

Disciplinary Actions

Disciplinary Actions Reported For March

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). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, March 15, 1999. The information relating to matters contained in this *Notice* is current as of the end of February 19, 1999.

Firm Suspended, Individual Sanctioned

First Atlanta Securities, L.L.C. (Atlanta, Georgia) and **James Andrew Steinkirchner (Registered Principal, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm was suspended from participating in any contingency offering for 30 days and thereafter until such time as it filed satisfactory revised written supervisory procedures governing the firm's participation in future contingency offerings with the NASD. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Steinkirchner, failed to ensure the establishment of a proper escrow account in connection with its participation in a best efforts contingency offering and conducted a securities business while failing to maintain its required minimum net capital. The findings also stated that the firm, acting through Steinkirchner, participated in sales in the offering in an amount exceeding the maximum specified in the offering documents, and beyond the time period specified in the offering documents, without providing notice to prior investors, reconfirming their purchases or offering them rescission.

The suspension began with the commencement of business on January 30, 1999, and concluded at the close of business on February 28, 1999.

Firms Fined, Individuals Sanctioned

Howe, Solomon & Hall, Inc. (Miami, Florida) and **Christopher John Hall (Registered Principal, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and required to retain an independent consulting firm mutually agreeable to both the firm and the NASD for one year. Hall was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity with no right to reapply. Hall has the right to continue as a passive investor in the firm, even during the term of the suspension. If it is ever determined that the scope of Hall's involvement with the firm during the term of the suspension ever goes beyond that, he shall immediately, and without notice, be permanently barred in all capacities. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm miscalculated its allowable assets thereby causing the firm to have insufficient net capital. The findings also stated that Hall "parked" securities by executing fictitious trades designed to overstate the firm's net capital thereby enabling the firm to continue in business in ostensible compliance with the net capital rule.

J.J.B. Hilliard, W.L. Lyons, Inc. (Louisville, Kentucky), James Reid Allen (Registered Principal, Louisville, Kentucky) and **Robert Clinton Oliver, Jr. (Registered Principal, Louisville, Kentucky)** submitted a Letter of Acceptance,

Waiver, and Consent pursuant to which the firm was censured and fined \$25,000; Allen and Oliver were each censured, fined \$7,500, and suspended from association with the NASD in any principal capacity for 10 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm permitted Allen and Oliver to act in the capacity of a general securities principal prior to their properly qualifying and becoming registered in that capacity.

Keogler, Morgan & Co., Inc. (Atlanta, Georgia), Chris Stuart Guerin (Registered Principal, Marietta, Georgia), Douglas Albert Dyer (Registered Representative, Chattanooga, Tennessee), Craig Robert Smith (Registered Principal, Duluth, Georgia), and James Hugh Brennan, III (Registered Representative, Chattanooga, Tennessee) submitted Offers of Settlement pursuant to which the firm was censured, fined \$25,000, and required to pay back \$63,264 in excessive profits to public customers. Guerin was censured, fined \$10,000, and suspended from association with any NASD member as a registered principal for six months; Dyer was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 60 days; Smith was censured, fined \$10,000, and suspended from association with any NASD member as a registered principal for six months; and Brennan was censured and fined \$10,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Smith and Dyer, effected principal purchases of common stock from public customers at prices that were marked down

excessively. The firm, acting through Smith, failed to report trades within 90 seconds of execution without employing the requisite “.SLD” modifier, incorrectly reported wholesale trades as retail trades, and incorrectly reported the price on trades. Guerin and Brennan failed to supervise adequately the trading in common stock of Smith and Dyer, respectively, and failed to detect that Smith and Dyer were purchasing stock from the firm's retail customers subject to excessive markdowns. Furthermore, the NASD determined that Dyer effected securities transactions in the accounts of his customers without the customers' prior knowledge or authorization.

Navillus Securities, Inc. (West Conshocken, Pennsylvania) and William Joseph Sullivan, Jr. (Registered Principal, West Conshocken, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the respondents were censured and fined \$60,000, jointly and severally. Sullivan was suspended from association with any NASD member in any principal capacity and from performing any functions that require registration as a principal for four months, except that he is permitted to perform duties as a financial and operations principal for his firm during the period of suspension. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Navillus, acting through Sullivan, allowed trades to be entered through the Small Order Execution SystemSM (SOESSM) for accounts belonging to family members of the firm's registered representatives and failed to establish, maintain, and enforce proper supervisory procedures governing the entry of trades through SOES. The findings also stated that Navillus, acting through Sullivan,

conducted a securities business while failing to maintain its minimum required net capital and filed a FOCUS report with the NASD that was inaccurate and misleading in that it included a net capital amount for the firm that was overstated. In addition, Navillus, acting through Sullivan, failed to maintain sufficient records of order entry and execution times for securities transactions; failed to complete a written training plan for its Firm Element training requirement; and failed to conduct and complete its Firm Element training requirement.

Firms And Individuals Fined

Austin Securities, Inc. (Forest Hills, New York) and Brian R. Mitchell (Registered Principal, Yorktown Heights, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also required to disgorge \$14,007 in excessive profits to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mitchell, entered into municipal bond sale and purchase transactions with public customers. The findings also stated that bond sales and bond purchases were conducted with excessive markups and markdowns, respectively, in light of the circumstances surrounding the transactions. In addition, the firm, acting through Mitchell, failed to establish or maintain an adequate written supervisory procedure pertaining to the pricing of municipal securities.

Butler Larsen Pierce & Company, Inc. (San Francisco, California), Dane Allan Larsen (Registered Principal, Danville, California), and Eric Hall Zurla (Registered Representative, Glen Ridge, New Jersey) submitted an Offer of

Settlement pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Larsen, permitted individuals to perform the duties of registered persons when their registrations were inactive due to their failure to complete the Regulatory Element of the Continuing Education Program. The findings also stated that Zurla performed, and the firm and Larsen permitted him to perform, the duties of a registered person when Zurla's registration was inactive due to his failure to complete the Regulatory Element of the Continuing Education Program. Furthermore, the NASD determined that the firm, acting through Larsen, failed to establish and implement adequate written supervisory procedures to ensure compliance with the definition of municipal securities principals or representatives pursuant to MSRB Rule G-3.

Derby Securities, Inc. (New York, New York) and Otto Frederick Grote (Registered Principal, New Castle, New Hampshire) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm must pay \$18,240 in restitution to the appropriate parties. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grote, received checks totaling \$18,240 in selling concessions related to the public distribution of shares of stock from a member firm. However, Derby Securities, Inc. was not entitled to such concessions because it did not render any services to the member firm. Furthermore, the NASD determined that Derby Securities, Inc., acting through

Grote, failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Program and failed to maintain written supervisory procedures for compliance with the Regulatory Element of the NASD's Continuing Education requirements. In addition, the NASD found that the firm, acting through Grote, failed to establish, maintain, and enforce proper written supervisory procedures concerning syndication and selling group participation, transactions in U. S. government securities, the conduct of annual compliance meetings, internal inspections to ascertain compliance with firm procedures, telephone solicitations, and insider trading (*i.e.*, Chinese Wall) procedures.

J. Alexander Securities, Inc. (Los Angeles, California) and James Alexander (Registered Principal, Los Angeles, California) submitted an Offer of Settlement pursuant to 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, acting under the direction and control of Alexander, allowed an individual to become and remain associated with the firm as a principal when he was barred by the Securities and Exchange Commission (SEC) from acting in the capacity of a securities principal for 14 months and required to apply for reinstatement in that capacity.

Pacific Continental Securities Corporation (Beverly Hills, California) and James Albert Allen (Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also ordered to undertake to hire sufficient quali-

fied personnel to perform all the duties required to be performed by a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Allen, in contravention of its Restriction Agreement with the NASD, changed its status to that of a fully computing firm subject to the provisions of the SEC Customer Protection Rule 15c3-3, but failed to obtain prior written approval from the NASD and to undertake to comply with the requirements of the Rule. Furthermore, the NASD found that the firm, acting through Allen, held customer funds and failed to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to make weekly computations of the amount required to be deposited into the Reserve Account due to inadequate financial and operational personnel to identify the deficiencies.

Shamrock Partners, Ltd. (Media, Pennsylvania) and James Thomas Kelly (Registered Principal, Newtown Square, Pennsylvania) were censured; fined \$15,000, jointly and severally; required to pay \$10,053.13 in restitution to customers, jointly and severally; required to demonstrate corrective action with regard to their markup and markdown policy; and to submit to a staff interview. The SEC imposed the sanctions following appeal of an August 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Kelly, effected in a principal capacity purchases of common stock for public customers at prices that were not fair and reasonable in that the markdowns on the purchases exceeded five percent.

Triumph Securities Corporation (New York, New York) and Aubrey Theodore Stautberg, Jr. (Regis-

tered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$14,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stautberg, failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engages, and to supervise the activities of registered representatives, associated persons, and registered principals that are reasonably designed to achieve compliance with applicable securities laws, regulations, the NASD rules, and the Regulatory Element of the Continuing Education requirement. The findings also stated that the firm, acting through Stautberg, maintained the registration for individuals while they were not active in the securities business, and failed to file its annual audit reports on a timely basis.

Firms Fined

Capital Resources, Inc. (Washington, D.C.) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$13,500, and required to undertake to review and revise its written supervisory procedures to ensure that procedures are maintained, implemented, and enforced regarding private placements, contingency offerings, trading practices, and continuing education in a manner satisfactory to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it participated in contingency offerings and distributed offering materials that contained misleading information, failed to establish a bank escrow account, and failed to record receipt of customer funds for purchases of interests in contingency offerings on the firm's books and

records. The findings also stated that the firm failed to require all covered employees to complete the Firm Element of the Continuing Education requirement, to maintain records documenting the content of, and completion of, the Firm Element of the Continuing Education requirement, to conduct an annual needs analysis, and to develop a Firm Element Training Plan. Furthermore, the NASD found that the firm failed to indicate the limit order terms and conditions on order tickets to reflect that the customers' limit orders were changed to market orders, to timestamp the order tickets at the time the orders were changed, and to record all the order terms and conditions of customer limit orders. Moreover, the firm failed to execute limit orders within 60 seconds of completing trades in the firm's market making account at prices equal to or better than the customers' protected prices, and failed to establish, maintain, and enforce proper supervisory procedures governing the above violations.

Dean Witter Reynolds Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to pay \$262.30 in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed customer transactions without using reasonable diligence to ascertain the best prevailing inter-dealer market for each relevant security so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to provide, where it acted as principal for its own account, written notification to its customer disclosing that it acted as a Market Maker when executing the customer's transaction. Furthermore,

the NASD determined that the firm failed to provide, where it acted as principal for its own account, written notification disclosing the reported price to each of its customers.

IFC Holdings, Inc. (dba Invest Financial Corporation) (Washington, D.C.) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$75,000, and required to retain an independent consulting firm to conduct a review for one year of the firm's compliance and written supervisory procedures, in particular, but not limited to, procedures relating to conduct of branch office examinations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to address, or failed to address adequately, written supervisory procedures regarding, among other things, insider trading, receipt of customer funds and securities, mutual fund breakpoints, variable annuities and variable life insurance, option customer's background and financial information, municipal securities markups and markdowns, customer complaint reporting, cold calling, sales supervision, and discretionary accounts. Also, the firm's written supervisory procedures failed to designate a principal responsible for the review of mutual funds, variable products, and unit investment trusts. Furthermore, the findings stated that the firm failed to inspect each branch office according to the cycle set forth in its written supervisory procedures. In addition, the firm failed to supervise and enforce its written supervisory procedures concerning daily transactions, mutual fund switches, branch office inspections, advertising and correspondence, and employees' accounts at other broker/dealers. The firm failed to have each registered representative participate in an annual compliance meeting. The findings also stated that the firm

failed to conduct a periodic examination of all customer accounts to detect and prevent irregularities or abuses, failed to report forgery accusations from customers within 10 business days as required by the NASD, and allowed an individual to function as acting chief administrative officer without being properly registered.

Mesirow Financial, Inc. (Chicago, Illinois) was fined \$15,000. The sanctions were based on findings that the firm failed to execute contemporaneously member-to-member customer limit orders to sell shares of stock after it sold shares for its own market-making account at a price equal to or better than said orders. Also, the firm failed to establish, maintain, and enforce adequate written supervisory procedures to achieve compliance with the rules and regulations applicable to limit orders.

PaineWebber Incorporated (Weehawken, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$50,000, and required to review its supervisory procedures regarding registration of personnel and to implement changes necessary to ensure that all persons actively engaged in the firm's investment banking or securities business, or in the management thereof, are properly registered with the NASD. Without admitting or denying the allegations, PaineWebber consented to the described sanctions and to the entry of findings that it failed to ensure that persons actively engaged in the firm's investment banking or securities business, or in the management thereof, were properly registered as general securities representatives or general securities principals with the NASD. PaineWebber also failed to establish, maintain, and enforce written supervisory procedures that would ensure the proper registration of individuals.

R. J. Steichen & Company (Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, ACT reporting, limit orders, books and records, registration, locked and crossed markets, SOES, the order handling rules, anti-competitive practices, and best execution.

SCA Development, Inc. (Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 handle customer funds properly in connection with a contingency offering in that it failed to establish a bank escrow account and accepted and forwarded investor checks directly to the issuer, and closed the offering prior to the sale of the requisite number of units. The NASD also determined that the firm failed to timely file a Form U-5 on behalf of an individual, and failed to establish, maintain, and enforce proper supervisory procedures concerning the establishment and use of bank escrow accounts in contingency offerings, the extension of contingency offering periods, proper registration of principals, and timely submissions of Forms U-5 for terminated individuals.

Smith Barney Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce written supervisory procedures, and failed to supervise adequately and properly a registered representative. According to the findings, the firm failed to prevent the registered representative from making numerous sales of securities (hot issues) that traded at a premium in the immediate aftermarket to restricted persons, in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Individuals Barred Or Suspended

Jerald Fred Albin (Registered Representative, Independence, Missouri) submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Albin consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, and written approval and/or acknowledgment from, his member firm. The findings also stated that Albin failed to respond truthfully to NASD requests for information in that he provided the NASD with altered bank statements that contained inaccurate, false, and misleading information.

Brian Douglas Angiuli (Registered Principal, Port Washington, New York) was censured, fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Philadel-

phia District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Angiuli executed unauthorized trades in the account of a public customer.

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

Henderson Basco Berberabe (Registered Representative, West Covina, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berberabe consented to the described sanctions and to the entry of findings that he converted a total of \$58,000 from public customers through deceptive means. According to the findings, Berberabe obtained the signatures of the customers on blank or incomplete wire authorization forms and later completed the forms, without the knowledge or consent of the customers, in order to facilitate the unauthorized transfer of their funds into a personal brokerage account at a firm other than his employer. The funds were subsequently misused by Berberabe for his own benefit.

Philip Allen Bowsher (Registered Representative, Wapakoneta, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$235,000, barred from association with any NASD member in any capacity, and required to pay \$45,133.50 in restitution to his member firm. Without admitting or denying the allegations, Bowsher consented to the described sanctions and to the entry of findings that he endorsed checks received from public customers into his own name totaling \$45,133.50 and failed to

remit their proceeds to his member firm, and instead, retained the funds for his own use and benefit.

Donald Clyde Bozzi (Registered Representative, Basking Ridge, New Jersey) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Bozzi submitted life insurance applications that contained false information to his member firm. Bozzi also provided false information to the NASD.

Carol Brantley (Associated Person, Akron, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$2,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brantley consented to the described sanctions and to the entry of findings that she submitted a materially false or inaccurate Form U-4 to her firm that failed to disclose a criminal conviction.

Charles Edward Brown (Associated Person, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a general securities representative, general securities principal, and municipal securities principal without being registered in those capacities.

John Barrett Bryant (Registered Representative, Collierville, Tennessee) submitted an Offer of Settle-

ment pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity with the right to reapply in three years. Without admitting or denying the allegations, Bryant consented to the described sanctions and to the entry of findings that he received \$1,000 from a public customer for the purpose of investing in the customer's universal life policy account, failed to invest the funds in the account, and retained possession of the funds until a later date, without the customer's knowledge or consent. The findings also stated that Bryant sent correspondence to the customer that was misleading in that it overstated the funds maintained by the customer in the life insurance account by approximately \$1,000.

Peter Joseph Cammarano (Registered Principal, The Woodlands, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cammarano consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony.

Stephen Bruce Carlson (Registered Principal, Denver, Colorado) was censured, fined \$10,000, jointly and severally, with a member firm and barred from association with any NASD member in any capacity. The SEC imposed the sanctions following appeal of a September 1997 NBCC decision. The sanctions were based on findings that Carlson, acting for himself and on behalf of his firm, attempted to obtain stock at below market prices by means of threats, intimidation, and coercion.

Joseph Giulio Chiulli (Registered Principal, Lynbrook, New York)

was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to an NASD request for information.

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

Dickie Lynn Connors (Registered Representative, Kansas City, Missouri) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Connors consented to the described sanctions and to the entry of findings that she withdrew funds totaling \$22,000 from the accounts of public customers without their knowledge or consent and converted the funds to her own use and benefit.

Eugene Joseph Cordano (Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution to public customers. Without admitting or denying the allegations, Cordano consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The findings also stated that Cordano provided false information to the NASD during the course of its investigation.

Paul Cruz (Registered Representative, Colorado Springs, Colorado) and Lee Thomas Duran (Registered Principal, Colorado Springs, Colorado) submitted an Offer of Settlement pursuant to which they each were censured, fined \$2,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to respond to NASD requests for information in a timely manner.

Robert Henry Deighton, III (Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Deighton consented to the described sanctions and to the entry of findings that he sold approximately \$155,000 in chattel mortgages to public customers for which he received commissions totaling \$7,775 without giving prior written notice to, and receiving written approval from, his member firm.

Joseph Anthony DiMattina (Registered Representative, Glenview, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiMattina consented to the described sanctions and to the entry of findings that he received a check issued by his member firm to a public customer in the amount of \$432 to refund the customer for an initial premium paid on a life insurance policy that was canceled. The findings also stated that DiMattina signed the customer's name on the back of the check with-

out the customer's knowledge and consent, deposited the check in his personal account, and used the funds for some purpose other than for the benefit of the customer.

Edward Joseph Dorr (Associated Person, Amityville, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dorr failed to respond to NASD requests for information.

Kai Fang (Registered Representative, Flushing, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Fang consented to the described sanctions and to the entry of findings that he agreed to reimburse a public customer \$2,798.40 for a loss on a securities trade in the customer's account.

Daniel Charles Felter (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Felter consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Frederick Ernest Fischer, Jr. (Registered Representative, Tom's River, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fischer consented to the described

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

Allen D. Fritz (Registered Representative, Wyandotte, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$4,889.56 in restitution to his member firm. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he effected numerous index option transactions in his personal margin account maintained at his member firm without depositing the required margin, which caused margin call notices to be issued by his firm's clearing firm. The NASD determined that Fritz made a practice of meeting margin calls by liquidating positions in his account.

Daniel Scott Fuchs (Registered Representative, Plainview, New York) was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Fuchs purchased securities for the account of a public customer without the knowledge, authorization, or consent of the customer, and, in the absence of written or oral authorization to Fuchs, exercised discretion in the account.

James Michael Gallaer (Registered Representative, Patchogue, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gallaer consented to the described sanctions and to the entry of findings that he

either refused or failed to execute sell orders put in by public customers and made baseless, unreasonable, and specific price predictions to public customers as to speculative securities, often predicting substantial price increases in a specified period of time. The findings also stated that Gallaer bought or sold securities for the accounts of public customers without obtaining the customers' authorization, and required public customers who desired to purchase units in initial public offerings (IPO) to buy common stock and/or warrants of the issuer in order to be permitted to buy IPO units.

Stephen K. M. Gourlay, Jr. (Registered Principal, Hicksville, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three months, suspended from acting as a principal or supervisor of a member firm for two years, ordered to pay \$38,646.25 in restitution to public customers, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Gourlay consented to the described sanctions and to the entry of findings that he made fraudulent misrepresentations and omitted material facts in recommending the purchase of securities to public customers. The findings also stated that Gourlay effected unauthorized transactions in customer accounts.

Michael Dylan Gregory (Registered Representative, Scottsdale, Arizona) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gregory failed to disclose a reportable misdemeanor charge on Form U-4 applications.

Kory Evan Guglielminetti (Registered Representative, Staten

Island, New York) was censured, fined \$129,968.47, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Guglielminetti cheated on his Series 7 exam by having an impostor take the Series 7 in his name. Guglielminetti also failed to respond truthfully to questions during an NASD interview.

Carl John Hagmaier (Registered Representative, San Luis Obispo, California) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hagmaier consented to the described sanctions and to the entry of findings that he received checks totaling \$120,000 from public customers for investment, deposited the checks into a bank account that he controlled, and misused the funds himself or permitted others to misuse the funds. In one instance, Hagmaier fabricated an account statement for the customer which falsely stated that her funds had been invested in a cash and stock fund. The findings also state that Hagmaier received contributions totaling approximately \$539,000 for the creation of a defined benefit plan and misused \$68,262.61 of the plan's funds for unrelated business and/or personal expenses. Hagmaier also approached public customers to purchase life insurance, took out loans totaling \$160,000 on the value of the policies, and forged the signatures of the customers on the loan checks without the knowledge or consent of the customers. Hagmaier also failed to respond to NASD requests for information.

Andrew Fensmark Harris (Registered Representative, Bronx, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for

six months, and ordered to requalify by exam as a general securities representative. The NAC imposed the sanctions following review of a New York DBCC decision. The sanctions were based on findings that Harris removed a piece of scratch paper on which he had written several exam questions and answers from a Series 7 exam.

Deborah Wertz Henke (Registered Representative, Newbury Park, California) was censured, fined \$61,000, barred from association with any NASD member in any capacity, and ordered to pay \$5,200 in restitution to a member firm. The sanctions were based on findings that Henke converted customer securities and failed to respond to NASD requests for information.

Harold Lee Jenkins (Registered Representative, Bronx, New York) was censured, fined \$250,000, barred from association with any NASD member in any capacity, and ordered to pay \$28,751.90 in restitution. The sanctions were based on findings that Jenkins solicited public customers to provide funds for investment in mutual funds and/or insurance products and, instead of investing the customers' funds on their behalf, deposited the checks into his own personal money market account. Jenkins also failed to appear for an NASD on-the-record interview.

Brian Keith Johnston (Registered Representative, Bremen, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$120,222.90, barred from association with any NASD member in any capacity, and ordered to pay \$24,044.58 in restitution to an insurance company. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he

submitted fictitious annuity applications to an insurance company for people who did not exist and collected \$24,044.58 in advances on commissions to which he was not entitled.

Michael Andrew Kelleher (Registered Representative, Beverly, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Kelleher consented to the described sanctions and to the entry of findings that he provided inaccurate and misleading account information to a public customer on several occasions.

Gerald Kurt Kempa (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for five business days, ordered to disgorge \$67.72 in net commissions to the NASD, required to requalify by exam as a general securities representative, and ordered to make full restitution to a public customer in the amount of \$1,100, representing losses incurred and applicable interest. Failure to make complete restitution within 60 days will result in Kempa being barred from association with any member firm in any capacity until restitution is complete. Without admitting or denying the allegations, Kempa consented to the described sanctions and to the entry of findings that he effected the purchase of securities in a public customer's account without the customer's prior knowledge or consent.

Kenneth Craig Krull (Registered Principal, Marysville, Washington) was censured, fined \$20,000, barred

from association with any NASD member in any principal or supervisory capacity, suspended from association with any NASD member in any capacity for one year, ordered to pay \$81,705 in restitution to customers, and required to requalify by exam as a general securities representative. The SEC imposed the sanctions following appeal of a July 1997 NBCC decision. The sanctions were based on findings that Krull recommended unsuitable mutual fund switches in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the frequency of the transactions, the type of transaction being recommended, and the customers' financial situations, circumstances, and needs.

On February 3, 1999, the SEC granted a stay of the sanctions for 60 days based upon Krull's stated intent to seek review of the SEC's order in the U.S. Court of Appeals for the Ninth Circuit. The principal and supervisory bars are not included in the stay order. In the event that Krull files a timely appeal, the SEC's order shall be further stayed to that extent pending determination of the appeal to the Court of Appeals.

Adam Drew Levy (Registered Principal, Old Westbury, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$300,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Levy consented to the described sanctions and to the entry of findings that he caused his firm and its representatives to repurchase securities for the firm's account before the completion of IPO distributions at prices slightly higher than the IPO transactions and to solicit public customers to purchase aftermarket securities while the firm

was still engaged in the distributions. The findings also stated that Levy caused his member firm and its representatives to engage in numerous sales practice abuses including, but not limited to, baseless price predictions or guarantees, failures to execute customer orders, and customer requirements to purchase aftermarket shares as a condition of receiving IPO units, and other high pressure tactics. Levy caused his firm and its registered representatives to manipulate the prices of securities in the aftermarket trading of those securities, which resulted in over \$8 million in illegal profits for the firm. Furthermore, the NASD found that Levy failed to supervise the activities of the firm's registered representatives to ensure compliance with applicable securities laws, regulations, and NASD rules.

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

Dean Joseph LoBrutto (Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LoBrutto consented to the described sanctions and to the entry of findings that he failed to respond, or to respond truthfully, to NASD requests for information.

Henry Clay Lowry (Registered Representative, Orlando, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any

capacity, and ordered to disgorge \$80,000 to public customers. Without admitting or denying the allegation, Lowry consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to request, or receive, permission from his member firm to engage in such transactions.

Timothy Earl McGill, Sr. (Registered Representative, Shrewsbury, Pennsylvania) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McGill failed to respond to NASD requests for information.

Patrick Thomas McRaith (Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McRaith consented to the described sanctions and to the entry of findings that he received a \$4,100 check from a public customer with instructions to use the funds for a new annuity account. The NASD found that McRaith failed to follow the customer's instructions and used the funds for his own use and benefit by endorsing the check, depositing the funds into his personal bank account, and spending the funds, without the knowledge or consent of the customer.

David Amin Monawar (Registered Representative, East Hanover, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Monawar failed to respond to NASD requests for information.

Vincent Michael Nerlino (Registered Representative, New York,

New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Nerlino consented to the described sanctions and to the entry of findings that he engaged in an outside business activity by acting as a consultant and by sitting on the Board of Directors of a company in which his wife was a majority shareholder.

Thomas Andrew O'Malley (Registered Representative, East Grand Rapids, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$193,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Malley consented to the described sanctions and to the entry of findings that he received checks totaling \$31,546.75 from the securities account of a public customer, signed the customer's name to the checks, caused the checks to be deposited in an account in which he had a beneficial interest, and used the funds for some purpose other than the benefit of the customer without the customer's knowledge or consent. The findings also stated that O'Malley failed to respond to NASD requests for information.

Dennis Ray Owens (Registered Representative, Hamilton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Owens consented to the described sanctions and to the entry of findings that he failed to respond adequately to NASD requests for information.

Calvin Patterson, III (Registered Representative, Peoria, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Patterson consented to the described sanctions and to the entry of findings that he effected numerous options transactions on a discretionary basis in the accounts of public customers without prior written authorization from the customers and written acceptance from his member firm. The findings also stated that Patterson effected options transactions without the authorization of a public customer after the customer requested Patterson liquidate her account.

Lawrence Joseph Penna (Registered Principal, Franklin Lakes, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Penna consented to the described sanctions and to the entry of findings that he failed to appear for testimony and failed to respond to NASD requests for information regarding his justification for failing to appear for scheduled testimony in a timely manner.

Steven Francis Perdie (Registered Principal, Port Jefferson Station, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Perdie failed to respond to NASD requests for information.

Sean Michael Perry (Registered Representative, Rancho Cucamonga, California) submitted a Letter of Acceptance, Waiver, and

Consent pursuant to which he was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Perry consented to the described sanctions and to the entry of findings that he failed to disclose misdemeanors involving possession of a false identification and providing false identification to a police officer on his Form U-4 that he submitted to his member firm and the NASD.

Theodore Lester Pittman III (Registered Representative, McFarland, Wisconsin) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on finding that Pittman failed to respond to NASD requests for information.

Michael Ploshnick (Registered Principal, Boca Raton, Florida) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ploshnick failed to respond to NASD requests for information and to provide testimony.

Milson Carroll Raver, Jr. (Registered Representative, Sea Girt, New Jersey) was censured, fined \$350,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,000, plus interest, in restitution to public customers. The sanctions were based on findings that Raver used a fraudulent scheme to sell securities in that he deposited \$15,000 of public customers' monies intended for purchasing securities into a brokerage account he opened and controlled. Furthermore, Raver failed to segregate or hold the monies in an escrow account, used

the account to pay for personal expenses, withdrew all the money, and closed the account, without reimbursing the customers or delivering shares of stock to the customers. Raver also engaged in private securities transactions without giving prior written notice to his member firm and failed to respond to NASD requests for information.

Nelson Eric Roseland (Registered Representative, Oakland, California) was censured, fined \$67,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roseland made unsuitable recommendations to a public customer and exercised discretionary trading authority in the account of a public customer without prior written approval from the customer and his member firm. Roseland also failed to respond to NASD requests for information.

Robert Lowell Shatles (Registered Principal, Fort Salonga, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Shatles consented to the described sanctions and to the entry of findings that he allowed a firm to conduct a securities business by transacting with customers and making markets, while failing to maintain the minimum required net capital. The findings also stated that Shatles failed to record properly the firm's deficit net capital position on its financial books and records. In addition, Shatles failed to transmit notice of the firm's net capital deficiency to the SEC and the NASD and failed to file, and to file on a timely basis, the firm's FOCUS reports.

Robert Vincent Sherman (Registered Principal, Wheat Ridge, Colorado) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Sherman consented to the described sanctions and to the entry of findings that he repeatedly failed to make the required "affirmative determination" that certain securities he sold short would be delivered or available and could be borrowed.

Jeremy L. Slovik (Registered Representative, Bayshore, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Slovik consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that Slovik executed an unauthorized transaction in the account of a public customer.

Thomas W. Smith (Registered Principal, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he submitted misleading documentation to his member firm to obtain reimbursements through the petty cash fund in his branch office. The findings also stated that Smith charged these expenses to his firm's corporate account such that the firm was directly billed for these charges in

addition to the payments from petty cash. Smith obtained reimbursement in the amount of \$1,038.47; however, due to the nature of the firm's procedures for reimbursing branch office expenses and its compensation arrangement with Smith, the actual benefit to Smith was \$951.99.

Timothy Patrick Sullivan (Registered Representative, Owings Mills, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, and barred from membership with any NASD member in any capacity. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he submitted applications for life insurance on the lives of public customers without their authorization and consent and affixed signatures purporting to be the customers to the applications and to policy delivery receipts. The findings also stated that Sullivan caused an insurance policy on the life of a public customer to be surrendered and its cash value applied to purchase an annuity. In connection with the surrender and purchase, Smith affixed the customer's signature to the application and related documents without the authorization or consent of the customer.

John Anthony Tabone (Registered Representative, Auburn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tabone consented to the described sanctions and the entry of findings that he changed the addresses of public customers to addresses under his control without the customers' knowledge or consent, took unauthorized loans and other disbursements from variable and non-securities insurance policies

issued by his member firm, and converted the proceeds to his own use and benefit. The findings also stated that Tabone failed to apply funds given to him by public customers for insurance policy premiums, and, without the knowledge or consent of the customers, converted the funds to his own use and benefit. Tabone converted a total of \$253,573, of which \$24,435.28 was converted from non-securities insurance products. In furtherance of the conversion of funds, Tabone altered policy statements to reflect fictitious account values and gave these altered statements to the customers.

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

Sean Martin Towey (Registered Representative, Union City, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Towey failed to respond to NASD requests for information.

James Arlie Tyson, Sr. (Registered Representative, Lake Park, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$304,399.61 in restitution to public customers. Without admitting or denying the allegations, Tyson consented to the described sanctions and to the entry of findings that a public customer gave him checks totaling \$20,000 for the purchase of shares in a company "if and when" the company went public. The find-

ings stated that Tyson gave the customer a "debenture" which carried an 11 percent interest rate and purportedly gave him the right to convert his investment into shares of stock. Instead of investing the customer's funds, Tyson converted them to his own use and benefit. In addition, Tyson converted a total of \$304,399.61 received from other public customers to his own use and benefit by telling the customers he was investing their funds in securities and evidenced the transactions by providing them with "Certificates of Direct Participation" he created that specified an investment amount, an annual yield, and a maturity date.

Rocco Anthony Vignola (Registered Representative, Bohemia, New York) was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Vignola forged a public customer's signature on an application for an insurance policy in the customer's name and submitted the application, without the customer's knowledge or authorization; forged the customer's signature on a check for \$908 which reflected the customer's credit resulting from the cash surrender of a separate insurance policy; and used a portion of the proceeds of that check to pay for the aforementioned unauthorized insurance policy.

Robert Lee Wallace (Registered Principal, Naples, Florida) was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. The SEC affirmed the sanctions following appeal of a January 1998 NAC decision. The sanctions were based on findings that Wallace published an advertisement for viatical settlements in a newspaper that contained misleading, unwarranted, and exaggerated statements and failed to disclose the risks associated

with the product being advertised.

Mark Jonathan Weisman (Registered Representative, Basking Ridge, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, barred from association with any NASD member in any capacity, and ordered to pay restitution in the amount of \$465,031.70 to his member firms or their insurance company parent organizations. Without admitting or denying the allegations, Weisman consented to the described sanctions and to the entry of findings that he effected the unauthorized withdrawal of \$465,031.70 in loan checks from the policies of policy holders and public customers without their knowledge or consent, and deposited these funds into his personal bank account.

Kellie Anne Will (Registered Representative, Derby, New York) submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Will consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

Paul Daniel Willette (Registered Representative, Eden Prairie, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 15 business days, and required to pay \$10,000 in restitution to a public customer. Willette must also submit to additional supervision by his member firm for 365 days following the suspension. Without admitting or denying the allegations, Willette consented to the described sanctions and to the entry of findings that he failed to disclose a

customer complaint and settlement with the customer on a Form U-4. The findings also stated that Willette exercised effective control over customer accounts and recommended to the customers numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the size and frequency of the transactions, and the nature of the customers' accounts.

Andrew Scott Zeiger (Registered Representative, Fort Lauderdale, Florida) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zeiger failed to respond to NASD requests for information.

Individual Fined

David Madden Shehan (Registered Representative, Littleton, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$12,500. Without admitting or denying the allegations, Shehan consented to the described sanctions and to the entry of findings that he sent correspondence to mutual fund wholesalers without prior approval from his member firm. According to the findings, the correspondence solicited funds for a firm-sponsored educational meeting by improperly promising access to mutual fund wholesalers who contributed to the meeting and denying access to those unwilling to contribute.

Decision 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 February 12, 1999. The findings and sanctions imposed in the decision may be increased,

decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

David Charles Baron, Jr. (Registered Principal, Clearwater, Florida) was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 45 days. The sanctions were based on findings that Baron failed to supervise a registered representative by allowing the individual to effect transactions in municipal securities without being registered.

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

Complaints Filed

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

Thomas John Dalton (Registered Principal, Levittown, New York) was named as a respondent in an NASD complaint alleging that he charged public customers markups and markdowns above his member firm's contemporaneous cost, totaling approximately \$793,919.97, at prices that were not fair and reasonable, taking into consideration all of the relevant factors. The complaint also alleges that Dalton effected transactions in, or induced the purchase or sale of, securities by means

of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint alleges that Dalton failed to disclose to public customers that the prices at which his member firm was engaging in these transactions with its customers were not reasonably related to the prevailing market price of these securities.

Robert Louis Giardina (Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he employed devices to defraud a public customer by making untrue statements of material fact or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. The complaint alleges that Giardina made material misrepresentations to a public customer in order to persuade the customer not to sell securities. The complaint also alleges that Giardina failed to respond timely to NASD requests for information and for on-the-record testimony.

Daniel J. Glass (Registered Principal, Lutz, Florida) was named as a respondent in an NASD complaint alleging that he effected securities transactions in a public customer's account without the customer's authorization and without discretionary authority over the account, and in response to the customer's complaints, paid the customer a total of \$2,124.99 for the losses incurred in connection with the unauthorized transactions.

Matthew Christopher Hawley (Registered Principal, Sleepy Hollow, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material information to public customers in order to induce them to purchase securities. The complaint also alleges that Hawley made fraud-

ulent price predictions in connection with his recommendations and solicitations. The complaint alleges that Hawley effected transactions in public customer accounts without the prior authorization of the customers. The complaint also alleges that Hawley failed to execute a public customer's sell order.

Ricky Allen Lubinsky (Registered Principal, Fort Lauderdale, Florida) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to a public customer based on the facts the customer disclosed as to her tax status, investment objective, and financial situation and needs. The complaint also alleges that Lubinsky failed to respond to NASD requests for information.

Machelle Rene May (Registered Principal, San Diego, California) was named as a respondent in an NASD complaint alleging that she made unauthorized withdrawals from her member firm's bank accounts totaling \$42,208.67 and converted those funds to her own personal use.

Thomas Robert Sanford (Registered Principal, Dana Point, California) was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the accounts of public customers, and attempted to effect the purchase of securities in the account of another public customer without the customer's knowledge, authorization, or consent. The complaint also alleges that Sanford initiated unauthorized wire transfers totaling \$21,800 from the joint account of public customers, forged the customers' signatures on wire transfer instruction forms, and as a result, caused \$21,800 to be transferred from the customers' joint account to two bank accounts of which the customers had no beneficial or other interest.

Ronald Franklin Sivak (Registered Representative, Mobile, Alabama)

was named as a respondent in an NASD complaint alleging that he effected a transfer of funds in the amount of \$9,000 from the account of a public customer to the joint account of other public customers, without the knowledge or consent of the first customer. The complaint alleges that in connection with this activity, Sivak forged the signature of the first customer on an "Authorization to Journal Securities or Funds" form, without the customer's knowledge or consent. The complaint also alleges that Sivak failed to respond to NASD requests for information.

Dale Cochren Trask (Registered Representative, Swampscott, Massachusetts)

was named as a respondent in an NASD complaint alleging that after having been granted power of attorney over the financial affairs of a public customer afflicted with Alzheimer's and Parkinson's disease, he improperly converted \$157,250 of the customer's funds for his own use and benefit.

James Mitchell Vaughn (Registered Representative, Bellport, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations, omitted to disclose material information, and made fraudulent price predictions in connection with his solicitation of public customers to purchase securities. The complaint also alleges that Vaughn effected a transaction in the account of a public customer without the customer's authorization. The complaint also alleges that Vaughn failed to execute a sale of securities as instructed by a public customer.

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written

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

Barry F. Cohen & Company, Boca Raton, Florida (February 16, 1999)

Grigsby & Associates, San Francisco, California (February 4, 1999)

Firms Expelled For Failing To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

InterSecurities Limited, Nassau, Bahamas (February 5, 1999)

Plumwood Securities Corp., Libertyville, Illinois (February 5, 1999)

Strategic Resource Management, Inc., Aurora, Colorado (February 5, 1999)

Firm Suspended Pursuant To NASD Rule Series 9510 For Failing To Pay An Arbitration Award

Ash & Co., Inc., a/k/a Ash Financial Corp., Great Neck, New York (February 4, 1999)

M.S. Farrell & Company, Inc., New York, New York (January 25, 1999 - February 4, 1999)

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

Catsos, Jr., James E., Aventura, Florida (February 5, 1999)

DeSanto, Joseph F., Pompano Beach, Florida (February 5, 1999)

Mazzei, Frank R., Oceanport, New Jersey (January 29, 1999)

Moler, William A., Aurora, Colorado (February 5, 1999)

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

Cox, Jeffrey L., Lemayne, Pennsylvania (February 1, 1999 - February 10, 1999)

Katz, Michael Alan, Bethpage, New York (February 10, 1999)

Zangara, Frank Jack, Hicksville, New York (February 17, 1999)

NASD Regulation And The New York Stock Exchange Jointly Fine Ragen MacKenzie, Inc. \$125,000

NASD Regulation and the New York Stock Exchange, Inc., as a result of a coordinated examination and investigation, announced that Ragen MacKenzie, Inc., has been censured and fined \$125,000 for violations arising from the processing of customer orders and has agreed to an appropriate undertaking regarding its procedures. The actions were brought by both self-regulatory organizations and the sanctions are jointly assessed.

The NYSE found that with respect to two securities listed on the Exchange, Ragen MacKenzie aggregated orders for the purchase of securities in customer accounts into blocks, and after shares were obtained, allocated the shares to customers at the average price at which the orders were filled. The NYSE found that the firm did not prepare order tickets to reflect orders, at

or near the time the block orders were entered did not possess documentation reflecting that the firm disclosed to its customers that it intended to aggregate orders, and then to allocate the shares purchased to its customers, after the close of the trading day, at the average price at which the shares were purchased.

NASD Regulation also found that in June and July of 1997, Ragen MacKenzie aggregated certain customer purchase and sale orders in seven Nasdaq stocks and executed such orders as block trades through its trading desk. After the execution of the block trades was completed, the firm's brokers allocated the shares at the average price among selected customer accounts for which the orders were placed. Ragen MacKenzie had no standardized process to prevent disparate allocations among customer accounts. NASD Regulation further found that, in violation of NASD rules and federal securities laws, the firm failed to prepare and maintain records reflecting details of individual customer orders including price and size of orders, and time of receipt and account identification information.

NASD Regulation and the NYSE also found that the firm failed to provide for appropriate supervision designed to prevent these violations.

Ragen MacKenzie, which neither admitted nor denied NASD Regulation's and the NYSE's allegations, has undertaken to have the audit committee of its parent company verify that a review of the firm's procedures has been conducted and that appropriate new procedures have been implemented to ensure compliance with applicable self-regulatory organization rules and the federal securities laws.

NASD Regulation Expels Biltmore Securities, Inc., Bars Two Principals For Microcap Fraud, And Obtains Restitution And Funds For Investors

NASD Regulation announced that it has expelled Biltmore Securities, Inc., of Ft. Lauderdale, Florida, from membership in the NASD, and permanently barred its two principals, Elliot Loewenstern and Richard Bronson, for engaging in fraudulent conduct and obtaining excessive underwriting compensation. The firm and its two principals have agreed to settle, without admitting or denying the allegations, several disciplinary actions involving the underwriting, distribution, or trading of the securities of five different issuers between November 1993 and December 1995.

As part of the settlement, the firm and its principals have agreed to return more than \$6 million to customers of the firm. Of this, \$3.3 million has been earmarked for customers who have recently reached settlements with the firm. An additional \$1.6 million of this money will be used to pay restitution to identified customers. The final \$1.1 million will be used to compensate customers of Biltmore who voluntarily participate in a mediation program specifically designed to mediate their claims against the firm.

Biltmore, Loewenstern, and Bronson will also pay fines of \$600,000, \$300,000, and \$100,000, respectively. NASD Regulation will collect the fines only after all obligations to customers under the settlement have been satisfied.

Violations

The settlement involves the following violations:

Manipulative Conduct. Biltmore Securities and Loewenstern

engaged in manipulative activity in connection with the IPOs of CSI Computer Specialists, Inc., and Terrace Holdings, Inc., underwritten by the firm. This activity violated the anti-fraud, anti-manipulation, and other provisions of the federal securities laws and NASD rules.

During both offerings, which took place in 1995, Loewenstern controlled the distribution of the IPOs and placed 31 percent of each offering with investors who he expected would sell the securities back to Biltmore as quickly as possible after trading began. Minutes after open market trading began, these shares were sold or "flipped" back to Biltmore at prices between \$.75 and \$2 above the IPO price. In addition, while the initial offering was still in progress, Biltmore agreed to purchase 725,000 shares from "insiders" of Terrace Holdings, for prices well below the price of the offering.

Once the IPO was completed and after-market trading began in each offering, Biltmore's sales force began an aggressive effort to sell the securities to the firm's retail customers. Biltmore and Loewenstern violated the securities laws and NASD rules by acting as a market maker in the aftermarket for each security before completing a bona-fide distribution of these IPOs. As a result of this misconduct, Biltmore illegally profited by almost \$1.8 million.

Fraudulently Failing to Disclose Adverse Interests. In 1993 and 1994, Biltmore awarded bonuses of publicly traded warrants of Healthcare Imaging Services, Inc., and United Restaurant, Inc., to Loewenstern, Bronson (in one instance), and other employees of the firm. Warrants entitle the holder to buy during a specified period a proportionate amount of common stock at a price which is usually higher than the market price at the time of issuance of the war-

rants. Shortly after the bonuses were awarded, the vast majority of the warrants were sold back to the firm. At the same time, Biltmore's brokers, acting under the direction of Loewenstern and/or Bronson, aggressively solicited Biltmore's public customers to purchase these warrants. They failed to disclose to those customers, as required by federal securities laws, the materially important fact that certain persons at the firm had a personal financial interest in the warrants being sold. As a result of purchasing these securities, Biltmore's customers suffered losses of more than \$1.6 million, which are being repaid as part of this settlement.

Excessive Underwriting Compensation and Related Misconduct.

Biltmore made more than \$2.6 million in illicit profits by collecting excessive underwriting compensation in violation of the NASD's Corporate Financing Rule. That Rule regulates the amount of compensation an underwriter can receive in an offering; requires firms to file certain information, including the amount of their proposed compensation, with the NASD prior to the commencement of an offering; and requires that the underwriting compensation be disclosed in the offering materials.

During late March 1994, Biltmore bought more than 7 million shares of

stock of Licon International, Inc., from an entity owned by three principals of Stratton Oakmont, Inc. Subsequently, the firm, acting through Loewenstern and Bronson, engaged in a public distribution of these shares by selling them to its customers. They did not comply with the Corporate Financing Rule under which they would have been entitled to receive \$984,330. Instead, the firm received over \$640,000 more than it should have received. In 1995, Biltmore and Loewenstern again violated the Corporate Financing Rule in connection with the distribution of the Terrace Holdings securities it obtained from "insiders" of the company in 1995 described above. In this case, the firm was entitled to underwriting compensation of \$755,332. Instead, it obtained more than \$2 million in excess of that amount.

Terms Of The Settlement

In addition to agreeing to the expulsion of Biltmore from the NASD, and permanent bars from the securities industry of Loewenstern and Bronson, they have agreed to give up their illicit profits to pay back some former customers with claims against the firm. Some of those funds will be used to finance a specially designed voluntary mediation program, sponsored by NASD Regulation's Media-

tion Department. The program may be used by customers with claims against the firm arising within the past six years. Certain limits have been set on the amounts that a particular investor may recover and the number of customers who benefit from the program will depend on the number and size of the claims actually mediated. All customers with existing claims against them will be provided notice of the terms of the mediation program. Customers may still opt to pursue their case in arbitration.

Customers who have questions concerning the details of this mediation program, may call Elizabeth McCoy, Assistant Director of Mediation at 888-NY-MEDI-8 (888-696-3348).

In addition, Biltmore, Loewenstern, and Bronson have agreed to repay customer losses of approximately \$1.6 million to some 150 customers in at least 25 states, who purchased United Restaurant warrants (between November 14-22, 1994 and January 5-20, 1995) or Healthcare Imaging warrants (between November 23-December 7, 1993). Customers with questions about this aspect of the settlement should call 888-275-7456.

© 1999, National Association of Securities Dealers, Inc. (NASD). All rights reserved.