

Disciplinary Actions

Disciplinary Actions Reported For December

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 November 27, 2000.

Firm Expelled

Waldron & Co., Inc. (CRD #868, Irvine, California) was expelled from NASD membership. The sanction was based on findings that the firm executed buy-ins of stock when the firm controlled the float of the stock. The findings also stated that the buy-ins were executed by having the firm supply the stock for the buy-ins at prices that far exceeded the inside ask price at the time of the transactions, resulting in unfair profits for the firm. **(NASD Case #CAF990023)**

Firms Fined, Individuals Sanctioned

Providential Securities, Inc. (CRD #31189, Fountain Valley, California) and **Henry Dack Fahman (CRD #1952649, Registered Principal, Huntington Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$115,000, required to offer rescission to public customers, and Fahman was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Fahman, offered and sold shares of

stock through a private “minimum-maximum” offering to public customers and made untrue statements of material facts and omissions in that the offering memorandum:

- failed to disclose that an officer of the firm could make contributions to help meet the minimum requirement;
- failed to disclose the firm's and Fahman's disciplinary history; and
- stated falsely that 50 percent of the minimum offering was to be used to register the firm as a New York Stock Exchange member self-clearing broker/dealer, when in fact, the funds were used to cover the firm's regular operating expenses.

Moreover, the NASD found that the firm, acting through Fahman, disclosed on the offering memorandum that the firm had three branch offices and additional full-service satellite offices, failed to disclose that the firm's membership agreement restricted the firm to only two branch offices, extended the offering date without providing prior written notification to its investors, and falsely represented individuals in the offering as being members of the Board when they were not.

The findings also stated that the firm, acting through Fahman, failed to deposit and retain customer funds received in the offering in a properly established bank escrow account, and transmitted funds to the firm's operations bank account in the name of the issuer, failed to return customer funds when the terms of the contingency were not met, and continued to sell common stock through the private placement memorandum despite the expiration of the contingency.

Furthermore, the NASD found that Fahman violated the firm's restriction agreement with the NASD by opening more than two branch offices and failing to register these offices, and operated Offices of Supervisory Jurisdiction (OSJ) without a required on-site principal. In addition, the findings stated that the firm, acting through Fahman, permitted individuals to engage in the securities business and function as general securities representatives and limited representative-equity traders prior to being properly registered or qualified in the appropriate capacities, and distributed communications to the public through the Internet that failed to conform with the NASD's general and specific standards of conduct. **(NASD Case #C02000061)**

Ridgewood Associates, Inc. (CRD #16727, Paramus, New Jersey) and **Philip Patrick Marino (CRD #319926, Registered Principal, Paramus, New Jersey)** submitted an Offer of Settlement in which they were censured and fined \$20,000, jointly and severally. In addition, Marino was suspended from association with any NASD member in any principal capacity for 20 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Marino, failed to adequately and properly supervise the trading activity of an individual in the accounts of public customers to ensure compliance with the securities laws and applicable NASD rules. The NASD also found that the firm, acting through Marino, failed to prevent transactions in the customers' accounts that were excessive in size or frequency in view of the financial resources and character of such accounts.

Marino's suspension began November 6, 2000, and concluded on November 25, 2000. **(NASD Case #C9B000018)**

Firms And Individuals Fined

Alex Moore & Company, Inc. (CRD #28062, Garden City, New York) and **Frank John Gerage (CRD #2271507, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$12,500, jointly and severally. The firm was fined an additional \$3,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gerage, failed to register with the NASD an individual who was actively engaged as a principal in the management of the firm. The findings also stated that the firm, acting through Gerage, participated in an underwriting that was not listed as a permissible activity in the firm's restriction agreement and conducted more principal transactions in a 12-month period than permitted in the agreement. The NASD also found that the firm, acting through Gerage, failed to maintain sufficient net capital while conducting a securities business and failed to notify the Securities and Exchange Commission (SEC) and the NASD in a timely manner that it was under its minimum net capital. In addition, the firm failed to timely submit a monthly FOCUS filing and failed to reconcile the balances in a FOCUS Part IIA Report with the firm's financial statements and supporting schedules. **(NASD Case #C10000175)**

Beneficial Capital, Inc. (CRD #8219, Woodbridge, Connecticut) and **Richard Schatz (CRD**

#412683, Registered Principal, Woodbridge, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm employed Schatz as its financial and operations principal (FINOP) without being registered with the NASD as a FINOP. The findings also stated that the firm, acting through Schatz, engaged in the securities business while failing to have and maintain sufficient net capital. **(NASD Case #C02000057)**

FFP Securities, Inc. (CRD #16337, Chesterfield, Missouri) and **Roy Monroe Henry (CRD #243400, Registered Principal, Chesterfield, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$40,000, 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 used a confidentiality clause that prohibited, or otherwise inhibited, the customer from disclosing the settlement terms and underlying facts of the dispute to a securities regulator in settlement agreements. The findings also stated that the firm failed to report, and failed to timely report, to the NASD specific disclosure events within 10 business days in accordance with NASD rules, and failed to file amended Forms U-4 or Forms U-5 for individuals subject to customer complaints within 30 days of becoming aware of the facts or circumstances giving rise to a need for the amendments. Furthermore, the NASD found that the firm commenced a best efforts

all-or-none offering of limited partnership units through the use of a private placement memorandum that represented that the offering period would terminate on a certain date if the required minimum units were not received. The NASD determined that the firm, acting through Henry, rendered false the representation of the contingency in the memorandum in that it failed to include a statement that the firm and persons associated with the firm would be purchasing a portion of the offering when, in fact, an affiliated company of the firm purchased units giving the appearance that the stated contingency was satisfied. Moreover, the findings stated that the firm, acting through Henry, failed to establish an escrow account in connection with the offering during the contingency period and, instead, transmitted investors' monies directly to the brokerage account under the issuer's control.

The findings also stated that the firm, acting through Henry, commenced an offering of securities in the form of government collateralized investment notes to investors when a registration statement had not been filed with the SEC for the securities nor were the securities otherwise exempt from registration. The firm also failed to establish an effective supervisory control system to ensure all transactions by the principals of its OSJ were being properly supervised by another supervisory principal. **(NASD Case #C04000033)**

First Madison Securities, Inc. (CRD #38820, Boca Raton, Florida) and **Ray Vahab (CRD #1041775, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were

censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Vahab, conducted a securities business while failing to maintain its minimum net capital. The findings also stated that the firm, acting through Vahab, failed to prepare an adequate Continuing Education written needs analysis for one year and a written needs analysis and training plan for two years. In addition, the NASD found that the firm, acting through Vahab, failed to report customer complaints and an arbitration to the NASD. **(NASD Case #C10000194)**

Glenn Michael Financial, Inc. (CRD #37912, Melville, New York) and **Francine Ann Lanaia (CRD #1415689, Registered Principal, Ft. Salanga, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the respondents were censured and fined \$10,500, jointly and severally. The firm was also fined \$4,000, jointly and severally with another individual, and \$19,500, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm reported transactions late without the required symbol, executed transactions as bunched without reporting them as bunched, reported transactions with an incorrect modifier, and reported agency transactions as principal transactions. The firm also time-stamped order tickets inaccurately, and failed to include a notation of quotations from market makers on order tickets representing OTC Bulletin Board® (OTCBB) securities transactions. The firm, acting through Lanaia, permitted an individual to function as a

registered representative and paid commissions to another individual during periods that they were "inactive" due to failure to complete the Regulatory Element of the NASD Continuing Education Program. The findings also stated that the firm, acting through Lanaia, failed to report customer complaints to the NASD as required. In addition, the NASD found that the firm, acting through another individual, made markets in a greater number of securities and OTCBB securities than was permitted in the firm's membership agreement. **(NASD Case #C3A000039)**

Joseph Matthews & Company (CRD #19605, Staten Island, New York) and **Joseph Vincent Quattrocchi (CRD #1231465, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm knowingly maintained, through Quattrocchi, the registrations of individuals for periods of time when they were not actively engaged in the firm's securities business or were not functioning as registered representatives of the firm, thereby, avoiding a lapse in registration. **(NASD Case #C10000189)**

Merrill Lynch, Pierce, Fenner & Smith Inc. (CRD #7691, New York, New York) and **Arthur Joseph Matney (CRD #322913, Registered Principal, Santa Rosa, California)** submitted a Letter of Acceptance, Waiver, and Consent (AWC) in which Matney was censured, fined \$15,000, and required to requalify by exam as a general securities principal within

180 days from the date of acceptance of the AWC. The firm was censured and fined \$25,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Matney failed to reasonably supervise the trading activity of a registered representative. The findings also stated that the firm failed to reasonably enforce its written supervisory procedures concerning trading activity and the detection of potentially unsuitable and excessive trading. **(NASD Case #C11000026)**

Firms Fined

Alexander Wescott & Company, Inc. (CRD #35935, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$9,000, jointly and severally with an individual, and fined \$7,000, individually. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted the premature breaking of escrow by releasing funds to the issuer when the escrow account had a balance of approximately \$640,000 and misrepresented to investors that the minimum contingency of \$1,000,000 had been satisfied. The findings also stated that the firm, acting through an individual, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain the minimum required net capital. The NASD also found that the firm, acting through an individual, failed to report a State of Minnesota cease and desist order and an \$86,000 arbitration judgment against the firm to the NASD within 10 business days, and failed to report quarterly statistical and

summary information relating to customer complaints to the NASD. In addition, the NASD found that the firm failed to report trades within 90 seconds of execution and with the “.SLD” modifier and reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) as principal trades when they should have been reported as agency trades. **(NASD Case #C11000022)**

Cambridge Capital, LLC (CRD #41464, Garden City, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$31,500, and ordered to pay \$9,702.50 in restitution to public customers. Satisfactory proof of restitution payment must be provided to the NASD no later than 90 days after acceptance of the AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to disclose in a private placement memorandum that affiliates of the issuer and/or the placement agent could invest in the offering. The findings also stated that the firm failed to disclose the difference between the price to the customer and the firm’s contemporaneous purchase for customer purchases or sale price for customer sales in riskless principal transaction confirmations. The NASD also found that customers did not receive best execution, resulting in \$9,702 in damages to the customers and failed to record the correct time of entry on retail order tickets representing the offsetting purchase or sale transaction effected by the firm. In addition, the NASD found that the firm reported to the tape, via ACT, 100 percent of the customer side of its riskless principal transactions in Nasdaq National Market[®] (NNM) transactions when the firm was not

a market maker in the securities and was not required to do so and should not have reported the customer portion of riskless principal transactions. Moreover, the NASD found that the firm failed to have adequate written supervisory procedures in place to ensure that customer confirmations for riskless principal transactions contained the correct disclosures, failed to review periodically customer trades and verify for best execution, and failed to ensure that order tickets were promptly time stamped. **(NASD Case #C3A000038)**

C.E. Unterberg, Towbin (CRD #24790, New York, New York) 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 an order was presented to the firm at the firm’s published bid or published offer in an amount up to its published quotation size. The NASD found that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC and NASD firm quote rules. **(NASD Case #CMS000215)**

Direct Access Brokerage Services Inc. (CRD #30057, Chicago, Illinois) 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, within 90 seconds after execution, to

transmit through ACT, last sale reports of transactions in NNM securities, eligible securities, Nasdaq SmallCapSM securities, and OTC equity securities. The findings also stated that the firm failed to designate last sale reports as late through ACT, and incorrectly designated last sale reports of transactions in NNM, SmallCap securities, OTC equity securities, and eligible securities reported within 90 seconds of the execution as “.SLD” through ACT. **(NASD Case #CMS000218)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, the firm entered a bid or ask quotation in The Nasdaq Stock Market, Inc. that caused a locked or crossed market condition to occur. **(NASD Case #CMS000202)**

J.C. Bradford & Company (CRD #1287, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously or partially execute customer limit orders in Nasdaq[®] securities after it traded each subject security for its own market-making account at a price that would have satisfied each

customer's limit order. The findings also stated that the firm reported to ACT the incorrect time of execution and an incorrect price for transactions in NNM securities. The findings also stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have improved the firm's bid or offer for each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each 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 security. **(NASD Case #CMS000206)**

OTA Limited Partnership (CRD #25816, Purchase, New York) 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 engaged in a pattern or practice of late transaction reporting without exceptional circumstances by failing to report securities transactions to ACT within 90 seconds after execution. The findings also stated that the firm failed to transmit last sale reports of transactions in NNM securities, a transaction in a SmallCap security, and transactions in listed securities through ACT within 90 seconds after execution; and failed to designate each transaction as late to ACT. **(NASD Case #CMS000211)**

Preferred Capital Markets, Inc. (CRD #10993, San Francisco, California) 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 transmit last sale reports of transactions in NNM securities through ACT within 90 seconds after execution, and failed to designate these reports as late to ACT. The findings also stated that the firm reported through ACT last sale reports of transactions in NNM securities and SmallCap securities it was not required to report, and incorrectly designated last sale reports of transactions in NNM securities as “.SLD” to ACT. In addition, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning trade reporting. **(NASD Case #CMS000209)**

Prime Dealer Services Corporation (CRD #36142, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to submit to the NASD revised written supervisory procedures reasonably designed to prevent future violations of NASD Rule 3360. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report its short interest positions to the NASD. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short interest reporting. **(NASD Case #CMS000224)**

Individuals Barred Or Suspended

For individuals who have been both barred and suspended, only the date that the bar became effective is included.

Richard Gary Agran (CRD #854773, Registered Representative, Cupertino, California) 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, Agran consented to the described sanction and to the entry of findings that he participated in the purchase of common stock without providing written notification to his member firm. **(NASD Case #C01000027)**

Farzan Ali (CRD #2631139, Registered Representative, Briar Wood, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ali consented to the described sanction and to the entry of findings that he received \$1,593 from public customers to pay their annual homeowner insurance policies and converted \$1,056 of the funds for his own use and benefit without the customers' prior knowledge, authorization, or consent. **(NASD Case #C10000181)**

Harry Edward Bassett, III (CRD #2649512, Registered Representative, Valley Stream, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity provided that he may reapply for association after three years from the date of

the order accepting the Offer of Settlement. Without admitting or denying the allegations, Bassett consented to the described sanction and to the entry of findings that he was engaged in the solicitation and conduct of the securities business of a member firm while he was not registered with the NASD and was prohibited from being associated with a member firm because of his statutory disqualification. **(NASD Case #CAF000029)**

Angus Deford Beal (CRD #2994227, Registered Representative, San Antonio, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Beal consented to the described sanctions and to the entry of findings that he exercised discretionary power to effect trades in the accounts of public customers without their prior written authorization for discretionary trading.

Beal's suspension began November 20, 2000, and concluded at the close of business on November 29, 2000. **(NASD Case #C3B000015)**

William Edward Bergh (CRD #1409200, Registered Representative, Peoria, 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, Bergh consented to the described sanction and to the entry

of findings that he engaged in private securities transactions without providing prior written notice to, and receiving approval from, his member firm in that he sold securities in the form of investment contracts or evidence of indebtedness. **(NASD Case #C02000060)**

Larry Gene Brady (CRD #4152720, Registered Representative, Ogden, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brady consented to the described sanctions and to the entry of findings that he failed to disclose on his Form U-4 that he had been charged and pled guilty to felony grand theft in the State of California.

The suspension began December 4, 2000, and will conclude at the close of business on December 3, 2001. **(NASD Case #C3A000043)**

Vincent Michael Carrella (CRD #2321148, Registered Principal, Bellport, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for three months and suspended from association with any NASD member firm in any registered capacity or from acting in any capacity for which he would be required to be registered for two years. In light of the financial status of Carrella, no monetary sanction has been imposed. Without admitting or denying the allegations, Carrella consented to

the described sanctions and to the entry of findings that he made fraudulent misrepresentations, omitted facts, and made baseless price predictions to customers; and caused an unauthorized sale in a customer account.

The suspension in any capacity began November 20, 2000, and will conclude at the close of business on February 19, 2001, and the suspension in any registered capacity will begin February 20, 2001, and conclude at the close of business on February 19, 2003. **(NASD Case #CMS960174)**

Pasquale Detursi (CRD #1865313, Registered Representative, Arlington, Massachusetts) 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, Detursi consented to the described sanction and to the entry of findings that he entered his name as primary beneficiary on a public customer's application for a single premium deferred annuity policy that was funded with a \$100,322.93 investment. **(NASD Case #C11000024)**

Anthony Frederick DiMaria (CRD #2286669, Registered Principal, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$48,740, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$1,090 in commissions to the NASD. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DiMaria consented to the described sanctions and to the

entry of findings that he failed to make a bona fide public distribution of an initial public offering that traded at a premium in the immediate secondary market and sold shares of stock to relatives who are restricted persons. The findings also stated that DiMaria submitted customer new account documents to his firm's management for his relatives when he knew that the documents contained inaccurate information.

DiMaria's suspension began November 20, 2000, and will conclude at the close of business on January 3, 2001. **(NASD Case #C10000192)**

Dennis Franklin Drescher (CRD #2965951, Registered Representative, Chesterfield, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. Also, for one year after the date Drescher reassociates with a member firm following the suspension, he will refrain from accepting or maintaining employment in any capacity with any NASD member unless the firm has formulated special supervisory procedures to oversee and monitor his activities. In light of the financial status of Drescher, no monetary sanctions have been imposed. Without admitting or denying the allegations, Drescher consented to the described sanctions and to the entry of findings that he caused his member firm to violate SEC Rule 17a-3 in that he accessed a member firm's internal accounting system to make a journal entry to facilitate the transfer of a sale of shares of stock from his personal securities account to the firm's average price account. The NASD also found that Drescher submitted via the firm's internal order system,

orders to sell shares short of the stock in the firm's average price account. Furthermore, the findings stated that Drescher did not mark these sales as short sales, although they were in fact short sales, and made notations on the firm's reconciliation reports for the average price account to the effect that the short position reflected for the stock had been "moved already" in order to conceal the fact that he improperly initiated a short position in the firm's average price account.

Drescher's suspension began December 4, 2000, and will conclude on March 3, 2001. **(NASD Case #C04000035)**

Kevin Andrew Fleming (CRD #2615501, Registered Principal, Saddle Brook, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fleming failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9B000011)**

Troy Joseph Flowers (CRD #2580057, Registered Principal, Lemon Grove, California) 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 one year. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Flowers consented to the described sanctions and to the entry of findings that a former member firm, acting through Flowers, did not comply with the SEC penny stock rules with respect to customer purchases of stock because it incorrectly and improperly took the

position that a stock was not a penny stock.

Flowers' suspension began November 20, 2000, and will conclude at the close of business on November 19, 2001. **(NASD Case #C02000058)**

Richard Alan Frondorf (CRD #2054157, Registered Representative, Abita Springs, Louisiana) was fined \$7,500 and suspended from association with any NASD member in any capacity for two months. The sanctions were based on findings that Frondorf caused unauthorized withdrawals from the accounts of public customers and thereby created margin loan balances in their accounts. The findings also stated that Frondorf attempted to conceal his misconduct from his member firm by inducing the customers to provide false written statements concerning his activity to his firm.

Frondorf's suspension began November 6, 2000, and will conclude at the close of business on January 4, 2001. **(NASD Case #C05000002)**

Michael Alan Gagnani (CRD #1280818, Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gagnani consented to the described sanctions and to the entry of findings that he created and provided to a public customer a fictitious confirmation reflecting that a member firm had sold shares of stock for the account of other customers for proceeds of \$3,733, when in fact no sale of such securities had occurred.

Gagnani's suspension will begin December 18, 2000, and will conclude at the close of business on January 2, 2001. **(NASD Case #C01000028)**

Darrin Bradford Greene (CRD #1175667, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Green consented to the described sanctions and to the entry of findings that he assisted his member firm and other principals in repurchasing shares and warrants issued in an initial public offering during the immediate aftermarket. The findings also stated that since these securities did not come to rest in the hands of the investing public when the customers bought them, the purchase and resale of the shares and warrants constituted a continuation of the distribution. In addition, the NASD found that Greene assisted his member firm and other individuals in making markets in the common stock and warrants of a security and bid for, purchased, or induced others to purchase the securities at significantly higher prices.

Greene's suspension will begin December 18, 2000, and will conclude at the close of business on January 17, 2001. **(NASD Case #CAF000005)**

John Edward Harper (CRD #2387102, Registered Representative, St. Petersburg, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Harper failed to respond to NASD requests for information. **(NASD Case #C05000028)**

Javier Hernandez (CRD #2298668, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and required to pay \$3,375, plus interest, in restitution to a public customer. The fine and restitution, plus interest, must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. In addition, proof of payment of the restitution must be provided to NASD Regulation no later than 90 days after the acceptance of this offer. Without admitting or denying the allegations, Hernandez consented to the described sanctions and to the entry of findings that he used the means and instrumentalities of interstate commerce and engaged in manipulative, deceptive, and fraudulent practices in connection with securities transactions. The findings also stated that Hernandez made material misrepresentations and baseless performance predictions to a public customer, effected unauthorized transactions in the customer's account, and failed to execute the customer's order to sell his securities.

Hernandez' suspension began December 4, 2000, and will conclude at the close of business on January 17, 2001. **(NASD Case #C10970143)**

Shek Wai Hui (CRD #2024873, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hui misappropriated funds totaling \$38,977.01 for his own use from insurance policyholders at his

member firm and failed to respond to NASD requests for information. **(NASD Case #C10000078)**

Evelyn Jackson (CRD #2142586, Registered Representative, Philadelphia, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jackson failed to respond to NASD requests for information. **(NASD Case #C9A000023)**

Kenneth Browning Karpf (CRD #1798596, Registered Representative, Spring, Texas) was barred from association with any NASD member in any capacity and ordered to pay \$23,502.85, plus interest, in restitution to customers. The sanctions were based on findings that Karpf effected securities transactions in the accounts of public customers without their authorization. **(NASD Case #C06000011)**

John F. Keegan (CRD #2125338, Registered Representative, Duluth, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, suspended from association with any NASD member in any capacity for six months, and suspended from association with any NASD member in a supervisory capacity for two years. Keegan must also requalify by exam before acting again in the capacities for which he is suspended and is also ordered not to act as a Director of Compliance, or as the sole compliance representative, in a Compliance Department of any NASD member firm for two years. Without admitting or denying the allegations, Keegan consented to the described sanctions and to the entry of findings that he failed to report to the NASD statistical and summary information regarding

customer complaints. The findings also stated that Keegan failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD rules regarding customer complaint reporting.

Keegan's suspensions began December 4, 2000. The suspension in all capacities will conclude on June 3, 2001, and the suspension in a supervisory capacity will conclude at the close of business on December 3, 2002. **(NASD Case #CAF000041)**

David Michael Lamey (CRD #2127942, Registered Representative, Hempstead, New York) was permanently barred from association with any NASD member in any capacity. The sanction was based on findings that Lamey failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10000110)**

Edward Leccese (CRD #2847776, Registered Representative, Boca Raton, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days for opening an account without authorization and effecting an unauthorized trade, and barred from association with any NASD member in any capacity for failing to appear for an NASD on-the-record interview. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Leccese opened an account for a public customer at his member firm and effected a purchase of securities in the account without the customer's prior knowledge, authorization, or

consent. The findings also stated that Leccese failed to respond to NASD requests to appear for an on-the-record interview.

Leccese's bar became effective October 25, 2000. **(NASD Case #C10000058)**

Anthony Alfred Maccarone, Jr. (CRD #2382616, Registered Principal, Hoboken, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity, including clerical or ministerial functions. Without admitting or denying the allegations, Maccarone consented to the described sanction and to the entry of findings that he effected unauthorized transactions in the account of a public customer and forged the customer's signature on Letters of Authorization causing the misappropriation of approximately \$123,419 from the customer's account. The findings also stated that Maccarone prepared and provided the customer with monthly account statements that contained false information in order to conceal his misconduct. **(NASD Case #C10000188)**

Michael Joseph Markowski (CRD #844847, Registered Principal, Miami Beach, Florida) and **Joseph F. Riccio (CRD #710502, Registered Representative, Palm Harbor, Florida)**. Markowski was censured, fined \$300,000, and barred from association with any NASD member in any capacity, and Riccio was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a July 1998 NAC decision. The sanctions were based on findings that Markowski and Riccio manipulated the market for

securities underwritten by a firm and published non-bona fide bids for those securities. In addition, Markowski failed to comply with a restriction agreement between the firm and the NASD and refused to timely submit to an NASD investigative interview. **(NASD Case #CMS920091)**

Deborah Faye Morones (CRD #1779396, Registered Principal, Bowling Green, Kentucky) submitted an Offer of Settlement in which she was suspended from association with any NASD member in any capacity for six weeks, suspended from association with any NASD member in any principal capacity for six months, and ordered to requalify by exam as a general securities principal by passing the Series 24 exam prior to acting again in that capacity. In light of the financial status of Morones, no monetary sanctions have been imposed. Without admitting or denying the allegations, Morones consented to the described sanctions and to the entry of findings that she engaged in the sale of unregistered securities to non-accredited investors in connection with an offering of units in which the offering was not exempt from registration under the Securities Act of 1933, and that she signed the acceptance of subscription for each of the non-accredited investors. The findings also stated that Morones published and distributed a public communications piece in connection with an offering of units that lacked a balanced presentation of the risks of the security, contained unwarranted and misleading statements, omitted material facts, and included exaggerated statements and claims. The NASD also found that Morones failed to enforce customer suitability requirements on offerings of securities and signed the acceptance of subscriptions for offerings for public cus-

tomers who did not provide sufficient information to determine suitability or who failed to meet suitability standards.

Morones' suspensions began December 4, 2000. The suspension in all capacities will conclude at the close of business on January 12, 2001, and the suspension in a principal capacity will conclude on June 3, 2001. **(NASD Case #C05000051)**

Gary Eugene Morris (CRD #1044382, Registered Representative, Elysburg, Pennsylvania) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two months, and required to disgorge \$1,850 in commissions earned to public customers. The fine and disgorgement must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he participated in the offer and sale of a debt security to public customers outside the normal course or scope of his association with a member firm and failed to provide the firm with prior written notice of the security transaction.

Morris' suspension began November 20, 2000, and will conclude at the close of business on January 19, 2001. **(NASD Case #C9A000026)**

Greg Alan Reinhold (CRD #2320935, Registered Representative, Portland, Indiana) 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, Reinhold consented to the described sanction and to the entry of findings that he purchased securities for the account of a public customer without the knowledge or consent of the appointed guardian of the customer's estate and in the absence of the guardian's written or oral authorization to exercise discretion in the account. The findings also stated that Reinhold caused \$30,000 to be withdrawn from the account of a public customer, and he used the proceeds for his own use or benefit or for purposes other than the benefit of the customer. Reinhold also failed to respond to questions concerning, among other things, a public customer's account during an on-the-record interview. **(NASD Case #C8A000062)**

Christopher William Rowland (CRD #2449043, Registered Representative, Richmond, Virginia) 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, Rowland consented to the described sanction and to the entry of findings that he received \$10,000 in cash to set up an annuity for a public customer. According to the findings, the money was delivered by a third party who acted as an intermediary between Rowland and the customer, and after several unsuccessful attempts to meet the customer through the third party, Rowland purchased the annuity for the customer but forged the customer's signature on several documents relating to the annuity. **(NASD Case #C07000079)**

Samuel Colin Andrew Sampson (CRD #2881918, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sampson received \$290 from public customers as the initial premium payment for life insurance policies issued by his member firm. Sampson failed to forward these payments to his member firm and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent. Sampson also failed to respond to NASD requests for information. **(NASD Case #C9B000012)**

Donald Charles Sarin (CRD #411017, Registered Representative, Lenox, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$75,000, of which \$46,000 represents disgorgement of commissions; suspended from association with any NASD member in any capacity for 18 months; and required to requalify by exam as a general securities representative within 180 days from the date he becomes reassociated with a member firm following his suspension. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sarin consented to the described sanctions and to the entry of findings that he executed trades in the account of a deceased customer without the authority to do so and embarked upon aggressive short-term trading in the account. The findings also stated that Sarin engaged in excessive and unsuitable trading in the account and acted in reckless disregard of his client's interests when he disregarded the impact of his customer's

death on the account, the tax ramifications associated with the trading activity, and the risks the account incurred from the excessive and unsuitable trading.

Sarin's suspension began November 20, 2000, and will conclude on May 19, 2002. **(NASD Case #C11000025)**

David Lee Sherman (CRD #1303348, Registered Representative, Ansonia, Ohio) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sherman consented to the described sanction and to the entry of findings that he engaged in private transactions and failed to provide his member firm with written notice describing the transactions and his role therein and failed to receive written acknowledgment and/or permission from his firm to participate in the transactions. The findings also stated that Sherman failed to respond to NASD requests for documents and information. **(NASD Case #C8B000011)**

Aleksandr Shvarts (CRD #1718124, Registered Principal, Brooklyn, New York) submitted an Offer of Settlement in which he was fined \$837,436.80, which includes restitution in the amount of \$837,436.80 representing the full amount of loss to bona fide customers of a member firm for which Shvarts is responsible, and barred from association with any NASD member in any capacity. Restitution, plus interest, must be paid before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Shvarts consented to the described sanctions and to the entry of findings that a member

firm, acting through Shvarts, through means or instrumentalities of interstate commerce or of the mails, intentionally, knowingly, or recklessly:

- employed a device, scheme, contrivance, and/or artifice to defraud and manipulative, deceptive, or other fraudulent device or contrivance;
- made untrue statements of a material fact and/or omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading; and
- engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors.

The firm, acting through Shvarts, created a "boiler room" that encouraged associated persons of the firm to utilize baseless price and performance predictions and other misleading statements and to exert pressure on purchasers in connection with the solicitations of interest in an initial public offering (IPO). The findings also stated that the firm, acting through Shvarts, delivered to customers IPO prospectuses and other documents that failed to disclose the firm's securities purchasing policy and that the firm's associated persons were offered incentives to sell the securities. The NASD also found that the firm, acting through Shvarts, acted as a market maker in the securities when it was precluded from doing so under SEC Rule 10b-6 so as to prevent the possibility of manipulation and to ensure that the market prices of the newly distributed securities were determined by independent, competitive bidding until after the firm had completed its participation in the distribution. Further, the NASD found that the firm, acting

through Shvarts, executed the purchase of securities in the accounts of public customers when the securities were a "hot issue" and were then sold in the immediate aftermarket for a profit. Moreover, the NASD found that Shvarts failed to testify truthfully during an NASD on-the-record interview and failed to respond to NASD requests for information. **(NASD Case #C10000029)**

Gene Miron Spektor (CRD #3073674, Registered Representative, Santa Monica, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with a member firm following the suspension. Without admitting or denying the allegations, Spektor consented to the described sanctions and to the entry of findings that he completed a Form U-4 for a member firm, and failed to disclose that he had been charged with and convicted of a felony involving receiving stolen property and charged with a felony involving forgery.

Spektor's suspension began November 20, 2000, and will conclude at the close of business on December 19, 2000. **(NASD Case #C02000018)**

Robert Henry Stachura (CRD #1670434, Registered Representative, Niles, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to cooperate with the NASD in connection with its prosecution of any other disciplinary actions against other individuals subject to NASD jurisdiction who possibly

participated in the sale of promissory notes to members of the public. Without admitting or denying the allegations, Stachura consented to the described sanctions and to the entry of findings that he participated in private securities transactions by participating in the sale of securities in the form of promissory notes to members of the public, failed to give written notice of his intention to engage in such activities to his member firm, and failed to receive written receipt of such notice from the firm prior to engaging in such activities. **(NASD Case #C8A000063)**

Paul Salim Tahan (CRD #2494916, Registered Representative, Boca Raton, Florida) was suspended from association with any NASD member in any capacity for two years and fined \$20,000 for unsuitable omissions; suspended from association with any NASD member in any capacity for one year and fined \$20,000 for unsuitable recommendations; and barred from association with any NASD member in any capacity for failing to respond in any manner to NASD requests for information. The fine must be paid before any application for reentry into the securities industry will be considered.

Tahan's bar became effective October 27, 2000. **(NASD Case #C07000039)**

Cristian Taverne (CRD #2860792, Registered Representative, Santiago, Chile) 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 20 business days. The fine must be paid before reassociating with a

member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Taverne consented to the described sanctions and to the entry of findings that he paid \$2,000 to settle a public customer's complaint without informing and obtaining authorization from his member firm.

Taverne's suspension began November 20, 2000, and will conclude at the close of business on December 18, 2000. **(NASD Case #C10000184)**

Laura Lea Taylor (CRD #2719777, Registered Representative, San Angelo, Texas) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Taylor consented to the described sanction and to the entry of findings that she received money orders totaling \$1,153 that represented payment for a life insurance policy purchased by a public customer through Taylor's member firm. The NASD determined that Taylor made both money orders payable to herself, cashed both money orders, and without the authorization, knowledge, or consent of the customer, used the funds for her own use and benefit. **(NASD Case #C06000013)**

Simon Piers Thurlow (CRD #2697252, Registered Representative, Scarsdale, 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 five months. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any

statutory disqualification. In light of the financial status of Thurlow, a \$5,000 fine has been imposed. Without admitting or denying the allegations, Thurlow consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in connection with the sale of shares. The findings also stated that Thurlow engaged in outside business activities without providing prompt written notice to his member firm and receiving written approval from the firm to engage in outside transactions.

Thurlow's suspension began November 20, 2000, and will conclude at the close of business on April 19, 2001. **(NASD Case #C10000045)**

Matt Laroy Whitley (CRD #1438169, Registered Representative, San Antonio, Texas) 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, Whitley consented to the described sanction and to the entry of findings that, while associated with a member firm, he received checks from public customers and converted \$61,000 in underlying funds to his own use by applying fictitious endorsements on the checks. Whitley also failed to respond to NASD requests for information. **(NASD Case #C06000027)**

Jonathan Daniel Winston (CRD #2483658, Registered Principal, Great Neck, New York), Douglas Keith Traynor (CRD #600138, Registered Principal, Pound Ridge, New York), Jason Alan Cohen (CRD #2483655, Registered Principal, Albertson, New York), and Robert Noonan Drake (CRD #1213804, Registered Principal, Pawling,

New York) submitted Offers of Settlement in which Winston was fined \$70,000 and suspended from association with any NASD member in any capacity for two years, and Cohen was fined \$55,000 and suspended from association with any NASD member in any principal capacity for two years. Drake was suspended from association with any NASD member in any principal capacity for two years, and Traynor was suspended from association with any NASD member in any principal capacity for 18 months. In light of the financial status of Drake and Traynor, no monetary sanctions were imposed against them. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they permitted an individual whom they knew, or should have known, was subject to statutory disqualification to conduct activities at, and to be associated with, a member firm without approval from the NASD or the SEC. The findings also stated that Drake failed to timely and accurately report customer complaints, consent agreements with the States of Michigan and Indiana, and a reprimand by the State of Georgia to the NASD and failed to comply with the NASD's Firm Element of the Continuing Education Requirement for the firm's covered personnel. The NASD also found that Traynor failed to supervise Drake in regard to reporting customer complaints and reportable events to the NASD and to achieving compliance with NASD rules with respect to the Firm Element of the Continuing Education Requirement. Traynor also failed to timely and accurately report statistical and summary information regarding customer complaints to the NASD. In addition, the NASD found that

Cohen failed to respond adequately to NASD requests for information, and Winston failed to respond to NASD requests for information.

Winston, Cohen, and Drake's suspensions began December 4, 2000, and will conclude at the close of business on December 3, 2002. Traynor's suspension began December 4, 2000, and will conclude at the close of business on June 3, 2002. **(NASD Cases #C10990212 and C10000031)**

Ervin Robert Witherspoon (CRD #1603697, Registered Principal, Hempstead, 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 one year. Without admitting or denying the allegations, Witherspoon consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without providing prior written notice to the member firm with which he was then associated.

Witherspoon's suspension began November 20, 2000, and will conclude at the close of business on November 19, 2001. **(NASD Case #C10000119)**

Edmund Francis Zajack (CRD #1564561, Registered Principal, Debary, Florida) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zajack consented to the described sanctions and to the

entry of findings that he failed to timely respond to NASD requests for information.

Zajack's suspension began December 4, 2000, and will conclude at the close of business on March 3, 2001. **(NASD Case #C07000044)**

Individual Fined

Donald Allen Dunworth (CRD #867655, Registered Principal, Upper Montclair, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$50,000, and required to requalify as a general securities principal. Without admitting or denying the allegations, Dunworth consented to the described sanctions and to the entry of findings that, as the head trader on the OTC trading desk at a member firm, he failed to reasonably and properly supervise the activities of traders on the OTC trading desk so as to detect and prevent violations of the limit order display rule. **(NASD Case #CMS000219)**

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee or the Office of Hearing Officers and have been appealed to or called for review by the National Adjudicatory Council (NAC) as of November 10, 2000. 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*.

Christopher Michael Block (CRD #2073057, Registered Principal, Houston, Texas) and **Jeffrey**

Schwartz Burke (CRD #2007369, Registered Principal, Houston, Texas). Block was fined \$50,000 and barred from association with any NASD member in any principal or supervisory capacity. Burke was fined \$15,000, suspended from association with any NASD member in any principal or supervisory capacity for 30 days, and ordered to requalify by exam for his Series 24 license. The sanctions were based on findings that Block knew of his firm's net capital deficiencies and failed to ensure the maintenance of proper books and records for his member firm and allowed his firm to conduct a securities business while its net capital was below the required minimum. The findings also stated that Block filed inaccurate FOCUS Reports. The NASD also found that Block induced the purchase of stock by providing false and misleading financial information and was responsible for the issuance of a private placement memorandum that failed to disclose the firm's true net capital. The NASD found that Burke allowed the firm to operate while in net capital violation and failed to supervise an individual properly, with respect to the firm's books and records.

Burke has appealed this action to the NAC and the action has been called for review for both Block and Burke by the NAC. The sanctions are not in effect pending consideration of the appeal and call for review. **(NASD Case #C05990026)**

James Burling Chase (CRD #368743, Registered Representative, Milwaukee, Wisconsin) was fined \$25,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam by taking the Series 7 exam within six months or

cease operating in that capacity until he so requalifies. The sanctions were based on findings that Chase recommended and effected transactions in a public customer's account without a reasonable basis for believing that such recommendations were suitable for the customer due to the nature of the securities, the concentration of the securities in the account, and the customer's investment objectives, financial situation, and needs.

Chase has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A990081)**

Joseph Gaetano Gerace (CRD #1060223, Registered Representative, St. John's Antigua, West Indies) was fined \$10,000 and suspended from association with any NASD member in a securities principal capacity for one year. The sanctions were based on findings that in connection with a contingency offering, Gerace permitted his firm to fail to establish an escrow account to protect investors' funds received pursuant to the offering. Gerace also failed to sell the minimum amount of securities to bona fide public investors prior to delivering the investors' funds to issuers of the offering.

Gerace has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02990022)**

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.

Robert Scott Cash (CRD #2063885, Registered Representative, St. Petersburg Beach, Florida) was named as a respondent in an NASD complaint alleging that he recommended a public customer purchase a single premium deferred annuity outside of the scope of his employment with his member firm, and failed to provide prior written notice to, or receive written approval from, his member firm before such a recommendation. The complaint further alleges that Cash recommended to a public customer the purchase of securities and engaged in a series of transactions in the customer's account that were unsuitable for the customer in light of the customer's investment experience, objectives, and risk tolerance. **(NASD Case #C07000075)**

Stephen Roy Connors, Sr. (CRD #726642, Registered Representative, Castaic, California) was named as a respondent in an NASD complaint alleging that he informed a public customer that he would guarantee the customer against any loss arising from an investment in a stock. **(NASD Case #C02000062)**

Claude Anthony Eatman, Jr. (CRD #1899070, Registered Principal, Jersey City, New Jersey) was named as a respondent in an NASD complaint

alleging that he executed trades in the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization by the customer to exercise discretion in the account. The complaint also alleges that Eatman submitted change of address forms to his member firm in regard to the accounts of public customers, without their knowledge or consent, so that the firm's records reflected fictitious addresses. In addition, the complaint alleges that Eatman opened the account of a public customer and used a fictitious address without the customer's authorization or consent. **(NASD Case #C10000185)**

James Gaberkorn a.k.a. Gennady Gaberkorn (CRD #1718031, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Gaberkorn engaged in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C10000187)**

Christopher Daniel Geis (CRD #2177608, Registered Representative, Wood Ridge, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended to a public customer that she invest in tax-free investments with a mutual fund and, based on this recommendation, received checks totaling \$179,000. The complaint further alleges that Geis deposited the checks in an account in which he had signatory authority and converted the funds to his own use

and benefit, without the customer's knowledge or consent, and sent the customer confirmation letters that falsely stated that the funds had been invested. In addition, the complaint alleges that Geis failed to respond to NASD requests for information. **(NASD Case #C9B000030)**

Magellan Securities Inc. (CRD #15986, Harper Woods, Michigan) and **Terry M. Laymon (CRD #304342, Registered Principal, Grosse Pointe Woods, Michigan)** were named as respondents in an NASD complaint alleging that they prepared inaccurate blotters, ledgers, trial balances and net capital computations, and filed inaccurate FOCUS Part IIA Reports with the NASD. The complaint also alleges that the firm failed to comply with the terms of a restrictive agreement when it accepted customer checks for the purchase of limited partnerships in the secondary market, and deposited the checks into its general operation bank account. Furthermore, the NASD alleges that the firm received and held customer funds in its operating bank account, received and held customer funds in an account while failing to open and use a special reserve bank account for the exclusive benefit of customers, failed to compute its special reserve, and commingled customer funds with the firm's operating funds. Moreover, the complaint alleges that the firm improperly used funds prior to purchasing interests in limited partnerships, failed to return customer funds, deposited funds directly in the firm's bank checking account, and used the funds for operating expenses. The complaint also alleges that the firm purchased interest in partnerships for other customers and transferred excessive amounts

of funds considered commissions to its operating account prior to returning the funds to customers. **(NASD Case #C8A000060)**

Anthony Armando Morelli (CRD #2561728, Registered Representative, Mineola, New York) was named as a respondent in an NASD complaint alleging that he executed transactions in the account of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in their account. **(NASD Case #C10000199)**

Royal Hutton Securities Corp. (CRD #14489, New York, New York) was named as a respondent in an NASD complaint alleging that the firm, directly and/or indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, and in connection with the purchase and sale of securities, knowingly or recklessly employed a device, scheme, or artifice to defraud; made untrue statements of material fact and/or omitted material facts necessary to make statements, in light of the circumstances, not misleading; and/or engaged in acts, practices, or courses of business that operated as, or would operate as, a fraud or deceit upon persons. The complaint also alleges that the firm, through employees, owners, and officers, made material misrepresentations and withheld material facts from public customers in connection with the sale of securities including the nature of the investment risk, the amount of commissions the broker would receive in connection with the transaction, and the limitations on the circumstances under which the securities could be sold. The complaint further alleges that the firm effected transactions in or

induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices and contrivances and failed to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of its business. **(NASD Case #CAF000042)**

Stephen Morris Wilkinson (CRD #718506, Registered Representative, Pace, Florida) was named as a respondent in an NASD complaint alleging that he received checks totaling \$23,345.31 from a public customer intended for investment in mutual funds, recorded his own name as payee on the checks, endorsed the checks, and deposited the funds in his own bank account. The complaint also alleges that Wilkinson failed to respond to NASD requests for information. **(NASD Case #C07000074)**

Firms Canceled

The following firms were canceled from membership in the NASD for failure to comply with formal written requests to submit documents and 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 cancellation commenced is listed after the entry.)

Bell Investment Group, Inc., New York, New York (November 6, 2000)

J.P. Gibbons & Co., Inc., New York, New York (July 31, 2000)

Lloyd G. Wilson Securities, Inc., Mount Hermon, California (November 6, 2000)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With Arbitration Settlement Agreements (The date the suspension began is listed after the entry.)

Lucas, Timothy Doyle, Lutz, Florida (November 7, 2000)

VanCleave, Charles L., Seminole, Florida (November 7, 2000)

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

Crenshaw, Michael, Brooklyn, New York (November 9, 2000)

Hawley, Matthew Christopher, Sleepy Hollow, New York (November 9, 2000)

Mandrell, Frank Edward, West Palm Beach, Florida (August 7, 2000)

Taylor, Phuong Binh, Seattle, Washington (November 10, 2000)

Thomas, Christopher Lynn, Pembroke Pines, Florida (August 7, 2000)

NASD Regulation Charges Dean Witter Reynolds Inc. With Securities Fraud And Other Violations Related To The Marketing And Sales Of Term Trusts; Two Individuals Also Charged

NASD Regulation announced that it

has issued a complaint against Dean Witter Reynolds Inc. for violations relating to its marketing and sale of proprietary bond funds known as Term Trusts. John B. Kemp and Lawrence J. Solari, Jr., executives with the firm, were also charged with violations relating to the marketing of the Term Trusts.

NASD Regulation's complaint alleges that Dean Witter sold over \$2 billion of TCW/DW Term Trusts to over 100,000 customer accounts through the use of a firm-wide internal marketing campaign that misrepresented the Trusts as safe, secure, low-risk investments. The complaint alleges that Dean Witter targeted certificate of deposit holders and other conservative investors, many of whom were elderly with moderate, fixed incomes, for sales of these securities. The marketing campaign failed to include critical information about the significant risks and potential volatility of the Term Trusts. In fact, the Trusts' portfolios contained a large percentage of risky and volatile mortgage derivative securities, known as inverse floaters, aggressively employed a risky borrowing strategy, were highly interest rate sensitive, and were dependent on a low interest rate environment to achieve their projected returns.

After interest rates rose in 1994, the Term Trusts lost over 30 percent in net asset value (a drop of over \$500 million) and were forced to reduce their dividends by nearly a third. The market prices of the Trusts also declined significantly, losing over \$600 million in market value. Nearly 30,000 customers sold at least some portion of their Term Trusts, suffering realized losses of approximately \$65 million. The complaint alleges that Dean Witter received over \$119 million in underwriting fees and sales

concessions from the sale of the Term Trusts, as well as approximately \$7 million annually in management fees.

Dean Witter conducted an extensive internal marketing campaign to encourage its brokers to sell the Term Trusts. The campaign presented the Term Trusts to brokers as a simple and safe investment, as an investment that was suitable for virtually all investors, and as a safe, high-quality alternative to CDs. The campaign failed to mention, or obscured, the significant risks associated with the Term Trusts.

Presentations made to branch offices at Dean Witter for one of the Term Trust offerings focused sharply on CD holders and money market investors and told brokers "CD investors are looking for safety and competitive yields – features available in Term Trust 2000." Internal newsletters provided to all brokers at Dean Witter also made numerous misleading claims about the Term Trusts. For instance, one newsletter stated: "What makes this closed-end investment so attractive? Three key features: Quality, safety and yield." Another stated:

The timing couldn't be better!
Approximately \$110 billion in Certificates of Deposits are rolling over in April. That's a huge potential market for TCW/DW Term Trust 2003. Certificates of Deposit have traditionally been the choice of investors seeking safety and an attractive yield. . . . really spell out the exciting features of the TCW/DW Term Trust 2003 and you'll have yourself more sales than you can calculate the commissions on.
Everything you want from a CD and more!

The internal newsletters also suggested misleading sales presentations. One suggested using a "simple" comparison of the Term Trusts with CDs, omitting any discussion of the differences between the Term Trusts and CDs or of the additional risks associated with the Term Trusts. The proposed sales presentation suggested that the Term Trusts were suitable for retirees for whom "safety" was a "major concern." Another newsletter suggested a sales approach for investors who "don't want the volatility associated with interest rate moves." Dean Witter's marketing effort for the Term Trusts also included high-pressure sales efforts at the regional and branch levels, including the use of sales contests and sales quotas. Dean Witter brokers also received higher commissions for the sale of the proprietary Term Trusts than for non-proprietary products.

The complaint also charges that Dean Witter sold a significant percentage of the Trusts to elderly customers seeking income as their primary investment objective. Over \$500 million of the Trusts were sold to investors 70 years of age and older.

The complaint charges Dean Witter with violations of the NASD's antifraud, suitability, and supervisory rules, and with violations of its rule requiring that members adhere to high standards of commercial honor and just and equitable principles of trade.

The Term Trusts were sold by Dean Witter in three separate offerings from October 1992 to November 1993.

Kemp, President of Dean Witter Distributors and Director of Sales for Dean Witter InterCapital, was charged with overseeing and

approving roadshow presentations for the Term Trusts that misleadingly portrayed the Trusts as safe, low-risk investments that should be sold to investors looking for certificate of deposit equivalents.

Solari, the former Regional Director for Dean Witter's Northeast Region, a region containing approximately 45 branches and 1,000 salesmen, was charged with sending sales memoranda to numerous Dean Witter branch managers that encouraged improper sales of the Term Trusts through misleading sales presentations.

Both Kemp and Solari were charged with violations of the NASD rule requiring that members adhere to high standards of commercial honor and just and equitable principles of trade.

NASD Regulation wishes to acknowledge the assistance provided in this matter by the New York State Attorney General's Office.

NASD Regulation Fines Merrill Lynch, Pierce, Fenner & Smith, Inc. \$97,000 For Limit Order, Best Execution, And Other Violations

NASD Regulation announced that it has censured and fined Merrill Lynch, Pierce, Fenner & Smith, Inc., \$97,000 for rule violations that were discovered by NASD Regulation's Market Regulation Department through a combination of its automated surveillance systems and the onsite examination program. NASD Regulation determined that, from November 1997 to December 1999, Merrill Lynch on occasion violated the SEC limit order display rule, as well as NASD rules pertaining to best

execution, short sales, locked and crossed markets, and trade reporting. NASD Regulation also found that Merrill Lynch failed to have a reasonably designed supervisory system in place with respect to the correct reporting of short sales to ACT and in 1997, with respect to best execution, the SEC order handling rules, and ACT compliance. In settling this matter, Merrill Lynch neither admitted nor denied NASD Regulation's findings.

In its review, NASD Regulation found that Merrill Lynch failed to comply with the SEC limit order display rule in connection with 41 customer limit orders. Customers place limit orders to trade securities at a specific price. The SEC limit order display rule requires the immediate display of customer limit order prices, if they improve on the market maker's quotation. The Market Regulation Department also found that between 1997 and 1999 Merrill Lynch failed to provide best execution for 70 customer orders, and under NASD rules for best execution, members must execute customer orders at prices that are as favorable as possible under prevailing market conditions.

In another area, the NASD Regulation probe found that Merrill Lynch failed to comply with the NASD's rule for locked and crossed markets. A locked market occurs when the inside bid price equals the inside offer price in the same security, and a crossed market occurs when the inside bid is greater than the inside offer price of a security. NASD rules require that, before entering a quote during the trading day that will lock or cross the market in a Nasdaq security, a market maker must make reasonable efforts to avoid such a locked or crossed market by executing transactions with all market makers whose quotations

would be locked or crossed. According to its review, the Market Regulation Department found that, in 73 instances, Merrill Lynch did not make reasonable efforts to avoid locked and crossed markets.

The NASD Regulation Market Regulation Department also determined that Merrill Lynch engaged in a pattern of late transaction reporting into the ACT system without exceptional circumstances. Further, the NASD Regulation review found that the firm's supervisory system to ensure the correct reporting of short sales to ACT was inadequate.

In settling the matter, NASD Regulation took note that Merrill Lynch has taken steps to develop and implement highly automated systems to address best execution and short sale issues.

NASD Regulation Sanctions Asensio & Company; Manuel Asensio, For Short Selling, Trade Reporting, And Internet Advertising Violations

NASD Regulation announced a settlement in which Asensio & Company, Inc. and its President, Chairman, Chief Executive Officer, and Compliance Officer, Manuel P. Asensio, were censured and fined \$75,000 for short selling, trade reporting, and Internet advertising violations.

NASD Regulation found that, from August 1, 1998, through July 31, 1999, Asensio & Company failed to record affirmative determinations in connection with 306 short sale transactions for itself or its customers. In 117 of those transactions, the firm failed to make affirmative determinations at all.

A short sale occurs when a security, not owned by the seller, is

sold in anticipation of a decrease in the stock's price. NASD rules require that when a member effects a short sale for its own account or accepts a short sale for a customer, the member must make an "affirmative determination," in writing, that it can borrow the security or will be able to provide it for delivery. At a later time, the seller purchases the stock to complete the transaction.

NASD Regulation also found that, from August 1, 1998, through July 31, 1999, Asensio & Company reported 331 sale transactions to ACT without indicating that they were short sales, as required.

In addition, NASD Regulation found that Asensio & Company's Web Site violated NASD's advertising rules. Seven research reports on the firm's Web Site, which recommended short selling, failed to disclose the associated risks. Also, certain graphs in the Selected Performances section of the firm's Web Site failed to provide a sound basis for evaluation, omitted material facts, or made misleading statements or claims. The Selected Performances section contained graphs showing the price performance over time of different securities. Each graph contained a downward facing arrow which appeared to show the date and the corresponding price when Asensio & Company issued its initial recommendation regarding the security. In addition, next to each graph were several sentences which appeared to be taken from Asensio & Company's research report on the company.

NASD Regulation found that:

- The Selected Performances section contained one graph of a security for which Asensio & Company did not issue a report

and several quotations which did not come from actual recommendations. The graph purported to show that the firm recommended buying a security on a specific date. Next to the graph were two sentences explaining why the security's price would likely rise. In fact, Asensio & Company never issued a written recommendation for that security. With respect to three other securities, the firm's research reports did not contain the statements which appeared next to their respective graphs.

- On several of the graphs, the arrows did not point to correct prices or dates. Six arrows did not point to the actual dates when the firm made its initial recommendations. For example, on one graph, the arrow pointed to approximately January 31, 1997, when the closing price was \$19.50. Asensio & Company, however, issued its initial "very strong sell recommendation" on that company on October 7, 1996, when the closing price was \$15.50. In addition, on six of the graphs containing strong sell or short sell recommendations, the arrow pointed to a price that was higher than the price of the security on the date of Asensio & Company's actual recommendation.
- On two of the graphs, after the time period illustrated on the charts, the price of the securities reversed direction.
- NASD rules require that members must cite all relevant past recommendations. Nonetheless, while the Selected Performances section contained graphs covering the time period from January 1994 to August 1998, it excluded one sell and four buy recommendations made by Asensio & Com-

pany during that same time period. Those five recommendations were not included anywhere on the Web Site.

NASD Regulation further found that, through Manuel Asensio's Internet account, associated persons of Asensio & Company posted at least 14 bulletin board messages which did not disclose any connection with the firm but, instead, used unrelated screen names. One posting stated, in part: "Asensio & Company's research is precise. ... I have no affiliation with, and have no interest in Asensio or [the issuer]." Another posting was entitled: "Asensio stands for the truth." Communications posted by members or their associated persons on electronic bulletin boards or message boards are considered "advertisements" under NASD rules and, as such, they are subject to approval, recordkeeping, filing, and content requirements.

NASD Regulation also found that Asensio & Company failed to file, with NASD Regulation's Advertising Regulation Department, 43 research reports regarding nine issuers and a brochure regarding the firm, all of which were contained on the Web Site. In addition, the firm failed to file at least 71 messages which were posted on bulletin boards run by America Online and The Motley Fool.

Asensio & Company and Manuel Asensio also failed to establish, maintain, and enforce procedures reasonably designed to achieve compliance with the advertising rules, the rules relating to short selling, and the rules relating to trade reporting.

In settling this matter, Manuel Asensio and Asensio & Company neither admitted nor denied NASD Regulation's findings.

In addition to a fine and a censure, Manuel Asensio and Asensio & Company will remove all advertisements that are the subject of the settlement from the firm's Internet Web Site and any other Web Sites under their control. Before those advertisements may be used in the future, they must be filed with the Advertising Regulation Department of NASD Regulation. Manuel Asensio must requalify by examination as a registered General Securities Principal (Series 24). The firm also agreed to retain an outside consultant to review and make recommendations concerning the firm's current policies and procedures as they relate to the settlement.

This case was brought by NASD Regulation's Enforcement Department with assistance from NASD Regulation's Market Regulation and Advertising/Investment Companies Regulation Departments.

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