined

ABN AMRO Incorporated (CRD #15776, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$36,500, and required to pay \$268.75, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that when it acted

as principal for its own account, the firm failed to provide written notification disclosing to its customers the correct reported trade price, and failed to provide written notification disclosing to its customers that the transaction was executed at an average price. The findings also stated that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. Furthermore, the NASD found that the firm failed to accept or decline in Automated Confirmation Transaction ServiceSM (ACTSM) transactions in eligible securities within 20 minutes after execution; failed to use reasonable diligence to ascertain the best inter-dealer market; and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The NASD also determined that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in Nasdaq National Market (NNM) securities, Nasdaq SmallCapSM securities, and OTC Equity securities; failed to designate through ACT such last sale reports as late; and incorrectly reported to the Fixed Income Pricing SystemSM (FIPS[®]) transactions in high-yield securities. (NASD Case #CMS010026)

Hill, Thompson Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent

in which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it published, or submitted for publication, quotations in the National Quotation Bureau "Pink Sheets" for securities and failed to have in its records the documentation required by SEC Rule 15c2-11(a), and failed to have a reasonable basis under the circumstances for believing that the required information was accurate in all material respects or that the sources of the required information were reliable. The findings also stated that the firm failed to file a Form 211 for the securities at least three business days before the firm's quotations were published or displayed in a quotation medium, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning NASD Marketplace Rule 6740 and SEC Rule 15c2-11. (NASD Case #CMS010015)

International Correspondent Trading, Inc. (CRD #37401, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in 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 indicate on limit order tickets whether the orders were day or good-till-canceled orders. Furthermore, the NASD determined that the firm failed to indicate on order tickets whether they were market or limit orders, failed to indicate the time of entry or execution, failed to indicate the time of cancellation, failed to indicate whether the securities were "long" or "short" in the account, and failed to indicate

affirmative determination. The NASD also found that order tickets could not be located. (NASD Case #C9B010011)

Kirlin Securities, Inc. (CRD #21210, Syosset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,250. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to Nasdaq late; reported late trades without the ".SLD" modifier. In addition, the findings stated that the firm reported short sales that were late; failed to report bunched trades with the ".B" modifier; failed to use the late bunch trade modifier (".SB"); and failed to compare trades within 20 minutes. The findings also stated that the firm failed to provide customers with best execution and failed to comply with FIPS rules and trade reporting requirements. In addition, the NASD found that the firm's order tickets failed to contain notations documenting the firm's efforts to obtain quotes from three dealers. Moreover, the NASD found that the firm's written supervisory procedures did not set forth procedures adequately designed to ensure compliance with the prohibition against the coordination of quotes, trades, and trade reports; the proper displaying of quotes and prices; the prohibition against delaying trade reporting and sharing information with other market makers; firm quote obligations and procedures; timely and accurate trade reporting obligations; ACT Rule amendments; and proper conduct by trading personnel. Furthermore, the NASD found that the firm failed to report to the NASD the internal suspension of its marketing manager and the suspension of registered representatives. The findings stated that the firm

failed to report to the NASD that a claim by the estate of a customer was resolved for an amount in excess of \$25,000. (NASD Case #C10010035)

Parker Financial Corporation (CRD #42140, Huntington Station, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported short sale transactions in NNM securities through ACT and failed to append the ".S" modifier identifying the transactions as short sales. The NASD also found that the firm reported agency transactions to ACT incorrectly as principal transactions. The findings also stated that the firm failed to execute short sale transactions in accordance with the NASD short sale "bid test" requirements and failed to make an affirmative determination as to the stock's availability in short sale transactions reported to ACT. In addition, the NASD found that the firm reported transactions late to ACT without the ".SLD" modifier, and reported aggregated transactions to ACT without the ".B" modifier. (NASD Case #C10010032)

Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accurately report the unit price for transactions in Nasdaq NMS securities, in that the firm failed to exclude the markup/markdown for the reported transactions. The findings also stated that the firm held

unexecuted customer limit orders in Nasdaq securities and continued to trade the securities for the firm's market making account at prices that would have satisfied the customers' limit orders but failed to execute the limit orders within 60 seconds of the times of the trades in the firm's market making account. The NASD also found that the firm failed to publish within 30 seconds of receipt bids or offers that reflected the prices and full size of customer limit orders, which orders were at prices that would have improved the firm's bid or offer in each security related to those orders; and failed to designate transactions as short sales or short sale exempt through ACT by including the appropriate .S or .X modifier. In addition, the NASD found that the firm failed to file Municipal Securities Rulemaking Board (MSRB) Form G-36 for municipal underwritings within 10 business days after the final agreement to purchase, offer, or sell the securities in accordance with MSRB filing procedures and failed to maintain a record of sending the required forms and documents to the MSRB. (NASD Case #C05010014)

Individuals Barred Or Suspended

Mark P. Azzolino (CRD #4209615, Registered Representative, Fairlawn, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Azzolino consented to the described sanctions and to the

entry of findings that he provided false responses on his Form U-4.

Azzolino's suspension began March 19, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C9B010007)

John Baragwanath (CRD #2472854, Registered Representative, Santiago, Chile) submitted an Offer of Settlement in which he was fined \$6,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Baragwanath consented to the described sanctions and to the entry of findings that he paid a public customer approximately \$7,000 to partially reimburse the customer for a loss, without the knowledge and consent of his member firm.

Baragwanath's suspension began April 2, 2001, and will conclude at the close of business April 30, 2001. (NASD Case #C10000191)

Rodney Lynn Belzer (CRD #1616847, Registered Representative, Kansas City, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Belzer consented to the described sanction and to the entry of findings that he accepted \$775,600 from public customers intended for investment purposes and, without the knowledge or consent of the customers, deposited the funds into his personal bank account and used \$530,600 of the funds for his own use and benefit. (NASD Case #C04010003)

Frederick Michael Benson (CRD #2876856, Registered Principal, Woodinville, Washington) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Benson consented to the described sanctions and to the entry of findings that he held himself out as a broker and affirmatively misrepresented his registration status. The findings also stated that Benson recommended securities transactions to public customers, made announcements about particular stocks to everyone in the trading room on a regular basis, and talked to individual customers about stocks during the trading day without being registered with the NASD. In addition, the NASD found that Benson accepted customer orders and entered them on the branch's admin machine prior to being registered with the NASD.

Benson's suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #CAF000028)

Thomas Charles Bradley (CRD #28346, Registered Representative, Pinehurst, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$17,500 in unjust profits to public customers. The fine payment and satisfactory proof of payment of the disgorgement must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bradley consented to the described sanctions and to the entry of findings that he

participated in private securities transactions and failed to provide his member firm with prior written notice, describing in detail the proposed transactions, his role therein, and stating whether he had received, or would receive, selling compensation in connection with the transactions.

Bradley's suspension began April 2, 2001, and will conclude at the close of business April 1, 2002. (NASD Case #C05010015)

David Wayne Burk (CRD #1094676, Registered Representative, Sparks, Maryland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Burk failed to respond to NASD requests for information. (NASD Case #C9A000022)

Marco Louis Carucci (CRD #1951639, Registered Representative, Brooklyn, New York) and Christopher Michael Tomasulo (CRD #1220199, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which each respondent was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$2,482 in restitution to a public customer. In light of the financial status of Carucci and Tomasulo, fines of \$2,500 were imposed. Payment of the fine and satisfactory proof of restitution, with interest, must be provided by each respondent before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to follow a public customer's instructions to sell securities.

Carucci's and Tomasulo's suspensions began March 19, 2001, and will conclude at the close of business April 17, 2001. (NASD Case #C10010030)

Mark Christopher Chang (CRD #2648704, Registered Representative, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chang altered nine checks issued to public customers, endorsed the checks, and cashed eight of the checks, all without the authorization of the firm or the customers. Chang also failed to respond to an NASD request for information. (NASD Case #C07000046)

Shun Tak ("Dixon") Chow (CRD #2721545, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chow consented to the described sanctions and to the entry of findings that he effected orders for the purchase of shares of an investment product that was not approved by his member firm for public customers away from his firm. The NASD also found that, prior to effecting the transactions, Chow failed to provide written notification to, or obtain written approval from, his member firm.

Chow's suspension began March 19, 2001, and will conclude at the close of business September 18, 2002. (NASD Case #C10010034)

John Patrick Clancy (CRD #2085167, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Clancy, no monetary sanction has been imposed. Without admitting or denying the allegations, Clancy consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview.

Clancy's suspension began April 2, 2001, and will conclude at the close of business May 31, 2001. (NASD Case #C10990222)

Clayton John Darrohn, Jr. (CRD #2708608, Registered Representative, West Sayville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Darrohn consented to the described sanction and to the entry of findings that, prior to becoming registered at a member firm, he used the registered representative numbers of other individuals to effect securities transactions on behalf of public customers. The findings also stated that Darrohn failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10010028)

Christopher M. Delcioppo (CRD #2730016, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief

from any statutory disqualification. Without admitting or denying the allegations, Delcioppo consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information.

Delcioppo's suspension began April 2, 2001, and will conclude at the close of business May 16, 2001. (NASD Case #C07000027)

Christopher Ronald DiGregorio (CRD #2754779, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, DiGregorio consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in a public customer's account.

DiGregorio's suspension began April 2, 2001, and will conclude at the close of business April 16, 2001. (NASD Case #C9B000042)

Ralph Umberto D'Ovidio (CRD #1736914, Registered Representative, Surfside, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that D'Ovidio failed to respond to NASD requests for information. (NASD Case #C07000069)

Salvatore Louis Esposito (CRD #2534742, Registered Representative, Howard Beach, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Esposito had an impostor take the Series 7 qualification exam on his behalf. The findings also stated that Esposito failed to respond truthfully during an NASD on-the-record interview. (NASD Case #C10000186)

Juan Carlos Fernandez (CRD #2080130, Registered Principal, Lakeworth, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fernandez failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07000059)

Timothy Patrick Flood (CRD #2074476, Registered Representative, Lawrenceville, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member in any capacity after three years. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Flood consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer and entered into a settlement agreement and release with his customer wherein he paid the customer \$122,491.30 without disclosing the settlement or the unauthorized trades to his member firm. Furthermore, the NASD found that Flood signed a \$45,837.19 promissory note payable to the customer to settle the complaint without informing his member firm. Also, the NASD found that, when attempting to become registered with a member firm, Flood failed to disclose the existence of a customer complaint against him for the unauthorized trading and his settlement of the complaint. (NASD Case #C07010009)

Floyd Clark Gambrel, Jr. (CRD #2492516, Registered Representative, Eden, Idaho) submitted a Letter of Acceptance, Waiver, and

Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gambrel consented to the described sanction and to the entry of findings that he engaged in private securities transactions, and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. (NASD Case #C3B010002)

Joseph Gaetano Gerace (CRD #1060223, Registered Principal, San Rafael, California) submitted an Offer of Settlement in which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gerace consented to the described sanctions and to the entry of findings that, a member firm, acting through Gerace, effected transactions in securities while failing to maintain minimum required net capital.

Gerace's suspension began April 2, 2001, and will conclude at the close of business May 14, 2001. (NASD Case #C01000020)

Gary Ducarmel Guirand (CRD #2372860, Registered Principal, Baldwin, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$5,416.75 in restitution to a public customer. Without admitting

or denying the allegations, Guirand consented to the described sanctions and to the entry of findings that he placed unauthorized trades in the accounts of public customers. The findings also stated that Guirand failed to comply with a customer's instructions that his account be closed and the remaining securities be delivered to him.

Guirand's suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #CAF010005)

John Weldon Hare (CRD #1965893, Registered Principal, Darien, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Hare consented to the described sanctions and to the entry of findings that he failed to provide prompt written notice to his member firm of his activities outside the scope of his relationship with his firm.

Hare's suspension began April 2, 2001, and concluded April 15, 2001. (NASD Case #C11010006)

Kevin Arthur Hoag (CRD #1908521, Registered Representative, San Francisco, California) was fined \$12,200 and barred from association with any NASD member in any capacity. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Hoag executed unauthorized transactions in the accounts of public customers. (NASD Case #C01000013)

Larry Bruce James (CRD #2616619, Registered Representative, Brookhaven, New York) was barred from association with any NASD member in any

capacity. The sanction was based on findings that James failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10000144)

Michael Joel Keizman (CRD #2824901, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Keizman failed to respond to NASD requests for information. (NASD Case #C10000164)

Nicholas John Kirk (CRD #2004783, Registered Representative, Rocklin, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and required to pay \$78,500, plus interest, in restitution to a public customer. Proof of restitution, with interest, shall be a prerequisite before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kirk consented to the described sanctions and to the entry of findings that he borrowed \$78,500 from a public customer purportedly for start-up costs for a business and failed to provide the customer with any instrument documenting the duration of the terms of the loans, including the principal borrowed from her or the interest, if any, she would be earning on that principal. The NASD found that, instead, Kirk used the funds for his personal use and benefit and never repaid the customer any portion of the loans. The findings also stated that Kirk gave the NASD false and misleading responses to written requests concerning his handling of loan proceeds and provided false and misleading representations on his Form U-4. (NASD Case #C02000055)

Robert Daniel Louis (CRD #2707569, Registered Principal, Hackensack, New Jersey) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Louis falsified a public customer's account record by falsely representing that he was the account executive on the customer's account, signing the new account form, and permitting another individual to use his account executive number when executing transactions in the account. The NASD also found that Louis testified falsely in an NASD on-the-record interview. (NASD Case #C9B000007)

Matthew Steven McKeon (CRD #2564640, Registered Representative, Flushing, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, McKeon consented to the described sanctions and to the entry of findings that he failed to execute a public customer's sell order. The findings also stated that McKeon failed to timely respond to an NASD request for information.

McKeon's suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #C10010036)

Michael Louis Meskers (CRD #3225041, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative within 90 days from the

date the suspension is over. If Meskers fails to requalify within that period, he shall be suspended from acting in that capacity until the exam is successfully completed. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Meskers consented to the described sanctions and to the entry of findings that he falsified firm documents by signing his name as the approving registered representative on customer new account forms by backdating his approval date on the forms. The findings also stated that Meskers accepted a \$39,476.36 check from his member firm that represented commissions relating to transactions, transferred the funds to an individual not registered with the NASD, and, thereby, facilitated the payment of commissions to an unregistered individual.

Meskers' suspension began March 19, 2001, and will conclude at the close of business March 18, 2002. (NASD Case #C10010018)

Anthony Armando Morrelli (CRD #2561728, Registered Representative, Mineola, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Morrelli effected transactions in the account of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10000199)

Mynor Monterroso (CRD #2355105, Associated Person, Norco, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity, with the right to reapply for association with any NASD member in any capacity after a period

of five years. Without admitting or denying the allegations, Monterroso consented to the described sanctions and to the entry of findings that he provided false responses on his Form U-4 and failed to amend his Form U-4. The findings also stated that Monterroso failed to respond to NASD requests for information. (NASD Case #C02000063)

Steven Barry Nothmann (CRD #1265457, Registered Representative, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Nothmann consented to the described sanctions and to the entry of findings that, in response to an NASD request for information, he provided tax returns to the NASD that he had previously completed using his son's social security number and made the documents appear to look as if they contained his social security number.

Nothmann's suspension began March 19, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C11010002)

Peter Gerard Olton (CRD #1967551, Registered Principal, Parlin, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Olton converted \$13,000 of a public customer's funds by effecting a wire transfer from the customer's brokerage account to his personal bank account without the knowledge, authorization, or consent of the customer. The findings also stated that Olton failed to respond to NASD requests for information. (NASD Case #C10000168)

Mark S. Pacelli (CRD #2344494, Registered Representative, Plantation, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$40,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Pacelli received \$40,000 from a public customer for investment purposes and used the funds for his own benefit. Pacelli also failed to respond to an NASD request for information. (NASD Case #C07000063)

Vito Gerard Padulo (CRD #2370645, Registered Representative, Englishtown, New Jersey) was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days for unauthorized transactions. In addition, Padulo was barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. The sanctions were based on findings that Padulo effected unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information.

Padulo's bar became effective February 21, 2001. (NASD Case #C10000166)

Cosmo Scali (CRD #2396302, Registered Representative, Brooklyn, New York) and Jeffrey Scott Geoghegan (CRD #2582567, Registered Representative, Putnam Valley, New York) were each barred from association with any NASD member in any capacity. The sanctions were based on findings that Scali and Geoghegan engaged in transactions in the accounts of public customers without their prior

knowledge, authorization, or consent. The findings also stated that Scali requested that a public customer provide him with an address outside of Texas to circumvent Texas blue sky restrictions. In addition, the NASD found that Geoghegan solicited public customers to purchase units in an initial public offering (IPO) prior to its effective date and failed to advise his customers of material facts regarding the extensive risks associated with the proposed investment, and falsified an entry on an order ticket in order to evade Virginia blue sky restrictions. (NASD Case #C10970143)

Warren Richard Schreiber (CRD #722981, Registered Representative, East Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schreiber consented to the described sanction and to the entry of findings that he entered a plea of guilty in the U.S. District Court, Southern District of New York, to felony securities law violations, (NASD Case #CAF010004)

Gary Clinton Scofield (CRD #1026835, Registered Representative, Clifton Park, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months, ordered to disgorge commissions, and required to pay \$4,486.68, plus interest, in partial restitution to a public customer. If the customer has received full restitution from another source, the \$4,486.68 will be paid as an additional fine. The fine payment and satisfactory proof of disgorgement and restitution, with interest, must be made before reassociating with any

NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scofield consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Scofield received a \$564.07 override in connection with the sale of a promissory note by another registered representative.

Scofield's suspension began April 2, 2001, and will conclude at the close of business October 1, 2002. (NASD Case #C11010004)

Derick Lawrence Sharpe (CRD #2790179, Registered Representative, Lawrenceville, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sharpe failed to respond to NASD requests for information. (NASD Case #C05000037)

Morgan Simonson (CRD #3136194, Associated Person, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$9,619.21 in restitution to a public customer. Satisfactory proof of restitution, with interest, must be made prior to reassociation with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Simonson consented to the described sanctions and to the entry of findings that he transferred \$18,719.21 in customer funds to his personal bank account without the customer's prior knowledge, authorization, or consent and misused and commingled the

funds. The findings also stated that Simonson returned \$9,100 to the customer and converted the remaining balance for his own use and benefit. In addition, the NASD found that Simonson prepared monthly account statements for the customer that contained false information. Moreover, the NASD found that Simonson failed to inform his member firm that he maintained a securities account with another member firm and failed to inform the other member firm that he was associated with a member firm. Furthermore, the NASD findings stated that Simonson failed to respond to NASD requests for information and documentation. (NASD Case #C10010040)

Ronald Lawrence Solomon (CRD #1093887, Registered Principal, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Solomon failed to respond to NASD requests to provide information and failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07000052)

Robert James Strain, II (CRD #2787826, Registered Representative, Charlotte, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Strain caused the wire transfer of funds totaling \$500 from an investment club account to his aunt's bank account although he was not entitled to any of the funds in this account. Strain also failed to respond to NASD requests for information. (NASD Case #C07000076)

Thomas Otto Tabat (CRD #1011671, Registered Representative, Glendale, Arizona) submitted a Letter of Acceptance,

Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tabat consented to the described sanction and to the entry of findings that he participated in private securities transactions outside the scope of his employment with a member firm. The findings also stated that Tabat failed to provide prior written notice to, or receive written approval from, his member firm to participate in the transactions. (NASD Case #C3A010007)

Verdell N. Tassler (CRD #1984549, Registered Representative, Abilene, Kansas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Tassler failed to respond to NASD requests for information. (NASD Case #C04000032)

Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada) was barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for two years and six months, fined \$35,000, and suspended until an outstanding arbitration award is paid in full plus an additional 30 days. If, after 30 months from the date of the National Adjudicatory Council (NAC) decision, an outstanding arbitration award is not fully paid or otherwise satisfied, the suspension imposed will convert to a bar in all capacities. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of two Office of Hearing Officers (OHO) decisions. The sanctions were based on findings that Tretiak fraudulently sold securities in an initial public offering (IPO) while using a materially misleading prospectus and in violation of the

contingency requirements contained in the prospectus and that he failed properly to establish an escrow account for the IPO. The NAC also found that Tretiak failed to satisfy a \$52,360 arbitration award that had been reduced to civil judgment.

Tretiak has appealed this action to the SEC and the sanctions, other than the principal bar, and the suspension until he pays off the arbitration award, are not in effect pending consideration of the appeal. The principal bar and suspension, until the arbitration award is paid, began March 9, 2001. (NASD Cases #C02990042 and #C02980085)

Jason Varzarevsky (CRD #2891755, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for six months, ordered to pay \$30,000 in restitution to a public customer, and ordered to requalify by exam as a general securities representative within 90 days of the approval and issuance of the AWC. If Varzarevsky fails to requalify within the time period, he shall not associate with any NASD member in any capacity until he requalifies. Payment of the fine and satisfactory proof of restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Varzarevsky consented to the described sanctions and to the entry of findings that he made material misrepresentations to induce a public customer to purchase shares of stock.

Varzarevsky's suspension began March 19, 2001, and will conclude at the close of business September 18, 2001. (NASD Case #C10010031)

Louis David Verrone (CRD #1037862, Registered Representative, Johnstown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$10,000 received in commissions. Satisfactory proof of payment of the disgorgement must be made before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Verrone consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. (NASD Case #C9A010004)

David Michael Weeks (CRD #2280967, Registered Principal, West Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Weeks, no monetary sanction has been imposed. Without admitting or denying the allegations, Weeks consented to the described sanction and to the entry of findings that he effected transactions in the accounts of public customers without the prior knowledge or consent of the customers and commingled the funds of public customers with cash and/or securities held in his personal securities account. The findings also stated that Weeks failed to respond to NASD requests for information and documentation. (NASD Case #C10010013)

Robert Walter White (CRD #2118340, Registered Representative, Winston-Salem, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that White received \$10,000 from a public customer to be deposited in the customer's investment account and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that White failed to respond to NASD requests for information. (NASD Case #C05000052)

Richard Peter Williams, Jr. (CRD #2556997, Registered Representative, Pompton Lakes, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U-4 to disclose that he had been named as a respondent in an investment-related, consumer-initiated arbitration which alleged that he was involved in sales practice violations.

Williams' suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #C9B010010)

Scott Douglass Winningham (CRD #2398475, Registered Representative, Canton, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended

from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Winningham consented to the described sanctions and to the entry of findings that he prepared and delivered to members of the public, sales literature in the form of a flyer offering his services as a financial consultant, and failed to have a registered principal of the firm approve the flyer prior to its use. The findings also stated that Winningham failed to provide the customers with a sound basis for evaluating the facts presented in the flyer with regard to the representations that no account fee and no commissions would be charged, and for evaluating the financial consulting expertise being offered. Moreover, the NASD found that the flyer contained a testimonial concerning the quality of his advice but failed to clearly state that "the testimonial may not be representative of the experience of other clients," and "the testimonial is not indicative of future performance or success." Furthermore, the NASD determined that the testimonial in the flyer contained statements and claims that were exaggerated, unwarranted, and/or misleading.

Winningham's suspension began April 2, 2001, and concluded at the close of business April 6, 2001. (NASD Case #C8A010008)

Daniel Alberto Zappala (CRD #2762038, Registered Representative, Merrick, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$3,500 in restitution to a public customer. Payment of the fine and satisfactory proof of payment of the restitution,

with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zappala consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Zappala's suspension began April 2, 2001, and will conclude at the close of business October 1, 2001. (NASD Case #C10010038)

Individuals Fined

Joseph Edward Kurczodyna (CRD #864454, Registered Principal, Lake Bluff, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$12,500. Without admitting or denying the allegations, Kurczodyna consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce written supervisory procedures, or to take reasonable steps to supervise individuals to prevent free-riding and withholding violations in an IPO. (NASD Case #C8A010011)

William Joseph Shaughnessy (CRD #870259, Registered Representative, Tucson, Arizona) submitted an Offer of Settlement in which he was censured and fined \$10,000. Without admitting or denying the allegations, Shaughnessy consented to the described sanctions and to the entry of findings that he made unsuitable recommendations for the joint securities account of public customers that resulted in an over-concentration of precious metals-related investments in the account. The findings also stated

that Shaughnessy completed a new account form for the customers' securities account that contained material inaccuracies. (NASD Case #C3A000036)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of March 9, 2001. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

LH Ross & Company, Inc. (CRD #37920, Boca Raton, Florida) and Franklyn Ross Michelin (CRD #2459180, Registered Principal, Boca Raton, Florida) were censured and fined \$24,000, jointly and severally. Respondents were also jointly and severally assessed \$2,909.70 as costs, including \$2,159.70 for transcripts and an administrative fee of \$750. The sanctions were based on findings that the respondents failed to implement the supervisory tape recording procedures required by the NASD taping rule.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review. (NASD Case #C07000033)

Frank Anthony Cardia, Jr. (CRD #2808582, Registered Representative, Bogota, New Jersey) was barred from association with any NASD member in any capacity and fined \$50,000 for falsifying records concerning a customer's account and for providing false information to the NASD. Cardia was also suspended from associa-

tion with any NASD member in any capacity for six months, fined \$30,000 for pre-selling the aftermarket in a stock, and ordered to pay \$8,637.95, plus interest, in restitution to a customer for failing to execute a limit order. The sanctions were based on findings that Cardia intentionally falsified a public customer's account records by falsely representing that another individual was the account executive on the customer's account and providing false testimony to the NASD during an on-the-record interview. Cardia also violated the antifraud provisions of the securities laws by utilizing a tie-in arrangement in which the customer had to agree to purchase aftermarket shares of stock in order to purchase shares in an IPO, and failed to follow a customer's instruction to sell a security. In addition, the NASD found that Cardia falsely stated in a written response to an NASD request for information that no customer had complained that he failed to place a sell limit order.

Cardia has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9B000007)

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Salam Aburas (CRD #2969004, Registered Representative, Berwyn, Illinois) was named as a respondent in an NASD complaint alleging that he purchased, or caused to be purchased, shares of common stock for the account of a public customer, without the knowledge or consent of the customer, and in the absence of written or oral authorization from the customer allowing him to exercise discretion in said account. (NASD Case #C8A010014)

Wendell Duane Beldon (CRD #1324913, Registered Principal, Tulsa, Oklahoma) was named as a respondent in an NASD complaint alleging that he recommended and effected sales of Class B mutual fund shares to a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. (NASD Case #C05010012).

Steven John Manocchia (CRD #1010935, Registered Representative, Smithfield, Rhode Island) was named as a respondent in an NASD complaint alleging that he misappropriated and converted at least \$8,198.44 in funds from a loan taken on a variable life insurance policy held in the name of a public customer. The complaint also alleges that Manocchia, without the consent of the customer, caused the loan check to be issued and sent to his address, forged the customer's signature on the check, added his own signature, and deposited the check into his own bank account. (NASD Case #C11010007)

Robert David Mayfield (CRD #2386752, Registered Principal, Murrietta, California) and Daniel Joseph Frydrych (CRD #1343609, Registered Principal, Temecula, California) were named as respondents in an NASD complaint alleging that they recommended to public customers the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in light of the nature of the transactions and the facts disclosed by the customers as to their other securities holdings, financial situation, investment objectives, circumstances, and needs. The complaint further alleges that Frydrych and Mayfield engaged in unethical conduct in that they provided the customers and their member firm with a materially false and misleading mutual fund switch form negatively impacting their ability to accurately assess the suitability of the transactions. (NASD Case #C02010003)

Thomas Vincent Meaglia (CRD #862483, Registered Representative, Glendora, California) and Richard Steven Meza (CRD #2570853, Registered Representative, Corina, California) were named as respondents in an NASD complaint alleging that

they exercised discretion in the accounts of public customers, without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by their member firm. The complaint also alleges that Meaglia and Meza recommended and engaged in transactions in the account of public customers, and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. (NASD Case #C02010002)

Kevin Arthur Sawicki (CRD #3100380, Registered Representative, West Palm Beach, Florida) was named as a respondent in an NASD complaint alleging that he failed to respond to NASD requests for information. The complaint also alleges that Sawicki made misrepresentations and material omissions of fact to public customers in order to induce the customers to purchase stock; failed to disclose that he was paid commission on the sales; and failed to discuss any negative or cautionary information regarding the stock to the customers. (NASD Case #C07010006)

Sean Patrick Tenney (CRD #3055872, Registered Representative, Orlando, Florida) was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer on a Mutual Fund and Certificate Redemption, Exchange, and/or Transfer of Investment form and a Financial Advisory Service Agreement form without the customer's authorization. The complaint also alleges that Tenney failed to respond to NASD requests for information. (NASD Case #C07010012)

Michael Verbitsky a.k.a. Michael Levine (CRD #3070975, Registered Representative, Livingston, New Jersey) was named as a respondent in an NASD complaint alleging that he sold and 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 from the customers to exercise discretion in said accounts. The complaint further alleges that Verbitsky failed to respond to NASD requests for information. (NASD Case #C9B010018)

Firm Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

LCP Capital Corp. f.k.a First Hanover Securities,
Staten Island, New York
(February 15, 2001)

Firms Suspended For Failure To Supply Financial Information

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Caribbean Securities LLC,
New York, New York
(March 15, 2001)

Montrose Capital Management LTD, New York, New York
(March 12, 2001)

Northridge Capital Corporation,
Melville, New York
(March 12, 2001)

The Taggart Company LTD,
Beverly Hills, California
(March 12, 2001)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations

Camm, Daniel A.
Odessa, Florida
(February 9, 2001)

DiMaria, Anthony F.
Bronx, New York
(February 9, 2001)

Millard, Russell W.
Redlands, California
(March 7, 2001)

Pagano, Louis J.
Staten Island, New York
(March 7, 2001)

Individuals Suspended Pursuant To NASD Rule 9540 Series For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)

Breckenridge, Deborah J.
Sunrise, Florida
(February 20, 2001)

Carnahan, Michael
Jupiter, Florida
(March 3, 2001)

Clyde, Stephen B.
Richwood, New Jersey
(March 9, 2001)

Dunlap, III, Arthur Lee
Winchester, Virginia
(February 28, 2001)

Hanson, Jr., Paul
Sausalito, California
(February 13, 2001)

Kuwata, Colburn Yoshitaka
Honolulu, Hawaii
(March 9, 2001)

Litwin, Gerald
Summit, New Jersey
(February 21, 2001)

Mason, Christopher T.
Glendale, Arizona
(March 7, 2001)

Monares, Ed J.
Malibu, California
(March 6, 2001)

Phillips, Daniel John
Stuart, Florida
(March 7, 2001)

Reed, Christopher R.
Cincinnati, Ohio
(February 21, 2001)

Santucci, Joel M.
Hallandale, Florida
(March 9, 2001)

Welsome, William A.
San Diego, California
(March 6, 2001)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

The date the registration was suspended is included after the entry. If the individual has complied, the listing also includes the date the suspension was lifted.

Jones, Marvin Hughey
Long Beach, California
(February 26, 2001-March 6, 2001)

Lemieux, John Charles
Levittown, New York
(March 2, 2001-March 19, 2001)

NASD Regulation Files Six Enforcement Actions Involving Marketing and Sales of Variable Annuities

NASD Regulation announced the filing of six separate enforcement actions against firms for the improper marketing and sale of variable annuities. One individual was also named. These disciplinary actions represent the first cases resulting from a series of special examinations focusing on the sale of variable contracts conducted by NASD Regulation during 1999 and 2000. Monetary sanctions, including restitution, in the five settled actions total more than \$112,000.

The six cases include allegations and findings of violations in the following areas:

- Misleading and unbalanced advertising and sales literature that failed to adequately disclose that variable contracts purchased in tax-deferred plans provide no additional benefit to the customer;
 - Use of a Web site that implied that tax benefits in tax-deferred plans are only available if they are funded with an annuity contract;
 - Unsuitable sales of variable annuities;
 - Failure to collect customer financial and other information for use in making suitability determinations;
- and
- Deficient supervisory procedures with respect to suitability reviews.

The sanctions in this group of settled cases include censures and fines ranging from \$10,000 to \$32,500 and restitution to an

affected public customer. These actions were investigated and filed by NASD Regulation offices in New Orleans and Dallas, and represent the continuing effort of NASD Regulation to address problem areas in the sale, distribution and marketing of variable products.

Sales of variable products have grown enormously over the past several years, and with the rise in new annuity products, investors may be inclined to replace their current annuity with a new one in a tax-free exchange. To help investors consider a replacement, NASD Regulation today issued an *Investor Alert*, offering investors key points to review before replacing a variable product. Over the past few years, NASD Regulation has also offered guidance to its members on the proper sale of variable products through the issuance of *Notices to Members* 99-35 and 00-44 and an article in the Summer 2000 issue of the *Regulatory and Compliance Alert*. These information pieces have given firms and their brokers sound guidance on how to sell variable annuity and life contracts, and also offer key points to consider when evaluating the suitability of these products for investors.

Mary L. Schapiro, President of NASD Regulation, said, "These enforcement actions demonstrate that variable annuities, like other securities products, must be properly sold and must be suitable investments for those who purchase them. Because these are complex products both for the broker who sells them, as well as the investor who buys them, it is extremely important that firms selling variable annuities have supervisory systems in place that will be able to detect if unsuitable sales are taking place."

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD Regulation in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because the complaints are unadjudicated, the respondents should be contacted before drawing any conclusion regarding the allegations in the complaints.

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

VARIABLE ANNUITY ENFORCEMENT ACTIONS INCLUDE:

1. American United Life Insurance Company - Case No. C05010011

American United Life Insurance Company is named in this complaint, which alleges:

- a) Misleading and unbalanced advertising and sales literature that failed to adequately disclose that variable contracts purchased in tax-deferred plans provide no additional benefit to the customer;
- b) Use of a Web site that implied that tax benefits in tax-deferred plans are only available if they are funded with annuity contracts;
- c) Failure to adequately disclose that the investment vehicles funding the plans are variable contract sub-accounts, as opposed to mutual funds; and

d) Inadequate written supervisory procedures.

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

2. Prudential Securities, Inc. - Case No. C06010005

Prudential Securities, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

Failure to enforce the firm's written procedures relating to the sale of annuities—certain documentation (e.g., order tickets and other documents required under the firm's own procedures) was missing in 201 transactions reviewed.

The firm was censured and fined of \$10,000.

3. First Union Brokerage Services, Inc. - Case No. C05010010

First Union Brokerage Services, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

a) The firm failed to establish and maintain adequate written procedures to supervise the sale of variable annuity contracts in terms of how reviews were to be done, how to evidence the review, how to supervise the suitability of the allocation of premium payments to sub-accounts, and how certain of the review responsibilities could be delegated.

b) The firm failed to obtain customer information required pursuant to its written procedures.

The firm was censured and fined \$32,500, which includes \$5,000 of disgorgement.

4. Allmerica Investments, Inc.- Case No. C06010004

Allmerica Investments, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

Deficient written supervisory procedures relating to annuity sales – routine procedure not in place to ensure adequate principal review of customers' investment objectives.

The firm was censured and fined \$15,000.00.

5. Ralph C. Evans - Case No. C05010009

Ralph C. Evans settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

Evans sold a \$325,000 annuity contract into a revocable trust for the benefit of a 76-year-old widow. Funds for the purchase were derived from the sale of Class B mutual funds, for which the account incurred contingent deferred sales charges, and from a margin loan. The transaction was unsuitable because Evans had not made any determination about whether the anticipated holding period was long enough such that the tax-deferred benefits would be likely to outweigh the fees imposed on the annuity relative to other investments. These included the contingent deferred sales charges paid in

connection with the sale of the mutual fund shares and the margin interest.

Evans was censured, fined \$10,000, and ordered to pay restitution to the affected customer in the amount of \$20,130.61.

6. Lutheran Brotherhood Securities Corp. - Case No. C06010003

Lutheran Brotherhood Securities Corporation settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

a) Failure to collect investment objective information in connection with 12 of 99 annuity transactions reviewed; and

b) Deficient written supervisory procedures concerning annuity sales with respect to (i) collection of investment objective information, (ii) supervisory review of financial status information, and (iii) supervisory review of allocation of premium payments to sub-accounts in relation to investment objectives.

The firm was censured and fined \$25,000.

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