

Disciplinary Actions

Disciplinary Actions Reported For June

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. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, June 15, 1998. The information relating to matters contained in this *Notice* is current as of the end of May 21.

Firm Expelled, Individual Sanctioned

Patterson Icenogle, Inc. (Tulsa, Oklahoma) and **Mark D. Icenogle (Registered Principal, Tulsa, Oklahoma)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. Icenogle was censured, fined \$15,000, and barred from association with any NASD member in any principal 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 Icenogle, failed to exercise reasonable and proper supervision over an individual associated with the firm and failed to establish, maintain, and enforce supervisory procedures designed to detect and prevent the misappropriation of customer funds and excessive trading by this individual.

Firm Suspended, Individual Sanctioned

Patterson, Travis, Inc. (New York, New York) and **David T. Travis (Registered Principal, Englewood, Colorado)** submitted an Offer of Settlement pursuant to which they were censured, and fined \$35,000, jointly and severally. Travis was suspended from association with any NASD member in any principal capacity for

20 business days, and the firm was suspended from participation in any initial public offering of any security meeting the definition of "penny stock" for one year. In addition, the firm was required to retain, at or about three months prior to the conclusion of the suspension from participation in "penny stock" underwritings, an independent consultant to review the firm's policies, practices, and procedures with respect to the sale of penny stocks and provide the NASD a copy of the report, together with documentation of the changes implemented by the firm as a result of the consultant's review. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Travis, maintained inventory in amounts exceeding the maximum inventory value permitted by its restriction agreement and employed more registered representatives than its restriction agreement allowed.

The findings also stated that the firm, acting through Travis, offered securities in an initial public offering that met the definition of a "penny stock," but did not comply with Securities and Exchange Commission (SEC) Rules 15g-2, 15g-5, and 15g-9 in connection with the offer and sale of those securities. Furthermore, the NASD determined that the firm, acting through Travis, failed to supervise three individuals and to establish written supervisory procedures reasonably designed to achieve compliance with rules regarding the conduct of business by unregistered persons.

Firm Fined, Individual Sanctioned

Joseph Charles & Associates, Inc. (Boca Raton, Florida) and **Victor C. Sibilla (Registered Principal, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Con-

sent pursuant to which they were censured and fined \$12,500, jointly and severally, and ordered to pay \$21,528 in restitution to a public customer. In addition, Sibilla was suspended from association with any NASD member in all principal capacities for 10 business days and must requalify as a principal prior to resuming any supervisory or principal duties. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sibilla, failed to reasonably supervise the trading activity in the account of a public customer to prevent and detect excessive trading by two registered representatives.

Firm And Individual Fined

Lam Securities Investments, Inc. (San Francisco, California) and **Dick Lam (Registered Principal, San Francisco, California)** submitted an Offer of Settlement pursuant to which they were censured and fined \$9,500, jointly and severally, and fined \$2,500, jointly and severally, with another individual. In addition, the firm was ordered to obtain approval of all advertisements and sales literature from the NASD prior to use for one year, ordered to review and revise its written supervisory procedures concerning SEC Rule 15c3-1 and advertising and sales material, and provide its new procedures to the NASD. Lam was ordered to requalify as a general securities 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 Lam, failed to file with the NASD newspaper advertisements and Web sites on the World Wide Web. The findings also stated that the firm, acting through Lam, failed to establish and implement written supervisory procedures to detect and prevent an indi-

vidual from disseminating misleading and exaggerated statements on a Web site, and engaged in securities business while failing to maintain minimum required net capital.

Firms Fined

A. S. Goldman & Company (Iselin, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to 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 it reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting. Furthermore, the NASD found that the firm failed to maintain adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, the Limit Order Protection Interpretation, and the registration of persons with the NASD.

Barron Chase Securities, Inc. (Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$19,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, recordkeeping, and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, the Limit Order Protection Interpretation, the registration of persons with the NASD, and short sales.

D. H. Blair & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$12,000, and required to implement and provide to the NASD revised written supervisory procedures concerning trade reporting and limit orders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and the Limit Order Protection Interpretation.

Meyers Pollock Robbins, Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was censured, fined \$50,000, and required to pay \$279,204 plus interest in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm effected transactions as principal in securities at prices that were unfair and unreasonable taking into consideration all of the relevant factors.

Podesta & Co. (Chicago, Illinois) was censured, fined \$26,250, and fined \$5,000, jointly and severally, with an individual. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm participated as an underwriter in a negotiated underwriting of certain bonds within two years of having made political contributions to officials of the issuer. In addition,

the firm failed to file Form G-37 reports with the Municipal Securities Rulemaking Board (MSRB) in a timely manner and failed to establish, maintain, or enforce written supervisory procedures to prevent the occurrence of the conduct described above.

Troster Singer, a Division of Spear, Leeds & Kellogg (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, recordkeeping, and the Limit Order Protection Interpretation.

Wilson-Davis & Co., Inc. (Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and rules regarding trade reporting and recordkeeping.

Individuals Barred Or Suspended

Ronald L. Ahumada (Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Ahumada consented to the described sanctions and to the entry of findings that he received funds in the amount of \$15,000 from public customers intended for investment purposes and misappropriated such funds for his own use and benefit.

Kathleen Anderson (Registered Representative, Palatine, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$280,774, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that she received checks in the amount of \$56,154.78 from public customers intended for deposit in annuities. The NASD found that Anderson instead deposited the checks into a personal bank account without the knowledge or consent of the customers, and used the proceeds for some purpose other than for the benefit of the customers.

Stephan P. Boruchin (Registered Principal, Denver, Colorado) was censured, suspended from association with any NASD member in any capacity for 45 days, and required to requalify by exam as a registered representative and a general securities principal. The sanctions were based on findings that Boruchin, acting in his capacity as trader for his member firm, accepted and executed orders to buy and sell securities in customer accounts when he knew that the persons receiving and soliciting those orders on behalf of the firm were not effectively registered with the firm. Furthermore, Boruchin functioned as a principal of the firm without having qualified as a principal.

Edward W. Breault (Registered Representative, Hopedale, Massachusetts) 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, Breault consented to the described sanctions and to the entry of findings that he forged and converted checks from public customers totaling \$20,935.77.

Larry Dean Bryan (Registered Representative, Edwardsville, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$58,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bryan consented to the described sanctions and to the entry of findings that he received a check for \$10,000 from a public customer with instructions to use the funds to open a money market account in the customer's name. The NASD found that Bryan, without the customer's knowledge or consent, added another customer's name to the account application form as joint tenant with right of survivorship, listed a post office address on the money market account instead of the customer's home address, drew checks payable to himself in the amount of \$7,500, and used the funds for some purpose other than for the benefit of the customer. Bryan also failed to respond to NASD requests for information.

Gregory M. Cooper (Registered Representative, Denver, Colorado) and **Wayman L. Morgan (Registered Representative, Denver, Colorado)** submitted an Offer of Settlement pursuant to which they were censured, fined \$30,000 individually, and 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 they

solicited outside investments without obtaining their member firm's approval. The findings also stated that Cooper and Morgan made oral misrepresentations and disseminated written misrepresentations about the investment and failed to disclose the risks associated with it. In addition, the NASD determined that Morgan transferred a public customer's funds to an entity purportedly receiving such funds for the investment when he knew that these funds were subject to a risk of loss. Cooper and Morgan also failed to respond to NASD requests for information.

Charles Joseph Cottone (Registered Representative, Gables, Michigan) 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 required to pay \$16,768 in restitution to a public customer. Without admitting or denying the allegations, Cottone consented to the described sanctions and to the entry of findings that he received \$23,817 from a public customer with instructions to purchase securities products. Contrary to the customer's instructions and without the customer's knowledge or consent, Cottone failed to invest the funds in any securities products and instead used the funds for some purpose other than for the benefit of the customer.

Jack E. DeLong, Jr. (Registered Principal, Dunwoody, Georgia) was censured, fined \$30,000, and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that a member firm, acting through DeLong, failed to maintain complete, current, and accurate books and records; conducted a securities business while failing to maintain the minimum required net capital; and filed FOCUS Reports Part I and II that

materially overstated the firm's net capital.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Gerald Divozzo (Registered Representative, Mount Clemens, Michigan) 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, Divozzo consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities on a private basis and failed to give his member firm prior written notice of, or obtain prior written authorization to participate in, such activities.

Divozzo's suspension began May 1, 1998, and concluded May 30, 1998.

Robbie D. Dosty (Registered Principal, Tucson, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dosty consented to the described sanctions and to the entry of findings that he received a \$330 refund check from his member firm to be delivered to a public customer and instead forged the customer's signature on the check and deposited the check into his own account. Dosty also failed to respond to NASD requests for information.

Richard G. Dunn (Registered Representative, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in

any capacity. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he forged a policyholder's signature on a policy change application that increased the face amount of an insurance policy owned by the customer from \$150,000 to \$350,000.

Eugene Anthony Eusanio (Registered Representative, Lancaster, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eusanio consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to, or receive written approval from, his member firms.

Paul W. Feeny (Registered Principal, Bayside, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$54,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$81,232 in restitution to public customers. Without admitting or denying the allegations, Feeny consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with the solicitation and execution of securities transactions. The findings also stated that Feeny predicted the future price of securities without a reasonable basis for such predictions, failed to follow customer instructions to sell securities, and effected transactions without the customers' prior authorization and consent. Furthermore, Feeny guaranteed a customer against loss in the customer's account.

Frank R. Gittens (Registered Representative, West Hempstead, New York) was censured, fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$5,798 in restitution to public customers. The sanctions were based on findings that Gittens effected unauthorized transactions in the accounts of public customers and failed to respond to NASD requests to provide information and to appear for an on-the-record interview.

Phillip A. Goodwin (Registered Principal, O'Fallon, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$13,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goodwin consented to the described sanctions and to the entry of findings that he participated in private securities transactions and outside business activities and failed to give prior written notice of such activities to his member firm. The findings also stated that Goodwin failed to update his Form U-4 to disclose a Cease and Desist Order issued by the State of Missouri.

Kendall D. Gregory (Registered Representative, Biloxi, Mississippi) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of a public customer, thereby exercising discretion in those accounts, without having obtained prior written authorization from the customer and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Gregory executed individual purchase trans-

actions in one of the customer's accounts without informing the customer that such purchases could have been executed at reduced sales charges at the various breakpoint levels under the rights of accumulation features of such fund. Moreover, Gregory failed to provide the customer with the benefit of reduced sales charges for purchases of the subject fund that exceeded the breakpoint levels.

Frank C. Grigsby (Registered Representative, Phoenix, Arizona) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Grigsby participated in outside business activities without providing prompt written disclosure of such activity to his member firm.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Mark Lloyd Grosche (Registered Representative, Agoura Hills, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$4,200, and suspended from association with any NASD member in any capacity for 30 days. In addition, Grosche must cooperate with the NASD in its investigation of issues relating to activities at his member firm's Office of Supervisory Jurisdiction and testify at any hearing resulting from any disciplinary action brought by the NASD concerning such matters. Without admitting or denying the allegations, Grosche consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that resulted in an individual at his member firm executing trades in corporate securities even though this individual was not licensed to offer and/or sell corporate securities. Grosche

allowed the individual to use his account executive number. He then received the commission checks and signed them over to the individual.

Gary Dee Harris (Registered Representative, Cedar Falls, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$18,762.56, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam in any capacity. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he functioned as a representative and engaged in securities business without proper registration and permitted an individual who was not properly registered to function as a representative and engage in securities business.

Frank Henry, Jr. (Registered Representative, San Diego, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,000 in restitution to his member firm. Without admitting or denying the allegations, Henry consented to the described sanctions and to the entry of findings that he received \$6,000 from a public customer for investment, failed to execute the purchase on the customer's behalf, and instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The NASD also determined that, in furtherance of the conversion, Henry falsified a fund statement to evidence the customer's purchase of the fund when in fact no such fund was purchased and the account number on the statement was a nonexistent account.

Lawrence Mark Jasinover (Registered Representative, New York, New York) was censured, fined \$120,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jasinover effected unauthorized transactions in the securities accounts of public customers. In addition, Jasinover falsified his member firm's books and records and failed to respond to NASD requests to appear for an on-the-record interview.

Roderick Fitzgerald Kocanda (Registered Representative, Columbus, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$65,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kocanda consented to the described sanctions and to the entry of findings that he received a check for \$13,000 made payable to a public customer intended for life insurance premium payments. The NASD determined that Kocanda did not use the funds as intended, and used them instead for some purpose other than for the benefit of the customer.

Lauren Lessard (Registered Representative, Northport, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$15,000, suspended from association with any NASD member in any capacity for three months, required to pay \$5,335 in restitution, and required to requalify by taking the Series 7 exam. Without admitting or denying the allegations, Lessard consented to the described sanctions and to the entry of findings that she engaged in unauthorized trading, price predictions, and improper tie-ins of securities held by a public customer, and sold shares of a public customer's securities without autho-

rization. The findings also stated that Lessard used the proceeds to make an unauthorized purchase of other securities in that customer's account. The findings also stated that Lessard allowed a public customer to purchase securities in initial public offerings only if that customer committed to buy the stock of the same issuers in the aftermarket at a four to one ratio. Lessard also made improper price predictions in soliciting a public customer to purchase securities.

Adam S. Levy (Registered Representative, Aventura, Florida) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Levy executed unauthorized transactions in the account of a public customer.

Kelly A. Macheca (Registered Representative, Arabi, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$8,800,000, barred from association with any NASD member in any capacity, and required to pay \$1,764,478.40 in restitution to appropriate parties. Without admitting or denying the allegations, Macheca consented to the described sanctions and to the entry of findings that she received funds in the amount of \$1,764,478.40 from public customers intended as payment of annuity premiums and for investment purposes. The NASD determined that Macheca failed to submit these funds to her member firm or execute the purchase of such securities on the customers' behalf, and instead, converted the funds to her own use and benefit, without the customers' knowledge or consent.

Lawrence W. McGary (Registered Representative, San Antonio, Texas) submitted an Offer of Settlement pursuant to which he was censured, fined \$80,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, McGary consented to the described sanctions and to the entry of findings that he sold shares of stock to public customers and failed to disclose to the customers and his member firm the total remuneration he received or would receive from the transactions.

Robert J. Mitchell (Registered Representative, Garden City, New York) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mitchell failed to respond to NASD requests to appear for an on-the-record interview.

Kishor Parekh (Registered Principal, Miami, Florida) 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 three months. Without admitting or denying the allegations, Parekh consented to the described sanctions and to the entry of findings that he sent a letter to the Dade County, Florida Commission and several publications concerning Dade County's financial advisor, falsely portraying that the president of another member firm was the author and sender of the letter.

James T. Patten (Registered Principal, Bernardsville, New Jersey) was censured, fined \$55,000, jointly and severally with a member firm, fined \$175,000 individually, suspended from association with any NASD member as a registered representative for one year, and suspended in a principal capacity for two years. In

addition, Patten must not associate with any NASD member in any capacity until he requalifies by exam. The NAC affirmed the sanctions following appeal of a Market Regulation Committee decision to the SEC. The sanctions were based on findings that Patten intentionally reported fictitious and substantive transactions to The Nasdaq Stock MarketSM (Nasdaq[®]) at or near the close of the market in order to affect the closing price of the securities. In addition, Patten effected transactions between accounts that he owned and controlled, which involved no change in beneficial ownership, for the purpose of creating a false and misleading appearance of active trading in the securities at issue. Patten also published and circulated reports of purchase and sale transactions which he knew or should have known were not bona fide.

Furthermore, Patten, acting through a member firm, violated the firm's restriction agreement with the NASD by effecting more than an occasional transaction per month in the firm's investment account without obtaining prior approval to modify the agreement, and failed to enforce supervisory procedures that would have enabled the firm to detect and deter marking the close activity.

John Michael Peterson (Registered Representative, Broken Bow, Nebraska) 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, Peterson consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Richard Ringel (Registered Representative, Old Bethpage, New York) and **Peter Rubenstein (Registered Representative, Bayside, New York)** submitted Offers of Settlement pursuant to which Ringel was censured, fined \$50,000, and barred from association with any NASD member, and Rubenstein was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ringel and Rubenstein made unauthorized transactions in the accounts of public customers and made baseless and improper price predictions as to speculative securities. The findings also stated that Ringel and Rubenstein misled customers as to the risk of investing in a new issue, including false promises to limit customers' potential losses, and that Rubenstein made baseless and improper comparisons among unrelated securities to a customer.

Furthermore, the NASD determined that Ringel falsely promised to make up orders with new trading, made a misrepresentation to an issuer, refused to execute, or aggressively discouraged, sell orders, induced a customer with limited income and assets to make unsuitable investments in speculative securities, and falsified customer records as to the customers' financial conditions in order to justify investment in speculative securities.

Scott Thomas Smith (Registered Representative, Shoreview, Minnesota) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described

sanctions and to the entry of findings that, without the knowledge or consent of his employer, he transferred \$3,856 from his employer's settlement account to his personal account and converted the funds to his own use and benefit. Smith also misrepresented to his employer that he had not received a \$500 check from the settlement account when, in fact, it had been deposited in his personal bank account. On the basis of this misrepresentation, Smith was paid an additional \$500 that he converted to his own use and benefit.

Tony R. St. John (Associated Person, Gilbert, Arizona) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that St. John failed to disclose a criminal charge on his Form U-4.

James F. Sweeney (Registered Representative, Toms River, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sweeney consented to the described sanctions and to the entry of findings that he disregarded his duty of fair dealing with public customers and his duty to research securities recommended to public customers. The findings also stated that Sweeney misled customers by making material misrepresentations, including price predictions, and omitting material negative information during the offer, purchase, and sale of securities. In addition, Sweeney effected transactions in the accounts of public customers without their prior authorization or consent.

Merrill W. Sywenki (Registered Representative, Lehigh, Pennsylvania) was censured, fined \$338,500, barred from association

with any NASD member in any capacity, and ordered to pay \$57,700 in restitution to public customers. The sanctions were based on findings that Sywenki misappropriated customer funds in the amount of \$57,700 intended for investment purposes and intentionally converted the funds to his personal use. Furthermore, Sywenki prepared false account statements representing that the funds received from the customers were used to purchase securities and further concealed his misuse by falsely representing to the customers that certain payments they received were dividend payments.

Paul T. Westervelt, Jr. (Registered Principal, Folsom, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Westervelt consented to the described sanctions and to the entry of findings that, in contravention of the NASD Front Running Policy, he received a not held customer order to sell shares of common stock and, while in possession of material, non-public information relating to the imminent block-size transaction, and prior to the time that the information concerning the block-size transaction had been made publicly available, Westervelt caused call options contracts in the stock to be executed in his personal account at his member firm.

Christopher S. Wolf (Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wolf consented to the described

sanctions and to the entry of findings that he failed to respond, or to respond completely, to NASD requests for information and to appear for an on-the-record interview.

Cenk Levent Yurtsel (Registered Representative, Woodhaven, New York) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Yurtsel failed to respond to NASD requests for information.

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Individuals Fined

Joshua A. Cohen (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers.

Robert Manning Davison (Registered Representative, Princeton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$13,375. Without admitting or denying the allegations, Davison consented to the described sanctions and to the entry of findings that he opened a joint securities account at a member firm, failed to provide written notice to the firm of his registration status, and failed to notify his employer member firm that he had a beneficial interest in this account. The findings also stated that Davison purchased shares of stock that traded at a premium in the immediate aftermarket in contravention of the

NASD Board of Governors' Free-Riding and Withholding Interpretation.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of April 24, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Thomas D. Coldicutt (Registered Representative, San Diego, California) and **Wallace Kantor (Registered Principal, San Diego, California)**. Coldicutt was censured, fined \$20,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$12,500 to the NASD. Kantor was censured, fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member as a financial and operations principal, with the right to reapply to become so associated after three years. The sanctions were based on findings that a member firm, acting through Coldicutt, received varying amounts of consideration from, or on behalf of, issuers for filing a Form 211 with the NASD to list the issuers' securities on the OTC Bulletin Board®. Kantor, during the course of an NASD interview, failed to disclose that he had resigned as his member firm's financial and operations principal, thereby misleading the NASD into thinking the firm was operating with a registered financial and operations principal.

Coldicutt and Kantor have appealed this action to the NAC and the sanc-

tions are not in effect pending consideration of the appeal.

Pamela A. Hartsock (Registered Representative, Montoursville, Pennsylvania) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hartsock received \$2,500 from a public customer for investment purposes and neither remitted such funds for their intended purposes nor promptly informed her member firm of any possible loss of the funds.

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

Christopher B. Pascente (Registered Principal, Aurora, Illinois) was censured, fined \$10,000, and ordered to requalify by exam as a financial and operations principal (FINOP) by taking and passing the Series 27 exam. If Pascente does not requalify as a FINOP within 30 days of the date of the decision, he shall be suspended as a FINOP until he so requalifies. The sanctions were based on findings that a member firm, acting through Pascente, conducted a securities business while failing to maintain minimum required net capital, failed to maintain complete, current, and accurate books and records, and filed inaccurate FOCUS Part I reports that materially overstated the firm's net capital.

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

Theodore L. Pittman, III (Registered Representative, McFarland, Wisconsin) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pittman failed to

respond to NASD requests for information.

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

Lance E. Van Alstyne (Registered Representative, Laguna Niguel, California) was censured, fined \$95,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Van Alstyne engaged in the management of the securities business of a member firm without being registered as a principal of the firm. Furthermore, Van Alstyne offered and sold securities to public customers for which a registration statement was not filed and in effect with the SEC and for which no exemption was applicable. In addition, Van Alstyne failed to respond to NASD requests for information and to appear for an on-the-record interview.

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

Complaints Filed

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

Thomas J. Brown (Registered Representative, Nanuet, New York) was named as a respondent in

an NASD complaint alleging that he received \$24,000 from a public customer as premium payments intended for deposit in the customer's life insurance policy. The complaint alleges that Brown did not deposit the money on the customer's behalf but, rather, misappropriated the funds for his own personal use. The complaint also alleges Brown failed to respond to NASD requests for information and to appear for an on-the-record interview.

Sandy Charles Giglio (Registered Representative, Palm Coast, Florida) was named as a respondent in an NASD complaint alleging that he forged the signatures of public customers on forms in order to move their accounts from his former member firm to his current member firm. The complaint also alleges that Giglio altered an application submitted by a public customer to purchase stock by deleting the designated registered representative's name and member firm as the designated investment dealer and replacing those entries with his own name and his current member firm.

Duane Joseph Koerner (Registered Representative, Denver, Colorado) was named as a respondent in an NASD complaint alleging that he entered unauthorized transactions in the securities account of a public customer. The complaint also alleges that Koerner made false and misleading statements to the public customer that were related to the status of the customer's account.

Donerval Kevin Moreland (Registered Representative, San Clemente, California) was named as a respondent in an NASD complaint alleging that he recommended, offered, and sold \$25,000 worth of securities to a public customer while not properly registered with the NASD. The complaint also alleges that Moreland made these recom-

mendations without having reasonable grounds for believing that they were suitable for the customer in view of the size and nature of the recommended transactions and the facts disclosed by the customer as to her investment objectives and financial situation. Additionally, the complaint alleges that Moreland failed to respond to NASD requests for information.

Rene Reyes (Registered Representative, New Orleans, Louisiana)

was named as a respondent in an NASD complaint alleging that he received \$5,000 from a public customer intended for investment in initial public offerings. The complaint alleges that Reyes failed to invest these funds on the customer's behalf, and instead converted the funds to his own use and benefit. The complaint also alleges that Reyes failed to notify his member firm, in writing, that he had established and maintained securities accounts with other member firms, and he also failed to notify those firms of his association with a member firm. Additionally, the complaint alleges that Reyes failed to respond to NASD requests for information.

John S. Smoot, Jr. (Registered Representative, Jackson, Tennessee) was named as a respondent in an NASD complaint alleging that he received insurance premium payments totaling \$6,300 from public customers, failed to submit these funds to his member firm, and converted the funds to his own use and benefit, without the customers' knowledge or consent. The complaint also alleges that Smoot failed to respond to NASD requests for information.

John J. Squeri, Jr. (Registered Representative, Atlantic Beach, New York) was named as a respondent in an NASD complaint alleging that, while associated with a member

firm, he executed a transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint alleges that he improperly exercised discretionary authority in the account of a public customer without the customer's written permission and, as a result, executed a transaction in the account. Additionally, the complaint alleges that Squeri misrepresented his identity to another public customer who resided in a state in which Squeri's registration had been suspended.

Waldith G. Thompson (Registered Representative, Lauder Hills, Florida)

was named in a complaint alleging that he received funds in the amount of \$10,000 from an insurance customer intended for the purchase of a life insurance policy, failed to purchase the policy, and failed to return the funds to the customer. The complaint also alleges that Thompson failed to respond to NASD requests for information.

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.

Arrowhead Capital Services, Inc., New York, New York (April 30, 1998)

Avatar Financial Group, Ltd., Blue Bell, Pennsylvania (April 30, 1998)

Lone Mountain Securities, Inc., Scottsdale, Arizona (April 30, 1998)

Schuparra Securities Corporation, San Antonio, Texas (April 30, 1998)

Wise Choice Discount Brokerage, Inc., New York, New York (April 30, 1998)

WR Lazard, Laidlaw Inc., New York, New York (April 30, 1998)

Suspensions Lifted

The NASD has lifted the suspension from membership on the dates shown for the following firms because they have complied with formal written requests to submit financial information.

Corporate Funding, Ltd., Minot, North Dakota (May 1, 1998)

Euromax Financial Services, Inc., Daly City, California (May 19, 1998)

First Commonwealth Securities Corporation, New Orleans, Louisiana (April 27, 1998)

Kopfer Financial Services, Inc., Easton, Pennsylvania (May 12, 1998)

Sanford Roberts Inc., Miami, Florida (April 30, 1998)

U.S.A. Investments, Inc., Morristown, New Jersey (April 27, 1998)

William & Co. Capital Markets, Ltd., New York, New York (May 12, 1998)

Firms Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

A.J. Michaels & Co., Inc.,
Hauppauge, New York (May 6, 1998 to May 14, 1998)

Greenway Capital Corp. n/k/a Cortlandt Capital Group,
New York, New York (May 4, 1998)

Investors Associates, Inc.,
Hackensack, New Jersey (May 12, 1998)

Island Securities, Inc., Garden City,
New York (May 6, 1998)

Joseph Roberts & Co., Inc.,
Pompano Beach, Florida (May 6, 1998)

Landmark International Equities,
Westbury, New York (May 7, 1998)

Individuals Whose Registrations Were Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Award

Basile, Jack Robert, Brooklyn,
New York

Cutrone, William Michael,
Woodbury, New York

Duca, Frank Peter, East Meadow,
New York

Epstein, Herman, Franklin Lakes,
New Jersey

Evans, Robert Stewart, Mount
Pleasant, South Carolina

Jusko, Jan Joseph, Oyster Bay,
New York

Keyser, John T., Lighthouse Point,
Florida

Liakos, Dean, Rego Park, New York

McCluskley, Brian T., Glendale,
New York

Tropeano, Fred, Brooklyn,
New York

Weinrich, Sr., Joseph J., Kansas
City, Missouri

NASD Regulation Fines NationsSecurities \$2 Million for Term Trusts Sales; Two Senior Officials And Branch Manager Also Sanctioned

NASD Regulation announced that it fined and censured NationsSecurities, two senior officials, and a branch manager in connection with the marketing and sale of the Nations Government Income Term Trust 2003 and the Nations Government Income Term Trust 2004. The officials—a NationsBank N.A.'s senior vice president and the national sales manager for mutual funds, NationsSecurities' executive vice president of sales and deputy chief operating officer, and its Houston branch office manager during the relevant period—were all fined, suspended, and censured.

NationsSecurities, without admitting or denying NASD Regulation's findings, was fined \$2 million. NASD Regulation found that, during a focused sales campaign aimed at bank customers, including investors who owned bank certificates of deposit (CDs), NationsSecurities engaged in practices that blurred the distinctions between the bank and the brokerage firm, disseminated false and misleading information to investors, failed to adequately disclose the Trusts' risks, and made unsuitable sales to investors.

As part of a coordinated regulatory effort, the SEC and the Office of the Comptroller of the Currency (OCC) also announced settlements with NationsSecurities and NationsBank

today. NASD Regulation thanked the SEC and the OCC for their assistance in this case.

Blurring Practices. As part of NationsSecurities' program to increase referrals from bank employees, brokers were encouraged to "blend in" with the bank, and some were also told, in effect, that they would be foolish to point out that they were not part of the bank. The brokers were advised to use the term "receipt" instead of "confirmation," the term "account" instead of "closed-end fund," and not to use the term "commission" or "broker." NASD Regulation also found that some brokers sold the Term Trusts from banking centers that lacked the required signage identifying them as representatives of the brokerage firm. As a result, many bank customers believed they were doing business with a bank employee, not a broker.

"Bank broker/dealers have a duty to ensure that bank customers who purchase mutual funds and other investment products in banks are not confused about the distinction between a bank-insured product and a securities product. The misleading information disseminated about the investments, along with blurring the distinction between the bank and the securities firm, subjected numerous investors to undue risk and loss," said NASD Regulation President Mary L. Schapiro.

False and Misleading Sales Practices. The Term Trust 2003 went public in August 1993; the Term Trust 2004 did so in February 1994. The Trusts are proprietary closed-end funds that, because of the concentration in mortgage-backed securities, investments in derivative securities, the use of leverage, and the long average maturity of the securities, were highly sensitive to interest rate changes. During 1994,

interest rates rose significantly and the market price of the Term Trusts fell 35 to 40 percent below the \$10 offering price. More than 11,000 customers across the country invested more than \$300 million in the Term Trusts. NationsSecurities earned more than \$11 million from sales of the Term Trusts.

NASD Regulation found that NationsSecurities' sales effort included the use and dissemination of materially misleading scripts and statements, which were not filed with the NASD Regulation's Advertising Regulation Department for review, as required. According to one script, the Term Trusts would provide "certainty in an uncertain world"—a materially misleading description of the fund. Some investors were told that the Term Trusts were safe or guaranteed, and would provide a full return of the principal invested, when, in fact, the principal was at risk. Investors were also told that shares could be sold at any time, but some were not informed that such a sale could result in a loss of principal, or that closed-end funds generally trade at below net asset value. In certain instances, the Term Trusts were compared to CDs, without an explanation of the significant differences between the two.

Unsuitable Sales. NASD Regulation also found that NationsSecurities was aware that, by soliciting sales from bank customers, its sales efforts would reach elderly, conservative, and unsophisticated investors. The firm's orientation training materials noted that "NationsSecurities customers who are NationsBank retail customers are generally an older, more conservative investor. They are not very sophisticated in evaluating investment products. Most wouldn't go to a brokerage firm, but feel comfortable using the bank for investment advice."

Sixty-five percent of the investors in the Term Trusts were more than 60 years old; 36 percent were at least 70 years old; and 11 percent were more than 80 years old. Forty-seven percent of Term Trust investors had annual incomes of \$25,000 or less, with 19 percent of all Term Trust investors having annual incomes of \$15,000 or less.

Individuals Sanctioned. All three Nations officials neither admitted nor denied NASD Regulation's findings. NationsBank N.A.'s National Sales Manager for Mutual Funds, Daniel Wroble, was fined \$100,000, suspended for six months in all capacities, suspended an additional six months as a principal, and censured. He must also requalify by examination before he can act in any registered capacity. Wroble made as many as three presentations a day to Nations' sales force, and participated in conference calls with wholesalers, branch managers, and brokers to promote the Term Trusts. NASD Regulation found that, while Wroble understood the essential nature of the Term Trusts, his sales presentations to brokers were materially misleading because he failed to adequately disclose the characteristics, nature, and risks of these investments.

Wroble consistently used a speech in which he held up a brochure featuring a picture of the U.S. Capitol and told the sales force (a significant number of whom were inexperienced) that as long as the U.S. Capitol was standing in 10 years, investors would receive their original investments back. This false and misleading statement—the promise of the return of full principal—was ultimately disseminated to investors.

Charles King, NationsSecurities executive vice president of sales and deputy chief operating officer during this period, was fined \$50,000, suspended for three months in all capacities,

and censured. He must requalify by examination as a registered principal. Houston Branch Office Manager, Jamie Atkinson, was fined \$35,000, suspended for one month in all capacities, suspended an additional three months as a principal, and censured. He must requalify by examination before he can act in any registered capacity.

NASD Regulation found that Atkinson developed the "Four-Step Process" as part of a training session on sales techniques. King distributed this document to eight state managers, encouraged its use by all branch managers, and suggested that it be used to help less experienced brokers sell more successfully. The "Four-Step Process" used materially misleading descriptions of the 2004 Trust, including: emphasizing safety, predictability, and yield with no discussion of material risks; misleading comparisons to bank accounts; misleading comparisons of the liquidity of the Term Trust to highly liquid, exchange-listed issuers; and referring to this closed-end trust as an "account."

Supervision. NASD Regulation found that NationsSecurities failed to establish, maintain, and enforce reasonable supervisory procedures to prevent these problems from occurring. These supervisory inadequacies existed notwithstanding the NASD's continued emphasis on the importance of ensuring adequate disclosure in the sale of investment products to CD holders, in conducting sales at a bank-affiliated brokerage firm, and in effecting sales in off-site offices.

NationsSecurities was acquired by NationsBank Investments, Inc., on January 1, 1998, and the findings and sanctions imposed by NASD Regulation apply to NationsBank Investments, Inc., and to any future successor entity.

The investigation leading up to this action was conducted by NASD Regulation's Enforcement Department in consultation with NASD Regulation's Advertising Regulation Department.

NASD Regulation Charges Biltmore Securities, Inc., And Two Principals With Fraud

NASD Regulation announced that it issued a complaint charging Biltmore Securities, Inc.; its Chief Executive Officer, Elliott A. Loewenstern; and its President, Richard B. Bronson, with fraud in connection with the sale of United Restaurants, Inc., A and B warrants. The complaint alleges that profits from this misconduct amounted to more than \$2.1 million, of which Loewenstern and Bronson personally received almost \$1.5 million.

In the complaint, NASD Regulation charges that the firm, Loewenstern, and Bronson carried out this fraud by failing to disclose to potential customers that they, and other Biltmore employees, were in the process of selling their personal holdings of United Restaurants warrants while simultaneously recommending that customers buy them. They also failed to disclose to the potential customers that they had obtained the warrants without paying for them.

Warrants entitle the holder to buy a proportionate amount of common

stock at a specified price, usually higher than the market price at issuance, for a specified period of time.

Biltmore Securities had co-underwritten the initial public offering of United Restaurants, Inc., in April of 1994. The complaint alleges that, in October 1994, Biltmore transferred approximately one million United Restaurants, Inc., B warrants to 19 Biltmore employees, including both Loewenstern and Bronson, who received 425,000 each. According to the complaint, the warrants were transferred to the individuals, without cost, in lieu of a cash bonus at a time when the warrants were trading for approximately \$1.25.

The complaint alleges that, between November 14 and November 22, 1994, Loewenstern sold virtually all of the warrants back to the firm from the employee accounts without their knowledge. The firm repurchased the warrants at a price of \$1.75 per warrant (when the bid price was only \$1.50 per warrant). This resulted in a profit of more than \$1.8 million to the 19 employees, of which Loewenstern and Bronson each received approximately \$750,000 (or about \$1.5 million collectively). During this time, it is alleged that Biltmore dominated the market in these warrants. The repurchases covered the firm's sales efforts in recommending and selling these warrants to its cus-

tomers. The complaint alleges a similar course of misconduct with respect to the A warrants, which were given to 10 Biltmore employees in late 1994 and which generated profits to these employees of almost \$250,000.

In the complaint, NASD Regulation asks that the respondents be ordered to relinquish the profits that were illegally obtained and make restitution to defrauded investors. Other potential sanctions include a fine, suspension, individual bar, or firm expulsion from the NASD. Under NASD rules, the individuals and the firm named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel.

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

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