

ALERT

National Association of Securities Dealers, Inc.

Volume 11, Number 4 December 1997

NASD Reminds Members Of Obligations Under The Free-Riding And Withholding Interpretation

NASD Regulation, Inc., is reminding members of their obligations under the Free-Riding and Withholding Interpretation, IM-2110-1 (Interpretation) with respect to allocations of hot issues to venture capitalists. Paragraph (b)(4) of the Interpretation restricts sales of hot issues to certain persons affiliated with "a bank, savings and loan institution, insurance company, investment company, investment advisory firm or any other institutional type account (including, but not limited to, hedge funds, investment partnerships, investment corporations, or investment clubs)." ¹ A venture capitalist falls within

the scope of paragraph (b)(4) when acting as a senior officer of an "institutional type account" or otherwise is a person who may influence or whose activities directly or indirectly involve or are related to the function of buying or selling securities of an "institutional type account." This type of account includes, among others, investment partnerships and investment corporations, which are frequently used by venture capitalists. Members should ensure, therefore, that sales of hot issues to venture capitalists

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YEAR 2000...Will You Be Ready?

As the year 2000 quickly approaches, it is absolutely critical that **every** introducing and clearing firm ensure that their computer systems are Year 2000 compliant. Firms should proactively seek written assurances and certifications from all automated service providers that the systems they use will work properly in the next millennium. For introducing firms, this includes their clearing firm.

When the date changes to January 1, 2000, it is imperative that computers in every industry correctly identify "00" as the year 2000, rather than 1900.

Member firms that use automated programs to satisfy their regulatory and compliance responsibilities should ensure that those systems are able to function on and after January 1, 2000.

Be aware that computer failures related to Year 2000 problems generally will not be considered a defense to violations of firms' regulatory or compliance responsibilities or a mitigation of sanctions for such violations.

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If you haven't already done so, your firm should initiate a Year 2000 Project to determine the scope of this problem at your firm; develop a strategy, methodology, and a detailed plan for the correction of the problem; and retire, replace, or convert applications to ensure they are Year 2000 compliant. Your scope should apply to all information technology systems (internal and external) used to conduct a securities business and other business support systems (e.g., telephone, power, elevators).

To ensure that members are on a course to make their systems and applications Year 2000 compliant, NASD RegulationSM requires all members to return a completed "Year 2000 Compliance Survey" to NASD Regulation no later than **January 31, 1998**. Member firms that have returned a completed "Year 2000 Survey" to the New York Stock Exchange are exempt from this requirement at this time. Each member should have received this survey along with *NASD Special Notice to*

Members 97-96. This NASD Regulation survey can also be downloaded off of the Year 2000 Web Pages on the NASDR (www.nasdr.com) and NASD (www.nasd.com) Web Sites.

Day-by-day, resources are becoming more and more difficult to secure and more costly to obtain. Remember, the deadline is December 31, 1999, and there are no extensions.

The time to act is **NOW!** □

who are restricted under the Interpretation are made consistent with the Interpretation.

Persons restricted under paragraph (b)(4) are generally referred to as conditionally restricted persons. As such, they may purchase hot issues from a member only if the member is “prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice, that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one of such persons is insubstantial in amount.”²

In 1994, the Securities and Exchange Commission (SEC) approved amendments to the Interpretation which, among other things, included an exemption for venture capital investors who meet certain enumerated criteria. The venture capital provisions of paragraph (h) of the Interpretation are not a general exemptive provision for venture capital investors. In fact, these narrow exemptive provisions were adopted because, under most circumstances, members otherwise would be prohibited from selling hot issues to venture capitalists. The venture capital investor provisions

included in paragraph (h) of the Interpretation allow venture capital investors to purchase a hot issue security to maintain their percentage ownership interest in an entity, notwithstanding that such venture capital investor may be restricted under the Interpretation.

Cancellation Safe Harbor

NASD Regulation is also reminding members of the scope of the cancellation safe harbor provisions of paragraph (a)(3). Specifically, paragraph (a)(3) provides that it shall not be “a violation of the interpretation if a member which makes an allocation to a restricted person or account of an offering that trades at a premium in the secondary market, cancels the trade for such restricted person or account, prior to the end of the first business day following the date on which secondary market trading commences and reallocates such security at the public offering price to a non-restricted person or account.”³ The SEC order adopting the cancellation safe harbor⁴ and the related *NASD Notice to Members*,⁵ both stated that the cancellation provisions were intended to remedy concerns caused by inadvertent violations of the Interpretation that are corrected by the member making the distribution. Thus, paragraph (a)(3)

permits members to allocate securities to restricted persons and subsequently reallocate such hot issue securities to other accounts within the time limits prescribed by the safe harbor only to the extent that such reallocation is to remedy an inadvertent violation of the Interpretation.⁶

Questions concerning this issue should be directed to Gary L. Goldsholle, Office of General Counsel, NASD Regulation, at (202) 728-8104. □

¹ IM-2110-1(b)(4).

² IM-2110-1(b)(5).

³ IM-2110-1(b)(3).

⁴ 59 Fed. Reg. 64455, 64458 (December 14, 1994).

⁵ NASD Notice to Members 95-7 (February 1995).

⁶ This sentence has been modified from the Member Alert dated November 21, 1997, to more clearly define the scope of paragraph (a)(3).

NASD Regulation Institutes Firm Quote Compliance Procedures

A member backs away from a trade when it does not comply with SEC Rule 11Ac1-1(c). That Rule requires a market maker to execute an order “presented” to it at a price at least as favorable as its published quotation up to its published quotation size. A market maker’s obligation to fill an order begins at the time the order is “presented,” regardless of how the order is transmitted to the market maker. Exceptions to Rule 11Ac1-1 (Rule 11Ac1-1 or the firm quote rule) exist only if: (i) the market maker revises its quoted price or size to The Nasdaq Stock MarketSM prior to presentation of an order; or (ii) the market

maker has effected or is in the process of effecting a transaction at the time an order is presented and, immediately upon completion of that transaction, communicates a revised quotation to The Nasdaq Stock Market. Conduct that violates Rule 11Ac1-1 may also violate NASD Conduct Rule 3320 and NASD Marketplace Rule 4613(b), which require a market maker to trade at its quotation and up to its quotation size when presented with an order.

To ensure that members fully comply with Rule 11Ac1-1, NASD Regulation has developed an automated

surveillance system (the Firm Quote Compliance System or FQCS) to permit the resolution of backing-away complaints on a real-time basis. FQCS will also, in the absence of complaints, identify firms that demonstrate a pattern of non-response to SelectNetSM liability orders. By using the Firm Quote Compliance System, NASD Regulation addresses backing-away complaints on a real-time basis and resolves such complaints with a contemporaneous trade execution, if warranted, and looks, on a historical basis, for patterns of behavior indicative of potential violations of Rule 11Ac1-1.

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In light of the establishment of the Firm Quote Compliance System, NASD Regulation's Market Regulation Department has instituted procedures to immediately address complaints during the trading day. Any potential backing-away complaint should be communicated to the Market Regulation Department within five minutes of the alleged backing-away by calling (800) 925-8156. If a complaining firm does not contact the staff within five minutes, it will be difficult for the staff to obtain a contemporaneous trade execution, if warranted, from the market maker.

Firms also are encouraged, but not required, to contact the other firm to seek resolution of their complaint. Firms that contact the other side first will not be held to the five-minute time period of contacting the Market Regulation Department. However, they must contact the other side within five minutes and, if there is no resolution, they must contact the Market Regulation Department *immediately* after their contact with the other firm.

Although the staff will review and investigate complaints which are faxed or received by telephone after the five-minute period, the staff may not be able to assist in obtaining a contemporaneous trade execution for those complaints. **Nevertheless, failure of the complaining firm to contact the market maker or the staff within five minutes of the alleged backing-away is not, and has never been interpreted by NASD Regulation as, a defense to a backing-away violation.**

In processing the alleged backing-away complaints and other potential rule violations identified by the Firm Quote Compliance System, NASD Regulation will not pursue immediate disciplinary action for an individual backing-away complaint in which a contemporaneous trade execution is obtained or offered. However, the staff will keep a record of, and gather information concerning, such incidents to determine if a firm has

demonstrated a pattern of non-compliance with the firm quote rule. Thus, these violations could result in disciplinary action. **The staff will investigate individual instances of backing-away and consider disciplinary action if the staff believes that a contemporaneous execution is warranted, but the market maker refuses to provide the fill upon the staff's request.**

Members are also encouraged to read carefully the applicable sections of the SEC Section 21(a) report, which contains a discussion of a market maker's obligations under Rule 11Ac1-1 as well as specific situations which the SEC considers to be violations of the firm quote rule. Following are some guidelines that market makers should be aware of:

- 1. Cancellation of Preferred SelectNet Liability Orders.** The fact that a preferred SelectNet order is canceled by the order entry firm before the three-minute time period does not eliminate a firm's firm quote obligation with respect to that order while it was "live." Patterns of delay in filling liability orders may result in disciplinary action for violation of Rule 11Ac1-1. A market maker's obligation to fill an order begins when the order is presented, not upon expiration of the three-minute time period.
- 2. Failure to Act on a Preferred SelectNet Liability Order.** The fact that preferred SelectNet liability orders may have scrolled off the screen on the Nasdaq Workstation terminal is not an exception to Rule 11Ac1-1. Members should take whatever steps they deem appropriate to ensure that preferred liability orders received through SelectNet are monitored and responded to in conformance with the firm quote rule.
- 3. No Trade-Ahead Exception for SOES Executions Received After a Preferred SelectNet Liability Order.** A trade-ahead exception will not be permitted for Small Order

Execution SystemSM (SOESSM) executions received after presentment of a preferred SelectNet liability order. As stated in the SEC's Section 21(a) report, "[b]ecause SOES executions are automatic and instantaneous, a market maker could not have been in the process of executing a SOES order that was received after a SelectNet order."

4. No Automatic Trade-Ahead

Exception. A trade-ahead exception for trades that are reported after the presentment of a liability order will not be permitted if a market maker executes a trade absent proof, such as the time of order entry, that the market maker was in the process of executing the order prior to presentment of the preferred SelectNet liability. Additionally, the market maker must immediately update its published quotation subsequent to the execution.

- 5. Late Quote Update.** A quote update without any accompanying trade report must occur prior to, or simultaneous with, the presentment of a SelectNet liability order or telephone order to be considered an exception to Rule 11Ac1-1.

6. System Problems, Extreme Weather, Flood of SelectNet Liability Orders.

Situations such as firm system problems, extreme weather conditions, and a flood of other SelectNet orders surrounding a SelectNet liability order may be viewed as mitigating factors, but not exceptions, to Rule 11Ac1-1.

On July 16, 1997, the SEC sent a letter to the NASD providing guidance on a variety of firm quote compliance issues. (The NASD's July 7, 1997 inquiry and the SEC's July 16, 1997 letter in response are presented on pages 6-11 of this newsletter.) Based on the guidance provided in the SEC's letter, the staff will continue to analyze the SOES/SelectNet "double-hit" issue on a facts-and-circumstances basis and will continue to review firms that demonstrate a pattern of non-responsiveness to

SelectNet liability orders after presentation. In addition, the SEC's letter implicitly reiterates the SEC staff's position that a preferenced SelectNet order is deemed to be presented to the recipient of that order for purposes of Rule 11Ac1-1 upon delivery of that order to the firm. Indeed, the SEC's letter reaffirms statements made in the SEC's Section 21(a) report that, "[t]he firm quote rule is triggered when an order is 'presented' to the market maker. Because all directed SelectNet orders

are delivered electronically to a particular market maker, the presentation of an order is readily ascertainable."

Member firms should discuss the items set forth in this article and the SEC's letter dated July 16, 1997, with their traders and remind them of their obligations under Rule 11Ac1-1. Member firms should also implement adequate written supervisory procedures to detect and deter potential firm quote violations. Failure to have an adequate supervisory

system in place may result in disciplinary action. In addition, firms should ensure that they have adequate staff and/or systems technology to immediately respond to SelectNet orders.

Questions regarding this information may be directed to NASD Regulation's Market Regulation Department, at (800) 925-8156. □

NASD Regulatory & Compliance Alert Information

Regarding Any Items In This Publication

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

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National Association of Securities Dealers, Inc. ■ 1735 K Street, NW ■ Washington, DC 20006-1500 ■ 202-728-8000

July 7, 1997

Dr. Richard Lindsey
Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Dear Dr. Lindsey:

This letter requests the Commission's interpretive views regarding the application of Rule 11Ac1-1 under the Securities and Exchange Act ("Firm Quote Rule") to orders received through the Nasdaq Stock Market's Selectnet System. We appreciate very much the attention the Commission staff has already given to this issue as well as the constructive suggestions you personally have made regarding longer term system and NASD rule changes that might relieve the present Firm Quote compliance burdens. Nevertheless, we believe that a response to the interpretive questions set forth below will be extremely helpful in clarifying the application of the Firm Quote Rule and thereby enhancing the ability of NASDR to enforce compliance with the Rule.

First, the Commission has previously stated that orders sent through the Selectnet System are "presented" to a market maker at the time the Selectnet order is displayed on its terminal. The Commission has further stated that the fact an order quickly scrolls off a market maker's trading screen does not excuse traders from complying with the Firm Quote Rule. We would appreciate the Commission's views as to the application of the Firm Quote Rule in the following example. The market maker receives on its terminal a preferenced Selectnet buy order at its quoted offer price at 10:10:00. Before the market maker becomes aware of the Selectnet order it executes a second order over the telephone, its proprietary execution system or SOES at 10:10:15. At 10:10:20 the market maker becomes aware of the Selectnet order. Is the market maker obliged by the Firm Quote Rule to execute the Selectnet order? Would the response to this question be different if the market maker had executed an order over the telephone or through its proprietary execution system at 10:09:55 but had not yet updated its quotation when it became aware of the Selectnet Order at 10:10:20? Would the answer to either of these fact scenarios change if the market maker was displaying a customer limit order as its quotation and had no interest in trading for its proprietary account at that price?

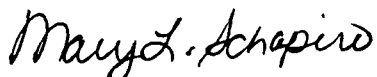
Second, we would appreciate the Commission's staff view as to whether a market maker's obligation under the Firm Quote Rule is affected in any way by the cancellation of a Selectnet order. For example, assume again that a market maker received a Selectnet buy order at its quoted offer price at 10:10:00. Assume further that the market maker states that it had not become aware of the Selectnet order prior to the time that the order was cancelled. Does the market maker's failure to execute the Selectnet order prior to cancellation violate the Firm Quote Rule? If the answer to this question is yes, what is the legal obligation which requires the market maker to respond prior to the system expiration time? Is there some period of time (e.g., 15-30 seconds), during which the market maker's failure to respond prior to a cancellation would not constitute a violation? Finally, would a market maker who becomes aware that a preferenced order has scrolled off a screen and timed out, meet its firm quote obligations if it then executed the transaction without involvement of NASDR or a complaint from the order entry firm?

Third, we would appreciate the Commission's staff view as to whether the order entry firm's conduct in entering and cancelling multiple orders through the Selectnet system is relevant to the fact situation discussed above. For example, if an order entry firm entered seven broadcast buy orders and three preferenced buy orders into the Selectnet system between 10:09:50 and 10:10:10 and then, after receiving an execution of one broadcast order at 10:10:15 cancelled all (or most) of its other Selectnet orders, have the market making firms who received the three preferenced Selectnet orders violated the Firm Quote Rule even though the order entry firm appeared to succeed in its strategy?

Finally, is it relevant in any of the backing away fact situations discussed above that the market making firm can demonstrate that on numerous occasions in the past it has executed Selectnet preferenced orders received from the same and other order entry firms.

We appreciate very much your response to these questions and look forward to continuing to work with you to ensure that the Firm Quote Rule is fully and fairly enforced.

Sincerely yours,


Mary Schapiro


Richard Ketchum *by mks*



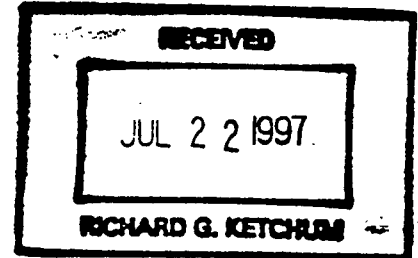
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

July 16, 1997

Mr. Richard G. Ketchum
Executive Vice President & Chief Operating Officer
National Association of Securities Dealers, Inc.

Ms. Mary L. Schapiro
President
NASD Regulation
1735 K Street, N.W.
Washington, D.C. 20006-1506



Dear Mr. Ketchum and Ms. Schapiro:

In the undertakings specified in the Commission's administrative proceeding against the NASD,^{1/} the NASD committed to substantially upgrade its capability to enforce Rule 11Ac1-1 under the Securities Exchange Act of 1934 ("Firm Quote Rule"). NASD efforts to date include the establishment of a real-time procedure for resolving backing away complaints, and new draft parameters and protocols for processing such complaints.

In your letter of July 7, 1997, you indicated that you would like more guidance on what types of activity may be deemed backing away under the Firm Quote Rule.^{2/} You have requested the Division's views regarding this conduct so as to enhance NASDR's ability to enforce compliance with the Firm Quote Rule.

Many of your questions involve a market maker's duty to honor its quote when the market maker receives two or more orders in close conjunction via Nasdaq's SelectNet System and the Small Order Execution System ("SOES") or the telephone.^{3/}

^{1/} See Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD, the Nasdaq Market, and Nasdaq Market Makers, Securities Exchange Act Release No. 37542 (August 8, 1996).

^{2/} See Letter from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, and Mary L. Schapiro, President, NASDR, to Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated July 7, 1997.

^{3/} The double execution problem arising from Nasdaq providing two automated order delivery systems could be eliminated by integrating these two systems.

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The Division acknowledges that the receipt of simultaneous orders in SOES, SelectNet and over the telephone raises questions regarding firm quote compliance for market makers.^{4/} Nonetheless, it is not feasible in this context to articulate a "bright-line" test on what conduct constitutes backing away. Instead, NASDR should examine the particular facts and circumstances surrounding a market maker's conduct to determine if a market maker violated its firm quote obligations.

For example, when an order entry firm cancels its order quickly after presentment in SelectNet,^{5/} NASDR should analyze that

^{4/} For example, some market makers claim that other market participants are (1) sending a market maker a preferenced SelectNet order at the market maker's quote; (2) cancelling the order quickly before the market maker can fill it; and (3) filing a backing away complaint against the market maker. Another alleged practice is for a firm to send a preferenced SelectNet order virtually contemporaneously with a similar order via SOES. In this situation, the SelectNet order arrives shortly before the market maker receives confirmation of an automatic execution in SOES. The order entry firm then will file a backing away complaint if the market maker does not honor the SelectNet order. Market makers are concerned that this practice subjects them to double executions.

^{5/} Although a market maker may often be able to react within 10 seconds of presentment of a SelectNet order, the 10 second cancellation prohibition is not meant to establish a per se backing away time threshold. See Securities Exchange Act Release No. 38185 (January 21, 1997), 62 FR 3935 (January 27, 1997) (approving a ten second minimum life for a preferenced SelectNet order). As an initial matter, the Division believes that an order entry firm that directs multiple SelectNet orders to a market maker within a relatively brief time, with the intent of cancelling these orders shortly after entry for the purpose of deliberately deterring order execution, could be in violation of the federal securities laws and should be examined under the appropriate NASD rules. Although market makers have a responsibility to stand behind their published quotations when receiving order flow from order entry systems, in the situations where order entry firms are deliberately deterring execution of these orders, the market maker should not be held to be in violation of the Firm Quote Rule. Nonetheless, because of the serious problems involving unwarranted backing away by market makers in the past, the NASDR must ensure that a market maker's allegations of order

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market maker's pattern of execution for orders it receives via SelectNet. On one hand, if the analysis reveals that the market maker generally executes orders from market makers or other firms within a few seconds of presentment, a backing away violation may be indicated where the market maker waits significantly longer to execute orders from the order entry firm involved in the complaint. On the other hand, if a market maker can show that it generally fills most SelectNet orders promptly and in a non-discriminatory fashion, failure to fill a particular SelectNet order cancelled quickly after presentment may not rise to the level of backing away, depending on the facts and circumstances of a particular case.

A similar analysis should be employed for the SOES/SelectNet double hit question. There should be no "bright line" test that would excuse a market maker from executing the SelectNet order without violating its obligations. The determination would have to be made on a facts and circumstances basis.^{6/} Of course, the Firm Quote Rule does not allow a market maker to decline to fill an order based on the receipt of a subsequent order. Therefore, in deciding a backing away complaint, the NASD should determine the time the SOES order was entered by factoring in the time it takes a market maker to receive the execution confirmation from the point of order entry.

NASD policy is that firms with timely backing away complaints may receive a contemporaneous trade execution. The Division notes, however, that the fact that a market maker gives a customer a fill in response to a complaint or otherwise reimburses the customer is not determinative of whether a violation has occurred. Although it may be appropriate to consider contemporaneous fills as a mitigating factor for individual violations, it would not be conclusive for market makers that have demonstrated a pattern of backing away violations.

Finally, some market makers have complained that the large volume of SelectNet orders may cause preferenced orders to rapidly scroll off the screen before a trader can see them, subjecting the firm to backing away complaints. The Division does not believe that a firm should escape Firm Quote Rule responsibility based on

entry firm "gaming" in response to a backing away complaint be substantiated.

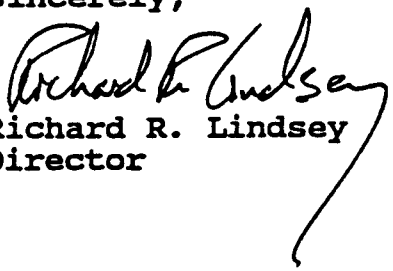
^{6/} Some factors to consider include the times that the orders were entered and whether both orders were sent by the same firm.

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claims that a trader failed to see a SelectNet order due to the "scrolling effect." The Division understands that many market makers now are able to separate the SelectNet preferenced orders from general broadcast orders on their individual screens, which would reduce the scrolling problem.

The Division reiterates that improved backing away surveillance is integral to the NASD's ability to satisfy its self-regulatory obligations. If you have additional questions regarding this matter, please do not hesitate to contact me.

Sincerely,


Richard R. Lindsey
Director

NASD Interprets SEC Order Handling Rules, NASD Limit Order Protection Rules, And Member Best Execution Responsibilities

In the following article, the NASD, after consultation with staff of the SEC, is providing interpretive advice regarding a member's best execution obligations when handling a customer order, especially in light of the SEC's Order Handling Rules and the NASD's Limit Order Protection Rules. The Questions and Answers that follow are an attempt to provide members with answers to compliance questions raised following the implementation of the new Order Handling Rules.

In its release adopting and amending the new and amended SEC Order Handling Rules, Rule 11Ac1-4 and Rule 11Ac1-1, the SEC made specific statements regarding the best execution of customer orders. Specifically, the SEC stated that when a market maker holds an undisplayed limit order priced better than the quote, and it subsequently receives a market order on the opposite side of the market from the limit order, it is no longer appropriate for the market maker to execute the market order at the published quote and the limit order at its limit price. The market maker must pass along the price improvement of the limit order to the market order. The Nasdaq Stock Market has received a number of questions regarding NASD member firm obligations to obtain best execution of customer orders in light of this statement. Nasdaq and NASD Regulation have discussed various best execution scenarios as detailed below with the SEC.

In using this Q & A as a tool to develop a member's policies regarding its best execution obligations, it is important to note that the application of best execution concepts necessarily involves a

"facts and circumstances" analysis. Depending upon the particular set of facts surrounding an execution, actions that in one set of circumstances may meet a firm's best execution obligation, may not meet that standard in another set of circumstances. It should also be noted that the best execution obligation is an obligation that evolves as rules and systems change.

Thus, if Nasdaq were to amend its Limit Order Protection Rule, a firm's best execution obligations will likely change as well.

In addition, it should be noted that the discussion that follows relates principally to the handling of orders in Nasdaq securities (National Market and SmallCap) in light of the NASD's Limit Order Protection Rule, IM-2110-2. However, because the NASD Limit Order Protection Rule (Manning) only applies to Nasdaq securities, the limit order protection requirements discussed below do not necessarily apply to over-the-counter equity securities that may trade in the NASD's OTC Bulletin Board®. Of course, members continue to have best execution obligations for these securities. The NASD continues to evaluate best execution and limit order handling obligations for such securities and will provide information regarding a firm's obligations in a separate document at a future date.

Separately, we note that limit order protection for over-the-counter executions in exchange-listed securities is governed by NASD Rule 6440 and members continue to have best execution obligations for those securities as well.

I. Treatment Of Orders Received From Another Member

Question 1: Basic Obligation

- Nasdaq Inside Market:
10 - 10 1/2 10 x 10
- Market Maker A (MMA) holds customer limit to buy 1,500 shares at 10 1/4.
- The customer requests that this order not be displayed.
- MMA receives a market order to sell 1,000 shares from another customer through its internal order delivery and execution system.
- What must MMA do?

Answer 1:

Under best execution principles discussed in the SEC's Adopting Release, market makers holding undisplayed limit orders must execute incoming market orders at the limit order price. Thus, MMA must execute the market order at 10 1/4, the price of the undisplayed limit order. MMA may execute the market order against the limit order or against its own inventory. However, if it fills the market order out of its own inventory, the Manning Rule requires that MMA protect the limit order at its price. Therefore, the limit order would also have to be executed at its price. The remaining 500 shares of the limit order would continue to reside undisplayed on MMA's book.

Question 2: System Orders

- Nasdaq Inside Market:
10 - 10 1/2 10 x 10
- MMA holds a customer limit order to buy at 10 1/4 for 1,500 shares that is not displayed.
- MMA receives a customer market order to sell 1,000 shares from another broker/dealer through MMA's automated order delivery and execution system.
- At what price should the limit and market orders be executed?

Answer 2:

Even though the order is from another broker/dealer, because the other firm has routed its order with the understanding that MMA will provide automated executions for that broker's customer orders and thereby provide best execution through MMA's system, MMA must match (as principal or as agent, as explained in Answer 1, above) the 1,000-share customer market order against 1,000 shares of the undisclosed customer limit and execute at 10 1/4. The remaining 500 shares of the 10 1/4 limit order remains undisclosed on MMA's files. The same rationale for matching the market order against the limit order would apply if the customer order had been routed to MMA through Nasdaq's Advanced Computerized Execution System (ACES®) facility.

Question 3: Phone Orders - Market Maker And Order Entry Firm Have A Relationship

- Nasdaq Inside Market:
10 - 10 1/2 10 x 10
- MMA holds an undisclosed customer limit order at 10 1/4 for 1,500 shares.
- MMA is quoting publicly 10 bid.
- Broker/dealer B (BD-B) telephones MMA to sell 1,000 shares at the

market for a customer. MMA has an arrangement with BD-B with the understanding that MMA will provide BD-B's customer orders with best execution, such as part of a payment for order flow, reciprocal, or correspondent arrangement.

- What is MMA's obligation to broker/dealer B and to the limit order to buy?

Answer 3:

Even though the order is from another broker/dealer, MMA must match 1,000 shares of BD-B's customer order against the undisclosed limit order of 10 1/4, because MMA has an arrangement under which it has implicitly or explicitly undertaken to provide best execution to BD-B's customer orders. MMA will execute 1,000 shares of the market order and the limit order at 10 1/4.

However, because the Limit Order Display Rule, Rule 11Ac1-4, has not been fully implemented as of the date of this document, limit orders received by a market maker may not yet be reflected in the market maker's quote. Consequently, it may be difficult for a market maker to quickly access information regarding the limit order at a better price that it holds at the time the telephone order is received. Accordingly, until such time that all Nasdaq stocks are subject to Rule 11Ac1-4 and thus are likely to be reasonably accessible to the trader, the NASD will not take regulatory action against market makers that fail to provide the undisplaced limit order price to the execution of telephone orders that they receive in any Nasdaq stocks during the phase-in period. Once all Nasdaq securities are subject to Rule 11Ac1-4, members will be expected to provide telephone orders, except as detailed below, the benefit of superior limit order prices, whether displayed or not.

Question 4: Phone Orders - Market Maker And Order Entry Firm Do Not Have A Relationship

- Nasdaq Inside Market:
10 - 10 1/2 10 x 10
- MMA holds an undisclosed customer limit order at 10 1/4 for 1,500 shares.
- MMA is quoting publicly 10 bid.
- Broker/dealer B telephones MMA to sell 1,000 shares at the market for BD-B's own account where MMA has no agreement or understanding to treat BD-B's orders as customer orders or otherwise provide them with best execution.
- What is MMA's obligation to broker/dealer B and to the limit order to buy?

Answer 4:

MMA may execute BD-B's market order to sell at MMA's published quote of 10. MMA does not owe a best execution obligation to a non-customer where no understanding or expectation of treatment as a customer has been reached by MMA and BD-B. Broker/dealers are not considered customers for purposes of this obligation.

If MMA executes BD-B's order at 10, MMA, however, has traded through the customer limit order it holds. Under the Manning Rule, therefore, MMA must execute 1,000 shares of the limit order it holds. Under the present interpretation of Manning, MMA must execute 1,000 shares of the customer limit order at 10 1/4 or better, because 10 1/4 is the price at which the limit order was held. MMA, of course, may choose to give the market order customer the price of the limit order, but it is not currently required to do so. The NASD's staff is presently evaluating whether to propose to the Nasdaq Board a change to the Manning Rule that would require a member to provide price improvement to the limit order in this situation.

(Continued on page 14)

Question 5: Rounded Orders

- Nasdaq Inside Market:
20 - 20 1/2 10 x 10
- MMA holds a customer limit order to buy a Nasdaq stock at 20 5/32 for 2,000 shares. MMA changes its quote to 20 1/8 for 2,000 shares to reflect the rounded price of the customer limit order.
- MMA receives a market order to sell 2,500 shares.
- At what price must the market and limit orders be executed?

Answer 5:

MMA must execute the customer limit order and 2,000 shares of the market order at 20 5/32, even though its displayed quote was rounded to 20 1/8. The execution must occur at the actual limit order price that MMA held.

Question 6:

- Nasdaq Inside Market:
10 - 10 1/2 10 x 10
- MMA holds a customer limit order to buy at 10 1/4 for 1,500 shares that is not displayed.
- MMA receives a customer limit order to sell 1,000 shares at 10 1/8.
- At what price(s) should the limit orders be executed?

Answer 6:

The SEC's best execution discussion in the Adopting Release did not discuss the crossing of limit orders with each other. However, by analogy to the best execution example used in the SEC's Order Handling Release, Nasdaq believes that the crossing of two limit orders is similar to the interaction of a market order and a limit order. Accordingly, Nasdaq believes that to provide best execution to a customer limit order when that limit order would cross another customer

limit order, MMA should execute the sell limit order against the buy limit order at 10 1/4. In essence, the second limit order is a marketable limit order that is the equivalent of a market order and should be treated as such under the best execution principles discussed by the SEC.

Question 7: Minimum Price Improvement To Avoid Manning Violation

- Nasdaq Inside Market:
20 - 20 1/4 10 x 10
- MMA receives a customer limit order to buy at 20 1/16 for 2,000 shares.
- MMA changes its quote to 20 1/16 for 2,000 shares to reflect the price of the customer limit order.
- MMA receives a market order to sell 2,500 shares.
- May MMA offer the market order price improvement over the 20 1/16th limit order and execute the market order for its own account? If so, what is the minimum amount of price improvement allowable?

Answer 7:

MMA is allowed to execute the market order at a price better than the limit order. Nasdaq, after consultation with the Quality of Markets Committee, believes that the minimum amount of price improvement that would permit a market maker to avoid a violation of the Manning Rule is 1/16th, where the actual spread is greater than 1/16th; however, where the actual quotation spread is the minimum quotation increment, the minimum price improvement is one-half of the normal minimum quote increment. In Question 7, since the actual spread is 20 1/16 - 20 1/4, the minimum price improvement is 1/16th. Thus, MMA could trade ahead of the limit order at 20 1/8th. If the actual spread were 20 1/16 - 20 1/8, since the

security is priced at more than \$10 per share, the minimum quote increment is 1/16th. If the market maker wants to trade with an incoming market order to sell without triggering its Manning obligations to the buy limit order, the market maker must buy from the sell order at 20 3/32nds. Similarly, if the security were priced under \$10 and quoted at 5 1/32 - 5 1/16, the minimum price improvement to avoid a violation of the Manning Rule would be 1/64th better than a buy limit order it holds.

This represents a change from previous statements regarding price improvement. In NASD Notice to Members 95-43, regarding the Manning Rule, Nasdaq stated that market makers may avoid violating Manning if they execute for their own accounts at 1/64th better than the limit order price. This statement no longer is applicable and is superseded by this information.

II. Discretionary Or Working Orders

Question 8:

- Nasdaq Inside Market:
10 - 10 1/8 10 x 10
- MMA quote: 9 7/8 - 10 1/4
- MMA receives 100,000-share discretionary ("working") order to buy in which the institutional customer and the market maker agree to the terms under which the order is to be worked and the compensation that MMA is to receive. The parties to this trade agree that MMA may, if necessary to fill the entire order at an acceptable price, trade ahead of the institutional customer's order. MMA immediately sells 30,000 shares to the institution and holds the remaining 70,000 shares.
- A. MMA executes an undisplayed limit order to sell at 10 1/16 for 1,000 shares.
- B. MMA executes a market order to sell for 1,000 shares at 10.

C. MMA executes an order to sell 10,000 shares at 9 7/8.

- What are MMA's responsibilities to the 70,000 share order when it executes any of the orders described in A, B, or C?

Answer 8:

MMA is holding a discretionary market order for which it has agreed to work to obtain an execution satisfactory to the customer. A discretionary order, sometimes called a "not held" or a "working" order, is an order voluntarily categorized by the customer as permitting the member to trade at any price without being required to execute the customer order. A broker/dealer with such an order must use its brokerage judgment in the execution of the order, and if such judgment is properly exercised, the broker is relieved of its normal responsibilities with respect to the time of execution and the price or prices of execution of such an order.

Because MMA has been given discretion by its customer to work the order, MMA does not owe the same best execution obligations to it and to other crossing orders as it would if the order were a non-discretionary market or limit order. Thus, where beneficial to the discretionary order, MMA may trade at 10 1/16 or lower with incoming orders without necessarily triggering a fill for the discretionary order it holds. Because the discretionary order is not a priced order, there are no Manning obligations to the order, nor is there a specific price at which an incoming order can be matched.

MMA, however, must clearly document that it has obtained the authorization of its customer to work the order and must disclose to the customer that such discretion means that the firm may trade at the same price or at a better price than that received by the discretionary order. In addition, it should be noted that, because the customer has granted the market maker the discretion to work the

order, the market maker, as agent, has a clear responsibility to work to obtain the best fill considering all of the terms agreed to with the customer and the market conditions surrounding the order. In the absence of a clear understanding between the trader and the customer regarding MMA's activities in competing with the customer order, MMA could potentially violate its fiduciary duties to its customer in the way it "works" the order.

Question 9:

- Nasdaq Inside Market:
10 - 10 1/4 10 x 10
- MMA accepts a discretionary order to buy 100,000 shares with a cap of 10 3/16.
- MMA receives a market order to sell 1,000 shares from a customer.
- Does MMA have to match the market order against the discretionary order that has a cap?

Answer 9:

The discretionary order with a cap is not considered a limit order because the firm is "working" the order and may be able to execute it at prices other than the 10 3/16 cap price. Thus, MMA does not have to match the market order against the discretionary order and MMA is able to buy from the market order at its bid of 10, assuming that this handling benefits the discretionary order.

III. Execution Of Blocks Outside The Inside Market Price

Question 10:

- Nasdaq Inside Market:
10 x 10 1/4
- MMA accepts a customer limit order to buy 1,000 shares at 10 1/8 that is not displayed.
- MMA negotiates with an institution to buy 100,000 shares at 9 7/8.

- Does MMA have to execute the 1,000-share limit order at 9 7/8?

Answer 10:

No. While MMA has a Manning obligation to execute the limit order, MMA can execute the limit order at its stated price of 10 1/8. In addition, MMA is not obligated to execute 1,000 shares of the block at 10 1/8, assuming that MMA has clearly disclosed to the institution that it intends to handle the order in this manner, and the institution has agreed to this practice.

IV. Net Trades/Internal Sales Credits

Question 11:

- Nasdaq Inside Market:
20 - 20 1/4 10 x 10
- MMA holds a limit order to buy at 20 for 1,000 shares.
- MMA receives from an institution a limit order to sell 9,000 shares "net" at 20.
- What effect does the "net" sell order have on MMA's Manning or best execution obligations?

Answer 11:

MMA must execute the net sell order at 20 by matching (as principal or as agent) the limit order to buy at 20 against the net sell order first and execute the remainder of the net order against its inventory.

Question 12:

- Assuming the same facts as outlined in Question 11 above, does the answer change if MMA discloses to the institutional customer with the sell limit order that the sales representative is to obtain a 1/8th sales credit and thus, MMA will be holding the limit order at a price exclusive of the sales credit?

(Continued on page 16)

Answer 12:

If MMA chooses to disclose the internal sales credit to the institutional customer and explains that the 20 net price is to be affected by this sales credit, and the customer agrees to this arrangement, then MMA should hold the limit order to sell at 20 1/8 and display the order in its quote, unless an exception to Rule 11Ac1-4 were available. Thus, the inside market would move to 20 - 20 1/8, 10 x 90.

Accordingly, because the net limit order to sell was held at a price (20 1/8) that does not match against the limit order to buy at 20, there is no execution.

Further, if the net limit order to sell were to be executed, it should be executed at a price of 20 1/8 and reported at such price to Nasdaq for trade reporting purposes and to the customer on the confirmation for purposes of Rule 10b-10. In effect, the agreement regarding the compensation to the sales representative converts an internal division of firm profits on a trade into compensation to the firm that must be treated as a markup/markdown or commission and handled as such. This answer is consistent with statements made by the NASD in Notices to Members 95-67 and 96-10, as well as the letter from Dr. Richard Lindsey,

SEC, to Richard Ketchum, NASD, dated January 3, 1997.

If members have additional questions regarding these issues, contact Eugene A. Lopez, Director, Market Services, The Nasdaq Stock Market, at (202) 728-6998 or NASD Regulation's Market Regulation Department, at (800) 925-8156. Any requests for legal opinions regarding matters addressed in this article should be directed to the Nasdaq Office of General Counsel, at (202) 728-8294. □

Continuing Education/Testing/Qualifications

Securities Industry/Regulatory Council On Continuing Education Recommends Changes To Industry Continuing Education Program

The Securities Industry/Regulatory Council on Continuing Education (Council) recommended rule changes to industry self-regulatory organizations (SROs)¹ that would significantly enhance the current securities industry Continuing Education Program (Program). Currently, the Regulatory Element computer-based training does not distinguish between registered representatives and principals. The recommended changes to the Program, if adopted by the SROs and approved by the SEC, call for the development of a new Regulatory Element computer-based training module related to the specific needs of registered principals.

The new module for registered principals will have the scenario-based format of the current Program. What will be

different is that the scenarios will illustrate principal-specific situations which the participant must resolve by applying industry rules, sound business practices, human relations skills, and common sense. Scenarios will be made more realistic through the use of audio and video techniques.

No Graduation From The Program

The Council recommendation also requires registered persons to participate in the Regulatory Element throughout their careers. Under current rules, registered persons participate in the Regulatory Element computer-based training on the second, fifth, and tenth anniversaries of their initial registration, then graduate from the Program. Under the proposed rule, registered persons will be required to participate in the

appropriate Regulatory Element on the second anniversary of their initial registration and every three years thereafter, with no graduation from the Program.

A One-Time Grandfathering

Although graduation would be abolished under the proposed rules, a one-time grandfathering would exist from the Regulatory Element. Those grandfathered will be all persons graduated from the Regulatory Element as of the date the revised rules become effective, unless they are registered principals or sales supervisors who have been registered as such for less than 10 years. After grandfathering is finalized, all registered persons covered under the Regulatory Element would be required to complete computer-based training within 120 days of the second anniversary

¹ The American Stock Exchange (AMEX), the Chicago Board Options Exchange, Incorporated (CBOE), the Municipal Securities Rulemaking Board (MSRB), the National Association of Securities Dealers, Inc. (NASD), the New York Stock Exchange, Inc. (NYSE), and the Philadelphia Stock Exchange (PHLX).

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AUDIO TAPE ORDER FORM

NASD Regulation, Inc.

FALL SECURITIES CONFERENCE

November 5-7, 1997 Phoenix, Arizona

Please Check Session Numbers

Advertising Regulation Seminar

- ☐ 1197A01
- General Session I
Introductory Remarks
Update of New Rules
Overview of New Rule
Proposals
- ☐ 1197A02
- General Session II
Nuts & Bolts
Internet and Electronic
Communications
- Concurrent Workshops (Single Tape/Session)
- ☐ 1197A03
- General Brokerage
- ☐ 1197A04
- Fundamentals of Mutual
Funds and Variable Products
Advertising
- ☐ 1197A05
- Case Studies & Point of Sale
Issues
- ☐ 1197A06
- Advanced Issues in Mutual
Funds and Variable Products
Advertising

Dispute Resolution Skills Training

- Concurrent Workshops (Two Tapes/Session)
- ☐ 1197DRo2
- Hearing—Damages/Awards/
Disciplinary Referrals
- ☐ 1197DRo3
- Managing The Discovery
Process
- ☐ 1197DRo4
- Mediation
- ☐ 1197DRo5
- Overseeing Motion Practice:
Dispositive Motions
- ☐ 1197DRo6
- Injunctive Relief (Single Tape)
- ☐ 1197DRo7
- The Hearing & Evidentiary
Issues
- ☐ 1197DRo8
- Employment Law Update

Fall Securities Conference

- ☐ 119701
- General Session I
*Richard G. Ketchum and
Todd A. Robinson*
- ☐ 119708
- Luncheon and Keynote
Speaker
Stephen L. Hammerman

- ☐ 119715
- Open Forum with District
Directors
- ☐ 119716
- General Session II
Mary L. Schapiro and John T. Wall

Concurrent Workshops (Single Tape/Session)

- ☐ 119702
- Branch Office and Small Broker/
Dealer Compliance Systems
- ☐ 119703
- Examination Programs and
Priorities
- ☐ 119704
- Communications with the Public
- ☐ 119705
- Independent Contractors/
Investment Advisers
- ☐ 119706
- Nuts & Bolts of Starting
Up a Firm
- ☐ 119707
- Continuing Education
- ☐ 119709
- Effective Supervision
- ☐ 119710
- Rules Round Up
- ☐ 119711
- Technology and Compliance
- ☐ 119712
- Dynamics of Customer Complaints
- ☐ 119713
- MSRB Rules
- ☐ 119714
- On-Line Compliance
- ☐ 119717
- Market Regulation Issues
- ☐ 119718
- Enforcement Initiatives

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\$194.40

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sary of their initial registration date and every third anniversary thereafter.

Presently, 83 percent of registered persons are covered by the Regulatory Element. The proposed changes will bring persons registered for more than 10 years in a non-principal capacity, but registered as principals less than 10 years, back into the Program for as long as they maintain their principal registration. This means that 90 percent of the industry will fall under the Program in the first year after the rule change.

Inactive Registration

The proposed rule maintains the provision: registered representatives who do

not satisfy the Regulatory Element within 120 days of their registration anniversaries will have their registrations made inactive and could not perform or be paid for activities that require a securities registration. Anyone remaining inactive for more than two years must requalify for registration by examination.

With millions of new investors in the markets today, and the growing array of financial products and securities that are being offered, the Council believes that an educated sales force is absolutely essential to ensuring the integrity of and investor confidence in the marketplace. Requiring registered persons to partici-

pate throughout their careers in both the Regulatory Element and Firm Element of the industry Continuing Education Program, and providing industry principals with specific training will benefit both the industry and investors tremendously.

Questions concerning the Continuing Education Program may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, at (301) 208-2932, or Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation, at (202) 728-6911. □

NASD Regulation Provides Testing & Continuing Education Information

Last year NASD Regulation contracted with Sylvan Learning Systems, Inc., of Baltimore, Maryland to administer testing and continuing education to the securities industry. Previously, these services were provided through 55 NASD PROCTOR® Certification Centers. The Sylvan network includes delivery at over 200 locations in the continental U.S., Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Recently, the Sylvan centers experienced problems that affected testing and continuing education sessions, and both entities regret any resulting inconveniences and are working to prevent a recurrence. Both sides have commenced reviews of their systems and will take all necessary corrective action.

Following is detailed information for NASD members regarding testing and Continuing Education Program delivery, particularly since some processes and procedures have changed.

Sylvan Technology Centers

Sylvan provides an expansive, nationwide network of testing centers, which allows NASD firms and their personnel greater flexibility in choosing testing locations for exams and continuing education sessions. The vast majority of the Technology Centers are co-located with Sylvan's Learning Center franchises. The Sylvan Technology Center network offers an increase not only in the number of sites, but in the total number of computer stations available for testing by almost 200 percent over what the PROCTOR network provided.

It is important to note that the Sylvan Technology Center environment is different in the following ways:

- Unlike the PROCTOR network, Sylvan's Technology Centers offer their services to many different clients. For example, it is common for an NASD candidate to be seated alongside a candidate who is taking a Nurse's Licensing Exam or a Graduate Record Exam.

- Depending upon the time of day a candidate is taking an exam or participating in a continuing education session at a Sylvan site, the candidate may see children being tutored in the Learning Center portion of the site. Most of the waiting rooms provided at Sylvan sites do not separate clients of the Learning and Technology Centers.

Appointment Scheduling Tips

To schedule an individual appointment, call either the local Sylvan Technology Center phone number, or call Sylvan's National Registration Center (NRC) at (800) 578-6273 (Option 1). Furthermore, keep the following "tips" in mind:

- Call local centers after 10 a.m. in order to avoid early morning activity that normally takes place at the centers.
- Plan ahead to secure a preferred training date; allow a two to three week lead time when scheduling a session.

- Provide the name as it appears on the Form U-4. The registration validation process matches the first initial of the first name. For example, if the candidate's name is Robert Jones, scheduling the appointment as "Bob" will cause a validation problem. If a candidate's name is F. Scott Jones, scheduling the appointment as "Scott" will also cause a problem with the validation.
- Provide a "back-up" telephone number in addition to a primary number. Center staff will attempt to reach the candidate if it is necessary to cancel/reschedule the session if the enrollment cannot be validated. The back-up number could also be used to notify the candidate (prior to the candidate traveling to the center) of emergency closure due to weather or a system outage.
- Note the appointment tracking number and the telephone operator's name. The tracking number is very helpful if an appointment needs to be rescheduled or canceled.
- **Make appointments through the local center if scheduling an appointment less than four calendar days from the current date.** The NRC is **not** able to schedule these types of appointments, since full control of a center's appointment calendar reverts to the local center at minus four days. This gives the center maximum control to schedule, reschedule, or cancel appointments on short notice.
- If the NRC indicates that the "scheduling system is down," the scheduling systems at local centers are also down. When the scheduling system goes down, it is down everywhere.
- Scheduling more than five appointments per call is a "group" appointment regardless of whether the appointments are scheduled at one center site or numerous sites. (See the paragraph "NASD Group Scheduling Team" under the Resource Teams section below for more information.)

Policies And Procedures

- **Personal Belongings**—If at all possible, do not take briefcases, backpacks, laptop computers, cell phones, or pagers to the center. Lockers are available to store belongings, but may be too small to store larger items. Candidates could be asked to lock larger items in their cars.
- **Identification Requirement**—Candidates without proper identification will not be seated. Proper identification is defined as one valid state or federal government-issued ID that contains both a photo and signature, such as a driver's license, passport, military ID, or state-issued ID card.

If a candidate does not possess the proper identification as defined above, the firm's Registration Department should be contacted immediately. The firm's Registration Department should contact NASD's Field Support Services (FSS) Team at (800) 999-6647 in order to determine the appropriate course of action.

- **Rescheduling Appointments Due to Exam Failure**—If a candidate does not pass the exam, the candidate needs to contact the firm's Registration Department to re-register for the exam. Another appointment should not be made until re-registration has taken place.
- **Rescheduling Incomplete Continuing Education Sessions**—If a candidate does not complete a continuing education session, the candidate needs to wait 48 hours before rescheduling with the local center or NRC. This allows time to create a new enrollment record.
- **Rescheduling Appointments Due to a Problem (No Exam) at the Technology Center**—If a candidate encounters a problem at the center whereby center staff cannot launch an exam or continuing education session, the candidate cannot reschedule the appointment for at least 48 hours (two days) from the initial

appointment date. The time lag allows the Sylvan and the NASD systems to communicate and free the enrollment record so that the new appointment record and existing enrollment record can be matched, and the appointment record validated.

- **"7+" Day Scheduling Procedure**—If an appointment is scheduled more than seven days from the current date, the appointment will be booked regardless of whether a validation (a.k.a., registration) has been found on the day the appointment call is made. Subsequently, if the appointment cannot be validated within seven calendar days before the appointment date, Sylvan will call the candidate. They will verify the appointment information (spelling of name, Social Security Number, exam or session series #, etc.) on the appointment record. If Sylvan is still unable to validate the registration, the appointment will be canceled until the problem can be resolved. A Sylvan representative may need to cancel an appointment by leaving a message on a phone machine or voice mail if Sylvan cannot reach the candidate directly.
- **Center Downtime Procedure**—If a center is experiencing system-related problems and cannot seat the candidate at the scheduled time, the candidate will have to wait at least 30 minutes from the appointment start time for the problem to be corrected. If, after 30 minutes, the problem has not been corrected, the candidate can continue to wait **or** can leave the center and reschedule the appointment at a later date. When a center is "down," the center staff will **not** be able to reschedule the appointment at that time; nor will the NRC be able to reschedule the appointment on that day. Candidates must wait 48 hours (two days) before calling the center or NRC to reschedule the appointment. The time delay is necessary in order to clear the enrollment and appointment records.

(Continued on page 20)

- Window Extension Process—If a candidate is unable to obtain an appointment at a Sylvan Technology Center before the window closing date on a test or continuing education enrollment, the following procedure is in place to assist the candidate:

Window extensions will **only** be granted to candidates who have attempted to obtain an appointment more than 10 business days before the expiration date of the validation window. Extension requests made to the FSS Team less than 10 business days from the validation expiration will be **DENIED**.

The candidate, or firm registration staff, must telephone either the local center or the NRC at (800) 578-6273 at least 10 business days before the window expiration date to schedule the appointment. If the candidate **cannot** obtain an appointment prior to the window closing date, the candidate must determine with the local center or NRC the next available date to book the appointment.

The candidate, or firm registration staff, must then call the NASD FSS Team at (800) 999-6647 (Option 3). The candidate relays the window and appointment availability information. The FSS Team will extend the window to the appointment availability date.

The candidate must then **re-call** either the local center or NRC to schedule the appointment on the agreed-upon date. This call should be placed **immediately** to ensure that the appointment gets booked and not given away to another candidate.

Resource Teams

NASD Field Support Services (FSS) Team

NASD's FSS Team, (800) 999-6647 (Option 3), is available Monday through Friday from 8:30 a.m. to 5:30 p.m., Eastern Time (ET). The FSS

Team can assist member firms in the following areas:

- Questions pertaining to candidate enrollments.
- Questions regarding exam delivery policy and procedure.
- Questions about, or obtaining extensions to, a candidate's validation window.
- Making arrangements for "special session" paper/pencil exams for member firm candidate groups.
- Reporting problems specific to exam and/or continuing education session delivery at Sylvan Technology Centers.

The firm should call its assigned NASD Quality & Service Team to register a candidate to take an examination or to request assistance pertaining to any candidate registration issue. For questions about continuing education rules, regulations, policies, or procedures, contact Heather Bevans of NASD Regulation at (301) 590-6011.

Sylvan's Resource Teams

Sylvan has set up an Enrollment Task Team (ETT) specifically to handle NASD enrollment issues. The ETT is available Monday through Friday 7 a.m. to 7 p.m., ET, at (800) 766-2539 (Option 2). On Saturdays, ETT is available between the hours of 8 a.m. to 4 p.m., ET.

Call the ETT with questions about whether a candidate has a valid enrollment with the NASD. NASD candidates who have valid enrollments with the NASD are able to schedule appointments for the next available date. It is critical to provide accurate information including: first initial of first name (use legal name), last name, Social Security Number, and the name or series of the test. If a candidate does not have a valid enrollment at the time of the call, the system will only allow the candidate to

schedule an appointment date more than seven days from the call date. ETT has access to the NASD's Central Registration Depository (CRDSM) database and will work with the NASD to validate the candidate's appointment. If ETT feels there is a problem with a candidate's enrollment, it will call to verify the candidate's information. ETT will cancel appointments for candidates whose enrollments cannot be validated seven days before their appointment date and will inform them to contact their firms.

The NASD Group Scheduling Teams

Reserve Block Requests—A reserve block is a specified number of workstations (a minimum of five) for candidates scheduled in the same location on the same day. Requests for a reserve block **must** be received **at least 30 days prior to the requested date**.

Nakia Savage has been assigned to facilitate these requests. For requests, changes, and/or general information, call Nakia Savage at (800) 578-NASD (6273), Option 2, or (410) 843-4800 (ext. 2126). If she is unavailable, contact Artischa Holt at ext. 2124.

Include the following information when faxing a reserve block request:

- Type of Test
- # of Seats
- Desired Location
- Test Date with a Second Choice
- Contact Person and Phone #

The above information will simply reserve the space. The candidates' names and Social Security Numbers **must** be faxed **at least 10 days prior** to the appointment date. Candidates without a valid enrollment will be subject to cancellation by ETT.

Multiple Appointments—A multiple appointment is five or more candidates scheduled in the same location on the

same date, or on various dates at different locations. To ensure availability, multiple appointment requests should be received *at least seven days prior* to the desired appointment date.

Sylvan’s specialists assigned to handle multiple appointments are Twaila Purnell and Artischa Holt. For requests, changes, and/or general information, they can be reached at (800) 578-NASD (6273), Option 2, or at (410) 843-4800 (Purnell at ext. 2125 and Holt at ext. 2124).

Include the following information when faxing your multiple appointment request:

- Candidates’ Names
- Social Security Number
- Home Phone #
- Work Phone #
- Type of Test
- Location
- Desired Date
- Contact Person and Phone Number

Candidates Declaring English As A Second Language

Candidates declaring English as a Second Language (ESL) can request more time to take tests by calling the NRC at (800) 578-NASD (6273). ESL candidates should not call the Special Accommodations Department. The amount of extended time is based on the standard length of the test: *see chart below*.

Standard Test Time	Allowable Additional Time
Up to 2 hours	30 minutes
2.25 - 5 hours	60 minutes
Over 5 hours	30 minutes per session/part

ESL candidates requesting additional time **must** have an Authorization Letter for Additional Time with them when they arrive for their testing appointment. The Test Center Administrator will collect this letter during check in. The letter **must**:

- be printed on company letterhead;
- be signed by the candidate’s supervisor or a principle of the firm;
- state that English is the candidate’s second language;
- contain the candidate’s name, test title and/or series number, and appointment date;
- be an original (no faxes or photocopies); and
- provide a recent date.

Form letters from firms are acceptable as long as the candidate’s name, test title, date, and requisite signature are original and have not been photocopied. Candidates not sponsored by a firm should call the NASD Qualifications Department at (301) 590-6500 for approval prior to their scheduled appointment.

Special Accommodations Team

It is the policy of NASD and Sylvan to ensure all candidates have equal opportunity and access to testing. Every candidate, especially those with disabilities, has the right under the Americans With Disabilities Act (ADA) to receive the same services as those without disabilities; this means being able to register for, schedule for, and take a test within a reasonable amount of time. NASD and Sylvan will work with a candidate to provide access to testing with special accommodations; the overall goal is to ensure that an effective, yet reasonable, solution is found for each candidate.

Firms or candidates should contact the NASD Special Accommodations Department at (301) 590-6724 to receive approval for special accommodations. The NASD Special Accommodations Department will contact the firms or candidates to let them know if

they have or have not been approved for special accommodations. If approved, the firm or candidate will be instructed to wait at least 48 hours, and then call Sylvan’s Special Accommodations Department at (800) 967-1139 to schedule the appointment. A Sylvan Special Accommodations Coordinator will work with the firm or candidate and the center, if necessary, to accommodate the candidate appropriately.

Candidates needing special accommodations must not register through the regular NRC phone number for NASD candidates. Candidates failing to follow the procedures outlined above may risk not having special accommodations available at the testing center on the day of their test.

Future Initiatives

The NASD Regulation Web Site’s (www.nasdr.com) “Exam Information & Locations” Web Page, which provides nationwide delivery location information, will be updated to provide location-specific maps for each center. The user will be able to view a map showing the location of the center directly from the Center Location List. In addition to providing the map, the user will have the ability to zoom in or out in order to view a more detailed or global map of the general area. This new feature will also provide point-to-point driving directions. Watch for this new feature coming soon.

NASD Regulation will continue to keep its members and other constituents informed about its testing delivery efforts through printed publications and the NASD Regulation Web Site.

Direct questions about this article or suggestions about future exam delivery topics to cover in upcoming NASD Regulation communications to Linda Christensen, Member Regulation, NASD Regulation, at (610) 627-0377 (e-mail: christel@nasd.com). □

NASD Seeks Further Comment On Injunctive Relief Rule

The Injunctive Relief Rule – NASD Rule 10335 (Rule) – of the NASD Code of Arbitration Procedure (Code) gives arbitrators the authority to grant injunctive relief in industry or clearing controversies. The Rule allows parties to seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. The Rule also provides expedited procedures for hearings on the merits once a temporary injunction is obtained from an arbitrator or a court. The Rule and its procedures are important tools for member firms and associated persons seeking quick resolution of disputes. In response to suggestions from parties, NASD Regulation is seeking further comments from members, associated persons, and others on how the Injunctive Relief Rule and expedited proceedings work and on how to improve the Rule and procedures.

Background

On January 3, 1996, the NASD Regulation Office of Dispute Resolution (ODR) implemented a one-year pilot arbitration procedure to govern injunctive relief claims between or among members and associated persons. The pilot procedure, codified in NASD Rule 10335, was extended for another year on January 3, 1997, in order to permit ODR to gain additional experience with the Rule before permanently adding it to the Code.

Rule 10335 provides, among other things, that:

- Parties may seek temporary injunctive relief either in court or in arbitration.
- Parties who seek temporary injunctive relief in court must simultaneously submit the claim to arbitration for permanent relief.
- Permanent injunctive relief may be obtained in arbitration as part of the

final relief a party seeks in connection with a claim.

- Applications for interim injunctive relief are expedited.
- Where a court grants interim injunctive relief to one of the parties, arbitration proceedings on the dispute must be expedited.

Experience With The Rule

Most cases filed under the Rule have involved associated persons leaving one firm for employment at another firm (often called “raiding” cases). The associated person’s former firm was generally the claimant in arbitration. In most such cases, the firm filed the action to prevent a former employee from soliciting clients whom the employee worked with at the firm. The following causes of action are commonly alleged in these cases:

1. breach of contract;
2. misappropriation or conversion of trade secrets (customer information); and
3. defamation (relating to the circumstances of the employee’s departure from the firm).

Since the inception of the Rule, few cases have gone forward to a hearing on the merits after a court or arbitrator issued an injunctive order. Most of the cases settled shortly after filing or just before an injunctive hearing in arbitration.

Operation

An application under the Injunctive Relief Rule resembles an ordinary arbitration claim filing. The application must include a submission agreement, a statement of claim, a filing fee, and a hearing session deposit. The Rule additionally requires that the applicant or claimant specify the type of interim relief sought and the reasons relief

should be granted. The applicant must serve all documents directly upon the opposition and provide the NASD Regulation New York Dispute Resolution Office with proof of service. The applicant must pay a nonrefundable \$2,500 surcharge to NASD Regulation which covers the significant costs of processing expedited proceedings.

If an applicant seeks an *Immediate Injunctive Order*, staff must endeavor to appoint an arbitrator and schedule a hearing within one to three business days of receipt of an application. If a *Regular Injunctive Order* is sought, staff must endeavor to appoint an arbitrator and schedule a hearing within three to five business days.

The Rule requires no response to an application for *immediate* relief. On the other hand, the Rule states that where there is an application for a *Regular Injunctive Order* a response must be served on the applicant within three business days of the application’s receipt. Unlike the process in ordinary arbitration proceedings, failure to file an answer to any interim injunctive application will not preclude a respondent from asserting defenses at the arbitration hearing.

Interim injunctive hearings with a single arbitrator are usually conducted by teleconference. When hearings are conducted in person, NASD Regulation holds them in New York, Chicago, and San Francisco, or a limited number of other locations where specially qualified arbitrators are located.

Within one to five business days of receipt of the application, NASD Regulation provides notice of the interim injunctive hearing and the background of the appointed arbitrator. The arbitrator may be challenged for cause

(Continued on page 24)

NASD Benefits By Association® Programs

The Securities Dealers Errors and Omissions Insurance Program

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Available In:
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*Mistakes can be costly.
Protect your assets.*

Program Features:

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- 10% discount for eligible NASD Group Fidelity Bond Program participants



Call the NASD program administrator, Seabury & Smith, at (800) 978-NASD (6273) for availability in your state, policy coverage, and to receive an application. Members in the Washington, DC area should call (202) 296-9640.

Note: Coverage is not available in a few states and is subject to underwriting. Coverage for individual registered representatives or branch offices is offered only through the broker/dealer firm.

but cannot be peremptorily challenged even if he or she presides at the later hearing on the merits.

Temporary injunctive orders, unlike final awards, are not publicly available.

Arbitrator Qualifications

A single arbitrator selected to hear applications for interim injunctive relief must be from the roster of almost 300 arbitrators specially designated as “Injunctive Qualified.” Arbitrators must possess extensive knowledge of provisional remedies, have extensive arbitrator experience, and be available on short notice to be eligible to serve on these matters.

Comments

NASD Notice to Members 97-59, issued in September, asked for comments on the following aspects of the Rule:

- availability of temporary injunctive relief in court;
- time limits on injunctive relief;
- discovery;
- hearing procedures; and
- the composition of the arbitration panel.

There is still time to provide your comments or suggestions. Before becoming effective, any rule change developed as a result of comments received must be

adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the SEC. The text of NASD Rule 10335 is set forth in *NASD Notice to Members* 97-59 and is part of the NASD Code of Arbitration Procedure.

NASD Regulation encourages all members and interested parties to respond to the issues raised in *NASD Notice to Members* 97-59. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006-1500 □

Municipal Securities

Municipal Securities—Transaction Reporting

The first phase of the Municipal Securities Rulemaking Board (MSRB) Transaction Reporting System requiring the reporting of inter-dealer transactions has been operational since January 1995, and the MSRB has collected transaction information on more than 2 million inter-dealer trades since the implementation of the system. MSRB Rule G-12 requires that dealers submit their trades with other dealers for automated comparison at a registered securities clearing agency. The National Securities Clearing Corporation (NSCC) is the registered securities clearing agency providing this service.

Each night after the comparison data is processed, NSCC forwards the transaction information to the MSRB. Therefore, dealers that submit their transaction information to the automated comparison system as required by MSRB Rule G-12 also satisfy the requirements of MSRB Rule G-14 on transaction reporting for inter-dealer transactions.

Customer Transaction Reporting

The MSRB is in the process of designing the second phase of its Transaction Reporting System. This second phase will require that dealers report to the MSRB all transactions—both institutional and retail customer transactions—on trade date. The MSRB anticipates that the second phase of the system will be implemented in the first quarter of 1998. The mechanism for reporting customer transaction data to the MSRB in the second phase of the program is slightly different than the first phase. Firms are asked to report their customer transactions in one of three methods:

- direct submission to NSCC;
- indirect submission to either a service bureau or a clearing agent; or
- through a PC dial-up connection to the MSRB.

NSCC has agreed to accept separate files containing customer transaction reporting data each night from its

participants. NSCC will, in turn, forward the customer transaction data to the MSRB for processing.

Firms will need to provide the following information when reporting customer transactions to the MSRB:

- CUSIP Number
- Trade Date
- Time of Trade Execution
- Dealer Identifier
- Buy/Sell Indicator
- Par Value Traded
- Dollar Price
- Yield
- Dealer's Capacity and, if Agent, Commission Charged
- Settlement Date
- Dealer's Control Number for the Transaction
- Cancel/Amend Code and Previous Record Reference

While this information is similar to the inter-dealer transaction data, it does differ from those requirements. If a firm submits customer transaction data to the MSRB via NSCC, it must be submitted in a separate file from the inter-dealer comparison information. Both the MSRB and NSCC have information available on their Internet Web sites providing details on how to submit customer transaction files.¹

In preparation for the second phase of the transaction reporting program, the MSRB has sent each firm registered as a municipal securities dealer a customer transaction reporting form. In completing the form firms need to provide contact names, phone numbers, clearing information, their firm CRD number, their firm's *executing broker symbol*, and an indication of how they will submit customer transaction data to the MSRB. MSRB Rule G-14 on transaction reporting requires that firms complete a test of the customer transaction reporting phase of the system. Firms must complete and return the form to the MSRB prior to being scheduled for testing. Any firm that has not received a customer transaction reporting form should contact the MSRB at (202) 223-9347.

Introducing Brokers

NASD Regulation has become aware that some member firms that act as introducing brokers believe that they are exempt from the trade-reporting requirements of MSRB Rules G-12 and G-14. This is not correct. Firms registered as municipal securities dealers are required to have their own four-letter executing

broker symbol. This symbol is used to identify the firm in both the first and second phases of the Transaction Reporting System. Firms that introduce transactions are, for MSRB Rule G-14 purposes, the executing broker and need to use their own unique symbol, not their clearing firm's symbol. This requirement currently applies to all transactions, even transactions between dealers. The responsibility for accurate reporting of the executing broker symbol rests with both the clearing firm and the executing firm. The clearing firm is responsible because it has assumed the responsibility to accurately transmit information. The introducing firm is responsible because it is the executing broker. Members should verify that their clearing agent and/or service bureau is currently reporting the executing broker symbol when submitting inter-dealer transactions for automated comparison. Firms that do not have an executing broker symbol may obtain one by calling NASD Subscriber Services at (800) 777-5606.

Ongoing Compliance Review

Members are reminded that MSRB Rule G-12 requires that all inter-dealer transactions eligible for automated comparison be compared through the NSCC. Failure to do so results in a violation of MSRB Rule G-12 on uniform practice and Rule G-14 on transaction reporting since the mechanism for reporting inter-dealer transactions to the MSRB is through the transmission of transaction data for comparison to NSCC. MSRB Rule G-14 on transaction reporting requires that firms submit their inter-dealer transactions timely and accurately

to allow the transaction to compare on trade date in the initial comparison cycle. The Rule also requires that firms submit:

- accrued interest if the settlement date is known;
- the time of trade; and
- the executing broker symbol for the firm introducing the transaction.

NASD Regulation reviews monthly performance statistics compiled by NSCC and contacts those firms that do not appear to be complying with the timeliness or accuracy requirements of MSRB Rules G-12 and G-14. Firms that are not in compliance are asked to provide a plan for corrective action. Firms that receive notices of non-compliance with these requirements may be subject to disciplinary action. Questions on this article or the review process may be directed to Judith A. Foster, District Coordinator, Fixed Income Securities Regulation, Member Regulation, NASD Regulation, at (202) 728-8462.

¹The documents on the MSRB's Web Site (www.msrb.org) are "Changes to File Specifications" (October 24, 1997), "Reporting Customer Transactions to the Board: Rule G-14," MSRB Reports (January 1997), "MSRB Transaction Reporting Program: Questions and Answers," and "Data Element and File Specifications for Reporting Customer Transactions," (March 1997). The Important Notices on the NSCC Web Site (www.nsccl.com) are "The MSRB's Transaction Reporting Program for Municipal Bond Securities: NSCC Interface Requirements" (April 2, 1997) and "The MSRB's Transaction Reporting Program for Municipal Bond Securities: MSRB Testing with NSCC Interface" (July 9, 1997). □

Attention

The MSRB has filed an amendment to Rule 36 revising Forms G-36(OS) and G-36(ARD). The revisions to Forms G-36(OS) and G-36(ARD) add several new data elements and reorganize the layout of the forms. The new forms are to be used for filings made after January 1, 1998.

Member firms may obtain copies of the new Forms G-36(OS) and G-36(ARD) from the MSRB by calling (202) 223-9347 or by visiting the MSRB's Web Site at www.msrb.org. □



“ASK THE ANALYST”

This edition of “Ask the Analyst” features answers to questions of general interest raised during the Advertising Regulation Seminars held in Washington, D.C. on October 30-31 and in Phoenix, Arizona on November 5, 1997. The seminars covered a variety of topics relating to communications with the public, including electronic media, telemarketing, investment companies, and general brokerage. If you have any questions or comments about this column, or suggestions for topics to be covered in future “Ask the Analyst” columns, please contact the Advertising Regulation Department at (202) 728-8330.

Electronic Communications

Q. What is the responsibility of a member firm for the currency of the information it publishes on its Internet Web site? When does the information become stale?

A. While Web communications enable member firms to publish and then maintain large quantities of information, these communications also require adequate allocation of resources for the ongoing maintenance and updating of this information over time. Members must assure that all their communications with the public are accurate and provide the reader with a sound basis for evaluating the facts with respect to the product or service being offered.

The NASD does not have a specific time frame after which information is deemed “stale.” However, if information on a Web site is no longer accurate or has been supplanted by more recent data, then the member must revise the Web site in order to comply. NASD Conduct Rule 2210 prohibits the use of inaccurate information and

requires that members’ communications provide the reader with a sound basis for evaluating the facts with respect to any products or services being offered. For example, stock prices must be current and a date provided for such prices to permit the reader to evaluate the information.

In addition, there are certain rules that are date sensitive. For example, total return performance data for mutual funds and variable annuities must be current to the most recent calendar quarter as required by SEC Rule 482.

Q. Must a member firm file its “intranet”? This internal Web site is available only to individuals employed by or registered with our firm who have been given password access to it.

A. This type of Web site does not need be filed with the Advertising Regulation Department. Only communications with the public are subject to the filing requirements set forth in NASD Conduct Rule 2210(c).

Q. Does NASD Regulation permit the use of interactive calculators in software packages and Internet Web sites? If so, what are the return restrictions?

A. Members may use interactive calculators as part of a financial planning or “needs analysis” discussion in a software or Web presentation. Since NASD Conduct Rule 2210 prohibits projections or predictions of performance for investments, the calculator should appear separately from the discussion of specific products and the accompanying text must avoid any implication that the calculator can be used to predict future product performance.

NASD Conduct Rule 2210 does not specify rates of return for use in these interactive calculators. However, the Rule prohibits exaggerated, unwarranted, or misleading presentations and requires that members’ communications reflect the inherent risks of investing. To avoid either exaggerating the potential returns of investments or misguiding an investor about how much he or she needs to invest to reach a financial goal, members should limit the rates of return users can enter into interactive calculators.

Many interactive calculators permit the user to see the hypothetical results of compounding an investment at a single rate of return for 10, 20, 30, or more years. Illustrations of specific rates of return for extended time periods may create unreasonable expectations and ultimately mislead investors. Disclosure accompanying the calculator must clearly address this issue by explaining that rates will vary over time, particularly for long-term investments.

If a calculator permits the use of high rates of return, the potential to mislead is increased. Interactive calculator presentations generally depict an investment compounding over time without any fluctuation of principal. Nevertheless, investments that achieve high rates of return often carry higher volatility. To avoid misleading the user, if high rates of return are permitted by an interactive calculator, the presentation must clearly explain that investments offering the potential for higher rates of return also involve a higher degree of risk to principal.

Telemarketing Scripts

Q. *Does the Telemarketing Rule (NASD Conduct Rule 2210) apply to telemarketing scripts used with institutional prospects or are they restricted to retail prospects?*

A. NASD Rule 2211 does not distinguish between institutional and retail prospects. It simply prohibits calls to residences prior to 8 a.m. or after 9 p.m. in the recipient's time zone without prior permission. In addition, the Rule mandates prompt disclosure of the following information in a clear and conspicuous manner:

- the identity of the caller and the member firm;
- the telephone number or address at which the caller may be contacted; and
- that the purpose of the call is to solicit the purchase of securities or related services.

Q. *Does the Telemarketing Rule apply to scripts used by representatives to follow-up with individuals who have already requested and received a prospectus for a mutual fund?*

A. Yes. Scripts used for this type of follow-up call must adhere to the time limitations and disclosure requirements noted above. Only calls to certain types of existing customers are exempt from these requirements.

Mutual Funds

Q. *The Rankings Guidelines (IM-2210-3) were recently amended to permit the use of short-, medium-, and long-term total return rankings in investment company communications if the ranking entity does not provide one-, five-, and ten-year rankings. What time periods are considered short, medium, and long?*

A. The amendments to the Guidelines published in *NASD Notice to Members* 97-28 do not specify time periods beyond short, medium, and long. However, in practice, the Advertising Regulation Department has not objected to short-term rankings for periods between one and four years, medium-term rankings for periods between five and nine years, and long-term rankings for periods of ten years or longer.

Variable Products

Q. *The NASD stated in a recent Notice to Members that group variable annuity sales are regulated under the NASD Conduct Rules. Does my firm have to file group variable annuity advertising and sales literature with the Advertising Regulation Department within 10 days of first use the way we do with other variable annuity material?*

A. No. While most variable annuities are registered investment company securities, group variable annuities generally are not registered. The filing requirement applies only to registered investment company advertising and sales literature (see NASD Conduct Rule 2210(c)(1)). The requirement does not apply to group variable annuities unless the product has been registered. Nevertheless, member firms may voluntarily submit group variable annuity communications to the Advertising Regulation Department for review.

Please note that the internal approval, recordkeeping, and content requirements of NASD Conduct Rule 2210 apply to advertising and sales literature on behalf of group variable annuities, whether or not registered. In addition, group variable annuity advertising and sales literature used by member firms and associated persons must adhere to the interpretive standards set forth in IM-2210-2 "Communications with the Public About Variable Life Insurance and Variable Annuities."

General

Q. *Is the phrase "Member NASD" required in advertising and sales literature?*

A. No, such disclosure is purely voluntary. If a firm chooses to include a reference to NASD membership in its communications with the public, certain restrictions apply. Any reference to NASD membership must:

- be separate from the regular text of the advertisement or sales literature;
- appear in a smaller type size and with less emphasis than that used for the member's name; and
- carry no direct or implied indication of Association approval of any security or service discussed in the advertisement or sales literature.

Please see IM-2210-4 "Limitations on Use of Association's Name" for more detail. □

SEC Approves An Amendment To The Three Quote Rule; Grants Exemptive Authority To The Staff Of NASD Regulation

On October 22, 1997, the SEC approved an amendment to NASD Rule 2320 (Three Quote Rule). The amendment authorizes the staff of NASD Regulation's Office of General Counsel to grant exemptions from the provisions of the Three Quote Rule to members with respect to certain customer transactions in non-Nasdaq securities. (SEC Rel. No. 34-39266.)

The Three Quote Rule originally was adopted as an amendment to the NASD's best execution interpretation under Article III, Section 1 of the NASD's Rules of Fair Practice (currently NASD Rule 2110). That amendment expanded a member's best execution obligation to customers by establishing additional requirements for customer transactions in non-Nasdaq securities. In particular, the amendment requires members that execute transactions in non-Nasdaq securities on behalf of customers to contact a minimum of three dealers (or all dealers if three or less) and obtain quotations in determining the best inter-dealer market.

This approach helps to ensure that members use reasonable diligence to ascer-

tain the best inter-dealer market for a security, and that the resultant price to the customer in a purchase or sale in that market is as favorable as possible under prevailing market conditions.

Some active dealers in the non-Nasdaq market have commented that the value of the Three Quote Rule in certain situations may hinder satisfaction of the best execution obligation because of the time delays involved in contacting and collecting quotations from three separate dealers. In addition, some member broker/dealers have questioned whether the Three Quote Rule should continue to apply to all customer transactions in non-Nasdaq securities due to the technological and regulatory changes in the non-Nasdaq marketplace, and in particular, to the OTC Bulletin Board, over the past seven years. Further, questions have been raised regarding the application of the Rule to transactions with institutional customers.

NASD Regulation believes that general exemptive authority under the Rule is appropriate to provide some flexibility for the staff to respond to changing market conditions and respond to fact-

specific situations. Should the staff exercise its authority, the grant of an exemption to the Three Quote Rule would not abrogate a member's best execution obligation. Moreover, the staff anticipates that the range of circumstances in which exemptions may be granted will be limited to those circumstances in which it can be shown that the application of the Three Quote Rule will hinder a member's efforts to achieve best execution and that approval of exemption requests generally would be infrequent.

Members seeking an exemption should make a detailed, written submission to the NASD Regulation Office of General Counsel. If a particular exemption involves a particular class of transactions or class of customers that may be relevant to other member broker/dealers, the staff will also publish such results to the membership through an *NASD Notice to Members* or similar communication.

Questions concerning this article may be directed to David A. Spotts, Office of General Counsel, NASD Regulation, at (202) 728-8071. □

SEC Provides Guidance To NASD Members Regarding The Use Of Average Price And Multiple Capacity Confirmations

In a letter to The Nasdaq Stock Market, dated May 6, 1997, the Chief Counsel of the SEC's Division of Market Regulation (Division) stated that the Division would not recommend enforcement action to the SEC pursuant to SEC Rule 10b-10(a) if NASD member firms send average price or multiple capacity confirmations to confirm single customer orders, effected in multiple executions, in order to achieve best exe-

cution, provided such executions are done in accordance with the letter.

This Division staff no-action position came about as a result of the implementation of the SEC's recently enacted Order Handling Rules and changes to the evolving standards of best execution of customer orders. It is now possible that a customer order in a Nasdaq security, received by a Nasdaq market

maker, may be executed by crossing such order either: (1) against other customer limit orders; (2) against the principal account of the market maker at multiple prices in multiple lots; or (3) both. For example, Market Maker A may be holding customer limit orders for a particular Nasdaq security to buy 500 shares at 20 3/8, 500 shares at 20 1/4, and 500 shares at 20 1/8. When Market Maker A receives a customer

market order to sell 2,000 shares of that security, Market Maker A may execute the 2,000 share order at multiple prices: 20 3/8, 20 1/4, 20 1/8, and 20, for 500 shares each. The last 500 shares (executed at 20) may be executed by the market maker as principal, whereas the other 1,500 shares may be executed as agent by crossing the customer market order to sell against the customer limit orders.

Recognizing that the issuance of multiple confirmations for each part of the execution of a single order could result in higher aggregate confirmation fees related to the overall execution (which transaction costs might be borne, in part, by customers), which would, in turn, offset the price improvement resulting from the matching of the market order and the limit order and cause confusion for some customers that receive multiple confirmations relating to an individual order, the Division staff stated that market makers may seek to issue a single confirmation at a price that is an average price derived from the sum of each individual executions and that reflects the multiple capacities in which the firm carried out multiple executions to fill the single order.

To the extent that a member firm chooses to issue such an average price or multiple capacity confirmation for the execution of a single order, the Division staff stated that the member firm responsible for the confirmation must provide the following information required by SEC Rule 10b-10(a):

1. The market maker must average the execution prices of each individual execution that filled the market order or crossing limit order and report the average price per share on the confirmation as the unit price, with a notation that the disclosed price is an average price. The confirmation must note that details regarding the actual prices are available to the customer upon request;
2. The confirmation must identify the capacity in which the broker/dealer acted in executing the order as “principal,” agent,” or both “principal and agent,” as applicable, and that details regarding capacity of each execution are available upon request;
3. The commission, markup, markdown, service fee, and any other remuneration to the member associated with the executions must not be detailed

separately, but must be stated in a single amount for the transaction as a whole; and

4. The confirmation must include all other information required by Rule 10b-10(a), but not specifically mentioned in items 1-3, above.

The Division staff also stated that each NASD member firm issuing such confirmations must create and maintain records as required under SEC Rules 17a-3 and 17a-4 in a manner that would reflect the processing of such orders as described above and permit the NASD member to provide, at the request of any customer receiving a customer confirmation as described above, information regarding each individual execution and the capacity in which the NASD member acted in each underlying execution. Direct any and all questions regarding this matter to Peter D. Santori, Attorney, Market Regulation, NASD Regulation, at (301) 208-2935.

[The Internet](#)

What's New On The NASD Regulation Web Site?

NASD Regulation has introduced new features to its Web Site that will benefit members, investors, reporters, and other interested parties. There are also some interesting new additions in development.

Registered Representative Corner

Expanding on NASD Regulation's objective to educate registered representatives (RRs), NASD Regulation has created a special area on the Web Site dedicated to their needs. Although the Web Site already contains a lot of information of interest to RRs, this area will make it much easier for RRs to quickly

find information that is directly pertinent to them, such as: NASD Rule filings, Frequently Asked Questions (FAQs), *NASD Notices to Members*, exam center locations, and links to other resources on the Internet. The principal area of this Web Page is “What's Hot for RRs.” This is where RRs can find new and important information.

NASD Regulation welcomes suggestions and comments on how to improve this Web Page. The RR Web Page includes an e-mail link where RRs can send questions, and all are welcome to use the overall Site's Feedback Form as well.

Focus Group

Anyone interested in participating in NASD Regulation's on-line focus group is welcome to join. Before implementing major changes (such as new navigation throughout the Site), NASD Regulation will ask this focus group to review proposed changes and provide its impressions. All this is done on-line, and participants need not spend more than a few minutes of their time, at their convenience. Visitors can sign up for the focus group from our Feedback Form.

(Continued on page 30)

Free E-mail Notifications

In order to keep up-to-date with all the changes to our Web Site, NASD Regulation encourages visitors to sign up for one or more of three e-mail lists:

- News: New press releases, speeches, and other announcements.
- Site Changes: New features on the Web Site.
- Publications: New issues of existing NASD Regulation publications.

After you subscribe you will get a short e-mail whenever we post any of the items listed above, depending upon which types of e-mails you elect to receive. This is a very efficient way to be notified of changes that are important to you and your business, and it's free.

OATS FAQs

NASD Regulation has dedicated a section of the Web Site, under "Members Check Here," to informing members and interested parties of the status of this important project – the Order Audit Trail System (otherwise known as

OATS). The OATS Web Page's newest feature is an area for FAQs. The OATS Team will continue to add new FAQs as the project evolves, and if you do not find the answer to your question, you may send an e-mail to the OATS staff, who will respond to your inquiry.

The Press Room: An Information Source For Reporters

In order to facilitate a reporter's ability to find information, NASD Regulation has created a special area where reporters can find all they need under one page. Instead of surfing around the Web Site for different features under different areas, all the main sections of interest to reporters are grouped under one roof — the Press Room. There, visitors will find direct links to *NASD Notices to Members*, broker information, and NASD rule filings. There also are e-mail links to the NASD Regulation Media Relations staff.

NASD Manual Online

In 1998, NASD Regulation will implement a Web version of the *NASD Manual* on the NASD Regulation Web

Site. With the help of Compliance International, Inc., publishers of Books on Screen™, NASD Regulation will bring you monthly updates of the *Manual* at no cost.

With advanced searching capabilities and intuitive navigation, the *NASD Manual* on-line, and all its sections (including past issues of *NASD Notices to Members*), will be available 24 hours a day, 365 days a year. NASD Regulation will provide more details in future issues of this newsletter.

NASD Regulation will continue to provide visitors with valuable information on its Web Site. Look for the announcement of more new features in the next issue of the *Regulatory & Compliance Alert*. Remember, NASD Regulation encourages your suggestions for additional content ideas. Please use the "Feedback" function to forward your ideas. □

Internet Provides Successful Mechanism For Customer Complaints And Regulatory Tips

NASD Regulation has maintained a successful Internet presence for more than a year with its programs to facilitate the filing of complaints and regulatory tips. Through the NASD Regulation Web Site (www.nasdr.com), investors—and others—can immediately alert regulators to any fraudulent activities by members or associated persons through submission of a complaint or regulatory

tip. Visitors to this area of the Site can also submit general inquiries or comments.

To file a customer complaint or regulatory tip, enter the Web Site's Home Page and click on the "Have A Complaint?" button to find specially designed forms to input information.

This information is automatically and electronically routed to the Compliance Department for review and for forwarding to the correct area within NASD Regulation, Nasdaq, or NASD for response and action. To date, the Department has received more than 1,000 messages via this communications vehicle. □

Market Regulation Reminds Member Firms Of Their Short Interest Reporting Obligations

NASD Conduct Rule 3360 requires each member firm to maintain a record of total customer and proprietary short positions in Nasdaq securities and to report those positions to NASD Regulation on a monthly basis. Member firms are also required to report to NASD Regulation short positions in exchange-listed securities that are not reported to any other SRO. Member firms are reminded that NASD Regulation must receive short interest data for Nasdaq securities no later than 6 p.m., ET, on the second business day after the reporting settlement date desig-

nated by the NASD. NASD Regulation must receive short interest data for exchange-listed securities no later than 1 p.m., ET, on the designated reporting date. Member firms are encouraged to review *NASD Notices to Members 95-8* and *93-42*, which address the NASD's policy with respect to the timely submission of short interest data and the sanctions imposed.

Additionally, member firms are advised that, for the purposes of NASD Conduct Rule 3360, short positions to be reported are those resulting from *short sales* as

that term is defined in SEC Rule 3b-3. Member firms should not report positions in accounts created by long sales for which stock has not yet been delivered, as part of its monthly short interest position.

Questions regarding NASD Conduct Rule 3360 should be directed to Yvonne Huber, Market Regulation, NASD Regulation, at (301) 590-6358. To request a schedule of designated short interest reporting settlement dates and deadlines, contact Business Program Support at (800) 321-6273. □

Disclosure Conversion Process Moving Forward

As member firms may already be aware, the process of distributing disclosure conversion information for member firm review has been postponed until after the renewal season. The CRD/Public Disclosure Department notified all firms that had already received their rosters of the problem and advised them to cease review of this information.

Initially, the CRD/Public Disclosure Department indicated it would resend updated, corrected rosters to member firms in mid-October. However, the Department has since obtained feedback from many members indicating that:

- instituting review of rosters during the traditional renewal season would tax many of the firms' resources; and
- firms want to see an expansion of the types of converted data to include the verbatim registered representative and firm comments found on the DRPs in Questions 8C and 9.

Furthermore, NASD Regulation wants to perform necessary quality checks to ensure the integrity of the data.

In order to be responsive to these issues, NASD Regulation will send new rosters to member firms after the conclusion of the renewal cycle in early 1998. These rosters will include the verbatim comments itemized in Questions 8C and 9 of the DRP forms. NASD Regulation will also extend operation of the Disclosure Conversion Team's Call Center in Chantilly, Virginia to address any questions and/or concerns firms may have due to their review of the newly converted rosters.

These converted records will form the basis of information released to the public under NASD Regulation's Public Disclosure Program, both via the Internet and in paper reporting format. Therefore, the goal of NASD Regulation is to ensure that the data is

a fair and accurate representation of the facts surrounding each disclosure event.

NASD Regulation will continue to provide updates about the status of the disclosure roster distribution and review, including associated mailings and deadlines.

Questions about the disclosure conversion process may be directed to Barbara Z. Sweeney, Director, CRD/Public Disclosure Department, NASD Regulation, (301) 590-6734. □

OATS Update

The proposal for establishment of an Order Audit Trail System, which will require members to capture and report specific data elements related to the handling or execution of orders in Nasdaq equity securities, is now pending at the SEC. The filing may be amended prior to approval and members will be informed about potential changes to timing and the scope of information required to be provided.

The OATS Support Center is the primary source for current information on OATS. The Center is open Monday through Friday from 8 a.m. until 6 p.m., ET. The e-mail address is oatssc@nasd.com; the telephone numbers are (888) 700-OATS and (301) 590-6503. General information can also be obtained from the OATS Web Page at www.nasdr.com. □

Order Disciplinary Hearing Procedures Guide

The NASD Regulation Office of Hearing Officers has developed a “plain English” explanation of the NASD’s disciplinary process designed to help respondents and their counsel understand these procedures. To obtain the *Disciplinary Hearing Procedures Guide*, and an accompanying copy of the NASD Code of Procedure, contact the NASD Regulation Office of Hearing Officers at (202) 728-8008. □

Violations

21 Brokerage Firms And A Bank Fined \$325,000 For Violating MSRB Rules

NASD Regulation and the Office of the Comptroller of the Currency (OCC) announced that, as the result of coordinated investigations with the SEC, 21 brokerage firms and a division of a national bank have been fined a total of \$325,000 and censured for violating MSRB rules that require disclosure to investors in municipal securities. NASD Regulation sanctioned the 21 brokerage firms and the OCC sanctioned the bank.

All 21 brokerage firms and the bank, which neither admitted nor denied the allegations, were sanctioned for violating MSRB Rule G-36 by filing municipal securities underwriting documents late. Without the filings mandated by Rule G-36, investors lack easy access to key information about the issuer, including its ability to repay bonds and, in the case of an advance refunding, information about an escrow account that has been established.

Rule G-36 requires that the sole or managing underwriter of a municipal securities offering send the MSRB two copies

of the final official statement within one business day of receiving the information from the issuer. In no case can the information be sent later than 10 business days after the final agreement to purchase, offer, or sell the securities. In the case of an advance refunding, the documents must be sent within five business days of the delivery of the securities. Investors can gain access to this important information about municipal securities through the MSRB’s Municipal Securities Information Library®.

Eight of the 21 firms were also sanctioned, in certain instances, for failing to file required documents at all; and a separate group of eight of the 21 firms were also sanctioned for not properly mailing the documents to MSRB—both of which are mandated by Rule G-36.

Eleven of the 21 firms and the bank were also sanctioned for not keeping records showing when they received required documents from the issuer, or when they sent those documents to the

MSRB, as required by MSRB Rule G-8.

“Every investor has the right to the information Rule G-36 provides. Not supplying that critical disclosure, or making it available well after the fact, does not serve investors well. As a result, it’s very important that every municipal securities firm lives up to its responsibilities to keep investors informed,” said Mary L. Schapiro, NASD Regulation President.

“It is important that banks and securities firms alike provide the information required under municipal securities Rule G-36,” said Comptroller of the Currency Eugene A. Ludwig. “The OCC intends to make sure that every national bank that sells municipal securities provides the information that individual investors need to make informed decisions.”

NASD Regulation and the OCC thanked the SEC’s Office of Compliance Inspections and Examinations for its assistance in bringing these cases.

Firms Sanctioned by NASD Regulation Amount

1. Bear, Stearns & Co. Inc.	\$25,000
2. First of America Securities, Inc.	\$10,000
3. First Southwest Company	\$10,000
4. First Union Capital Markets Corp.	\$10,000
5. Goldman, Sachs & Co.	\$25,000
6. J. P. Morgan Securities Inc.	\$25,000
7. Merrill Lynch, Pierce, Fenner & Smith Inc.	\$10,000
8. Miller, Johnson & Kuehn, Inc.	\$10,000
9. Morgan, Keegan & Co., Inc.	\$10,000
10. Morgan Stanley & Co., Incorporated	\$10,000
11. Oppenheimer & Co., Inc.	\$10,000
12. PaineWebber Incorporated	\$25,000
13. Piper Jaffray Inc.	\$10,000
14. PNC Capital Markets, Inc.	\$10,000
15. Prudential Securities Incorporated	\$25,000
16. Raymond James and Associates	\$10,000
17. Seattle-Northwest Securities Corp.	\$10,000
18. Smith Barney Inc.	\$25,000
19. Stone & Youngberg, LLC.	\$10,000
20. SunTrust Capital Markets, Inc.	\$10,000
21. Sutro & Co. Inc.	\$25,000

Bank Division Sanctioned by OCC

Amount

1. Commerce Capital, a division of Commerce Bank, N.A.	\$10,000
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NASD Regulation Fines Mayer & Schweitzer \$200,000 For Failure To Provide Best Execution, As Well As Record-Keeping And Supervisory Violations

NASD Regulation announced that Mayer & Schweitzer, Inc., was fined \$200,000 after settling charges that the firm failed to get its customers the best executions possible on five separate occasions from December 1995 through June 1996.

In the settlement, Mayer & Schweitzer neither admitted nor denied allegations that it failed to provide the best execution possible because it did not transmit member-to-member customer limit orders for securities the firm did not make a market in to another market maker that could have filled the orders. While Mayer & Schweitzer intended to forward the orders, its faulty procedures prevented them from being transmitted.

A customer limit order, whether originating from a public customer or another market maker on behalf of a customer, is an order to buy or sell a stock at a price specified by the customer. NASD Regulation's best execution rule requires that brokerage firms make every effort possible to obtain the most favorable price available for every security purchased or sold on behalf of a customer.

These violations were investigated by NASD Regulation's Market Regulation Department, and were based on the receipt of five separate customer complaints.

NASD Regulation also found that the firm failed to establish, maintain, and enforce written supervisory procedures to prevent these violations. Additionally, NASD Regulation found that Mayer & Schweitzer failed to maintain records of the time and manner in which the firm sent customer limit orders to other market makers for execution.

Previously, on March 20, 1996, Mayer & Schweitzer entered into a separate settlement, without admitting or denying allegations of best execution and record-keeping violations. The firm was fined \$75,000 as a result. □

Significant Actions Brought Against Firms

- NASD Regulation filed disciplinary charges against 33 former principals, brokers, and employees of the now defunct Long Island brokerage firm of Stratton Oakmont, Inc. The firm was expelled from the NASD in December 1996 because it posed “an on-going risk to the investing public.”

This complaint, which alleges a wide range of serious sales practice violations by 33 individuals, is one of the largest complaints of its type ever brought by NASD Regulation and results from a continuing investigation into Stratton Oakmont’s operations. The complaint alleges that 33 individuals, who were based at Stratton Oakmont’s headquarters in Lake Success, N.Y., engaged in a number of fraudulent sales practices and other misconduct from 1993 through 1996. NASD Regulation also alleges that in many instances, Stratton Oakmont used prepared scripts (six of which are part of the complaint) as part of their aggressive telemarketing efforts to sell speculative securities. The filing of an NASD Regulation complaint represents the initiation of a formal proceeding.

- NASD Regulation’s Los Angeles District Business Conduct Committee (DBCC) has ordered that San Diego-based La Jolla Capital Corp. be permanently barred from selling penny stocks and that five of its senior officials should be sanctioned for circumventing the penny stock rules.

As a result of a 16-day hearing by the DBCC, La Jolla Capital and its President Harold B.J. Gallison were fined more than \$400,000 and are jointly responsible for repaying more than 100 investors from 26 states, the District of Columbia, and British Columbia almost \$400,000. The remaining four senior officials were fined a total of more than \$150,000.

- NASD Regulation announced that GKN Securities Corp., as well as 29 brokers and supervisors, have been fined \$725,000. GKN Securities Corp. will repay more than \$1.4 million to investors who were overcharged as the result of a two-year-long program of excessive mark-ups in eight securities.

Nearly 1,300 investors from 39 states and the District of Columbia and

Puerto Rico will receive payments from GKN. These overcharges were uncovered after an investigation by the national NASD Regulation Enforcement Department and its District Offices in New York and Atlanta.

- NASD Regulation announced that D.H. Blair & Co. Inc., has been fined \$2 million, and will repay almost \$2.4 million to investors who were overcharged as the result of excessive mark-ups in 16 securities, and of other fraudulent conduct. D.H. Blair’s Chief Executive Officer and Head Trader were also fined a combined \$525,000.

More than 3,100 retail customers from 43 states including the District of Columbia will receive restitution payments from D.H. Blair. The overcharging was uncovered after a lengthy investigation by the national NASD Regulation Enforcement Department and its District Offices in Boston and Philadelphia. □

NASD DISCIPLINARY ACTIONS

In September, October, November, and December 1997, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

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

September Actions

None

October Actions

Leonard John Ialeggio (Registered Representative, Danville, California) was fined \$15,000 and ordered to requalify by exam as a general securities representative. The National Business Conduct Committee (NBCC) imposed the sanctions following a remand as to sanctions from the SEC. The sanctions were based on findings that Ialeggio submitted expense vouchers to his member firm’s parent company and received payment for travel expenses totaling \$9,868.50, to which he was not entitled. Ialeggio also induced the company to pay \$35,000 for his country club dues, a payment to which he was not entitled.

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

James Wallace Wullschleger (Registered Representative, Piedmont, California) submitted an Offer of Settlement pursuant to which he was fined \$6,300 and suspended from association with any NASD member in any capacity

for 30 days (suspension deemed served). Without admitting or denying the allegations, Wullschleger consented to the described sanctions and to the entry of findings that he sold limited partnerships to public customers while misrepresenting the liquidity and safety of the securities, and the risk of the investments. The findings also stated that Wullschleger sold limited partnership interests to customers that were unsuitable for the customers based upon the facts disclosed by them as to their other security holdings and their financial situations and needs.

November Actions

Clyde Joseph Bruff (Registered Principal, Oakland, California) was barred from association with any NASD member in any capacity. The NBCC affirmed the sanction following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanction was based on findings that Bruff exercised effective control over the account of a public customer and recommended to her the purchase and sale of securities that were unsuitable

for the customer in view of the size and frequency of the transactions and her other securities holdings, financial situation, and needs.

Bruff has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Joseph Marc DiLeo (Registered Representative, Davis, California) was fined \$40,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that DiLeo signed customer names to documents and submitted them to his member firm.

James E. Dunniway, Sr. (Registered Principal, Newark, California) was fined \$74,105 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Dunniway engaged in excessive trading in a customer's account and engaged in a deceptive and fraudulent scheme to generate commissions.

December Actions

Vicci Delores Havens (Registered Representative, Modesto, California) was fined \$21,500, barred from association with any NASD member in any capacity, and ordered to pay \$1,292.77 in restitution to a customer. The sanctions were based on findings that Havens forged a public customer's name to account documents and a check, submitted the documents to her member firm, and effected an unauthorized trade in the customer's account. Havens also deposited a \$1,292.77 check made payable to a public customer to her personal bank account and used the proceeds for her own use.

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

September Actions

William K. Cantrell (Registered Principal, Los Angeles, California) was fined \$2,500, suspended from association with any NASD member as a financial and operations principal for 10 days, and ordered to requalify by exam as a financial and operations principal. The SEC affirmed the sanctions following appeal of a May 1996 NBCC decision. The sanctions were based on findings that Cantrell permitted his member firm to effect securities transactions while failing to maintain the minimum required net capital.

October Actions

Cameron Freeland Evans (Registered Representative, Manhattan Beach, California) was fined \$750,000, barred from association with any NASD member in any capacity, and ordered to pay \$150,000 in restitution to a public customer. The sanctions were based on findings that Evans converted \$150,000 from a public customer intended for investment purposes without the knowledge or consent of the customer.

Michael A. Furr (Registered Representative, Lake Forest, California) was fined \$270,000, barred from association with any NASD member in any capacity, and ordered to pay \$42,500 in restitution to a public customer. The sanctions were based on findings that Furr received \$50,000 from a public customer for investment purposes and failed to deposit the funds into a securities account. Instead, Furr deposited the funds into a bank account and improperly used the funds. Furr also failed to respond to NASD requests for information.

Patrick Wayne Maloy (Associated Person, Kingfisher, Oklahoma) was fined \$55,000, barred from association with any NASD member in any capacity, and ordered to

pay \$25,430 in restitution to a customer. The sanctions were based on findings that Maloy was actively engaged in the management of the securities business of a member firm without being registered as a principal of the firm. Maloy also provided a written guarantee against loss to a customer and failed to respond to NASD requests for information.

Leonard Van McLendon, Jr. (Registered Representative, San Juan Capistrano, California) was fined \$175,000, barred from association with any NASD member in any capacity, and ordered to pay \$27,000 in restitution to customers. The sanctions were based on findings that McLendon received checks totaling \$27,000 from public customers for investment purposes and, instead, cashed the checks and converted the funds. McLendon also failed to respond to NASD requests for information.

Thien Huu Nguyen (Registered Representative, Westminster, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nguyen failed to respond to NASD requests for information.

Jan Sanders (Registered Representative, Lake Forest, California) was fined \$29,240, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Sanders recommended to a public customer the purchase and sale of securities without having reasonable grounds for believing the recommendations were suitable for the customer in view of the size, frequency and nature of the recommended transactions, and the facts disclosed by the customer as to his other securities holdings, financial situation, circumstances, and needs.

Lance E. Van Alstyne (Registered Representative, Laguna Niguel, California) was 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.

November Actions

John Brett Ballon (Registered Representative, Malibu, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ballon consented to the described sanctions and to the entry of findings that he churned a public customer's account by recommending and executing 91 purchase and sale transactions for the customer's account without having reasonable grounds for believing that such recommendations were suitable in view of the frequency of the recommended transactions and the customer's financial situation, objectives, circumstances, and needs. The findings also stated that Ballon effected unauthorized transactions in a customer's account and failed to respond to NASD requests to appear for an on-the-record interview.

My Ngoc Dang (Registered Representative, Alameda, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dang consented to the described sanctions and to the entry of findings that he failed to notify his current member firm of the existence of accounts with other member firms and failed to advise the other firms that he was associated with his current member firm. The findings also stated that Dang signed memoranda stating that he did not have a securities account with any brokerage firm, despite the existence of his member firm accounts.

Ann Marie Doty (Registered Principal, Marina Del Rey, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was suspended from association with any NASD member in any registered capacity for 60 days and required to requalify by exam before acting in any capacity requiring registration as a registered options principal. Without admitting or denying the allegations, Doty consented to the described sanctions and to the entry of findings that, while taking the registered options principal qualification exam, Doty was found to be in possession of notes relating to the subject matter of the exam.

Glenn A. Dove (Registered Representative, Sunset Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 15 business days and ordered to requalify by exam as a general securities representative. Without admitting or denying the allegations, Dove consented to the described sanctions and to the entry of findings that he effected various purchases and sales in securities in the account of public customers without the knowledge or consent of the customers.

Nicholas Mark Ellis (Registered Principal, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and suspended from association with any NASD member as a general securities principal for two years. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of finding that a member firm, acting through Ellis, conducted a general securities business but failed to designate a limited financial and operations principal. The findings also stated that a member firm, acting through Ellis, executed options and municipal transactions but failed to have and designate a registered options principal and municipal securities principal.

Michael Edgar Goldstein (Registered Representative, Los Angeles, California), Jeffrey B. Goodman (Registered Representative, Calabasas, California), Jason Scott Neu (Registered Representative, Santa Monica, California), William Reininger (Registered Representative, Agoura, California), and Joseph Patrick Hannan (Associated Person, Los Angeles, California). Goldstein and Goodman were each 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. Neu was fined \$20,000 and barred from association with any NASD member in any capacity and Reininger was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam as a limited representative for direct participation programs. Hannan was fined \$1,000 and suspended from association with any NASD member in any capacity for six months. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Goldstein, Goodman, Neu, Reininger, and Hannan failed to respond timely or fully to NASD requests for information.

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

Scott W. Lindquist (Registered Representative, Carlsbad, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Lindquist consented to the described sanctions and to the entry of findings that he signed customers' names on various new account applications and transfer forms to expedite the processing of transactions in 10 new customer accounts without the customers' prior knowledge or authorization.

Frank Anthony Monreal (Registered Representative, Moreno Valley, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$379,755 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Monreal consented to the described sanctions and to the entry of findings that he converted \$13,436.66 from a public customer by instructing the customer to endorse a proceeds liquidation check intended for deposit in the customer's account, and effectively converted those funds to the use of his girlfriend without the customer's knowledge or consent. The findings also stated that Monreal converted \$62,514.38 from a public customer's account by opening a joint mutual fund account with the customer away from his member firm without the customer's knowledge or consent, and thereafter transferring funds from the account to an account he controlled.

Anthony C. Nuzzo (Registered Representative, Venice, California) was fined \$25,000 and required to requalify by exam as a representative. The sanctions were based on findings that Nuzzo recommended and effected for the account of a public customer purchase and sale transactions in shares of investment companies without having reasonable grounds for believing that such recommendations were suitable for the customer in light of her financial situation and needs, the inappropriate nature of investment company shares for use as a short-term trading vehicle, and the frequency and costs of the transactions.

Allen B. Olander (Registered Representative, Lancaster, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Olander consented to the described sanctions and to the entry of findings that he participated in private securities transactions, but failed to provide prior written notification to his member firm.

December Actions

Michael J. Baker (Registered Representative, Beverly Hills, California) submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Baker consented to the described sanctions and to the entry of findings that he effected unauthorized purchases of securities in the accounts of public customers. The findings also stated that Baker exercised discretion in the accounts of public customers without having a signed discretionary agreement giving him such authorization. Furthermore, the NASD found that Baker established a fictitious securities account in the name of public customers, used a customer's address, social security number, and telephone number, and purchased shares of common stock without the knowledge or authorization of the customers.

Bernadette Jones (Registered Representative, Pomona, California) was fined \$3,500, suspended from association with any NASD member in any capacity for six months, ordered to requalify by exam as a general securities representative, and ordered to pay \$2,516.56 in restitution to a member firm. The sanctions were based on findings that Jones received \$6,000 from a public customer for the purpose of purchasing a life insurance policy. Jones submitted the insurance application with a money order for \$1,483.44 to her member firm and misused the remainder of the funds for her personal expenses. In addition, Jones submitted to her member firm a Form U-4 that contained false and misleading information.

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

L. H. Friend, Weinress, Frankson & Presson, Inc. (Irvine, California) and **Larry H. Friend (Registered Principal, Newport Beach, California)** submitted an Offer of Settlement pursuant to which they were fined \$30,000, jointly and severally. Without admitting or deny-

ing the allegations, the respondents consented to the described sanction and to the entry of findings that the firm did not possess the account documentation required by the NASD's Free-Riding and Withholding Interpretation to demonstrate that 23 accounts were not restricted from purchasing shares in an initial public offering. The findings also stated that Friend failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the above violations.

Nancy Hoff Martin (Registered Principal, Tustin, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martin allowed two unregistered persons to use her account executive number to engage in the securities business, and failed to maintain or enforce procedures designed to prevent associated individuals from effecting securities transactions without being properly registered.

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

James Basil Peters (Registered Representative, Oxnard, California) was fined \$3,500 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Peters signed a bank branch manager's name to documents in an attempt to improperly obtain commissions.

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

[District 3 - Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming](#)

September Actions

Black & Company, Inc. (Portland, Oregon) and **Dennis Burton Reiter (Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. Reiter also was required to requalify by taking the Series 7 and 24 exams. In addition, the firm must retain an independent consultant to review the firm's trading and market making practices and its written procedures, make recommendations based upon that review to the firm, and prepare a written report detailing its recommendations. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm executed principal transactions and subsequently provided customers written confirmation of the transactions, incorrectly representing that the firm had acted as an agent, when in fact, they were principal transactions.

The NASD also found that the firm incorrectly reported through the Automated Confirmation Transaction ServiceSM (ACTSM) purchase transactions as sale transactions and sale transactions as purchase transactions, failed to use a bunched indicator on transaction reports when the firm reported multiple transactions in a trade report, and reported the transaction prices of a security incorrectly. The findings also stated that Reiter failed to establish, maintain, or implement adequate written or unwritten procedures to detect the inaccurate disclosure of principal transactions as agent, the understatement of total compensation on customer confirmations, and the inaccurate reporting of transactions through ACT.

Terrence A. Buttler (Registered Principal, Denver, Colorado) and **Lori L. Foster (Associated Person, Aurora, Colorado)** submitted Offers of Settlement pursuant to which Buttler was fined \$15,000 and suspended from association with any NASD member in any principal capacity for two years. Foster was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Buttler permitted his member firm to conduct a business while failing to maintain its required net capital. The findings also stated

that Buttler permitted his member firm to maintain inventory in amounts that exceeded the inventory limitation of the firm's restriction agreement, and permitted the firm's balance sheet to carry certain assets as allowable for net capital purposes without obtaining the NASD's prior consent to such treatment as required by the restriction agreement. Furthermore, the NASD determined that Foster failed to appear and provide information at an NASD on-the-record interview.

Jeffrey J. Cline (Registered Principal, Salt Lake City, Utah) submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Cline consented to the described sanction and to the entry of findings that a member firm, acting through Cline, recommended and sold securities that were neither registered nor exempt from registration.

Phillips & Company Securities, Inc. (Portland, Oregon) and **Timothy Charles Phillips (Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. The firm also must pre-file all scripts with the NASD no later than 10 days prior to their use for one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Phillips, prepared telemarketing scripts that were available to the firm's sales force that failed to provide a sufficient basis for evaluating the facts regarding the specific securities offered. According to the findings, some of the scripts, standing on their own, failed to disclose certain risks associated with the subject recommendation, contained predictions and projections of investment results, and made references to the firm's past recommendations. The NASD also determined that the scripts failed to offer to furnish, upon request, available investment information in support of each recommendation and failed to include the date of first use.

Scott Richard Stewart (Registered Representative, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he participated in outside business activities without providing prior written notice to his member firm of such activities. The findings also stated that Stewart made improper use of customer funds in that he received funds from public customers for the purchase of mutual funds, failed to forward the entire amount to the funds, and kept \$1,680 for his own use and benefit.

October Actions

Vincent E. Barborka (Registered Representative, Midvale, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$500,000, barred from association with any NASD member in any capacity, and required to pay \$97,592.33 in restitution to a customer. Without admitting or denying the allegations, Barborka consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on several life insurance surrender forms, change of ownership forms, and loan request forms, and then forged the customer's signature on the checks issued as a result of the forged forms and endorsed the checks to himself. The NASD found that, as a result of this, Barborka converted at least \$97,592.33 to his control and used those monies for personal purposes.

Miriam R. Black (Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$9,015 in commissions. Without admitting or denying the allegations, Black consented to the described sanctions and to the entry of findings that she recommended and effected mutual fund switches for the accounts of five public customers that were not suitable based on their financial situation and needs.

Excel Financial, Inc. (Salt Lake City, Utah) and Gary R. Beynon (Registered Principal, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. The firm also shall provide to the NASD, with respect to private placements of securities for which it functions as the sole or lead placement agent, an opinion of counsel that the offering was made in conformity with all applicable provisions of the federal securities laws and regulations promulgated thereunder, and Beynon was required to requalify by exam 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 Beynon, participated in a private placement offering and failed to return investors' funds when the terms of the contingency offering were not met. The NASD also determined that the firm, acting through Beynon, conducted a securities business while failing to maintain its minimum required net capital.

Gilbert Marshall & Company, Inc. (Greeley, Colorado) and Michael A. Usher (Registered Principal, Greeley, Colorado) submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally, and Usher was suspended from association with any NASD member in any principal capacity, excluding the capacities of financial and operations principal and registered options principal, for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Usher, settled customer complaints with a settlement agreement that contained an agreement by the customer not to initiate or pursue any regulatory complaint. The NASD also determined that Usher failed to provide accurate and truthful information in response to NASD requests for information.

Investment Management & Research, Inc. (St. Petersburg, Florida) and Kenneth Craig Krull (Registered Representative, Marysville, Washington). The firm was fined \$10,000, required to submit satisfactory written supervisory procedures to the NASD, and required to pay \$42,785.21 in restitution to customers. Krull was 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, required to pay \$171,140.93 in restitution to customers, and required to requalify by exam as a general securities representative. The NBCC imposed the sanctions following appeal of a Seattle DBCC 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. The firm failed to ensure that Krull's sales activities were adequately reviewed and monitored to ensure those sales activities were not in contravention of the NASD's Rules. Furthermore, the firm also failed to have supervisory procedures that were reasonably designed to detect mutual funds switches in Krull's branch office.

Krull has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Gerard H. Lilley (Registered Representative, Chandler, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$5,031.35 in restitution to a customer. Without admitting or denying the allegations, Lilley consented to the described sanctions and to the entry of findings that he received from a public customer a \$4,700 check made payable to him intended for investment purposes. The NASD found that Lilley deposited the funds into his personal account, used the fund for his own benefit, and misled the customer to believe the funds were invested.

Samuel J. Lopez (Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$110,000, barred from association with any NASD member in any capacity, and required to pay \$10,000 in restitution to a customer. Without admitting or denying the allegations, Lopez consented to the described sanctions and to the entry of findings that he received \$20,000 from public customers for investment purposes, deposited the funds into a bank account under his control, and used the funds for his benefit. The findings also stated that Lopez prepared and delivered a document purporting to confirm to a public customer that the customer had purchased shares of an annuity when no such purchase had been made. Furthermore, the NASD found that Lopez presented to his member firm copies of checks purporting to represent the reimbursement of funds to customers when he knew the checks were drawn on an account that lacked sufficient funds.

John Ranay (Registered Representative, Englewood, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Ranay consented to the described sanctions and to the entry of findings that he submitted a Form U-4 that contained false and incomplete information.

Jerome Neal Schneider (Registered Principal, Vancouver, British Columbia) and Peter Alan Provence (Registered Principal, Pasadena, California) submitted an Offer of Settlement pursuant to which Schneider was fined \$32,000 and suspended from association with any NASD member in any capacity for 30 days. Provence was fined \$10,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Schneider, exercising discretion granted pursuant to oral and written authority, implicitly recommended transactions for the account of a public customer that were unsuitable for the customer in light of the size and frequency of the transactions, including the use of margin, in view of the financial resources and character of the account, the customer's other security holdings, and financial situation and needs.

The findings also stated that Schneider submitted a Form U-4 to the NASD that failed to disclose a customer complaint. Furthermore, the NASD determined that Provence failed to supervise properly and adequately Schneider's activities to assure compliance with the NASD Conduct Rules in that, among other things, Provence failed to adequately review and monitor the discretionary trading activity in a customer's account to detect and prevent transactions that were excessive in size or frequency in view of the financial resources and character of the account. The NASD also found that Schneider and Provence failed to establish adequate written or unwritten procedures to carry out supervision of discretionary trading, as engaged in by Schneider, to ensure his compliance with the applicable Conduct Rules.

Arthur W. Taylor (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Taylor consented to the described sanction and to the entry of findings that he completed a Form U-4 that failed to disclose SEC injunctive proceedings and a Consent Order.

November Actions

Kevin J. Brafford (Registered Representative, Tempe, Arizona) submitted an Offer of Settlement pursuant to which he was fined \$30,000, barred from association with any NASD member in any capacity, and required to reimburse his member firm \$4,000. Without admitting or denying the allegations, Brafford consented to the described sanctions and to the entry of findings that he accepted funds totaling \$4,000 from a public customer by represent-

ing that such funds were payments for the preparation of a financial plan and failed either to provide such a plan or return the funds. The findings also stated that Brafford failed to respond to NASD requests for information.

Douglas A. Glaser (Registered Representative, Evergreen, Colorado) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Glaser failed to disclose a felony charge on a Form U-4 and failed to respond to NASD requests for information.

William Leslie Walters (Registered Representative, Highlands Ranch, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$14,409 and required to requalify by exam. Without admitting or denying the allegations, Walters consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without first obtaining the authorization of the customers. The findings also stated that Walters misrepresented the value of securities in a customer's account.

Russell Leroy Whittaker (Registered Representative, Coalville, Utah) was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to a customer. The sanctions were based on findings that Whittaker borrowed \$10,000 from a public customer and, in connection with his solicitation of the loan, used a signature guarantee stamp from a former employer to create the false appearance that his signature on the promissory note was guaranteed by a corporate entity when in fact he knew no such guarantee existed. Furthermore, Whittaker was aware of and failed to disclose that he contravened the written supervisory procedures of his member firm that prohibited registered representatives from borrowing money from the firm's clients. Moreover, Whittaker failed to disclose his prior defaults on certain loans, failed to disclose that the signature stamp was not valid, and failed to repay the loan.

December Actions

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

Carlson has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Robert A. Quiel (Registered Principal, Bermuda Dunes, California) was fined \$12,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities principal and general securities representative. The SEC affirmed the sanctions following appeal of an October 1996 NBCC decision. The sanctions were based on findings that Quiel effected principal retail transactions with customers involving securities at prices that were unfair and excessive, with markups ranging from eight to 40 percent above the prevailing market price. Quiel also failed to respond completely to NASD requests for information.

Eric Slane (Registered Representative, Seattle, Washington) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Slane filed an inaccurate Form U-4 and submitted the form to his member firm to be forwarded to the NASD.

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

Barry R. Strauss (Registered Representative, Tempe, Arizona) and Robert S. Tryon (Registered Representative, Mesa, Arizona) submitted an Offer of Settlement pursuant to which Strauss was fined \$20,000 and barred from association with any NASD member in any capacity. Tryon was fined \$10,000 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 Strauss and Tryon engaged in outside business activities for compensation without providing prompt written notice of such activities to their member firm. The findings also stated that Strauss represented to the public that he was offering securities but failed to identify his member firm as the broker/dealer that he was associated with for purposes of securities transactions. Furthermore, the NASD found that Strauss provided inaccurate information in response to an NASD request for information.

District 4 - Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

September Actions

Roland Stanley Williams (Registered Representative, Brooklyn, New York) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Williams executed unauthorized transactions in the accounts of public customers without their knowledge or consent. Williams also attempted to negotiate a settlement with a customer without his member firm's knowledge in response to the customer's complaint regarding an unauthorized transaction.

October Actions

Charlotte S. Cohen & Company, Inc. (St. Louis, Missouri) submitted an Offer of Settlement pursuant to which the firm was fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made erroneous computations in computing its special reserve requirement and contravened SEC Rule 15c3-3 by withdrawing funds from its special reserve account without an accompanying reserve computation upon which the withdrawal was based. The findings also stated that the firm conducted a securities business while failing to maintain its minimum required net capital and failed to prepare its books and records properly.

November Actions

Daniel Grady Bayer (Registered Representative, Kansas City, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$62,425 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bayer consented to the described sanctions and to the entry of findings that he received \$20,485 from public customers for investment purposes, failed to apply the funds as directed by the customers, and instead misused and converted the funds to his own use and benefit without the customers' knowledge or consent.

Paul Dennett Crawford (Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for two years and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Crawford consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prior written notice to, and receiving written approval from, his member firm.

Jeff Alan Einfalt (Registered Representative, Lincoln, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,013, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam.

Without admitting or denying the allegations, Einfalt consented to the described sanctions and to the entry of findings that he shared in an account with a public customer at a member firm without obtaining prior written authorization from the member firm carrying the account. The findings also stated that Einfalt recommended to a public customer a series of securities transactions that were excessive in size and frequency in light of the customer's liquid net worth and investment objective of capital appreciation. Furthermore, the NASD determined that Einfalt recommended that public customers take out a loan collateralized by a certificate of deposit for the purpose of opening an account at his member firm and purchasing securities, and recommended that a customer take an advance from a margin account to fund a loan to a public customer to meet a margin call on the customer's account.

Mark Lynn Mortensen (Registered Representative, Fairfax, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mortensen consented to the described sanctions and to the entry of findings that he forged customer signatures on insurance product forms without the customers' knowledge or consent. The findings also stated that Mortensen prepared, forged signatures, and submitted life insurance applications and exchange request forms for two customers without their knowledge or consent for the purpose of receiving \$6,584 in commissions.

Gene Albert Riedinger (Registered Representative, Bismarck, North Dakota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Riedinger consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Gary Allen Sebbert (Registered Representative, Muscatine, Iowa) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Sebbert consented to the described sanctions and to the entry of findings that he affixed customer signatures on insurance and/or securities product forms without the customers' knowledge or consent. Sebbert's suspension began January 31, 1996 and concluded January 31, 1997.

Thomas G. Streich (Registered Representative, Apple Valley, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$288,714 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Streich consented to the described sanctions and to the entry of findings that he submitted false address change forms, requested loans against traditional and/or variable life and annuity contracts, received and endorsed loan proceeds checks made payable to the customers, and converted \$57,742.84 in customer funds to his own use and benefit.

Larry Dean Vandervoort (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Vandervoort consented to the described sanctions and to the entry of findings that he recommended and placed orders for the purchase and sale of securities in the individual retirement accounts of public customers without having a reasonable basis for believing the transactions were suitable for the customers based upon the frequency of these transactions and the customers' investment objectives and financial situations.

December Actions

Aron Oleg Bronstein (Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association

with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Bronstein consented to the described sanctions and to the entry of findings that he submitted orders for purchases of stock for fictitious customer accounts.

Daniel Lee Cheloha (Registered Representative, Omaha, Nebraska) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cheloha failed to respond to NASD requests for information.

Eddie Samuel Freeman, II (Registered Principal, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which he was fined \$33,641.35, barred from association with any NASD member in any capacity, and ordered to pay \$6,728.27 plus interest in restitution. Without admitting or denying the allegations, Freeman consented to the described sanctions and to the entry of findings that he issued checks totaling \$6,728.27 from his member firm's bank account made payable to himself, deposited the checks into his personal account, and utilized the proceeds from the checks for his own use and benefit without the knowledge or consent of his member firm. The findings also stated that he improperly used the proceeds from short sales of securities to pay for the purchase of warrants to cover the short sales. In addition, the NASD found that Freeman failed to respond to NASD requests for information.

Marty Ross Jones (Registered Representative, Richfield, Minnesota) was fined \$30,000, barred from association with any NASD member in any capacity, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam. The sanctions were based on findings that Jones received checks totaling \$4,602.38 representing the cash surrendered from life insurance policies of public customers and, without the knowledge or consent of the customers, endorsed and deposited the checks into his personal bank account and misused the funds. Jones also failed to respond to NASD requests for information.

Jeffrey Dean Lee (Registered Principal, Wichita, Kansas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lee failed to respond to NASD requests for information.

Steven James Reimer (Registered Representative, Vancouver, Washington) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Reimer consented to the described sanctions and to the entry of findings that a member firm, acting through Reimer, sold shares of common stock to investors by intentionally or recklessly employing devices intended to defraud these investors and omitted to state material facts necessary to make the statements made in the private placement memorandum not misleading.

Ronald Howard Tjarks (Registered Representative, Hastings, Nebraska) was fined \$340,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tjarks affixed a customer's signature on annuity withdrawal forms and withdrawal checks totaling \$94,000 without the knowledge or consent of the customer. In addition, Tjarks deposited withdrawal checks totaling \$54,000 into his personal bank account and converted the funds to his own use and benefit without the knowledge or consent of the customers. Tjarks also failed to respond to NASD requests for information.

District 5 - Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee

September Actions

Gerry M. Gordon (Registered Representative, Gulfport, Mississippi) submitted an Offer of Settlement pursuant to which he was fined \$131,000, barred from

association with any NASD member in any capacity, and ordered to pay \$70,830.73 in restitution. Without admitting or denying the allegations, Gordon consented to the described sanctions and to the entry of findings that he borrowed \$52,167.98 from public customers when he knew or should have known that he did not have the ability to repay the loans. The findings also stated that Gordon engaged in an outside business activity whereby he purchased and sold jewelry on behalf of customers without prior written notice to or approval from his member firm. Furthermore, the NASD determined that Gordon failed to respond to NASD requests for information.

Timothy D. Ross (Registered Representative, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity, with the right to re-apply for association with a member firm after a period of one year. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he recommended and engaged in a strategy of short-term trading of equities in the joint account of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers based on their financial situation, investment objectives, and needs. The findings also stated that Ross executed unauthorized transactions in the account of public customers without their knowledge or consent. The NASD also found that Ross completed a new account card on behalf of public customers that inaccurately reflected a customer's investment experience and overstated the customer's income and net worth. Furthermore, the NASD determined that Ross sent correspondence to public customers that falsely reflected the value of certain securities held in the customers' account and failed to obtain prior approval of the correspondence from a principal of his member firm.

Randolph N. Strickland (Registered Representative, Birmingham, Alabama) was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Strickland caused three checks totaling \$8,050 to be withdrawn from the IRA account of a public customer and converted the funds to his own use and benefit by forging the customer's signature on the checks and depositing them into his personal checking account, without the customer's knowledge or consent. In addition, Strickland engaged in outside business activities without prior written notice to or approval from his member firm, received two checks totaling \$4,770 that had been drawn on the IRA account of a public customer, and converted the monies to his own use and benefit, without the customer's knowledge or consent. Furthermore, Strickland recommended that a public customer transfer funds from a corporate-sponsored retirement fund into a self-directed IRA that was unsuitable for the customer on the basis of his financial situation, investment objectives, and needs. Strickland also failed to respond to NASD requests for information.

October Actions

John R. Atchley (Registered Representative, Belle Chasse, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two weeks (deemed served). Without admitting or denying the allegations, Atchley consented to the described sanctions and to the entry of findings that, at the request of a public customer, he deposited \$189,211.37 of the public customer's funds into his personal checking and securities accounts, used the funds to purchase bearer bonds on behalf of the customer, and in doing so, falsified his member firm's books and records in that he concealed the true identity of the purchaser of the bonds.

Michael E. Ellis (Registered Principal, Jackson, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,000 and required to participate in a compliance conference con-

ducted by the NASD and to undergo training specifically designed to address his supervision of his firm's mutual funds sales activities, as a portion of the Firm Element of his firm's Continuing Education Program. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of findings that he solicited and failed to return \$41,699 to various mutual fund companies representing funds paid by the mutual fund companies in excess of the costs of sponsoring an educational meeting. Furthermore, the NASD found that Ellis did not obtain from his member firm advance written approval for a meeting in accordance with firm procedures, and retained possession of a \$5,000 check received from a mutual fund company that was erroneously deposited into his personal cash management account.

Wade S. Lawson (Registered Representative, West Hollywood, California) was fined \$57,500, barred from association with any NASD member in any capacity, and required to pay \$100,000 in restitution to a public customer. The sanctions were based on findings that Lawson recommended and engaged in a private securities transaction without prior written notice to and approval from his member firm. Furthermore, Lawson recommended and engaged in a purchase transaction on behalf of a public customer without having reasonable grounds for believing that this recommendation and the resultant transaction were suitable for the customer on the basis of his age, financial situation, objectives, and needs. Lawson also engaged in the sale of unregistered securities to a public customer.

Southern Farm Bureau Fund Distributor, Inc. (Jackson, Mississippi) and William H. Risher, Jr. (Registered Principal, Brandon, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$50,000, 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 Risher, maintained registrations for 197 individuals who were not actively engaged in the securities business of the firm. The findings also stated that the firm, acting through Risher, failed and neglected to exercise reasonable and proper supervision over its registered representatives, and failed and neglected to establish, maintain, and enforce supervisory procedures. Furthermore, the NASD determined that the firm, acting through Risher, failed and neglected to comply with the continuing education requirements of the NASD in that the firm did not prepare a needs analysis, or prepare a training program and procedures for implementing the regulatory or firm elements for continuing education.

November Actions

Jere L. Beasley, Jr. (Registered Representative, Montgomery, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,100, suspended from association with any NASD member in any capacity for one week, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Beasley consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers without their knowledge or consent.

December Actions

Phillip J. Booth (Registered Representative, Floyds Knobs, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$200,000, barred from association with any NASD member in any capacity, and ordered to pay \$40,000 in restitution to a member firm. Without admitting or denying the allegations, Booth consented to the described sanctions and to the entry of findings that he received from a public customer a \$40,000 check by misrepresenting to the customer that the funds were to be used to purchase an annuity for the customer. The NASD found that Booth failed and neglected to purchase the annuity, and instead converted the funds to his own use and benefit by endorsing the

check and depositing it into his personal bank account, without the customer's knowledge or consent.

John S. Claudino (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Claudino consented to the described sanctions and to the entry of findings that he executed unauthorized purchase and sale transactions in the account of a public customer without the knowledge or consent of the customer. The findings also stated that Claudino failed to respond timely to NASD requests for information.

Robert E. Staley (Registered Representative, Maumelle, Arkansas) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Staley consented to the described sanctions and to the entry of findings that he recommended and engaged in the purchase transaction of a limited partnership in the joint account of public customers without having reasonable grounds for believing that such recommendation and resultant transaction was suitable for the customers on the basis of their financial situation, investment objectives, and needs. The findings also stated that Staley borrowed \$1,500 from a public customer knowing that he did not have the ability to repay the loan.

District 6 - Texas

September Actions

Brice Hanson Barnes (Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Barnes consented to the described sanctions and to the entry of findings that he participated in a private securities transaction and failed to provide written notification to his member firm describing in detail the proposed transaction and his proposed role therein, and stating whether he has received selling compensation in connection with the transaction. The NASD also determined that Barnes solicited and participated in the sale of common stock and thereby engaged in activities outside the scope of his registration.

George Michael McWhorter (Registered Representative, College Station, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, McWhorter consented to the described sanctions and to the entry of findings that he participated in a private securities transaction and failed to provide written notice to his member firm describing in detail the proposed transaction, his proposed role therein, and stating whether he received or might receive selling compensation in connection with the transaction.

October Actions

Charles Sung Beck (Registered Representative, Chino Hills, California) and Paul Mitchell Curtis (Registered Representative, Los Angeles, California). Beck submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for eight months. In a separate decision, Curtis was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Beck consented to the described sanctions and to the entry of findings that Beck and Curtis participated in private securities transactions and failed to provide prior written notice to their

member firms describing in detail the proposed transactions and their proposed role therein, and stating whether they had received or may receive selling compensation in connection with the transactions. Curtis also failed to respond to NASD requests for information.

Robert Wayne Vallair (Registered Principal, Houston, Texas) was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by exam. The sanctions were based on findings that Vallair engaged in outside business activities without notifying his member firm.

Fusung Peter Wu (Registered Principal, Plano, Texas) submitted an Offer of Settlement pursuant to which he was fined \$2,000, jointly and severally, with a member firm, suspended from association with any NASD member in any capacity for 60 days, required to requalify by exam prior to associations with any NASD member in a principal capacity, and required to file advertisements with the NASD at least 10 days prior to use for two years. Without admitting or denying the allegations, Wu consented to the described sanctions and to the entry of findings that a member firm, acting through Wu, failed to file advertisements with the NASD at least 10 days prior to use. The findings also stated that a member firm, acting through Wu, published an advertisement reflecting recommendations relating to specific securities that omitted material facts and/or qualifications, causing the advertising to be misleading. Furthermore, the NASD found that a member firm, acting through Wu, published and/or caused to be published, advertisements that reflected recommendations relating to specific securities and corporate equities without providing, or offering to furnish upon request, available information supporting the recommendation and failed to reflect the price at the time the recommendation was made.

November Actions

Harold Lee Deavours (Registered Representative, Kingwood, Texas) submitted an Offer of Settlement pursuant to which he was fined \$165,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Deavours consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice to his member firm of such activities. The findings also stated that Deavours made false, fictitious, and misleading representations to his member firm and failed to respond to NASD requests for information.

Dennis John DeYoung (Registered Principal, Northridge, California) submitted an Offer of Settlement pursuant to which he was fined \$8,500, suspended from association with any NASD member in any capacity for 31 days, ordered to disgorge \$22,815, and required to requalify by exam. Without admitting or denying the allegations, DeYoung consented to the described sanctions and to the entry of findings that he participated in private securities transactions and outside business activities while failing to provide prior written notice to his member firm of his participation in such activities. The findings also stated that DeYoung made false, fictitious, and misleading representations to his member firm.

Dominion Capital Corporation (Dallas, Texas) and Douglas Woodrow Powell (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$35,000, jointly and severally, and Powell was suspended from association with any NASD member in any principal capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Powell, failed to comply with SEC Rules 17a-3 and 17a-4 in that its books and records were either inaccurate, incomplete, or not maintained. The findings also stated that the firm, acting through Powell, failed to maintain and enforce adequate written supervisory procedures and failed to maintain adequate procedures regarding its compliance with the Securities Industry Continuing

Education Program. The findings also stated that the firm, acting through Powell, failed to submit quarterly statistical data regarding customer complaints, effected a series of transactions in equity securities, and failed to comply with SEC Rule 10b-10 in confirming each transaction to its customers in that the firm failed to disclose over \$12,500 in mark-ups and mark-downs.

Jonathan Matthew Lorenz (Registered Representative, Lubbock, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lorenz consented to the described sanction and to the entry of findings that he signed the names of public customers on insurance and insurance-related forms, submitted the forms to his member firm, and represented that the signatures on the forms were genuine when, in fact, they were not.

Steven Wayne Martin (Registered Representative, Whitehouse, Texas) was fined \$22,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to requalify by exam. The sanctions were based on findings that Martin failed to timely respond to NASD requests for information. Martin also submitted to his member firm an annual compliance checklist form that contained false and misleading responses to questions.

Bryan James O'Leary (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, O'Leary consented to the described sanctions and to the entry of findings that, while serving as a general securities principal, he failed to supervise the activities of an individual adequately in that he failed to ensure that the individual was properly registered with the NASD prior to conducting a securities business.

The Exchange, Inc. (Austin, Texas) and Christian Paul Garces (Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$17,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Garces, conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm, acting through Garces, failed to register five employees as representatives and failed to require these individuals to pass the required qualifications exams while allowing them to conduct activities requiring registration. Furthermore, the NASD determined that the firm, acting through Garces, failed to maintain the physical security of Small Order Execution SystemSM (SOESSM) equipment to prevent the unauthorized entry of information into SOES. The NASD also found that the firm failed to identify nine transactions input to the ACT as short sales.

Jerry Jewel Waller (Registered Representative, Pasadena, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Waller consented to the described sanctions and to the entry of findings that he exercised control over traveler's checks that were owned by an affiliate of his member firm and made unauthorized use of them.

Richard Wayne Wells, Sr. (Registered Representative, Rockwall, Texas) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

December Actions

James Michael Russell (Registered Representative, San Antonio, Texas) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanc-

tions were based on findings that Russell engaged in outside business activities even though he had not provided prompt written notice of such to his member firm. Russell also failed to respond to NASD requests to appear for an on-the-record interview.

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

September Actions

Litwin Securities, Inc. (Miami Beach, Florida) and Harold A. Litwin (Registered Principal, Miami Beach, Florida) were fined \$25,000, jointly and severally, and Litwin was barred from association with any NASD member as a financial and operations principal. The SEC affirmed the sanctions following appeal of a March 1996 NBCC decision. The sanctions were based on findings that the firm, acting through Litwin, filed inaccurate FOCUS Part I and IIA reports and submitted false and misleading financial documents to the NASD. The firm, acting through Litwin, also failed to maintain current and accurate books and records and conducted a securities business while failing to maintain its minimum required net capital. Furthermore, the firm, acting through Litwin, failed to give notice of the capital deficiency to the SEC and the NASD.

October Actions

Mark A. Bavosa (Registered Representative, Boynton Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bavosa consented to the described sanctions and to the entry of findings that he signed a customer's name to disbursement request forms and a disbursement check relating to an insurance policy owned by the customer without the customer's knowledge or authorization. The findings also stated that Bavosa failed to respond to an NASD request for information.

Jeffrey D. Berkoff (Registered Representative, Jupiter, Florida) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Berkoff consented to the described sanction and to the entry of findings that he participated in outside business activities and failed to notify his member firm.

Robert W. Campbell, Jr. (Registered Representative, Tucker, Georgia) was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam as an investment company and variable contracts products representative. The sanctions were based on findings that Campbell signed the name of a public customer to an investor disclosure form without the customer's knowledge or authorization.

Joseph F. DeSanto (Registered Principal, Hillsboro Beach, Florida) and Robert B. DiMarco, Jr. (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which they were fined \$60,000, jointly and severally, suspended from association with any NASD member in any principal or supervisory capacity for three years, and required to requalify by exam as general securities sales representatives. In addition, DiMarco was suspended from association with any NASD member in any capacity for one year and DeSanto was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through DiMarco and DeSanto, carried an inventory position, the value of which was greater than 50 percent of the firm's previous month's excess net capital by amounts ranging from approximately \$1.5 million to \$10.8 million, in violation of the firm's restrictive agreement.

Robert E. Hines (Registered Representative, Brooklyn, New York) was fined \$20,000 and barred from association

with any NASD member in any capacity. The sanctions were based on findings that Hines failed to appear and provide testimony and to respond to an NASD request for information.

Charles M. Hogan (Registered Representative, Winston-Salem, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for five business days and required to disgorge \$187.50 to the NASD. Without admitting or denying the allegations, Hogan consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a premium in the immediate after-market in violation of the Board of Governors' Free-Riding and Withholding Interpretation. Furthermore, the NASD found that Hogan failed to notify his current member firm of the existence of an account with another member firm and failed to advise his former member firm that he had become associated with his current member firm.

Timothy P. Kelly (Registered Representative, Longwood, Florida) submitted an Offer of Settlement pursuant to which he was fined \$7,000, suspended from association with any NASD member in any capacity for 30 days, and further suspended until he qualifies by exam. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he functioned as a general securities representative, and made at least two sales of investment company securities to public customers when he was not registered with the NASD. The findings also stated that Kelly failed to disclose a four percent sales charge (front-end load) on the purchase of investment company securities to customers.

Albert E. Lee (Registered Representative, Decatur, Georgia) was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$706.91 in restitution. The sanctions were based on findings that Lee received cash payments totaling \$706.91 from public customers intended as insurance policy premium payments, failed to remit the payments to his member firm, and converted the funds to his own use and benefit. Lee also failed to respond to an NASD request for information.

Harold A. Litwin (Registered Principal, Miami Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined \$7,500, suspended from association with any NASD member in any principal or supervisory capacity for two years, and barred from association with any NASD member as a financial and operations principal. In addition, Litwin was fined \$5,000, jointly and severally with a member firm. Without admitting or denying the allegations, Litwin consented to the described sanctions and to the entry of findings that a member firm, acting through Litwin, failed to pay an arbitration award and conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that a member firm, acting through Litwin, failed to maintain complete, current, and accurate books and records, and filed false and inaccurate FOCUS Part I and IIA reports. Furthermore, the NASD determined that Litwin functioned as a financial and operations principal at a member firm without being registered as such. The NASD also found that a member firm, acting through Litwin, effected customer sales of municipal bonds without having a registered municipal securities principal as required by MSRB Rules G-2 and G-3 and in violation of the firm's restriction agreement with the NASD.

Richard S. Pearl (Registered Principal, Pembroke Pines, Florida) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Pearl consented to the described sanctions and to the entry of findings that he recommended to a public customer a course of trading including short-term stock trading, the purchase and sale of listed options, margin trading, and short selling, without having a reasonable basis for believing that such trading was suitable for the customer.

Alan E. Pomeranz (Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$50,000, required to disgorge \$302,748 in commissions to customers, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pomeranz consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to or obtaining approval from his member firm regarding the transactions.

Bobby L. Porter (Registered Representative, Palm Harbor, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Porter failed to respond to NASD requests for information.

Robert F. Scholl, Jr. (Registered Representative, Atlanta, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Scholl failed to respond to NASD requests for information.

November Actions

Scott I. Brown (Registered Representative, Hallandale, Florida) was fined \$7,500, suspended from association with any NASD member in any capacity for 10 business days and thereafter until he qualifies by exam as a general securities representative, and ordered to disgorge \$1,498.62 to public customers. The sanctions were based on findings that Brown executed purchase and sale transactions in the securities accounts of public customers without their knowledge or consent.

Euro-Atlantic Securities Inc. (Boca Raton, Florida), David P. Melillo (Registered Principal, Pinellas Park, Florida), Robert E. Hines (Registered Representative, Brooklyn, New York), Charles M. Francis (Registered Representative, Staten Island, New York), and Peter J. Matera, Jr. (Registered Representative, Brooklyn, New York). Melillo submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity, with the right to reapply after two years only as a registered representative. In a separate decision, the firm was fined \$200,000, required to disgorge \$1,762,409 to its customers, and expelled from membership in the NASD. Francis was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, required to pay \$2,017.55 in restitution to customers, and required to requalify by exam as a general securities representative. Matera was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, required to pay \$5,437.50 in restitution to customers, and required to requalify by exam as a general securities representative. Hines was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$39,984.50 in restitution to customers.

Without admitting or denying the allegations, Melillo consented to the described sanctions and to the entry of findings that the firm, acting through Melillo, used manipulative, deceptive or other fraudulent devices in connection with the sale of warrants, and dominated and controlled both the wholesale and retail markets for a security such that there was no independent, competitive market in the security.

The findings also stated that the firm, acting through Melillo, charged fraudulently excessive mark-ups to retail customers in principal transactions, with mark-ups ranging from 5.26 to 63.16 percent over the prevailing market price. Francis, Matera, and Hines engaged in unfair pricing regarding the sale of warrants to public customers in that the gross commissions they earned on the sales of warrants ranged from 15 to 32 percent of their customers' total investment and they failed to question the fairness of the prices being charged to the firm's retail customers. The NASD also determined that Melillo failed to supervise his member firm's salesman adequately.

December Actions

Peter M. Delseni (Registered Representative, Brooklyn, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$9,626.05 in restitution to his customers. The sanctions were based on findings that Delseni received commissions on sales of securities to retail customers that were excessive and unfair.

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

September Actions

Douglas E. Dawe (Registered Representative, Lansing, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dawe consented to the described sanctions and to the entry of findings that he obtained a letter from a public customer instructing him to sell shares of one mutual fund in the customer's account in exchange for another mutual fund. The NASD determined that Dawe prepared a letter and signed the customer's name to it without the customer's knowledge or consent. The findings also stated that Dawe signed and submitted a letter on behalf of public customers to a mutual fund company with instructions to liquidate the customers' mutual fund shares and mail the redemption check to an address he maintained without the customers' knowledge or consent, and effected the purchase of shares of other mutual funds for the customers' account. Furthermore, the NASD found that Dawe submitted to a mutual fund company, on behalf of a public customer, a letter he wrote containing instructions to liquidate the customer's mutual fund shares and forward the redemption check to the customer without the customer's knowledge or consent.

Paul Thomas Fiorini (Registered Principal, Los Angeles, California) was fined \$150,000, subject to offset by payment of restitution of not more than \$100,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fiorini sold for his account at his member firm shares of stock he did not own and failed to deliver the shares before settlement date. Fiorini also purchased for his account shares of stock totaling \$112,656.25 and failed to pay for the stock.

Matthew Russell Hinton (Registered Representative, Prescott, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Hinton consented to the described sanctions and to the entry of findings that he completed and signed an inaccurate and incomplete Form U-4.

Robert A. McDowell (Registered Representative, Elkhart, Indiana) submitted an Offer of Settlement pursuant to which he was fined \$385,000, barred from association with any NASD member in any capacity, and ordered to pay \$77,546.62 in restitution. Without admitting or denying the allegations, McDowell consented to the described sanctions and to the entry of findings that he received checks totaling \$77,000 from public customers and his member firm for the purchase of a variable annuity and as a refund. The NASD found that McDowell instead used the funds for some purpose other than for the benefit of the customers.

Thomas J. Stiener (Registered Representative, Commerce, Michigan) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stiener failed to respond to NASD requests for information.

Michael E. Verity (Registered Representative, Eleva, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Verity consented to the described sanctions and to the entry of findings that he obtained a \$4,000 check from a public customer intended for the purchase of mutual funds and, instead, used the funds for some purpose other than for the benefit of the customer. The findings also stated that Verity failed to respond to NASD requests for information.

October Actions

First Analysis Securities Corporation (Chicago, Illinois) and Janet Irene Lloyd (Registered Principal, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lloyd, allowed an individual to be involved in the banking and securities business of the firm despite the fact the individual was not registered with the NASD and had failed to complete the regulatory element of the NASD's Continuing Education Program. The findings also stated that the firm, acting through Lloyd, failed to establish and maintain adequate written supervisory procedures with respect to the NASD's Continuing Education Program.

John Nicholas Giartonia, III (Registered Representative, Aurora, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$210,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Giartonia consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$22,000 intended for the purchase of a life insurance policy and for investment purposes. The NASD found that Giartonia cashed the checks, deposited the funds in an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customers.

Patricia A. Means (Registered Representative, Justice, Illinois) submitted an Offer of Settlement pursuant to which she was fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$645 in restitution. Without admitting or denying the allegations, Means consented to the described sanctions and to the entry of findings that she submitted a false life insurance application and a \$300 money order to an affiliate of her member firm, thereby causing the firm to pay her \$945 in commissions to which she was not entitled.

Lawrence M. Mosko (Registered Representative, Naperville, Illinois) was fined \$22,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mosko prepared and delivered to public customers sales literature without obtaining prior approval by a registered principal of his member firms. Mosko also failed to respond to NASD requests for information.

Philip A. Palarchio (Registered Representative, Haslett, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palarchio consented to the described sanction and to the entry of findings that he requested that his member firm issue checks totaling \$74,098.23 to public customers who maintained life insurance policies with his member firm; obtained, endorsed, and deposited the checks in his personal bank account; and used the funds for some purpose other than the benefit of the customers, without the customers' knowledge or consent.

Michael Shane Rummel (Registered Representative, Evansville, Indiana) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or

denying the allegations, Rummel consented to the described sanction and to the entry of findings that he completed and submitted to his member firm a request for the withdrawal of \$7,500 from a public customer's money market fund without the customer's knowledge, consent or authorization and in the absence of written or oral authorization to Rummel to exercise discretion in the account. Furthermore, the NASD found that Rummel caused a customer to issue a \$7,500 check to him by claiming that a previous withdrawal check the customer received was issued in error, and without the customer's knowledge or consent, negotiated the check and used the funds for some purpose other than for the benefit of the customer.

James Kenneth Smith (Registered Representative, Ypsilanti, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$627.97 in restitution to a member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he requested a member firm to withdraw and issue a check in the amount of \$627.97 from public customers' securities account, obtained and endorsed the check, and deposited it in his bank account without the knowledge or consent of the customers.

Carl Julius Winkler, III (Registered Representative, Carmel, Indiana) was fined \$5,745,395.50, barred from association with any NASD member in any capacity, and ordered to pay \$1,145,079.10 in restitution to the appropriate parties. The sanctions were based on findings that Winkler obtained \$1,160,079.10 by requesting from his member firm withdrawals from annuity accounts and insurance policies of public customers and soliciting premium payments and, without the knowledge or consent of the customers, deposited the funds into a bank account he owned and controlled, and used the money for some purpose other than for the benefit of the customers. Winkler also failed to respond to NASD requests for information.

November Actions

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

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

Daniel C. Boss (Registered Representative, Mendon, New York) was fined \$215,000, barred from association with any NASD member in any capacity, and required to pay \$39,100 in restitution to a customer. The sanctions were based on findings that Boss received \$40,000 from a public customer for the purchase of unspecified investments he recommended and, without the customer's knowledge or consent, did not use the funds for the intended purpose, but for some purpose other than for the benefit of the customers. Boss also failed to respond to NASD requests for information.

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

December Actions

Michael Ray Anderson (Registered Representative, Ambia, Indiana) submitted an Offer of Settlement pursuant to which he was fined \$226,000, barred from association with any NASD member in any capacity, and required to pay \$9,046 in restitution. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that, in connection with the purchase and sale of securities in the form of variable annuity life insurance products, he received \$124,400 from public customers. The NASD determined that contrary to the customers' instructions, and without their knowledge or consent, Anderson retained \$44,440 for some purpose other than the benefit of the customers. The findings also stated that Anderson sub-

mitted to his member firm five disbursement request forms that caused a total of \$849 to be disbursed from insurance policies owned by a public customer and used the funds to make premium payments on a variable annuity life insurance product that the customer had requested to be canceled, all without the customer's knowledge or consent.

Gerald Arthur Christensen (Registered Representative, Sterling Heights, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Christensen consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and in connection therewith, failed and neglected to provide written notice to, and receive written authorization from, his member firm to engage in such activities.

Herbert G. Frey (Registered Principal, Cincinnati, Ohio) was suspended from association with any NASD member in any capacity for 180 days. The SEC affirmed the sanction following appeal of a March 1997 NBCC decision. The sanctions were based on findings that Frey failed to pay an arbitration award.

Terry W. Hamilton (Registered Representative, Milwaukee, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hamilton consented to the described sanctions and to the entry of findings that he obtained \$111.48 from a public customer with instructions to use the funds to pay for a life insurance policy. The NASD determined that Hamilton failed to follow the customer's instructions and used the funds for some purpose other than for the benefit of the customer. The findings also stated that Hamilton failed to respond to NASD requests for information.

Steven Herbert Johansen (Registered Representative, Bolingbrook, Illinois) was fined \$100,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Johansen fraudulently interpositioned collateralized mortgage obligations to evade inventory limits set by his member firm and to generate greater trading profits.

Johansen has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Daniel Gerard Mullen (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$6,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Mullen consented to the described sanctions and to the entry of findings that he purchased and sold securities for the account of a public customer without the customer's knowledge or consent and in the absence of written or oral authorization from the customer to exercise discretion in the account.

Jeffrey A. Neal (Registered Representative, Gallipolis, Ohio) was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,049.67 in restitution to a member firm. The sanctions were based on findings that Neal submitted disbursement request forms purportedly signed by public customers, causing the firm to issue checks totaling \$10,049.67, payable to the customers. Neal did not provide these checks or the checks' proceeds to the customers and retained the funds for his own use and benefit, without the customers' knowledge, consent, or authorization. Neal also failed to respond to NASD requests for information.

Carlton D. Oakley (Registered Representative, Buffalo, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$5,969.46 in restitution to a member firm. The sanctions were based on findings that Oakley received a

\$5,969.46 check from a public customer intended for the purchase of securities and, without the customer's knowledge or consent, used the funds for some purpose other than for the benefit of the customer. Oakley also failed to respond to NASD requests for information.

William H. Scherrer (Registered Representative, Burlington, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Scherrer consented to the described sanctions and to the entry of findings that he signed the names of public customers to life insurance takeover request forms without the knowledge or consent of the customers.

Bruce M. Vitrano (Registered Representative, Bladell, New York) was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$1,979.56 in restitution to a member firm. The sanctions were based on findings that Vitrano received from a public customer \$1,979.56 to be used to fund a variable life insurance policy. Vitrano did not apply any of the funds as intended by the customer and used the funds for his own use and benefit. Vitrano also failed to respond to NASD requests for information.

Westhagen & Westhagen, Inc. (Ripon, Wisconsin) and Eric P. Westhagen (Registered Principal, Ripon, Wisconsin) were fined \$10,000, jointly and severally, and Westhagen was barred from association with any NASD member in any principal or supervisory capacity. The sanctions were based on findings that the firm, acting through Westhagen, failed to promptly amend and file with the NASD a Form BD to reflect a delinquent tax warrant, failed to maintain a general ledger, checkbook, bank statements, canceled checks, bank reconciliations, and copies of the firm's Form BD. In addition, the firm, acting through Westhagen, prepared inaccurate trail balances and net capital computations, and filed inaccurate FOCUS Part I and IIA reports with the NASD. The firm, acting through Westhagen, also failed to fully respond to NASD requests for information.

The firm and Westhagen have appealed this action to the NBCC and the sanctions are not in effect pending consideration of the appeal.

District 9 - Delaware, District of Columbia, Maryland, southern New Jersey (the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem) Pennsylvania, Virginia, and West Virginia

September Actions

E. C. Capital, Ltd. (Roslyn Heights, New York) and Gregory Small (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$7,500, jointly and severally. The firm is also required to pay \$4,744.64 in restitution to 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 Small, effected as principal the sales of stock to customers that were not fair and reasonable taking into consideration all relevant circumstances in that the markups on the transactions exceeded five percent. The findings also stated that the firm, acting through Small, failed to report transactions timely or otherwise properly report transactions in accordance with the transaction reporting requirements of The Nasdaq Stock Market contained in Rules 4630, et seq.

Janney Montgomery Scott Inc. (Philadelphia, Pennsylvania) submitted an Offer of Settlement pursuant to which the firm was fined \$35,000 (deemed satisfied in connection with and pursuant to its settlement of proceedings instituted by the Pennsylvania Securities Commission) and undertakes that the program formulated by an independent consultant pursuant to paragraph 5(c) of the Order entered in that proceeding will be implemented as to branch

office managers of branches outside of Pennsylvania as well as managers of branch offices located within Pennsylvania, and all policies and procedures adopted and implemented pursuant to the Order in the firm's branch offices located within Pennsylvania will also be adopted and implemented in its branch office outside of Pennsylvania. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce various supervisory operations and/or other procedures, rules, and policies the firm had established and implemented, including procedures, rules, and policies relating to the issuance and/or delivery of checks to customers drawn against their accounts. The findings also stated that the firm failed to reasonably and properly supervise a registered representative.

Robert W. Knorr (Registered Representative, Northumberland, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Knorr failed to respond to NASD requests for information.

David Terpoilli (Registered Representative, Norristown, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Terpoilli failed to respond to NASD requests for information.

October Actions

Glenn E. Backus (Registered Representative, Alexandria, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Backus consented to the described sanctions and to the entry of findings that he recommended purchase and sales transactions to public customers without having reasonable grounds for believing such recommendations were suitable for the customers taking into consideration their other security holdings, financial situations, and needs and in view of the frequency and nature of the transactions and Backus' improper short selling and excessive use of margin in the customers' accounts. The findings also stated that Backus executed unauthorized trades in a customer's accounts and improperly exercised discretion over customer accounts without their prior authorization. Furthermore, the NASD found that Backus failed to disclose to a customer the risks associated with trading on margin and short selling, and improperly misrepresented to the customer that the customer's monies were invested in municipal bonds when they were not.

Daniel Beimel (Registered Principal, New Kensington, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Beimel consented to the described sanctions and to the entry of findings that, in conduct toward public customers, he disregarded his duty of fair dealing with customers and disregarded his duty to research securities recommended to customers. The NASD also found that Beimel misled the customers by making material misrepresentations, including priced predictions, and omitted material negative information during the offer, purchase, and sale of securities. Furthermore, the findings stated that Beimel effected transactions in securities for customers' accounts without their prior authorization or consent.

R. Scott Bennett (Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bennett consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Peter Casali (Registered Representative, Bronx, New York) was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay

\$3,882.81 plus interest in restitution to a customer. The sanctions were based on findings that Casali received a \$4,400 check from a public customer intended as an insurance policy payment, deposited the check in a personal account, made an initial insurance payment of \$517.19, and converted the remaining \$3,882.81 for his own use and benefit. Casali also failed to respond to NASD requests for information.

Chesapeake Securities Research Corporation (Towson, Maryland) and Thomas T. Taylor (Registered Principal, Towson, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Taylor, conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm, acting through Taylor, conducted offerings of limited partnership interests, failed to return customer funds when the terms of the contingency were not met, and extended the termination date and lowered the offering contingency when there were no current offering documents or documented subscriber approval for a continuation of the offering. Furthermore, the NASD found that the firm, acting through Taylor, failed to obtain subscription agreements from subscribers and failed to obtain signed copies of amendments to the offering from investors. Moreover, the NASD determined that the firm, acting through Taylor, failed to maintain a checks received and delivered blotter.

Harold Davlin (Registered Representative, Washington, D.C.) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$70,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davlin consented to the described sanctions and to the entry of findings that he provided general subscriber information to other persons, which those persons subsequently used improperly to participate in a conversion of the mutual shares of a savings bank to the common stock of a holding company. The NASD found that these persons improperly executed stock order forms in the names of the actual depositors, participated in the conversion, and had the opportunity to profit when the trading of the common stock opened for secondary trading. The NASD determined that these persons provided two checks to Davlin totaling \$785.34, issued in the names of two bank depositors whose names were signed without their authorization, and that Davlin deposited the checks into his bank account for his own use and benefit. The findings also stated that Davlin failed to respond to an NASD request to appear for an on-the-record interview.

James W. DiBella, Jr. (Registered Representative, Marlton, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, DiBella consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of securities in the account of a public customer without having reasonable grounds to believe the recommendations were suitable for the customer. The findings also stated that, in inducing and effecting purchases, DiBella engaged in deceptive and/or fraudulent devices or practices, made false and misleading statements of material facts, and/or failed to disclose material facts about the stock. Furthermore, the NASD determined that DiBella effected unauthorized transactions in a customer's account.

DiBella's suspension began September 15, 1997 and concludes October 14, 1997.

Michael R. Euripides (Registered Representative, Virginia Beach, Virginia) was fined \$5,000, required to pay \$15,488.92 plus interest in restitution, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam as a general securities representative. The NBCC affirmed the sanctions following appeal of a Washington DBCC decision. The sanctions were based on findings that Euripides made

unsuitable recommendations to a public customer regarding the purchase of stock, and made misrepresentations and omissions of material facts in the sale of securities to the customer. Euripides also executed unauthorized transactions in the account of a public customer.

Hubert L. Ford (Registered Representative, Wilmington, Delaware) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ford failed to respond to NASD requests for information.

Alan Krouk (Registered Representative, Jamesburg, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any registered capacity for five years. Without admitting or denying the allegations, Krouk consented to the described sanctions and to the entry of findings that he received funds from certain customers in payment of insurance policy premiums, and caused the funds to be applied and credited in payment of other customers' policies for which payment was due but had not been received. The NASD determined that thereafter, when funds were received from customers whose policies had been improperly credited, Krouk caused those customers' funds to be credited to policies of customers whose funds had been previously misapplied.

Alan J. LaCava (Registered Representative, Philadelphia, Pennsylvania) was fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify as a general securities representative. The sanctions were based on findings that LaCava recommended to public customers, and effected in their accounts, the purchases of securities without having reasonable grounds to believe that securities he recommended were suitable for the customers. Furthermore, the NASD determined that, in inducing and effecting the purchases, LaCava intentionally, recklessly, or negligently engaged in deceptive and/or fraudulent devices or practices, made false and misleading statements of material facts, and/or failed to disclose material facts. The findings also stated that LaCava effected unauthorized transactions in a customer's account.

Deborah L. Leonard (Registered Representative, Muncy, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leonard consented to the described sanctions and to the entry of findings that she failed to respond fully to NASD requests for information.

Stephen F. Maertzg, Sr. (Registered Representative, Philadelphia, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Maertzg failed to respond to NASD requests for information.

Julio C. Meade (Registered Representative, Centerville, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Meade consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice to his member firms of his participation in such transactions.

Meade's suspension begins on October 4, 1997 and will conclude on November 2, 1997.

Richard B. Perry (Registered Representative, Southampton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Perry consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Shamrock Partners, Ltd. (Media, Pennsylvania) and James T. Kelly (Registered Principal, Newtown Square, Pennsylvania) were fined \$15,000, jointly and severally, and required to pay \$10,674.22 in restitution to customers, jointly and severally, demonstrate corrective action with regard to their mark-up and mark-down policy, and submit to a staff interview. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that the firm, acting through Kelly, effected in a principal capacity purchases of common stock from public customers at prices that were not fair and reasonable in that the markdowns on the purchases exceeded five percent.

The firm and Kelly have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Robert L. Swick (Registered Representative, Towson, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Swick consented to the described sanctions and to the entry of findings that he forged the signatures of policyholders on takeover request forms and letters requesting he be assigned as agent of record for their policies.

Kimberly Lynn Woodward (Registered Representative, Chandler, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Woodward consented to the described sanctions and to the entry of findings that she converted to her own use monies totaling \$195,543.09 from the account of a public customer. The findings also stated that Woodward created falsified statements for a mutual fund, purporting to show that the monies had been deposited into that fund in the customer's name when, in fact, the funds were deposited into checking accounts she controlled.

November Actions

Stephanie Ann Murray (Registered Representative, Trenton, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Murray, while taking the Series 7 exam, had in her possession notes relating to the subject matter of the exam.

Harvey F. Neustadt (Registered Representative, Easton, Maryland) was fined \$1,500,000, barred from association with any NASD member in any capacity, and required to pay \$306,494.32 plus interest in restitution. The sanctions were based on findings that Neustadt converted \$326,494.32 from public customers and failed to respond to NASD requests for information.

Delos G. Smith, III (Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 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 he failed to respond to an NASD request to appear for an on-the-record interview.

December Actions

None

District 10 - the five boroughs of New York City and the adjacent counties in New York (the counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester) and northern New Jersey (the state of New Jersey, except for the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem)

September Actions

Jack Robert Basile (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$206,601 to the NASD. Without admitting or denying the allegations, Basile consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Basile failed to respond to NASD requests to appear for an on-the-record interview.

Abdul Wadud Choudhury (Registered Representative, Jackson Heights, New York) was fined \$42,663, barred from association with any NASD member in any capacity, and ordered to pay \$3,092.14, plus interest, in restitution to his member firm. The sanctions were based on findings that Choudhury received \$4,144.17 from a public customer to repay loans on insurance policies and, instead, he converted \$2,411.10 of the funds to his own use and benefit. Choudhury also received a \$2,121.50 check from a public customer to reinstate a lapsed insurance policy and converted the funds to his own use by using the funds as partial repayment of monies owed to other customers. Furthermore, Choudhury failed to respond to NASD requests for information.

Michael A. Formiglia (Registered Representative, Selden, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Formiglia consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on disbursement request forms without their knowledge or consent and used the documents to obtain unauthorized loans totaling \$515.90. The findings also stated that Formiglia used the loans to fund policies of two different individuals. Furthermore, the NASD determined that Formiglia created an insurance policy for a non-existent individual, funded the policy by removing \$390 from the policy of an existing customer, without the knowledge or consent of the customer, and used the money to fund the creation of the fictitious policy.

Barry Mitchell Goldstein (Registered Representative, Plainview, New York) submitted an Offer of Settlement pursuant to which he was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and required to submit proof of restitution to customers. Without admitting or denying the allegations, Goldstein consented to the described sanctions and to the entry of findings that he instructed the back office of his member firm to issue checks totaling \$49,366 from the accounts of public customers. The NASD found that Goldstein retrieved the checks from the customers' mailbox, signed their names on the checks, double endorsed 20 of the checks totaling \$19,066, and deposited the funds into his personal bank account. The findings also stated that Goldstein signed the customers' names on the checks to enable him to negotiate the checks without a written power of attorney over the customers' account. The customers involved have indicated that they had orally authorized this activity and received all funds withdrawn from the accounts.

Howard Leroy Gregg, III (Registered Representative, State College, Pennsylvania) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity and ordered to disgorge \$1,500. Without admitting or denying the allegations, Gregg consented to the described sanctions and to the entry of findings that he purchased shares of a new issue that traded at a premium in the immediate aftermarket in contravention of the Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Gregg failed to notify his member firm in writing that he intended to open an account at another member firm, nor did he advise the other firm of his association with his member firm, and purchased shares of stock with-

out giving prior written notice to his member firm. Furthermore, the NASD determined that Gregg failed to respond to NASD requests for information.

Oliver Peter Hosang, III (Registered Representative, Brooklyn, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hosang failed to respond to NASD requests for information.

Joseph Krieger Kahn (Registered Representative, Marlboro, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kahn consented to the described sanctions and to the entry of findings that he converted customer funds totaling \$8,000 from the customer's account into his own account without the customer's knowledge, consent, or authorization.

Eric Kostyukovsky (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kostyukovsky consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7, 24, and 63 exams on his behalf.

Joseph Latona (Registered Representative, Staten Island, New York) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Latona engaged in a securities business, engaged in trading for a proprietary account of his former member firm, and received a percentage of the profits in that account, while subject to disqualification due to two felony convictions. Latona also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Nicholas Petrella (Registered Representative, Oakdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$71,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Petrella consented to the described sanctions and to the entry of findings that he participated in private securities transactions away from his member firm in the accounts of public customers. The findings also stated that Petrella failed to respond to NASD requests for information.

Edward Pyatetsky (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pyatetsky consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Pyatetsky failed to respond to NASD requests to appear for an on-the-record interview.

Alan J. Russo (Registered Representative, Harrison, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Russo consented to the described sanctions and to the entry of findings that he received funds totaling \$337,887.97 from a public customer for investment purposes, misappropriated these funds, and converted them to his own use. The findings also stated that Russo prepared a false confirmation of securities activity for a public customer's account, reflecting positions exceeding the customer's true and accurate positions. Furthermore, the NASD determined that Russo entered into private securities transactions without the prior knowledge or consent of his member firm.

Richard A Skinner, Jr. (Registered Representative, Glen Ridge, New Jersey) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was fined \$250,000, required to pay restitution plus interest to public customers, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skinner consented to the described sanctions and to the entry of findings that he misappropriated between \$600,000 and \$1,900,000 of public customer funds and converted the funds for the use and benefit of other customers and/or for his personal use.

Jeffrey Laurence Streich (Registered Representative, New York, New York) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Streich executed transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers.

George Lorenzo Swan (Registered Principal, Ridgewood, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$170,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Swan consented to the described sanctions and to the entry of findings that he executed, or caused to be executed, securities transactions in the accounts of public customers, without the prior knowledge, authorization, or consent of the customers, that involved transfers of stock from his personal and corporate accounts to customer accounts so that he might avoid margin calls in his accounts. The findings also stated that Swan failed to respond to an NASD request to appear for an on-the-record interview and failed to apprise his member firm's financial and operations principal of certain liabilities incurred by the firm, thereby causing the firm to fail to maintain its minimum required net capital.

October Actions

Edwin Aponte (Registered Representative, Yonkers, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Aponte consented to the described sanctions and to the entry of findings that he changed a public customer's address to Aponte's sister-in-law's address, forged the customer's name on a surrender of policy form, and received a \$565.74 check representing the surrender value of the customer's policy. The NASD found that Aponte forged the customer's endorsement to the check, negotiated the check, and converted the funds for his own personal use. The findings also stated that Aponte failed to disclose on a Form U-4 that he was the subject of a consumer-initiated complaint.

Ira Warren Bassin (Registered Principal, Plainview, New York) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Bassin consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information.

James Anthony Contacessa (Registered Representative, Glen Head, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$239,835.95. The sanctions were based on findings that Contacessa arranged to have an impostor take the Series 7 exam on his behalf. Contacessa also failed to respond to NASD requests for information.

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

Rene DeScartin (Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and

barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeScartin consented to the described sanctions and to the entry of findings that he forged policyholder signatures and misappropriated \$6,750.20.

L. B. Saks, Inc. (New York, New York) and Victor J. Puzio (Registered Principal, Rutherford, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Puzio, conducted a securities business while failing to maintain its minimum required net capital.

Thomas A. Ortwein (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member in any supervisory capacity for three months (suspensions served). Without admitting or denying the allegations, Ortwein consented to the described sanctions and to the entry of findings that he attempted to affect the closing price of a stock by entering a trade on behalf of a public customer at a time when he knew that the transaction was not a bona fide customer order and, in fact, was done without the customer's prior knowledge, authorization, or consent. The findings also stated that Ortwein executed a purchase transaction on behalf of a customer account without the customer's prior knowledge and/or written authority.

Eric Dean Pokross (Registered Representative, Valley Stream, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pokross failed to respond to NASD requests to appear for an on-the-record interview.

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

Steven M. Usarzewicz (Registered Representative, Hamilton, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Usarzewicz consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

November Actions

Frank J. Casillo (Registered Principal, Farmingdale, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in a principal capacity for 30 days. Without admitting or denying the allegations, Casillo consented to the described sanctions and to the entry of findings that he failed to implement, maintain, and enforce adequate supervisory procedures in connection with direct-ing brokers during an initial public offering.

Vita Marie Colangelo (Registered Representative, Cherry Hill, New Jersey) submitted an Offer of Settlement pursuant to which she was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to requalify by exam. Without admitting or denying the allegations, Colangelo consented to the described sanctions and to the entry of findings that she established three fictitious accounts at her member firm for public customers, completed purchase applications, and prepared a fictitious check on behalf of a customer without their prior knowledge, authorization or consent.

Cressida Capital, Inc. a/k/a Norfolk Securities Corp. (New York, New York) and Ian Richard Hosang (Registered Principal, Brooklyn, New York) were fined \$50,000, jointly and severally. In addition, the firm was expelled from NASD membership and Hosang was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Hosang, permitted registered persons at the firm to continue to perform duties as registered persons at such times as they had not complied with the regulatory and firm elements of the Securities Industry Continuing Education Program.

Furthermore, the firm, acting through Hosang, failed to delegate responsibility for compliance with the regulatory element and failed to maintain written procedures for compliance with the regulatory and firm elements. In addition, the firm, acting through Hosang, failed to maintain written supervisory procedures that would mandate an annual needs analysis, a written training plan, and an implementation plan, and failed to maintain books and records in compliance with the firm element of the continuing education rules. Hosang also failed to respond to an NASD request to appear for an on-the-record interview.

Leonard Sterling Dyer (Registered Representative, Teaneck, New Jersey) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dyer received \$416 from a public customer intended for the purchase of an insurance policy and gave the customer a receipt indicating the full payment of the premium. However, Dyer never opened a policy and converted the funds to his own use. Dyer also failed to respond to NASD requests for information.

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

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

Salvatore Piazza (Associated Person, Milburn, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Piazza failed to respond to NASD requests to appear for an on-the-record interview.

James Alfred Pierce (Registered Representative, Holbrook, New York) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pierce consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview.

Nancy Roebuck (Associated Person, New York, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roebuck failed to respond to NASD requests to appear for an on-the-record interview.

December Actions

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

Jimmy Berkovich (Registered Representative, Brooklyn, New York) was fined \$10,000 and suspended from association with any NASD member in any registered capacity for one year. The sanctions were based on

findings that Berkovich failed to timely respond to NASD requests for information.

Lawrence P. Bruno, Jr. (Registered Representative, Brooklyn, New York) was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$678,067 to the NASD. The sanctions were based on findings that Bruno arranged to have an impostor take the Series 7 exam on his behalf.

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

Weidi Feng (Registered Representative, Elmhurst, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Feng, while taking the Series 7 exam, had in his possession notes that contained information relevant to the exam. Feng also failed to respond to NASD requests to appear for on-the-record interviews.

Randall Scott Ferman (Registered Representative, Flanders, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 20 business days and ordered to requalify by exam as a general securities representative. Without admitting or denying the allegations, Ferman consented to the described sanctions and to the entry of findings that he recommended and executed transactions in the account of a public customer without having a reasonable basis for believing that such recommendations were suitable for the customer or for believing that opening and maintaining a margin account was suitable for the customer based on the customer's financial situation, needs, investment objectives, and investment experience. The findings also stated that Randall made misrepresentations to a public customer in connection with a loan he had requested for the customer. Furthermore, the NASD determined that Ferman engaged in outside business activities without notifying his member firm of the true nature of his activities.

Nicholas Liapunov (Registered Representative, Ridgefield, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Liapunov consented to the described sanctions and to the entry of findings that he forged a public customer's signature on a disbursement request form without the customer's knowledge, authorization or consent.

Douglas John Mangan (Registered Representative, Massapequa, New York) was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mangan created a false and inaccurate customer securities account statement and caused his member firm's records to falsely indicate the customer's address without the knowledge, consent or authorization of the customer. Mangan also failed to respond to NASD requests to appear for an on-the-record interview.

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

District 11 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the counties of Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)

September Actions

None

October Actions

None

November Actions

Thomas A. Arpante (Registered Representative, Holden, Massachusetts) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Arpante failed to respond to NASD requests for information. Arpante also forged documents in transactions with customers.

Randall J. DeMatteo (Registered Representative, Bridgeport, Connecticut) was fined \$27,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeMatteo failed to respond to NASD requests for information. DeMatteo also engaged in private securities transactions and failed to receive authorization from his member firm to engage in such activities.

Steven A. Hall (Registered Representative, Scarborough, Maine) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hall failed to respond to NASD requests for information. Hall also engaged in private securities transactions and failed to receive authorization from his member firm to engage in such activities.

Marc T. Schaufler (Registered Representative, New Milford, Connecticut) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schaufler failed to respond to NASD requests for information.

December Actions

Jeffrey Ward Jones (Registered Principal, Guilderland, New York) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones conducted unauthorized and excessive trading in public customer accounts and effected transactions without written discretionary authority from the customers. In addition, Jones effected customer transactions while not properly registered and failed to respond to NASD requests to appear for an on-the-record interview.

Charles R. Snyder (Registered Principal, South Glastonbury, Connecticut) submitted an Offer of Settlement pursuant to which he was fined \$25,000. Without admitting or denying the allegations, Snyder consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his employment with his member firm without giving written notice to his member firm describing in detail the proposed transaction, his proposed role therein, and whether he received or was to receive selling compensation in connection with the transaction.

Margaret L. Talbot (Registered Representative, Oneonta, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Talbot consented to the described sanctions and to the entry of findings that she accepted from a public customer a \$10,000 check intended for investment into a variable annuity. The NASD found that Talbot deposited the check into her personal bank account and converted the proceeds to her own use and benefit.

Market Regulation Committee

September Actions

Mitchell Aguirre (Registered Representative, Woodhaven, New York) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without

admitting or denying the allegations, Aguirre consented to the described sanction and to the entry of findings that he solicited customers and recommended the purchase of securities by making misrepresentations, omissions of material facts, and price predictions in order to induce the customers to place purchase orders for stock and commit to investment decisions. The findings also stated that Aguirre purchased and sold shares of stock for a customer's account without the customer's prior knowledge and consent. The NASD also found that Aguirre misappropriated to his own use and benefit \$36,648.36 that was withdrawn from a customer's account without the customer's knowledge or consent. Furthermore, the NASD determined that Aguirre participated in trading activities when he was not properly registered with the NASD.

Genesis Merchant Group Securities, L.P. (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$19,500 and ordered to designate a general securities principal to supervise the firm's SOES activities. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered proprietary or non-public customer orders into the SOES and divided orders in excess of the maximum order size into smaller parts to be entered into the system. The findings also stated that the firm entered orders into SOES for securities for which it was a registered market maker and failed to establish, maintain, and enforce adequate written supervisory procedures. Furthermore, the NASD determined that the firm did not designate a qualified general securities principal to supervise its SOES activity.

Ronald J. Geraci, Sr. (Registered Representative, Boynton Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Geraci failed to respond to NASD requests for information.

Investors Associates, Inc. (Hackensack, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was fined \$15,000 and required to participate in a staff conference and to submit to the NASD a revised copy of its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to time stamp the time of entry or execution on order tickets. 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.

Leonard J. Koenig (Registered Representative, Boynton Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Koenig failed to respond to NASD requests for information.

Scott Allan Miller (Registered Representative, Alpharatta, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miller failed to respond to NASD requests for information.

Securities Planners, Inc. (New York, New York), Edward McKay, Jr. (Registered Principal, New York, New York), Alex David Shindman (Registered Principal, Guttenberg, New Jersey), Alex Gincherman (Registered Representative, Brooklyn, New York), Igor Shekhtman (Registered Principal, New York, New York), Michael Garber (Registered Representative, Brooklyn, New York), Mark Furman (Registered Principal, Pompano Beach, Florida), and Eugene Flaksman (Registered Representative, Brooklyn, New York). The firm was fined \$50,000 and McKay was fined \$50,000 and barred from association with any NASD member in any supervisory and/or principal capacity. Shindman was fined \$25,000 and barred from association with any NASD member in any capacity. Gincherman was fined \$15,000, suspended from association with any NASD member in any capacity for 45 days, required to pay \$6,093.75 plus interest in restitution to a public cus-

tomor, and required to requalify as a general securities representative. Shekhtman was fined \$50,000, required to pay \$216,498.75 plus interest in restitution, and barred from association with any NASD member in any capacity. Garber was fined \$20,000, suspended from association with any NASD member in any capacity for six months plus 60 days, required to pay \$11,925 in restitution, and required to requalify as a general securities representative by taking and passing the Series 7 exam. Furman was fined \$55,000, suspended from association with any NASD member in any capacity for 30 days, required to pay \$5,500 plus interest in restitution to a customer, barred from association with any NASD member in any supervisory and/or principal capacity, and required to requalify as a general securities representative by taking and passing the Series 7 exam. Flaksman was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, required to pay \$22,000 in restitution, and required to requalify as a general securities representative by taking and passing the Series 7 exam.

The sanctions were based on findings that the firm, acting through McKay, failed to establish, maintain, or enforce adequate written supervisory procedures. Furthermore, Shekhtman, Gincherman, Garber, Flaksman, and Furman made material misrepresentations and omissions to customers concerning a stock. Shekhtman, Gincherman, and Flaksman also effected unauthorized transactions in customer accounts. In addition, Shekhtman failed to execute sell orders and Furman failed to supervise registered representatives who made material misrepresentations and omissions in connection with the sales of stock as well as registered representatives who made unauthorized trades, and failed to execute sell orders for customers. Garber and Shindman failed to respond to NASD requests for information.

Kevin Eric Shaughnessy (Registered Representative, Pittsburgh, Pennsylvania) was fined \$11,675, barred from association with any NASD member in any capacity, required to pay \$390 in losses to customers, and required to repay \$1,526.37 in commissions to customers. The NBCC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Shaughnessy entered into an arrangement with a non-registered individual whereby he agreed to sell shares of stock to his retail customers in exchange for compensation, without disclosing the arrangement with the customers or his member firm. Shaughnessy also failed to provide prompt written notice of this arrangement to his member firm and accepted compensation from a stock promoter.

Shaughnessy has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

October Actions

Herzog, Heine, Geduld, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to contemporaneously execute customers' limit orders when obligated to do so. Furthermore, the NASD found that the firm failed to report an order entry identification to ACTS and incorrectly reported third market transactions with the improper order entry/market maker designation by the "give up" reporting side executing dealer. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures with respect to its limit order activity.

Needham & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it was a registered market maker in securities, was presented orders at its published bid or offer, and failed to execute the orders, thereby failing to honor its published quotation. The findings also stated that the firm failed to maintain and

enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC Firm Quote Rule and other related rules.

Troster Singer Corp., A Division of Spear, Leeds & Kellogg (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it was a registered market maker in securities, was presented orders at its published bid or offer, and failed to execute the orders, thereby failing to honor its published quotation. The findings also stated that the firm failed to maintain and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC Firm Quote Rule and other related rules.

November Actions

Amr I. Elgindy (Registered Principal, Colleyville, Texas) submitted an Offer of Settlement pursuant to which he was fined \$30,000, suspended from association with any NASD member in any principal capacity for one year, suspended from association with any NASD member in any capacity for 30 days, and required to produce a copy of his member firm's implemented written supervisory procedures specifically with respect to overseeing his activities to deter and detect a recurrence of the conduct alleged in the complaint. Without admitting or denying the allegations, Elgindy consented to the described sanctions and to the entry of findings that he caused his member firm to execute 108 orders through SOES for the firm's account. The findings also stated that Elgindy caused his member firm to enter non-bona fide orders through the SelectNetSM System for the firm's account that were either timed out or canceled by Elgindy before they could be executed. Furthermore, the NASD found that Elgindy caused trades reported to ACT to be canceled by failing to acknowledge or confirm such trades. The NASD also determined that Elgindy failed to ensure that his member firm establish, maintain, and enforce supervisory procedures that would have enabled the firm to deter and detect the above conduct.

Nicholas Mark Ellis (Registered Principal, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and suspended from association with any NASD member as a general securities principal for two years. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of finding that a member firm, acting through Ellis, conducted a general securities business but failed to designate a limited financial and operations principal. The findings also stated that a member firm, acting through Ellis, executed options and municipal transactions but failed to have and designate a registered options principal and municipal securities principal.

Ellis' suspension began September 5, 1997 and will conclude September 5, 1999.

Furman Selz LLC (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to report the order entry firm in 61 transactions to ACT and failed to designate transactions in Nasdaq National Market securities as late to ACT. The findings also stated that the firm failed to accept or decline a transaction within 20 minutes after execution, to preserve a memorandum of a brokerage order for a period of not less than three years, and to preserve the memoranda of each member-to-member limit order received by the firm. Furthermore, the NASD determined 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, limit orders, best execution, and use of SOES.

Blake M. Russ (Registered Representative, Boca Raton, Florida), Dean C. Verrigni (Registered Representative, Wappingers Falls, New York), and Gary H. Hrycyk (Registered Representative, New York, New York) submitted Offers of Settlement pursuant to which Russ was fined \$18,000 and barred from association with any NASD member in any capacity and Verrigni was fined \$29,000 and barred from association with any NASD member in any capacity. Hrycyk was fined \$13,000 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 engaged in manipulative, deceptive, or other fraudulent activities in connection with the purchase or sale of securities.

December Actions

Dean Witter Reynolds, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to designate as late to the ACT transactions in listed and Nasdaq securities. The NASD also found that the firm failed to report to ACT the correct price of transactions in listed securities, failed to time stamp the time of execution on order tickets, and failed to contemporaneously execute shares of customer limit orders after it bought shares of stock for its own market-making account. Furthermore, the NASD determined 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 and the limit order protection interpretation.

Gerard, Klauer, Mattison & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to report to ACT the contra side executing broker in transactions in eligible securities and

failed to accept or decline a transaction in an eligible security within 20 minutes after execution. The findings also stated that the firm reported to ACT the incorrect symbol indicating whether one transaction in an eligible security was as principal or agent, and failed to show on memoranda of broker orders the terms and condition of each such order or instructions and any modification or cancellation thereof, the account for which entered, the time of the entry, the price at which executed and, to the extent feasible, time of execution or cancellation. Furthermore, the NASD determined 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 and record keeping.

Michael B. Jawitz (Registered Representative, Washington, D.C.) was fined \$50,000 and suspended from association with any NASD member in any capacity for one year and suspended thereafter as an equity trader until he takes and passes the Series 7 exam. The sanctions were based on findings that Jawitz engaged in manipulative, deceptive, and fraudulent conduct by intentionally and recklessly entering fictitious limit orders into his member firm's order execution system that led to non-bona fide transactions. Furthermore, Jawitz caused his member firm's order execution system to fail to automatically execute customer limit orders. Jawitz also intentionally and recklessly published or circulated reports of purchase and sale transactions when he knew that such transactions were non-bona fide.

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

Oppenheimer & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$14,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it designated as late to ACT 25 block transactions in Nasdaq National Market securities, and failed to provide written notification disclosing to its customer that the price at

which each such transaction took place was at an average price. The findings also stated that the firm failed to indicate on order tickets the terms, conditions, or instructions of each such order, and failed to contemporaneously execute customer limit orders after it traded each such subject security for its own market-making account at a price that would satisfy each such customer limit order. Furthermore, the NASD found 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, the limit order protection interpretation, and record keeping.

Boris Poleschuk (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year and will be subject to special supervision for two years. Without admitting or denying the allegations, Poleschuk consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions to his customers concerning a stock. The findings also stated that Poleschuk effected unauthorized transactions in his customers' accounts.

Randall H. Taylor (Registered Representative, Basking Ridge, New Jersey) and Paul C. Mazzanobile (Registered Representative, Haworth, New Jersey) submitted an Offer of Settlement pursuant to which Taylor was fined \$50,000, suspended from association with any NASD member in any capacity for 30 days, and suspended from association with any NASD member in a principal capacity for 60 days. Mazzanobile was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Taylor and Mazzanobile engaged in a pattern and practice of attempting to mark the open of the market for securities.