

# Regulatory & Compliance Alert

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## Overview Of The SEC's Report To Congress On The Year 2000 Challenge

On June 19, 1998, the Securities and Exchange Commission (SEC) submitted to Congressman John Dingell (D-Michigan) the second of three required staff reports on the Year 2000 challenge. The Report--titled "Second Report On The Readiness Of The United States Securities Industry And Public Companies To Meet The Information Processing Challenges Of The Year 2000"--provides the SEC's assessment of how the securities industry and public companies are doing in their preparation for the century date change. The SEC used information provided by the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) from member firms' Year 2000 Compliance Survey responses for a significant portion of the assessment.

As the Report stated, 67 percent of all NASD member firms reported that they were at least 40 percent complete with their Year 2000 remediation programs. Only seven percent of members reported they would not be able to complete their programs by the end of the second quarter of 1999. The SEC and NASD will pay close attention to those firms reporting lower levels of progress. Half of the firms in this category appear to be relying on service bureaus for their technology services.

In the Report the SEC expressed its disappointment in the quality of disclosure public companies had been making to date. To remedy the situation, the SEC has issued an "interpretive release." Although not a Rule, the interpretive release is a document reviewed and voted on by the Commission. The language is significantly stronger than that contained in the SEC's previous disclosure guidance found in Staff Legal Bulletin Number 5 and is expected to provide all who rely on such corporate information a clearer picture of each reporting company's Year 2000 progress, or lack of progress.

### ***Two Year 2000 Reports Required***

In July of this year, the NASD issued [\*Special Notice to Members 98-63\*](#) alerting members about an amendment to SEC Rule 17a-5 requiring broker/dealers to file two Year 2000 reports using the new BD-Y2K Form. The first report was due to the SEC and designated examining authority (DEA) on or before August 31, 1998. The second report is due April 30, 1999.

The SEC and NASD are working closely with all the self-regulatory organizations (SROs) as well as the Securities Industry Association (SIA) to improve their ability to identify potential Year 2000 failures. Much of this work will be accomplished through careful analysis of the two reports required by the SEC of both broker/dealers and transfer agents. Where analyses suggest a possible weakness, staff will follow up with the subject broker/dealers.

The NASD recently sent out over 1,500 letters notifying NASD member firms that they had failed to comply with the SEC Year 2000 reporting requirement, and that the NASD and SEC will file disciplinary actions as appropriate. The NASD strongly encourages these member firms to submit the Year 2000 report.

## **Public Disclosure Activities**

Two other areas will be the object of increased scrutiny over the next year: investment advisers and public company disclosure. A recent rule proposal, if adopted, will result in investment adviser reports on Year 2000 programs for both themselves as well as for any investment company(s) served by the adviser.

Questions may be directed to the NASD Year 2000 Program Office via its toll-free phone number--(888) 227-1330--or by e-mail, [y2k@nasd.com](mailto:y2k@nasd.com).

## **Cover Stories**

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### ***Year 2000 Legal Workshop***

The NASD Year 2000 Program Office will hold three workshops focusing on the legal challenges facing broker/dealers. Presenters will discuss how systems problems can become legal problems, legal responsibilities of company directors and officers, the effect of service providers' readiness, and other relevant issues.

<b>Date</b>	<b>Time</b>	<b>Location</b>
Tuesday, October 13	8:30 a.m. - 12:30 p.m.	Chicago Marriott Chicago, IL
Tuesday, October 20	8:30 a.m. - 12:30 p.m.	Grand Hyatt Atlanta, GA
Tuesday, November 3	8:30 a.m. - 12:30 p.m.	Millennium Hotel New York, NY

To register or for more information, contact the NASD Year 2000 Program Office by calling (888) 227-1330 or via e-mail at [y2k@nasd.com](mailto:y2k@nasd.com).

### ***Market Makers And ECNs Must Register For Order Audit Trail System***

NASD member firms that make markets in Nasdaq<sup>®</sup> securities and Electronic Communication Networks (ECNs) recently received the OATS Subscriber Initiation and Registration Form. Market Makers and ECNs that are required to report order information to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) under [NASD Rules 6950 through 6957](#) should have completed and returned this Form to the NASD by September 14, 1998.

[NASD Rules 6950 through 6957](#) require member firms that receive or handle orders in Nasdaq securities to record specified information about the orders and electronically transmit the information to the NASD. The effective dates for the Rules vary according to the following schedule: By March 1, 1999 (Phase 1), electronic orders received by Market Makers and ECNs must be reported; by August 1, 1999 (Phase 2), all electronic orders must be reported; and by July 31, 2000 (Phase 3), all non-electronic, or manual orders must be reported. (See [Notice to Members 98-33](#) for a complete description of the OATS Rules.)

Members that failed to complete and return the [Subscriber Initiation and Registration Form](#) be unable to report OATS data to the NASD. Failure to report order information is a violation of NASD Rules 6955 and 2110. Any Market Maker or ECN that has not completed and submitted the Form should do so immediately.

In addition, all third parties that intend to submit data during Phase 1 on a member's behalf should have submitted a copy of the [Subscriber Initiation and Registration Form](#) by September 14, 1998. The Form should be sent via mail to NASD Regulation, Inc., Business Program Support, 15201 Diamondback Dr., Rockville, MD 20850, or by fax to (888) 345-6275 or (301) 590-6504.

Information requested on this Form is necessary to register members and non-member third parties to report order information to OATS. The Form requires member firms and non-member third parties to identify contacts for administrative, technical, and compliance issues; organizations that will be reporting OATS information on their behalf; organizations on whose behalf they are reporting; and the transport method that they will use for reporting, such as file transfer protocol (FTP) or e-mail.

The NASD will use the information furnished on the Form to schedule the installation of network circuits for firms reporting via FTP and provide Subscriber Packets. These Subscriber Packets will supply instructions about requesting a circuit from the network provider; deadlines for circuit installation; user IDs and passwords for accessing OATS; assigned reporting dates within the phase; and a [Subscriber Manual](#) describing procedures for transmitting data to OATS, performing self-administration, and using OATS applications on the Web.

All firms that handle or execute orders for Nasdaq securities will be required to complete a Subscriber Initiation and Registration Form before they can begin reporting to OATS. In January 1999, a version of the Form and the Subscriber Manual will be available for firms and third parties that will begin reporting in Phases 2 or 3. Firms will be able to download the Form from the [OATS Web Pages](#) or request them from the NASD.

*If you have any questions regarding OATS or the Subscriber Initiation and Registration Form, contact the NASD via phone at (888) 700-OATS or (301) 590-6503, or via e-mail at [oatssc@nasd.com](mailto:oatssc@nasd.com). Information about OATS and copies of the Form are available via the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com). Also see [Notice to Members 98-73](#) for more details and for a copy of the Form.*

## ***NASD Moves Forward With Electronic Publication And Communication Initiatives***

The NASD recently amended its By-Laws to require the Executive Representative of each NASD member firm to establish and maintain an active Internet e-mail account by no later

than **January 1, 1999**, to update key firm contact information and receive electronic communications from the NASD. This development will enable the NASD to collect and distribute information using efficient electronic formats.

**Member Firm Contact Questionnaire**—The current method for collecting and administering the names of the Executive Representative and other individuals who hold positions of significant responsibility within member firms is through the filing of an NASD form entitled the "NASD Member Firm Contact Questionnaire" (Questionnaire). Currently, members are required to file the Questionnaire with the Central Registration Depository (CRD<sup>SM</sup>) system to provide initial information and to report changes.

Within the next few months, NASD Regulation will place this Form and data collected from the Form on its Web Site. This will allow members to view and update the data via the Internet. Access to this information for viewing and updating will be controlled via password protection. For example, only an Executive Representative, and/or his/her designee, on behalf of the firm, will be able to access its firm's data. This approach requires each member to maintain an Internet e-mail address on behalf of the Executive Representative. This e-mail address will be used to send messages reminding the firm to review and update its contact information. It will also be used to provide notification of new publications or new features that have been added to the Web Site.

This new requirement will become effective January 1, 1999. An upcoming issue of Notices to Members will provide additional information on the new requirement.

#### ***Complimentary Hard Copy Distribution Of Key Publications To End January 1, 1999***

Effective January 1, 1999, the primary distribution method for *Notices to Members* and the *Regulatory & Compliance Alert* will be via the [NASD Regulation Web Site](#). Member firms that elect not to use the Web Site versions will have the option of subscribing to hard-copy versions at cost (\$15 for each publication per year for the first subscription, and the current charge of \$225 per year for each additional Notices to Members subscription and \$80 per year for each additional Regulatory & Compliance Alert subscription).

NASD Regulation's Internet Web Site currently makes the text of [Notices to Members](#) and the [Regulatory & Compliance Alert](#) continuously available for all members free of charge via the Internet to view, download, print, and circulate. The January 1, 1999, implementation coincides with the above-referenced new requirement that Executive Representatives establish an Internet electronic mail account by that date.

#### ***NASD Manual Now Available at [www.nasdr.com](http://www.nasdr.com)***

As many NASD members are already aware, the *NASD Manual* is now accessible on the [NASD Regulation Internet Web Site](#). Thus, there are now two methods to comply with the NASD Rule 8110 requirement that the *Manual* be available in each member office through: (1) Internet access, or (2) a hard-copy version of the *Manual*. If a member or branch office relies on Internet access in order to remain compliant, it must have access to the [NASD Regulation Web Site](#) at the office location. The Internet version of the *Manual* will be updated monthly to reflect the complete and updated text of NASD rules.

Since the *Manual* is now available through on-line Internet access, the NASD has discontinued the free distribution to branch offices of the annually updated paperback version of the *Manual*. However, members desiring hard copies of the *Manual* for their branch offices may purchase them at cost at \$10 each (the price is \$29.95 for non-

members) by contacting [NASD MediaSource<sup>SM</sup>](#) at (240) 386-4200.

Questions about this article may be directed to [Jay Cummings](#), Director, Internet and Investor Education, NASD Regulation, Inc., at (301) 590-6070.

## Trading & Market Making

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### ***NASD Regulation Reiterates Trade Reporting Obligations Applicable To .SLD Trades Reported To ACT After Normal Market Hours***

NASD Regulation staff has detected an increase in the failure of NASD members to designate as late (*i.e.*, ".SLD") to ACT last sale reports of transactions in Nasdaq National Market Securities, Nasdaq SmallCap Securities, and OTC Equity Securities that are not reported to ACT within 90 seconds after execution, when such transactions are **executed** during normal market hours (between 9:30 a.m. and 4:00 p.m., Eastern Time) but reported to ACT during the period between 4 p.m. and 4:39 p.m., Eastern Time. Instead of properly designating such transactions as late to ACT and including the time of execution as required by NASD rules, the staff has found that NASD members are increasingly and incorrectly designating such transactions as ".T" to ACT. The staff reiterates that the ".T" modifier should only be used to designate transactions that are **executed** outside normal market hours, and its use under the circumstances described here constitutes a violation of NASD trade reporting rules. (NOTE: The ".T" modifier is **not** available for transactions in listed securities. Nonetheless, last sale reports of transactions in listed securities that are not reported to ACT within 90 seconds after execution, when such transactions are executed and reported to ACT between 9:30 a.m. and 5:15 p.m., Eastern Time, must be designated as late (*i.e.*, ".SLD") to ACT and include the time of execution.)

The staff also reiterates that, to the extent that an NASD member elects or is required by NASD rule to include the time of execution for a transaction that it reports to ACT in **any** ACT-eligible security, the time of execution for such transaction report must be set forth in **Eastern Military Time**.

Questions regarding these matters may be directed to the Legal Section of the Market Regulation Department, NASD Regulation, at (301) 590-6410.

### ***NASD Clarifies Operation Of The Limit Order Protection Rule During Unusual Market Conditions***

The NASD (or Association) is issuing this statement to clarify the application of the Association's Limit Order Protection Rule (Conduct Rule IM-2110-2) in instances where the market for a given security is experiencing "abnormal" market conditions. Specifically, consistent with pronouncements by the SEC concerning the obligations of Market Makers to display customer limit orders during unusual market conditions, the NASD is modifying its interpretation of the Limit Order Protection Rule that was previously set forth in *Notice to Members 95-67*, to provide that, under appropriate circumstances, limit orders need not be filled within one minute if activated during unusual market conditions and if all reasonable steps are taken to execute the transaction as soon as possible following activation. In such instances, which often occur at the opening or upon the commencement of trading following

a trading halt or an initial public offering (IPO), members are required to execute customer limit orders as soon as possible under the circumstances.

The Limit Order Protection Interpretation, IM-2110-2, provides that:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or the customer of another member firm) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110[.]

In *Notice to Members 95-67*, the Association provided guidance as to the obligation of member firms that execute a transaction at a price that would satisfy a customer's limit order (i.e., at a price equal to or better than that of the customer limit order). Specifically, in Question 5, the Association stated the following:

Q5: Once a member is obligated to execute a limit order, how quickly must it execute the limit order?

A: If a member trades through a limit order that it has accepted, the Interpretation provides that it must contemporaneously execute such limit order. To meet this obligation, a member must execute the limit order as quickly as possible. Absent reasonable justification that is adequately documented by the member firm, a limit order must at least be executed within a general time parameter of one minute after it has been activated.

Subsequent to the issuance of this one-minute requirement to fill activated limit orders, the SEC adopted its Order Handling Rules in August 1996. Specifically, among other things, the SEC amended the Firm Quote Rule (SEC Rule 11Ac1-1) and adopted a new rule governing the public display of customer limit orders, the Display Rule (SEC Rule 11Ac1-4). The Display Rule requires Market Makers to display the full price and size of qualifying customer limit orders in their quotes, subject to certain enumerated exceptions. Once a customer limit order is obligated to be publicly displayed in accordance with the Display Rule, the Display Rule requires that such customer limit order be displayed "immediately," unless a specific exception to the Display Rule applies. In the release accompanying the adoption of the Order Handling Rules, the SEC gave the following guidance as to what it meant by "immediately display":

Assuming that a specialist or OTC market maker does not rely on one of the exceptions to the Display Rule, . . . such specialist or OTC market maker must display the order as soon as practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.

Subsequent to the adoption of the Order Handling Rules, the SEC's Division of Market Regulation (the Division) clarified in two letters to the NASD, dated November 22, 1996, and January 3, 1997, what the SEC meant by "30 seconds after receipt" and "normal market conditions." In the November 22, 1996 letter, the Division stated that the "30 second time period [for the display of a customer limit order] begins when the order is received by the specialist or trader that will display the order (or the firm's automated display system)." As for when market conditions are not "normal," such that OTC Market Makers would not be required to display limit orders within 30 seconds of receipt, the Division also stated in the

November 22 letter that "OTC market openings should not currently be viewed as 'normal market conditions' for purposes of the Limit Order Display Rule." In such cases, during OTC market openings, the Division stated that "limit orders held at the opening must be displayed as soon as practicable under the circumstances." In its January 3, 1997 letter to the NASD, the Division stated that "normal market conditions" do not exist for the purposes of strict compliance with the Display Rule's "30 seconds after receipt" requirement in an additional two situations: the reopening of trading after a trading halt; and the commencement of trading in an IPO. In this letter, the Division also gave guidance on how a Market Maker is to determine when market conditions have returned to "normal," such that customer limit orders are required to be publicly displayed within 30 seconds: "The Division believes that market makers must make an independent assessment, based on the trading conditions of the stock, as to when trading and quoting in the stock has returned to normal market conditions. This time frame could be one minute for some stocks and longer for others; moreover, the time frame for a stock to return to normal market conditions could vary from day to day."

In light of the Division's statements regarding the application of the Display Rule in the circumstance where there are not normal market conditions, the NASD has likewise determined to apply this same rationale to the application of the one-minute reasonableness parameter in the context of obligations under the Limit Order Protection Interpretation. Accordingly, to the extent that unusual market conditions exist for a particular Nasdaq security (*i.e.*, "not normal") and a member executes a transaction that activates a limit order during this time period, such member would not be presumptively deemed in violation of the Limit Order Protection Rule if it failed to execute the limit order within a one-minute period, provided the member executed the order as soon as possible under the circumstances. In this connection, and as is fully consistent with the SEC's interpretation of the Display Rule, "normal market conditions" potentially do not include OTC market openings for specific securities, the resumption of trading after a trading halt, and the commencement of trading after an IPO. In every case where normal market conditions do not exist, Market Makers must make an independent assessment, based on the trading conditions of the specific security, as to when trading and quoting in the stock has returned to normal market conditions. This time frame could be one minute for some stocks and longer for others; moreover, the time frame for a stock to return to normal market conditions could vary from day to day.

*Questions concerning this article may be directed to the Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294, or the Legal Section of the Market Regulation Department, NASD Regulation, Inc., at (301) 590-6410.*

## **Advertising Regulation**

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### ***Ask The Analyst***

"Ask the Analyst" provides member firms a forum to pose questions to the NASDR Advertising/Investment Companies Regulation Department (the Department) on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication. However, we will respond to all questions we receive either here or by contacting you directly. If you have any questions or comments, please contact the Department at (202) 728-8330.

### ***Electronic Communications & Broker/Dealer Name***

*Q. I recently used an on-line business directory/search tool and noticed many listings under headings such as "mutual funds" or "securities" that identified only the names of individual registered representatives. Are these listings subject to the same regulatory standards as other advertisements?*

A. Yes. If a registered representative publicizes his or her securities business through an on-line business directory or search tool, the NASD Conduct Rules governing advertisements apply. For example, if a representative causes her name, address, and telephone number to be featured under the topic heading "stocks" in an on-line directory, the listing meets the definition of advertisement set forth in NASD Conduct Rule 2210(a)(1). A registered principal of the NASD member firm must approve the placement and content of the listing prior to use and in writing. The listing must clearly and prominently disclose the NASD member firm name (see Rule 2210(d)(2)(A) and (f)(2)(A)). In addition, if the listing names a non-member entity, such as the representative's insurance agency, then the listing must clearly indicate that the NASD member firm offers the securities products or services referenced (see Rule 2210(f)(2)(C)). Finally, the listing must present telephone number and address information for a registered branch office, OSJ or main office of the NASD member firm in accordance with Rule 3010(g)(2).

### ***Electronic Communications & Approval And Recordkeeping***

*Q. NASD Conduct Rule 2210(b)(1) requires that a registered principal approve each advertisement or item of sales literature prior to use or filing with the Department by signature or initial. May a registered principal approve a group electronic mail message, or other electronic communication, via a secured, electronic signature system such as the one described in the "Staff interpretation on the use of electronic signatures under NASD Rules 3110(c)(1) and 3010(d)" published on the NASD Regulation Web Site (at [www.nasdr.com](http://www.nasdr.com))?*

A. Yes. A firm may use a secured, electronic signature system as described in the interpretive letter for registered principal approval of electronic communications as required by Rule 2210(b)(1). The letter describes an electronic workflow process using optical disc technology to permit authorized principals to review and approve new account forms. The letter requires the implementation of certain safeguards including access of records by NASD staff, the ability to download and print documents, security precautions, written supervisory procedures, and periodic review of the system for compliance with NASD and SEC rules. Please see the interpretive letter for details.

### ***Internal-Use-/BD-Use-Only Material***

*Q. Is there a regulatory difference between delivering "internal use only" communications to registered investment advisers versus personnel registered with an NASD member firm?*

A. The only regulatory difference pertains to the filing requirements set forth in NASD Conduct Rule 2210(c). This Rule requires members to submit certain advertisements and sales literature to the Department within specified time frames. Communications sent to individuals who are registered as investment advisers with the SEC, but who are not registered with NASD member firms, are subject to these filings requirements. However, the Rule exempts from filing communications sent to branch offices, or other internal material that is not distributed to the public. The content standards set forth in Rule 2210 apply to both types of communications.

## **General**

*Q. I am a registered investment adviser and also a registered representative of an NASD member firm. I have a seminar presentation that discusses basic financial information like how the markets work, factors to consider in allocating assets, the risks of investing and descriptions of securities products, like mutual funds and tax credit limited partnerships. What are my obligations, under NASD rules, in terms of the seminar itself, or any advertising I might do for the seminar?*

A. If you will participate in the execution of transactions in specific securities offered at the seminar by investors who attended the seminar, then the seminar and advertisements for it are deemed communications on behalf of your NASD member firm's securities business. Consequently, both the seminar presentation and the advertisements must comply with the standards for communications with the public set forth in Rule 2210.

The content of the advertisements and your remarks at the seminar (even if they are made without the aid of a script, outline, or notes), must adhere to the general and specific standards for communications included in the Rule. For example, the content must be accurate and must provide sufficient information for the attendees to evaluate the facts with respect to the securities products or services discussed. You must disclose that securities transactions will be made through the NASD member firm.

If you advertise for the seminar or use a script, outline, slides or handouts, you must provide these materials to the NASD member firm for written principal approval prior to their use. Because the seminar concerns investment company securities (*i.e.*, mutual funds) and direct participation programs (*i.e.*, tax credit limited partnerships), your NASD member firm will have to file those sections of the seminar materials with the Department within 10 days of first use.

## **Limited Review Of Communications With The Public**

In 1997 the Advertising/Investment Companies Regulation Department (the Department) adopted a review procedure that focused on advertisements and sales literature that raised the greatest likelihood of investor protection concerns. The Department continues to review each and every communication filed by NASD member firms for compliance with applicable standards. The Department scrutinizes items that raise investor protection concerns on a line-by-line basis and provides detailed comments to member firms documenting the outcome of these reviews. Under the new procedure, the Department reviews on a more limited basis certain investment company communications that the rules allow members to file after they have been used with the public. The Department provides written responses to member firms documenting these limited reviews.

Members may use most investment company advertisements and sales literature with the public and then file them with the Department within 10 days of first use pursuant to NASD Conduct Rule 2210(c)(1). Investment company communications include material on behalf of mutual funds, variable contracts, unit investment trusts, and closed-end funds. Like all other communications with the public, member firms bear responsibility for ensuring that investment company advertisements and sales literature comply with applicable standards. A registered principal must sign or initial all communications before they are used with the public and before they are filed with the Department. The rules require documentation of this sign-off in all filings (see "Advertising Update," March 1998 NASD [NASD Regulatory &](#)

*Compliance Alert*). The Department's experience shows that investment company communications filed after use with the public have a high rate of compliance with the applicable standards. Accordingly, the Department determined that a more limited review approach may be appropriate for selected investment company communications filed after use with the public.

The Department reviews every investment company communication filed after use with the public against a set of internal criteria that focus on areas of regulatory concern. The criteria address areas such as concerns raised by the SEC staff, new rules, or communications about new products. Should an advertisement or item of sales literature meet one of the criteria, the staff will review that communication on the same line-by-line basis as it reviews other filings and provide a comment letter to the NASD member firm reflecting the outcome of such review. Many communications that receive this type of line-by-line review are found to be fully compliant. If the communication does not meet one of the Department's internal criteria, the staff will send the member a comment letter stating that the material has been the subject of a limited review and that the staff had no comments at the time of the review.

Each limited review letter explains that the advertisements or sales literature may be subject to further review at a later date. The Department may provide further comments should circumstances change. For example, if additional information comes to light about a communication, the manner in which it is used, or about the securities product or service advertised in the communication, the staff may send the member an additional comment letter on the advertisement or sales literature. The additional review letter may materially alter the substance of the prior review. All such additional review letters contain an explanation as to why further comments became necessary.

The new review procedure has enabled the Department to focus resources on and prioritize areas of highest regulatory concern with a minimal impact on the timing of members' use of compliant materials. Any questions regarding the review of communications with the public may be directed to the Department at (202) 728-8330.

## **Regulatory Short Takes**

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### ***Continuing Commissions Policy***

Generally, under NASD rules, a person associated with a member firm must be registered as a registered representative to receive continuing commissions for the sale of securities. However, under NASD Rule IM-2420-2, the Continuing Commissions Policy (Policy), a person who is no longer registered with a member firm may continue to receive commissions without being deemed to have violated NASD rules, subject to certain requirements. Continuing commissions include ongoing compensation generated by an account after it is initially established with the firm.

Continuing commissions must be paid according to a bona fide contract entered into by the recipient and member at the time the recipient was still registered as a representative with that member. Contracts structured after the recipient ceases to be registered are not covered by the Policy. In particular, the Policy recognizes the validity of contracts that vest in the associated person the right to receive continuing compensation upon retirement and designate such payments to the associated person's surviving spouse or other beneficiary.

The Policy also states that commission payment arrangements may not under any

circumstances permit the solicitation of new business or the opening of new accounts by persons who are no longer registered. NASD Regulation has interpreted the Policy broadly to mean that a person entitled to the payment of continuing commissions shall have no involvement or connection with the account(s) generating the commissions or the broker/dealer managing and controlling the account.

The Policy specifically prohibits any arrangement for the payment of continuing commissions to a person who is not eligible for membership in the NASD or association with a member because of any disqualification, as set forth in Article III of the By-Laws, such as revocation, expulsion, or suspension.

It has been brought to the attention of NASD Regulation that some associated persons, after they leave the securities business and are no longer registered as representatives with a member firm, attempt to "sell their book" of accounts to other registered representatives either for a flat fee or for an ongoing percentage of commissions generated by the accounts.

Under the Policy, a person who ceases to be registered would not be permitted to receive any commissions generated by the accounts if a *bona fide* contract had not been entered into by the recipient and member for the arrangement at the time he or she was still registered as a representative with that member. Absent the contract, any receipt by an unregistered person of commissions on an ongoing basis, whether pursuant to the sale of one's "book" or otherwise, would require the recipient to become registered as a representative under NASD rules. However, the Policy would not prevent the sale of the "book" by the unregistered person for a one-time, flat fee to another registered person. Finally, registered representatives are cautioned that they are subject to the firms' policies and procedures regarding the establishment or sale of their book of business, or the application of the Policy to the book.

*Questions about this article may be directed to [Robert J. Smith](#), Assistant General Counsel, NASD Regulation, Inc., at (202) 728-8176.*

## **Commemorative Certificates**

It has come to the attention of NASD Regulation that private vendors may be offering commemorative certificates to persons who pass NASD-offered qualification examinations. NASD Regulation is concerned that these certificates could be misused by registered persons or may be misinterpreted by customers and cause general confusion about what the certificates may represent. Passing a qualification exam is just one step in the registration process; customers may erroneously assume that it is the only step. Furthermore, registration status may change; a registration may be suspended, canceled, or voluntarily terminated, but the presence of a certificate commemorating the passage of a qualification examination may erroneously suggest otherwise. For these reasons, the staff believes that display of such certificates at any business location may violate NASD Rule 2110.

*Questions about this article may be directed to the Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.*

## ***Suitability Issues***

When considering "suitability," one often thinks in terms of a customer's financial status, investment background, and investment objectives. It is equally important to consider the factors relevant to the security and/or product being recommended. Before making any recommendation, the firm should perform adequate due diligence to ascertain essential facts such as financial status of issuer, degree of risk, maturity date, and withdrawal penalties. It is important that suitability standards be reviewed with each and every trade.

Although there is not a rule requiring that customer new account information be updated in a defined time frame, it is in the best interest of the firm and the customer to regularly verify background information, especially for those customers who infrequently execute transactions. It is also recommended that a representative obtain current information whenever a customer's investing ventures into a new product area or where product risk or asset allocation appear inconsistent with stated investment objectives.

It is not enough that the representative or broker/dealer is personally aware of a customer's financial status; it should also be in writing. Either the new account form should be updated directly or notes to the customer's file reflecting any changes to the required new account information should be made. In the current volatile trading environment, a first line of defense in avoiding suitability allegations is to have current, documented customer account information with a clearly stated investment objective.

*Members are encouraged to access the [NASDR Web Site](#) to research suitability issues. Questions may be directed to the appropriate local [NASD Regulation District Office](#), or [Daniel M. Sibears](#), Member Regulation, NASD Regulation, Inc. at (202) 228-6911.*

## ***SEC Rule 10b-10 Update***

On page 30 of the September 1997 [Regulatory & Compliance Alert \(RCA\)](#) (RCA), the NASD published an SEC interpretation under the heading *Yield-to-Maturity Calculation on Treasury Bills, Bonds, and Notes*. The interpretation pertained to SEC Rule 10b-10 regarding Confirmation of Transactions.

The specific information from that issue of the *RCA* stated the following:

*A question recently arose concerning whether Rule 10b-10 requires a broker/dealer to factor the markup/markdown or commission charged into the yield-to-maturity displayed on the confirmation.*

*Subsection (a)(5), which addresses debt securities transactions effected exclusively on the basis of a dollar price, requires that the yield-to-maturity be displayed on the confirmation unless there is an exception provided in subsection (a)(5)(ii). Treasury bills, bonds, and notes do not qualify for an exception.*

*Subsection (a)(6), which addresses debt securities transactions effected on the basis of yield, requires that the current yield, yield-to-maturity, or yield-to-call be displayed on the confirmation unless there is an exception provided in subsection (a)(6)(iii). Treasury bills, bonds, and notes do not*

*qualify for an exception.*

*In addition, subsection (a)(6) requires that if the transaction is effected on a basis other than yield-to-maturity and the yield-to-maturity is lower than the represented yield, then both the yield-to-maturity and the represented yield must be disclosed.*

*Therefore, members are required to factor compensation (i.e., markup, markdown, or commission) on Treasury bills, bonds, and notes into the yield-to-maturity calculation for disclosure on the confirmation.*

*Members should note that this does not affect the requirement that the commission charged on an agency transaction on Treasury bills, notes, and bonds must be disclosed separately on the confirmation. Conversely, the markup/markdown charged on these same securities does not have to be disclosed separately on the confirmation.*

On August 24, 1998, the SEC's Division of Market Regulation (the Division) wrote to The Bond Market Association (BMA) stating that the Division will not recommend enforcement action against any registered broker/dealer solely because that broker/dealer does not include commissions or other remuneration received from a customer in connection with a debt securities transaction effected on an agency basis, in calculating the yield-to-maturity disclosed on a customer's transaction confirmation. This relief is available through February 24, 1999 only.

*Broker/dealers may obtain a copy of the Division's letter via the BMA Web Site at [www.bondmarkets.com](http://www.bondmarkets.com) or by calling Maria Suppa of the BMA at (212) 440-9438.*

## **Municipal Securities**

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### ***Municipal Securities Update***

#### ***Disclosure To Purchasers Of New Issue Securities***

Communicating information about new issue municipal securities is critical to both the integrity of the new issue process and investor protection. Some municipal securities dealers believe that new issue investor disclosure responsibilities for municipal securities apply only to firms engaged in the underwriting process. This is not correct.

*Who Must Disclose?*—The Municipal Securities Rulemaking Board's (MSRB's) new issue municipal securities disclosure requirement applies to all firms selling new issues, including:

- syndicate managers;
- syndicate members;
- selling group members; and

- firms selling the municipal securities during the underwriting period.

*What To Disclose?*—If a firm is selling a customer a new issue municipal security, MSRB Rule G-32 requires, in part, that the firm deliver to the customer by no later than settlement date:

- a copy of the final Official Statement prepared by the municipal issuer;
- if an Official Statement is not being prepared, a preliminary Official Statement, if any, with a notice that no final Official Statement is being prepared; or
- if the new issue qualifies for an exemption under Rule 15c2-12(d)(1)(iii), a preliminary Official Statement, if any, and a written notice that a final Official Statement will be sent within one business day following receipt by the dealer.

Additionally, if the municipal security offering is a negotiated<sup>1</sup> new issue, then the following information must be provided in writing to the customer at or before final settlement:

- the underwriting spread;
- the amount of any fee received by the firm as agent for the issuer; and
- the initial offering price for each maturity being made available by the underwriting.

*What Records To Maintain?*—MSRB Rule G-8(a)(xiii) requires firms to maintain a record of the delivery of the new issue disclosure (e.g., the final Official Statement, the preliminary Official Statement). In this regard, there is no requirement that the firm send the customer the new issue municipal security disclosure documents by registered or certified mail. Some firms establish a file containing a copy of the customer's new issue municipal purchase confirmation and/or a mailing label to demonstrate compliance with Rule G-8. However, NASD Regulation does not view this approach as adequately demonstrating compliance with MSRB Rule G-8. Instead, an adequate record of the delivery of new issue municipal securities disclosure information should, at a minimum, contain the following:

- customer name;
- security description;
- settlement date(s);
- type of disclosure sent (preliminary or final Official Statement);
- date the required disclosure was sent; and
- name of person(s) sending the disclosures.

At times, a firm assigns the new issue municipal security disclosure function to a third-party vendor. As a result, the member does not maintain "a record of delivery" of the new issue disclosure. Nevertheless, from a regulatory perspective, the firm remains fully responsible for disclosure. When firms have assigned the new issue disclosure function to a third party, NASD Regulation expects that the compliance review process will include, at a minimum,

periodic tests to assure that the new issue disclosures are being made at or before settlement.

*Policies And Procedures*—The firm's written policies and procedures, and internal compliance review procedures should clearly address both new issue municipal securities customer disclosure and recordkeeping (see MSRB Rule G-27).

### ***Institutional Suitability***

NASD members conducting a municipal securities business have an obligation to assure that their recommended transactions are suitable (see NASD Rule 2310-3). This principle applies when institutional investors are involved in the municipal securities transaction. MSRB Rule G-19 is clear about a firm's responsibility: 1) to obtain customer information; and 2) to have reasonable grounds to believe that a transaction recommendation is suitable based both on information available from the issuer of the security, and on the facts disclosed by the customer or otherwise known about the customer.

*Who Is An Institutional Customer?*—MSRB Rule G-8 defines an institutional customer as:

- a bank, savings and loan association, insurance company, or registered investment company;
- registered investment adviser; or
- any entity with total assets of at least \$50,000,000.

*What Records Are Required Regarding The Institutional Customer?*—MSRB Rule G-8 mandates, in part, suitability information recordkeeping. When a firm initially establishes an institutional account, many firms obtain detailed information about: management expertise, account authorizations, account objectives, investment policies and/or account restrictions, risk tolerance, and maturity parameters. This type of information is useful for conducting a suitability analysis for institutional customer municipal securities transactions. However, the information is useful only when it is up-to-date; the information must be kept current.

As a general guide, institutional account information should be reviewed and updated at least annually. NASD Regulation may conclude that a member has no basis for demonstrating that municipal securities transaction(s) for that institutional customer is suitable if account information is not current. In short, dated customer information may be unreliable and of limited, if any, use in making customer suitability determinations. Accordingly, firms that do not periodically update customer information in connection with recommendations run the risk of violating MSRB Rule G-19, as well as MSRB Rule G-27 relating to supervisory policies and procedures.

*What Information Is Required About The Issuer?*—SEC Rule 15c2-12(c) requires procedures that provide reasonable assurance that the firm will receive notice of certain material events occurring within, or affecting a municipal issuer. If a firm cannot document that it has made inquiry of a Nationally Recognized Municipal Securities Information Repository (NRMSIR) or the MSRB as to material events regarding the specific municipal issues that are the securities purchased or sold in the transactions(s) under review, NASD Regulation may conclude that the firm has no basis for demonstrating that the municipal securities transaction(s) is suitable.

### ***Obligation To Disclose Material Facts***

It is also important to note that MSRB Rule G-17 requires that firms disclose all material facts to a customer at or prior to the time of trade. Firms would not be able to fulfill this obligation unless they comply with the disclosure requirements found in SEC Rule 15c2-12(c). Accordingly written, internal compliance review practices should adequately address NRMSIR or MSRB inquiry practices.

### ***Supervisory Obligation To Review Customer Accounts***

MSRB Rule G-27 establishes the foundation for supervising a municipal securities dealer. A key component of supervision is the establishment of written supervisory procedures, and one of the primary processes of supervision is the regular and frequent review of customer accounts. Some firms believe that the daily principal approval of each municipal transaction constitutes a review of customer accounts. It does not.

*What Is A Municipal Account Review?*—The review of customer accounts should be designed both to ensure that the municipal transactions are conducted in accordance with all applicable laws, and to detect and prevent irregularities and abuses. In contrast to review of customer transactions, this review is designed to detect patterns of transactions which occur over time. There are not specific definitions about either what constitutes a "regular and frequent" review, or the scope of the review. For practical purposes, both the frequency and scope of the supervisory review are determined by: the number of municipal securities transactions in the customer account; the profitability of the account; the type of municipal products being bought or sold; the experience of the municipal professional servicing the account; and similar decision criteria. In any event, reviews should be periodically based on, among other things, the type of securities or transaction volume. At a minimum, the principal's review should include:

- securities pricing;
- markups and markdowns;
- investors' objectives and resulting suitability;
- volume of activity in the account;
- complaints and/or patterns of canceled transactions.

One of the initial steps a firm must take to fulfill its supervisory responsibilities is the adoption of written procedures that describe how the firm will review accounts. In the absence of implemented, written procedures and practices for reviewing municipal securities customer accounts, NASD Regulation may question the adequacy of firm supervision. And, while there is no specific requirement that a firm maintain evidence of the reviews, in the absence of documentation, such as a principal signature or initial and a date, NASD Regulation will question whether the review was conducted.

*Questions about municipal securities may be directed to [Malcolm P. Northam](#) or [Judy Foster](#), Regulation Policy, Member Regulation, NASD Regulation, Inc., at (202) 728-8221.*

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<sup>1</sup> A negotiated new issue is a sale of a new issue of municipal securities by an issuer through an exclusive agreement with an underwriter or underwriting syndicate selected by the issuer.

## Compliance

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### *Compliance Questions & Answers*

The Member Regulation Department frequently receives inquiries from members. To keep members informed on matters of common interest, Member Regulation provides this question-and-answer feature through the *Regulatory & Compliance Alert*.

*Q. Will NASD Regulation approve a subordinated loan that includes a provision that the Scheduled Maturity Date will be extended automatically unless the lender notifies the borrower broker/dealer and the NASD in writing that it will not be extended?*

A. No. NASD Regulation will not approve a subordinated loan that provides for automatic amendments to the Scheduled Maturity Date. An extension of the Scheduled Maturity Date is an amendment to the subordinated loan, and NASD Regulation's policy is to require amendments to be submitted to the District Office for review and approval.

*Q. Should the last sale, bid, or ask price be utilized when pricing Nasdaq-listed or OTC Bulletin Board<sup>®</sup> (OTCBB) equity securities?*

A. Effective July 16, 1993, the SEC approved a NASD rule change to implement real-time trade reporting for over-the-counter transactions in Bulletin Board securities. All securities subject to real-time trade reporting, including Nasdaq and OTCBB securities, should be priced for inventory valuation purposes at the last reported sale price. If the last reported sale price is not current, the conservative approach would be to review the current bid or ask price to determine the most accurate method of pricing the security.

When pricing Nasdaq-listed and OTCBB securities the firm should always consider whether a specific position would require an undue concentration charge.

*Q. Can member firms designate a "district executive representative" for each District in which the member maintains a registered branch office?*

A. No. The requirement in Rule IM-4000-4 that members designate a "district executive representative" for each District in which the member maintains a registered branch office has been superseded by changes to the NASD By-Laws and election procedures that became effective in 1997. The only person eligible to vote on behalf of a member is the Executive Representative. **Note: On July 23, 1998, the SEC approved the technical change to Rule IM-4000-4 that deletes all references to a "district executive representative."**

*Questions about this information may be directed to Member Regulation, NASD Regulation, Inc., at (202) 728-8221.*

## Continuing Education

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### ***Testing And Continuing Education Examination Update***

In 1995 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 now provides delivery at 240 locations in the continental U.S., Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Following is information about where to call for assistance regarding testing information.

NASD Regulation's Field Support Services (FSS) Call Center can assist in the following areas.

- Delivery Support
- Exam Services
- Special Accommodations Appointment Scheduling Pursuant To The Americans With Disabilities Act (ADA)
- Group Appointment Scheduling

Members and/or candidates are provided with the following options when phoning the FSS Call Center at (800) 999-6647.

#### ***Option 1 - Delivery Support***

The Delivery Support Team is responsible for providing information and/or resolving problems in the following areas.

- Registration Validation Problems
- Exam Results (for exams taken via computer)
- Late Cancels/No Shows
- Exam Delivery Issues
- Sylvan Center Issues

#### ***Option 2 - Exam Services***

The Exam Services Team is responsible for providing information and/or resolving problems in the following areas.

- Scheduling Foreign Exams
- Paper/Pencil Exam Distribution and Exam Results

- Series 8, 9 and 10 Exams
- Non-Member Exam Scheduling

### ***Option 3 - Special Accommodations Appointment, Scheduling Pursuant To The Americans With Disabilities Act (ADA)***

The Special Accommodations Team is responsible for providing information pertaining to scheduling appointments for candidates needing special accommodation due to a physical or learning disability, such as:

- providing information on the documentation requirements for approval of special accommodations testing and/or continuing education sessions; or
- scheduling appointments for candidates with special accommodations needs.

### ***Option 4 - Group Appointment Scheduling***

The Group Appointment Team is responsible for scheduling group and multiple appointments. NOTE: A group/multiple appointment is defined as a single call to schedule five (5) or more candidates for tests and/or CE sessions.

### ***Continuing Education (CE) Inquiries***

Inquiries pertaining to the Continuing Education Program, content or eligibility requirements should call [Heather Bevans](#) at (301) 590-6011.

### ***Exam Eligibility Inquiries***

Firms needing assistance with registration problems and/or eligibility questions should call (301) 590-6500.

## **Policies & Procedures**

### ***Late Cancel Policy***

Candidates need to be aware that if a previously scheduled appointment needs to be changed (re-scheduled), they **must** do so by calling either the local Sylvan Center or Sylvan's Candidate Services Call Center at (800) 578-NASD.

Candidates **must** call to re-schedule **at least two business days prior to 12:00 noon**, in order to re-schedule the appointment without incurring a Late Cancellation Fee. A Late Cancellation Fee can be reversed **only** under two conditions:

1. Emergency Center Closure (equipment problems, power outage, etc.)
2. Natural Disasters (flood, fire, earthquake, tornado, snow storm, etc.)

Late Cancellation Fees for any other reason **will not** be reversed.

Candidates that need a Late Cancellation Fee reversed under the conditions above must

phone the NASDR FSS Call Center at (800) 999-6647, Option 1, to request the reversal.

### **Appointment Scheduling—Candidate Information**

When calling to schedule an appointment at a local Sylvan Center or the Sylvan Candidate Services Call Center (800-578-NASD, Option 1), it is highly recommended that at least two candidate phone numbers (daytime and evening) be provided at the time of scheduling. It is crucial that Sylvan Call Center representatives be able to reach the candidates to re-schedule an appointment in the event of inclement weather, technical problems at a center, or a candidate enrollment problem.

### **English As A Second Language (ESL)**

Candidates that need additional session time because English is not the candidate's first language can schedule an appointment at the local Sylvan Center or the Sylvan Call Center.

The request for additional time **must** be made when scheduling the appointment, so that the additional time can be added to the appointment session. In order to be granted the additional time, the candidate must present on-site at the session, a recently-dated authorization letter from the candidate's firm stating that the additional time is needed due to ESL.

- The authorization letter **must** be printed on company letterhead and contain the **original** signature of the candidate's supervisor or principal of the firm.
- The letter **must** contain the candidate's name, test title, and/or exam series number, and the appointment date.
- Photocopies of a previously written letter will be accepted.

### **Telephony—Sylvan Call Center's Automated Phone System**

Telephony, Sylvan's automated phone system, allows candidates to confirm, re-schedule, or cancel an appointment without the intervention of a Customer Service Representative (CSR). The telephony system also allows candidates to obtain directions to the local test center.

Candidates who want to use the telephony system must have the appointment tracking (confirmation) number provided by the Sylvan CSR when the original appointment was made.

To use the telephony system, call Sylvan's Candidate Service Call Center at (800) 578-NASD, Option 2. This service is available Monday through Saturday from 8 a.m. to 12 Midnight, Eastern Time, and on holidays.

*Questions about this information may be directed to [Linda M. Christensen](#), Account Executive, Member Regulation, NASD Regulation, Inc., at (610) 627-0377.*

## ***Certification Testing & Continuing Education Delivery Location List***

**Current as of September 1998**

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[AL](#) | [AK](#) | [AR](#) | [AZ](#) | [CA](#) | [Canada](#) | [CO](#) | [CT](#) | [DC](#) | [DE](#) | [FL](#) | [GA](#) | [HI](#) | [IA](#) | [ID](#) | [IL](#) | [IN](#) | [KS](#) | [KY](#)  
| [LA](#) | [MA](#) | [MD](#) | [ME](#) | [MI](#) | [MN](#) | [MO](#) | [MS](#) | [MT](#) | [NC](#) | [ND](#) | [NE](#) | [NH](#) | [NJ](#) | [NM](#) | [NV](#) | [NY](#) | [OH](#) |  
[OK](#) | [OR](#) | [PA](#) | [PR](#) | [RI](#) | [SC](#) | [SD](#) | [TN](#) | [TX](#) | [UT](#) | [VA](#) | [Virgin Islands](#) | [VT](#) | [WA](#) | [WI](#) | [WV](#) |  
[WY](#)

### **Alabama**

Birmingham	205-871-7444
Decatur	205-350-8324
Dothan	334-677-6334
Mobile	334-344-6284
Montgomery	334-262-0043

### **Alaska**

Anchorage	907-563-6601
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### **Arizona**

Chandler	602-963-6260
Phoenix (N. 35 <sup>th</sup> Ave.)	602-548-8220
Tucson	520-531-0431

### **Arkansas**

Fort Smith	501-484-0702
Little Rock	501-663-8280

### **California**

Anaheim	714-637-7323
Atascadero	805-462-8308
Brea	714-255-1155
Culver City (5601 W. Slauson)	310-337-6696

(5601 W.Slausen)	
Culver City (5731 W.Slausen)	310-337-6696
Diamond Bar	909-861-1146
Fremont	510-745-8193
Gardena	310-329-1844
Glendale	818-545-7383
Irvine	714-552-3487
LaJolla	619-454-4384
Piedmont	510-428-4123
Rancho Cucamonga	909-944-9763
Redlands	909-792-9669
Riverside	909-353-8600
Sacramento (Fair Oaks)	916-961-7323
San Diego	619-481-3640
San Francisco (Market St.)	415-882-1212
San Francisco (W. Portal St.)	415-682-2220
San Jose	408-257-7699
Santa Rosa	707-528-6000
Walnut Creek	510-934-3000
Westlake/Ventura	805-495-6367

**Canada**

Calgary	403-777-1365
Halifax	902-422-7323
Montreal	514-876-8818

Whitby 905-404-1818

Windsor 519-974-8747

Winnipeg 204-988-5050

**Colorado**

Boulder 303-449-1700

Colorado Springs 719-593-1272

Denver 303-692-8745

Littleton 303-972-7276

Pueblo 719-545-0838

**Connecticut**

Glastonbury 860-659-0400

Hamden 203-287-9677

Norwalk 203-845-9655

**Delaware**

Dover 302-741-0412

Wilmington 302-998-3353

**District of Columbia**

Washington DC 202-955-5887

**Florida**

Davie 954-423-0782

Ft. Myers 941-275-8236

Gainesville 352-371-6891

Jacksonville 904-739-3000

Maitland/Orlando 407-875-8118

Miami 305-825-2708

Sarasota	941-923-9399
Tallahassee	904-386-8707
Tampa	813-989-9988
Winter Park	407-671-2332

### **Georgia**

Atlanta	404-255-9957
Augusta	706-868-1888
Jonesboro	770-478-2336
Macon	912-474-5909
Savannah	912-355-2267
Smyrna	770-801-0215
Valdosta	912-245-9111

### **Hawaii**

Honolulu County	808-263-6656
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### **Idaho**

Boise	208-322-3555
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### **Illinois**

Bloomington	309-452-4788
Carbondale	618-529-4664
Carpentersville	847-426-6606
Chicago (LaSalle St.)	312-609-2525
Chicago (S. Wabash)	312-663-5632
Homewood	708-798-0238
Northbrook	847-559-2461
Peoria	309-682-0825

Springfield 217-546-0381

Westchester 708-947-2800

**Indiana**

Evansville 812-479-6855

Ft. Wayne 219-436-2710

Indianapolis  
(E. 86<sup>th</sup> St.) 317-257-7546

Indianapolis  
(Girl's School Rd) 317-247-7664

Lafayette 765-447-5996

Merrillville 219-736-1113

Mishawaka 219-254-1055

**Iowa**

Bettendorf 319-359-1001

Cedar Rapids 319-393-0000

Des Moines 515-223-6650

**Kansas**

Topeka 913-272-6284

Wichita 316-681-2880

**Kentucky**

Lexington 606-269-3933

Louisville 502-423-0340

**Louisiana**

Baton Rouge 504-293-8489

Bossier City 318-742-7349

New Orleans 504-245-2600

**Maine**

Portland 207-775-5812

**Maryland**

Bethesda 301-718-9893

Columbia 410-740-8137

Lanham 301-552-3400

Pikesville 410-486-9045

Salisbury 410-341-4100

**Massachusetts**

Boston 617-345-8980

E. Longmeadow 413-525-4901

Waltham 781-890-0466

**Michigan**

Ann Arbor 313-665-8916

Grand Rapids 616-957-0368

Lansing 517-372-7410

Livonia 313-462-2750

Portage 616-321-8351

Troy 248-643-7323

Utica 810-739-0270

**Minnesota**

Bloomington 612-831-7461

Duluth 218-723-1494

Rochester 507-292-9270

St. Cloud 320-529-4830

Woodbury 612-702-6791

**Mississippi**

Jackson (601) 366-6400

**Missouri**

Ballwin 314-394-7742

Creve Coeur 314-997-1555

Gladstone 816-468-7901

Springfield 417-882-0740

St. Joseph 819-671-9900

**Montana**

Billings 406-259-1659

Helena 406-443-9205

**Nebraska**

Columbus 402-562-6027

Omaha 402-334-9449

**Nevada**

Las Vegas 702-876-4090

Reno 702-829-2700

**New Hampshire**

Concord 603-228-2911

**New Jersey**

East Brunswick 908-390-4040

Fairlawn 201-475-1670

Hamilton Township 609-631-9794

Union 908-964-2862

**New Mexico**

Albuquerque 505-296-0609

**New York**

Albany 518-869-6119

Amherst/Buffalo 716-565-0570

Brooklyn Heights 781-222-1277

East Syracuse 315-433-9038

Garden City 516-746-7323

Ithaca 607-277-0507

Melville 516-845-9063

NYC  
Manhattan Area 212-760-1137

NYC  
Midtown Area 212-809-5509

NYC  
Wall Street Area 212-809-5509

Rego Park 718-997-6356

Rochester 716-385-4810

Staten Island 718-668-1940

Vestal 607-798-1715

Wappingers Falls 914-297-8666

White Plains 914-948-4116

**North Carolina**

Asheville 828-253-4224

Charlotte 704-364-7758

Gastonia 704-853-2038

Greensboro 336-288-1311

Greenville 919-756-0342

Raleigh 919-846-1933

**North Dakota**

Bismarck 701-224-1171

Fargo 701-293-1234

**Ohio**

Akron 330-784-5862

Cincinnati 513-671-7030

Columbus  
(Henderson Rd.) 614-451-4652

Columbus  
(Chatham Lane) 614-457-0105

Dayton 937-435-8417

Lima 419-331-7323

Mentor 216-255-0055

Niles 330-652-1886

Reynoldsburg 614-864-4090

Solon 216-349-4153

Strongsville 216-238-0530

Toledo 419-539-7211

**Oklahoma**

Oklahoma City 405-947-6248

Tulsa 918-250-7323

**Oregon**

Eugene 541-485-4589

Milwaukie 503-659-9575

Portland 503-254-2009

Salem 503-362-6474

**Pennsylvania**

Allentown	610-791-5320
Clark Summit	717-586-4362
Erie	814-864-6100
Harrisburg	717-652-0646
Lancaster	717-391-6519
North Wales	215-412-7822
Philadelphia	215-238-8380
Pittsburgh (North Hills)	412-367-4620
Pittsburgh (Braddock Ave.)	412-247-4463
Plymouth Meeting	610-941-6284
York	717-755-7471

**Puerto Rico**

Hato Rey	787-753-6394
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**Rhode Island**

Cranston	901-942-8552
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**South Carolina**

Charleston	803-766-5599
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Greenville	864-676-1506
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Irmo	803-749-0356
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**South Dakota**

Sioux Falls	605-338-1446
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**Tennessee**

Chattanooga	423-894-6249
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Clarksville	931-647-2003
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Franklin	615-790-5018
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Knoxville 423-690-0671

Madison (Nashville) 615-860-0376

Memphis 901-767-5006

**Texas**

Abilene 915-698-7858

Amarillo 806-359-1037

Arlington 817-572-6690

Austin 512-441-7020

Beaumont 409-899-9798

Corpus Cristi 512-993-3793

Dallas 972-385-1181

El Paso 915-587-7323

Houston  
(Richmond Ave) 713-952-5005

Houston  
(Saturn Ln) 281-488-6144

Lubbock 806-785-4400

Mesquite 972-686-3310

Midland 915-520-9418

San Antonio 210-494-7263

Sugar Land 281-491-9211

Waco 254-772-2467

**Utah**

Orem 801-226-5544

Salt Lake City 801-944-1222

**Vermont**

Williston 802-872-0845

**Virgin Islands**

St. Croix 809-773-5751

St. Thomas 809-777-8292

**Virginia**

Arlington/DC Area 703-807-5813

Dunn-Loring 703-204-9100

Lynchburg 804-832-0778

Mechanicsville 804-730-5844

Newport News 757-873-0208

Richmond 804-750-2823

Roanoke 540-344-3688

**Washington**

Lynwood 425-774-3922

Puyallup 253-848-0771

Spokane 509-467-8715

**West Virginia**

Morgantown 304-292-1097

South Charleston 304-744-4144

**Wisconsin**

Brookfield 414-796-0836

Fox Point 414-540-2223

Racine 414-554-9009

**Wyoming**

Casper 307-235-0070

## NASD Disciplinary Actions

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### *NASD Disciplinary Actions*

*In July, August, and September 1998, 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

#### **July Actions**

**Gregory Paul Maggipinto (Registered Representative, San Jose, California)** was censured, fined \$25,000, 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 sanctions were based on findings that Maggipinto effected securities transactions in the account of a public customer without the prior knowledge or consent of the customer.

Maggipinto has appealed this action to the National Adjudicatory Council (NAC) and the sanctions are not in effect pending consideration of the appeal.

**Alfred Salvatore Palagonia (Registered Representative, Quogue, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palagonia consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

#### **August Actions**

**Reynold Bradford Kern (Registered Representative, Scottsdale, Arizona)** was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Kern participated in private securities transactions without providing prior written notification to his member firm.

#### **September Actions**

**Emmanuel Alexander Lagpacan (Registered Representative, Lafayette, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$350,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lagpacan consented to the described sanctions and to the entry of findings that he engaged in fraudulent acts, practices, or courses of business by which he solicited public customers to invest funds totaling \$254,310.79 in securities offered in a firm he held out to be his own advisory business. According to the findings, while representing to the customers that they were investing in mutual funds, annuities, government securities, and other low risk securities, Lagpacan actually used their funds to purchase real estate in

the name of a corporation he controlled and to pay the corporation's expenses. The findings also stated that Lagpacan sold for \$40,000 to a public customer fictitious certificates of deposit purportedly issued by a firm and misappropriated the proceeds to other uses. Lagpacan also failed to respond to NASD requests for information.

**Robin Bruce McNabb (Registered Principal, San Jose, California)** was censured, fined \$100,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McNabb participated in private securities transactions without giving prior written notification to his member firm. McNabb also recommended to public customers the purchase of securities without having reasonable grounds for believing that such recommendations were suitable in light of the facts disclosed by the customers as to their other security holdings and as to their financial situation and needs.

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

**Glen McKinley Richards, III (Registered Representative, Delray Beach, Florida)** was censured, fined \$1,500, and suspended from association with any NASD member in any capacity for five business days. The NAC affirmed the sanctions following its call for review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Richards failed to pay a \$5,500 arbitration award in a timely manner.

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

### **July Actions**

**Edward F. Escamilla (Registered Representative, Long Beach, California)** was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to reimburse his member firm \$1,000. The sanctions were based on findings that Escamilla converted money orders totaling \$1,000 that he received from a public customer by endorsing and depositing them in his personal bank account. Escamilla also failed to respond to NASD requests for information.

**Maureen E. Galligan (Registered Representative, San Diego, California)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Galligan failed to respond to NASD requests for information.

**John Robert Jones, Jr. (Registered Principal, Santa Monica, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member as a general securities principal for 30 days, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he permitted an individual to engage actively in the management of the securities business of his member firm without being registered in a principal capacity. The findings also stated that Jones permitted individuals to execute corporate securities transactions for the accounts of public customers when they were not

licensed to sell corporate securities.

Furthermore, the NASD determined that Jones, as the branch manager of his member firm's Office of Supervisory Jurisdiction (OSJ), failed to establish and maintain a system to supervise the activities of registered representatives and associated persons in the OSJ that was reasonably designed to achieve compliance with NASD rules. Specifically, Jones failed to establish and maintain a system for handling customer complaints.

**Duane Lee McBride (Registered Principal, Escondido, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$1,950,685, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McBride consented to the described sanctions and to the entry of findings that he received funds totaling \$653,594.17 from public customers for investment purposes. The NASD determined that McBride failed to execute the purchase of partnership interests on the customers' behalf, and instead, converted approximately \$390,137.12 of these funds to his own use and benefit without the customers' knowledge or consent.

**Questron Securities, Inc. (Sherman Oaks, California) and Sam E. Harris (Registered Principal, Thousand Oaks, California)**. The firm was censured, fined \$20,000, and expelled from NASD membership and Harris was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Harris failed to respond to NASD requests for information.

**Janice D. Russo (Registered Representative, Van Nuys, California)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 18 months, ordered to pay \$4,871 in restitution, and ordered to requalify by exam before re-associating with any member firm. The sanctions were based on findings that Russo executed transactions in the account of a public customer without the customer's consent or authorization.

**Sheldon Gary Zimmerman (Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for six months, and ordered after the suspension to requalify by exam in any capacity in which he wishes to become associated or be suspended in those capacities until the time of such requalification. Without admitting or denying the allegations, Zimmerman consented to the described sanctions and to the entry of findings that he solicited and sold investments to public customers without providing prior written notification to his member firm.

### **August Actions**

**Akiko L. Hasegawa (Registered Representative, Westminster, California)** was censured, fined \$82,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hasegawa converted public customers' funds totaling \$16,500. Specifically, Hasegawa received personal checks from the customers for investment purposes. Instead of making the investments, Hasegawa deposited the checks in a bank account controlled by her, gave false confirmation statements indicating that the money had been invested, and used the funds for personal expenses. Hasegawa made no effort to make restitution until her firm discovered the conversion of a public customer's funds, and then, did not disclose the conversion of other customers' funds.

**J. B. Oxford & Co. (Beverly Hills, California) and Kevin Michael Beadles (Registered Principal, Long Beach, California)** submitted a Letter of Acceptance, Waiver and Consent

pursuant to which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Beadles, failed to disclose the difference in the price securities were purchased from and sold to customers and the firm's contemporaneous offsetting purchase or sale price to or from a Market Maker in contravention of Securities and Exchange Commission (SEC) Rule 10b-10(a)(2)(ii)(A). Specifically, the firm failed to send public customers the requisite written notification or confirmation in securities transactions that it was not a Market Maker in these securities.

**PIM Financial Services, Inc. (San Diego, California), Jack Kendrick Heilbron (Registered Principal, Poway, California) and Mary Rose Limoges (Registered Principal, Poway, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Heilbron and Limoges, failed to transmit promptly \$285,000 in investor funds received in connection with a contingent offering of securities to a properly established bank escrow account.

**Reaynaden Denina Relatores (Registered Representative, Huntington Beach, California)** submitted an Offer of Settlement pursuant to which she was censured, and suspended from association with any NASD member in any capacity for five years, and ordered to requalify by exam in all capacities. The sanctions were based on findings that Relatores participated in private securities transactions without providing prior written notification to her member firm and without receiving prior written approval from her firm.

**Steven Edward Smith (Registered Representative, Bakersfield, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$45,000 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 participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that in order to induce public customers to invest in stock, Smith made untrue statements of material facts and omitted to state material facts necessary in order to make the statement not misleading.

### **September Actions**

**Atlanta-One, Inc. n/k/a K. Michael & Company (Irvine, California), Kevin Michael McCarthy (Registered Principal, Irvine, California), and Thomas William Blodgett (Registered Principal, Irvine, California).** The firm was fined \$25,000 and ordered to reimburse customers for commissions charged in excess of eight percent on a principal amount in excess of \$500 for restitutions totaling \$291,546.02. In addition, the firm was ordered to reimburse a customer for a commission in excess of 20 percent on a principal amount less than \$500. McCarthy was censured and fined \$10,000, and Blodgett was censured and fined \$10,000. The Los Angeles DBCC imposed the sanctions following a remand of an NAC decision. The sanctions were based on findings that the firm, acting through McCarthy and Blodgett, charged public customers excessive and unfair commissions on transactions in foreign currency options.

**Donald James Jackson (Registered Principal, New York, New York) and George Peter Lucaci (Registered Principal, Summit, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$101,775, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a former member firm, acting through

Jackson and Lucaci, solicited and sold interests in a contingency offering before the firm was registered with the NASD. The findings also stated that Jackson and Lucaci received investor funds in connection with the offering and failed to forward the funds to a properly established bank escrow account during the contingency period, and held the funds on the firm's premises even after the contingency was met.

**Mischler Financial Group, Inc. (Corona Del Mar, California) and Walter Michael Mischler (Registered Principal, Huntington Beach, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,500, jointly and severally, with two other individuals. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mischler, participated in a private placement contingency offering and failed to forward investor funds to a properly established bank escrow account. Instead, these funds were deposited into a bank account maintained by a non-bank agent and commingled with other funds entrusted to the agent until the contingency was met. The findings also stated that the firm, acting under the direction and control of Mischler, failed to have and maintain sufficient minimum net capital in contravention of SEC Rule 15c3-1.

District 3 - Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming

### **July Actions**

**Lawrence M. Knapp (Registered Representative, Lakewood, Colorado)** was censured, fined \$170,000, ordered to reimburse his member firm \$30,069.47, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Knapp received checks totaling \$30,069.47 from a public customer for investment purposes. Knapp instructed the customer to make the checks payable to him. Instead of investing the funds, Knapp converted the money to his own use and benefit. Knapp also failed to respond to NASD requests for information.

**Scott I. Torres (Registered Representative, Holbrook, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$125,000, barred from association with any NASD member in any capacity, and ordered to pay \$168,302 in restitution to public customers. Without admitting or denying the allegations, Torres consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendation of securities to public customers. The findings also stated that Torres made fraudulent price predictions to customers in connection with his recommendation of these securities. Furthermore, the NASD determined that Torres purchased and sold shares of stock in a public customer's account without first obtaining the customer's authorization and failed to testify truthfully to the NASD during an on-the-record interview.

### **August Actions**

**Glenn Mitchell Dobbs (Registered Principal, Chelan, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$42,700, and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Dobbs consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing in detail the proposed transactions and his proposed role therein, and stating whether he would receive selling compensation in

connection with the transactions.

**Darren Ginas (Registered Principal, Medford, New York)** submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for four months, required to requalify by exam as a general securities representative, and required to pay \$70,735 in restitution to public customers. Without admitting or denying the allegations, Ginas consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities.

**Donald Cletus Girard (Registered Principal, Federal Way, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Girard consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm, describing in detail the proposed transactions, his proposed role therein, and stating whether he had received or might receive selling compensation.

**Frederick B. Hornick, Jr. (Registered Principal, Englewood, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hornick consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving his member firm prior written notice of his activities. Hornick also failed to respond to NASD requests for information.

**Alan M. Kletchka (Registered Representative, Port Jefferson, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$327,180 in restitution to public customers. Without admitting or denying the allegations, Kletchka consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that in connection with his recommendations of securities to public customers, Kletchka made fraudulent price predictions.

**Paul Kevin Knutson (Registered Representative, Carmichael, California)** submitted an Offer of Settlement pursuant to which he is censured, fined \$1,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Knutson consented to the described sanctions and to the entry of findings that he submitted a Form U-4 to a member firm that failed to disclose that he had been convicted of a felony.

**Joseph Oscar Mader (Registered Representative, Lewiston, Idaho)** was censured, fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify as a general securities representative following the completion of the suspension. The sanctions were based on findings that Mader failed to respond fully to NASD requests for information.

**Benito Saucedo (Registered Principal, Denver, Colorado) and Glenn Pellone (Registered Representative, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Saucedo was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 15 business days, suspended from

association with any NASD member in any principal capacity for an additional 15 business days, and required to requalify as a registered principal by passing the Series 24 exam. Pellone was censured, fined \$2,500, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify as a registered representative by passing the Series 7 exam. In addition, Pellone was required to make rescission or restitution to public customers of stock purchases, jointly and severally, with a member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Pellone solicited public customers and made recommendations to purchase securities without having reasonable grounds for believing that his recommendations were suitable for the customers based upon the facts disclosed by the customers as to their other security holdings, their financial situation, and needs. The findings also stated that Saucedo failed to supervise Pellone's activities properly by allowing him to make unsuitable recommendations and to effect unsuitable securities transactions. Furthermore, the NASD determined that Saucedo prepared new account forms, order tickets, and confirmations of sale that falsely reflected that he was the representative of record handling customers' accounts when, in reality, he had had no prior contact with the customers and it was Pellone who was actually the representative of record for such accounts.

**Larry R. Schlappi (Registered Representative, Orem, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$12,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Schlappi consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving his member firm prior written notice of his activities and his role therein.

**Josh I. Sisler (Registered Representative, Rocky Point, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$18,850, suspended from association with any NASD member in any capacity for 18 months, and required to pay \$33,148 in restitution to public customers. Without admitting or denying the allegations, Sisler consented to the described sanctions and to the entry of findings that, in connection with the solicitation of securities transactions, he made material misrepresentations and omitted to disclose material information concerning securities to public customers.

**Kevin Lee Spencer (Registered Principal, Castle Rock, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any principal capacity for three months. Without admitting or denying the allegations, Spencer consented to the described sanctions and to the entry of findings that he participated in a private placement offering subject to a minimum sales contingency and failed to deposit investor funds into an escrow account. The findings also stated that Spencer failed to return funds to investors when terms of the contingency were not met and failed to supervise an individual properly.

**Darryl Leon Strom (Registered Representative, Mill Creek, Washington) and Irvin Nels Strom (Registered Representative, Auburn, Washington)** submitted Offers of Settlement pursuant to which Darryl Strom was censured, fined \$69,994, and barred from association with any NASD member in any capacity; Irvin Strom was censured, fined \$45,489, 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 participated in private securities transactions and failed to provide their member firm prior written notice describing in detail the proposed transactions and their roles therein, and stating whether they would receive selling compensation in connection with the transactions. The findings also stated that Darryl Strom failed to respond to an

NASD request for information.

**Wyder L. Tutiven (Registered Representative, Patchogue, New York)** was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$102,322.57 in restitution to public customers. The sanctions were based on findings that, in soliciting customers to purchase securities, Tutiven misrepresented and failed to disclose material facts concerning securities and fraudulently predicted significant price increases for securities to induce public customers to purchase them. Tutiven also effected an unauthorized trade in a customer's account and failed to follow the customer's instructions to sell stock.

### **September Actions**

**Robert C. Abrahamson, Jr. (Registered Representative, Hicksville, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$42,775, suspended from association with any NASD member in any capacity for 80 business days, and required to pay \$46,646 in restitution to public customers. Without admitting or denying the allegations, Abrahamson consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions to public customers in connection with the purchase of stock and executed unauthorized transactions in a customer's account. The findings also stated that Abrahamson failed to execute a sell order or failed to execute it in a timely manner, made fraudulent and/or negligent price projections to customers, and made unsuitable recommendations to a public customer.

**Jeffrey Elmer Clark (Registered Representative, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 15 days, ordered to disgorge \$2,500 in commissions, and required to requalify by exam as a registered representative. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he entered inaccurate information concerning the financial circumstances of purchasers in a private placement offering thereby causing his member firm's records to be inaccurate. Moreover, the NASD determined that Clark negligently made certain representations regarding the merits and potential appreciation of the debt securities being offered that were inaccurate and misleading, omitted to disclose certain information that was material to the decision to invest in these securities, and did not provide a private placement memorandum to unaccredited investors in advance of their purchases. In addition, Clark effected the purchase of bonds in a customer account without the customer's prior authorization and consent.

**Duane Joseph Koerner (Registered Representative, Denver, Colorado)** submitted an Offer of Settlement pursuant to which he was censured, fined \$15,600, suspended from association with any NASD member in any capacity for 15 business days, and required to pay \$1,150 in restitution to a public customer. Without admitting or denying the allegations, Koerner consented to the described sanctions and to the entry of findings that he entered orders to effect securities transactions in the account of a public customer without the customer's prior authorization. The findings also stated that Koerner made false and misleading statements to a customer that were related to the status of the customer's account.

**Thomas Petropoulos (Registered Principal, Forest Hills, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$58,650, suspended from association with any NASD member in any capacity for 12 months, and required to pay \$44,150 in restitution to customers. Without admitting or denying the allegations, Petropoulos consented to the described sanctions and to the entry of findings

that he effected unauthorized transactions in the accounts of public customers and failed to follow a customer's order to sell securities. The findings also stated that Petropoulos made material misrepresentations and omitted to disclose material information concerning securities purchased by a customer on his recommendation. Petropoulos also predicted the future price of a security to customers without a basis for such prediction.

**Francisco A. Pimentel (Registered Representative, Brentwood, New York)** was censured, fined \$100,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pimentel made material misrepresentations and fraudulent price predictions in an attempt to induce a customer to purchase warrants. Pimentel also failed to provide truthful testimony to the NASD during an on-the-record interview.

**Bryant W. Robertson (Registered Representative, Littleton, Colorado)** was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Robertson failed to respond to NASD requests to provide testimony in connection with an investigation regarding his conduct while he was associated with NASD member firms.

**Jim Richard Rogers (Registered Principal, Gilbert, Arizona)** submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 60 days and ordered to requalify by exam in any capacity for which registration is required before functioning in such capacity in the future. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he recommended and effected transactions in accounts of public customers that were excessive in size and number. The findings also stated that Rogers made recommendations, on margin, to customers that were unsuitable because the security was unduly speculative, the accounts were unduly concentrated in a speculative security after the transactions and the use of margin exposed the customers to excessive risk of loss.

**John Gregory Schaefer, Jr. (Registered Principal, Fountain Hills, Arizona)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for three months, and ordered to disgorge \$2,400 in commissions. Without admitting or denying the allegations, Schaefer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities without giving prior written notification to his member firm.

**Robert Louis Stevens (Registered Principal, Denver, Colorado)** was censured, fined \$25,565, suspended from association with any NASD member in any capacity for 60 business days, and ordered to pay \$12,308 plus interest in restitution to a public customer. The NAC affirmed the sanction following its call for review of a Denver DBCC decision. The sanctions were based on findings that Stevens recommended to public customers the purchase of securities that were unsuitable for the customers. Stevens also prepared and submitted to his member firm a new account card for the trust account in which certain information concerning the customer was stated inaccurately causing his member firm's books and records to be inaccurate with respect to this account.

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

## July Actions

**James A. Goetz (Registered Representative, Dickinson, North Dakota)** was censured, fined \$2,500, and barred from association with any NASD member in any capacity, with the right to reapply after one year to become associated with an NASD member. The SEC imposed the sanctions following appeal of a November 1996 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Goetz submitted applications to his member firm's matching gifts program requesting that \$1,600 be donated to his daughter's school, misrepresenting that he had contributed personal funds in that amount, a requirement of the program. Goetz knew or should have known that the funds were used to offset the tuition of his daughter at the designated school, in further violation of the matching gifts program.

**David Richard Hasler (Registered Principal, West Des Moines, Iowa)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hasler failed to respond to NASD requests for information.

**Curtis Lewis Marchand, III (Registered Principal, Denver, Colorado) and David Keith Nelson (Registered Principal, Pleasantville, New York)** submitted Offers of Settlement pursuant to which Marchand was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for five days. In addition, Marchand must submit to additional supervision by his member firm for one year following the suspension, and at the end of the one-year period of additional supervision, Marchand or his member firm must submit a report to the NASD detailing the additional supervision over his activities. Nelson was censured, fined \$75,000, 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 Marchand employed devices to defraud public customers by recommending and urging customers to buy speculative and unseasoned securities through baseless price predictions and predictions of returns in transactions. Furthermore, Marchand omitted or misstated to customers material information in sales of recommended securities and failed to have a reasonable basis for his recommendations.

The findings also stated that Nelson failed to supervise several registered representatives adequately and properly, encouraged them to participate in a boiler room to market speculative and unseasoned companies to public customers, and to engage in aggressive and high-pressure sales tactics without concern for suitability and without having a reasonable basis for the recommendations to customers. In addition, the NASD determined that Nelson distributed, instructed, or permitted associated persons to utilize telemarketing scripts in making sales presentations to the public that did not conform to the NASD advertising rules. Nelson also failed to respond completely to NASD requests for information.

## August Actions

**Dale Buddington Dir (Registered Representative, Visalia, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$21,500. Without admitting or denying the allegations, Dir consented to the described sanctions and to the entry of findings that he opened a securities account at a member firm and failed to provide written notice to the firm of his registration status and failed to provide written notice to his employer member firm that he had a beneficial interest in this securities account at the time he opened the account. The findings also stated that Dir purchased shares of stock that traded at a premium in the immediate aftermarket in contravention of the Board of

Governors Free-riding and Withholding Interpretation.

**Dale Fuller Jackson (Registered Principal, Wall, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he recommended and effected purchases of limited partnership units and/or shares by public customers without having a reasonable basis for believing the recommendations were suitable for these customers in light of their investment objectives, financial situations, and needs. The findings also stated that Jackson participated in private securities transactions without prior written notice to and acknowledgment from his member firm. According to the findings, Jackson breached his fiduciary duty with a public customer by behaving in a manipulative, deceptive, and intimidating manner during settlement discussions with the customer which was heightened by his superior knowledge of the securities industry and the customer's relative lack of knowledge, her age, and her reliance on and trust in Jackson.

### **September Actions**

**Donald James Blumer (Registered Representative, Sioux Falls, South Dakota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$49,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Blumer consented to the described sanctions and to the entry of findings that he deposited a \$9,800 check from public customers into a bank account he controlled, and converted the funds to his own use and benefit without the knowledge or consent of the customers.

**CFS Brokerage Corporation (Minnetonka, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$69,622. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to conduct a securities business and to act in a registered capacity when each individual's registration had lapsed for non-compliance with the Regulatory Element of the Continuing Education requirements.

**Daniel Frederick Cox (Registered Representative, Burlington, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he received a blank check in the amount of \$2,000 from a public customer and blank money orders totaling \$2,000 from another customer intended for deposit into each of the customer's money market accounts. Instead, Cox cashed the checks and money orders, and converted the funds to his own use and benefit, without the customers' knowledge or consent.

**Gary Lee Niebling (Registered Representative, Florissant, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Niebling consented to the described sanctions and to the entry of findings that he effected withdrawals from annuities for a public customer totaling \$96,518.06 without the knowledge or consent of the customer and deposited all withdrawn funds into financial accounts under his control and converted the funds to his own use and benefit.

### July Actions

**Henry L. Sullivan, Jr. (Registered Representative, New Orleans, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$15,000. In addition, Sullivan must attend an advanced training program conducted by his member firm and undergo an annual private compliance session with a firm compliance officer for the next two years. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he prepared and allowed a public customer to take from his office documents containing a list of the customer's assets maintained at Sullivan's member firm that inaccurately reflected the value of the customer's investments.

### August Actions

**Walter Vance Bailey (Registered Principal, Brantley, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he failed to timely update his Form U-4 to reflect findings by the U.S. District Court, Northern District of Florida, that he had made a false statement to the Department of Agriculture, whose findings subjected him to statutory disqualification.

**Avin E. Bakal (Registered Representative, Brooklyn, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bakal failed to respond to NASD requests for information concerning a customer complaint.

**Debbie Ann Fairley (Registered Representative, Jackson, Mississippi)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fairley consented to the described sanctions and to the entry of findings that she established a credit card account by using the name and social security number of a co-worker's spouse, and charged approximately \$14,000 to the credit card for her own benefit without the co-worker's knowledge or consent.

### September Actions

**Russell D. Goldner (Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,633.16, suspended from association with any NASD member in any capacity for two weeks, and required to requalify as a general securities representative by taking the Series 7 exam. If Goldner fails to complete and pass the exam, he shall be suspended from acting in any capacity until such time as he does complete and pass the exam. Without admitting or denying the allegations, Goldner consented to the described sanctions and to the entry of findings that he induced a public customer to purchase securities by misrepresenting to the customer that he possessed insider information. The findings also stated that Goldner provided a public customer with sales materials marked "for internal use only" without obtaining prior approval to distribute the materials from his member firm.

**Ernest O. Kraemer, Jr. (Registered Representative, New Orleans, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 10

days. Without admitting or denying the allegations, Kraemer consented to the described sanctions and to the entry of findings that he recommended and engaged in a strategy of trading options and the purchase of a commodities pool limited partnership in the joint accounts of public customers, when he did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their age, financial situation, investment objectives, and needs. The findings also stated that Kraemer provided inaccurate information regarding the investment experience of public customers on the new account documents and options agreements relating to their joint account held at his member firm.

**Garey Neil Mitchell (Registered Representative, Sturgis, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$125,000, barred from association with any NASD member in any capacity, and required to pay full restitution to the appropriate parties. Without admitting or denying the allegations, Mitchell consented to the described sanctions and to the entry of findings that he received checks totaling \$14,150 from public customers for the purpose of investing in securities, failed and neglected to purchase the securities, and instead, converted the funds to his own use and benefit by endorsing the checks and either depositing them into his personal bank account or cashing them, without the customers' knowledge or consent. The findings also stated that Mitchell settled a customer complaint away from his member firm by executing a promissory note in favor of a public customer to settle a dispute regarding monies converted from the customer. Furthermore, the NASD determined that Mitchell received \$3,000 cash from a public customer intended for investment purposes and failed to apply the funds as directed by such customer. Moreover, Mitchell received a \$13,000 check from a public customer for investment purposes, failed to execute the purchase of securities on the customer's behalf, and instead, misused the funds by depositing the funds into the account of other public customers. Mitchell also failed to fully and completely respond to NASD requests for information.

**Darryl W. Platt (Registered Principal, Biloxi, Mississippi)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$350,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to the appropriate parties. Without admitting or denying the allegations, Platt consented to the described sanctions and to the entry of findings that he received \$23,000 in funds from public customers for the purpose of investing in securities and mutual funds, failed to execute the purchases on the customers' behalf, and instead converted the funds to his own use and benefit without the customers' knowledge or consent. The findings also stated that Platt issued checks to himself in the total amount of \$18,700 out of the checking account of a public customer and cashed these checks by forging the customer's endorsement, thereby converting the \$18,700 to his own use and benefit without the customer's knowledge or consent. Furthermore, the NASD determined that Platt received \$9,989.99 in the form of a loan proceeds check made payable to a public customer, forged the customer's endorsement and converted the funds to his own use and benefit by placing the funds in an account that he controlled, without the customer's knowledge or consent.

**Bobby J. Withrow (Registered Representative, Livermore, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$300,000, barred from association with any NASD member in any capacity, and required to pay \$60,000 in restitution. Without admitting or denying the allegations, Withrow consented to the described sanctions and to the entry of findings that he received approximately \$60,000 from public customers for the purpose of investment in a business venture, failed and neglected to properly account for these funds, and converted at least a portion of the funds by endorsing checks and depositing them into his personal checking account, without the individuals' knowledge or consent. The findings also stated that Withrow made a recommendation to a public customer that the customer liquidate a variable annuity and

invest the proceeds in a business venture without having reasonable grounds for believing that the recommendations and transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs. Furthermore, Withrow engaged in outside business activities while employed by a member firm without prior written notice to his member firm.

## District 6 - Texas

### July Actions

**Forrest Gahl Jackson (Registered Principal, Marina Del Rey, California)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jackson failed to respond to NASD requests for information.

### August Actions

**Paul Joseph Montessoro (Registered Representative, Boerne, Texas)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Montessoro failed to respond to NASD requests for information and to provide testimony.

**Sunpoint Securities, Inc. (Longview, Texas) and Mary Ellen Wilder (Registered Principal, Longview, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$50,000, jointly and severally. In addition, Wilder was suspended from association with any NASD member in the capacity of a financial and operations principal for 10 days and must requalify by examination prior to future association with any NASD member in the capacity of a financial and operations principal. Further, Sunpoint must engage for at least six months an independent consultant to review financial and operational matters, including but not limited to, matters involving internal controls, net capital computations, and reserve computations. Such consultant must be acceptable to the NASD and must provide the NASD with its analysis and findings on a quarterly basis, with such consultant being made available for discussions with NASD staff members in the event such request is made. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wilder, effected transactions in securities when it failed to have and maintain sufficient net capital and failed to make a required deposit to its Reserve Bank Account in connection with its reserve computations.

**Weese Roosevelt Alex Watson (Registered Representative, Kingwood, Texas)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Watson failed to respond to NASD requests for information.

### September Actions

**Adam Craig Friedland (Registered Principal, Woodbury, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Friedland consented to the described sanctions and to the entry of findings that he induced a public customer to purchase a speculative

security by extolling the merits and potential investment performance of the security without discussing the risks and predicting that the market price of the security would experience a substantial increase in value within a specific period of time without an adequate or reasonable basis in fact. Friedland also aggressively discouraged a customer's unsolicited sell order without a reasonable basis for doing so and without regard to the best interests of the customer, thereby causing the customer to incur additional monetary losses. In addition, the findings stated that Friedland predicted that the market price of a speculative security would experience a substantial price increase without having an adequate, accurate, or reasonable basis for such prediction.

**Gary John Kircher (Registered Representative, Dallas, Texas)** submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Kircher consented to the described sanctions and to the entry of findings that he exercised discretion to effect transactions in the accounts of public customers without obtaining prior written authorization from the customers. The findings also stated that Kircher recommended and effected unsuitable option transactions for a customer and made false and misleading statements to customers in connection with index option transactions.

**Edward Bartlett Leach (Registered Representative, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leach consented to the described sanctions and to the entry of findings that he recommended and effected the purchase and sale of stock options for the accounts of public customers without having a reasonable basis for believing that the recommendations were suitable for the customers based upon the facts known to him concerning the nature of the securities purchases for the customers' accounts, their investment objectives, financial situation and needs.

**Barrington Lloyd Nugent (Registered Representative, Houston, Texas)** was censured, fined \$60,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nugent made improper use of a customer's funds by receiving a \$4,310 check from a public customer intended for the purchase of stock. Contrary to representations he made to the customer, Nugent caused the customer to write a check made payable to him for the purchase, subsequently endorsed and cashed the check, and failed to purchase the stock. Nugent also failed to respond to NASD requests for information.

**Kimberly Ann Souza (Registered Representative, Malakoff, Texas)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Souza failed to respond to NASD requests for information.

**Brian Thomas Stone (Registered Representative, Bedford, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stone consented to the described sanctions and to the entry of findings that he made entries to the general ledger of his member firm totaling \$750 when he had no basis for making these entries in order to effect the transfer of these funds to a public customer's account. According to the findings, Stone effected these transfers to pay a personal debt he owed to the customer.

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

### July Actions

**Alan L. Alexander (Registered Representative, Coconut Grove, Florida)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alexander failed to respond to NASD requests for information.

**Gary W. Atwood (Registered Principal, Tampa, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$150,000, barred from association with any NASD member in any capacity, and required to pay \$80,000 in restitution to a public customer. Without admitting or denying the allegations, Atwood consented to the described sanctions and to the entry of findings that he induced a public customer to invest \$80,000 in promissory notes issued by a fictitious entity that Atwood created. According to the findings, Atwood prepared the notes and signed them on behalf of this fictitious entity, converted the proceeds of the \$80,000 in checks he received from the customer, and used the funds for his own benefit.

**Michael Bruzzese (Registered Representative, Brooklyn, New York) and Nicholas J. Mormando, Jr. (Registered Representative, Brooklyn, New York)** were each censured, fined \$5,000, suspended from association with any NASD member in any capacity for one month, and required to requalify by taking and passing the Series 7 exam. In addition, Bruzzese was required to disgorge to public customers his excessive commissions totaling \$5,407.70, and Mormando was required to disgorge \$227,587.45 in excessive commissions to public customers. The sanctions were based on findings that Bruzzese and Mormando received commissions on their sales of securities to public customers that were excessive and unfair.

The action was called for review by the NAC and the sanctions are not in effect pending consideration of the review.

**Burnett Grey & Co., Inc. (Atlanta, Georgia)** was censured, fined \$100,000, and expelled from NASD membership. The sanctions were based on findings that the firm accepted consideration from, or on behalf of, issuers for filing Form 211s with the NASD to list each issuer's securities on the OTC Bulletin Board<sup>®</sup> (OTCBB). The firm also received unfair and unreasonable compensation in connection with public offerings. In addition, the firm failed to establish, implement, and enforce reasonable supervisory procedures designed to assure compliance with NASD rules and policies and federal securities laws involving public underwriting and investment banking activities even though it engaged in such activities.

**Dean Witter Reynolds, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond to NASD requests for documents and information in connection with an NASD arbitration.

**Joseph Roberts & Co., Inc. (Pompano Beach, Florida)** was censured, fined \$100,000, and expelled from NASD membership. The sanctions were based on findings that the firm violated its restrictive agreement by carrying 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 \$1.5 to \$10.8 million. Furthermore, the firm conducted a securities business while failing to maintain minimum required net capital and failed to maintain complete, current, and accurate books and records. In addition, the firm filed false and inaccurate FOCUS Reports Part I and Part IIA that materially overstated the firm's net capital.

**Anthony C. Louvaris (Registered Principal, Tallahassee, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities principal by taking and passing the Series 24 exam. Without admitting or denying the allegations, Louvaris consented to the described sanctions and to the entry of findings that he induced public customers to participate in private securities transactions without the authority or knowledge of his member firm.

**Leonard D. Moore (Registered Representative, Spartanburg, South Carolina)** submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on a disbursement request form.

**NationsBanc Investments, Inc. (Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$5,000, jointly and severally with an individual, and fined an additional \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed an individual to continue performing duties as a principal although he had not satisfied the Regulatory Element of his continuing education requirement. The findings also stated that the firm failed to have an individual performing duties requiring principal registration properly qualified and registered as such, failed to provide an adequate supervisory system with respect to principal registrations, and failed to prepare and maintain written procedures reasonably designed to achieve compliance with all applicable rules and regulations.

**Michael T. Pinto (Registered Representative, Margate, Florida)** submitted an Offer of Settlement pursuant to which he was censured, fined \$6,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Pinto consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's knowledge or authorization. The findings also stated that, without his member firm's knowledge, Pinto entered into a written agreement with the customer wherein shares of stock, previously sold from the customer's account to cover a debit balance, would be replaced.

**John Mark Wallach (Registered Representative, Lakeworth, Florida)** was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Wallach exercised discretion in the accounts of public customers without having the discretionary authority reduced to writing and without having the accounts accepted as discretionary accounts by his member firm.

### **August Actions**

**Steven E. Blonde (Registered Principal, Ft. Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, barred from association with any NASD member in any capacity, required to pay \$38,000 plus interest in restitution to a public customer, and also required to pay restitution to another

customer in accordance with a previous settlement agreement. Without admitting or denying the allegations, Blonde consented to the described sanctions and to the entry of findings that he sold securities to public customers outside the scope of his regular employment with his member firm without giving prior notification to his member firm or receiving the firm's prior written approval.

**Eric D. Brumagin (Registered Representative, Winston-Salem, North Carolina)**

submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, ordered to disgorge \$37,138 in commissions to public customers, and required to requalify as a general securities representative by taking and passing the Series 7 exam. Without admitting or denying the allegations, Brumagin consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to request or receive permission to engage in these transactions from his member firm.

**Henry A. Hale (Registered Principal, Marietta, Georgia)** was censured, fined \$10,000, and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. The sanctions were based on findings that Hale failed to supervise reasonably the sales activities of an individual in order to prevent and/or detect the unsuitable trading that occurred in the account of a public customer.

**Chichiang Tang (Registered Representative, Hollywood, Florida)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tang attempted to share in a customer account. Tang also failed to respond to NASD requests for information.

**Michael Lee Yancey (Registered Representative, Lake Park, Georgia)** was censured, fined \$1,000, suspended from association with any NASD member in any capacity for six months, and further suspended until he requalifies by exam as an investment company and variable contracts product representative. The NAC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Yancey received \$100 from a public customer in part to pay premiums due on insurance policies and to apply to an outstanding loan. Yancey deposited \$80 of those funds in his personal checking account.

### **September Actions**

**Charles G. Cowden (Registered Principal, Sanford, Florida)** was censured, fined \$10,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam before acting in any capacity requiring registration. The sanctions were based on findings that Cowden participated in private securities transactions with investors without giving prior written notice to or receiving written approval from his member firm of his proposed participation in said transactions.

**Jeffrey Lynn Elliott (Registered Representative, Jacksonville, Florida)** was censured, fined \$7,500, suspended from association with any NASD member in any capacity for two years, and ordered to requalify before again associating with a member of the NASD. The sanctions were based on findings that Elliott obtained \$452.60 from a public customer intended as insurance policy premium payments and failed to process them through his office where they could have been tracked. Instead, Elliott mishandled the funds and took no steps to ensure that they were applied as requested. The findings also stated that Elliott failed to respond to NASD requests for information in a timely manner.

**Richard Timothy Greene (Registered Representative, Pittsboro, North Carolina)** was censured, fined \$10,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following its call for review of an Atlanta DBCC decision. The sanctions were based on findings that Greene forged the signature of a public customer on annuity-related documents.

**Anthony Littles (Registered Representative, Sanford, Florida)** was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Littles failed to respond to NASD requests for information.

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

### **July Actions**

**Institutional Investor Services, Inc. (Chicago, Illinois), Eugene V. Rintels (Registered Principal, Highland Park, Illinois), Joel Chestler (Registered Representative, Glencoe, Illinois), and Dennis G. Guy (Registered Principal, Delray Beach, Florida).** The firm, Rintels, Guy, and Chestler were censured and fined \$170,000, jointly and severally. Rintels, Guy, and Chestler were each suspended from association with any NASD member in any capacity for 90 days and required to take and pass all exams required for the capacities in which they wish to function with an NASD member or cease to function in any such capacity until they requalify. The sanctions were based on findings that the firm, Rintels, Guy, and Chestler, acting through partnerships they created, purchased stocks through dividend reinvestment and stock purchase plan programs (DRIP Plans), received a total discount of \$122,162, and exceeded the limits that each issuer placed on each purchaser contained in the DRIP Plans.

The firm, Rintels, Guy, and Chestler have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Paul J. Maton (Associated Person, Northbrook, Illinois)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maton consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Scott T. Nichol (Registered Representative, Brookfield, Wisconsin)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nichol failed to respond to NASD requests for information.

**Jacques V. Pessah (Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Pessah consented to the described sanctions and to the entry of findings that he permitted an individual to purchase shares of stock and warrants that traded at a premium in the immediate aftermarket, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation.

**Michael William Riley (Registered Representative, Mt. Vernon, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Riley consented to the described sanctions and to the entry of findings that he signed a public customer's name to a variable life insurance application and a request for liquidation of mutual fund shares with instructions that the \$7,446 proceeds of the liquidation be applied to the insurance policy and another variable life policy, without the customer's knowledge or consent.

**Abdul H. Umer (Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$11,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Umer consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Umer guaranteed to cover a customer against losses in the customer's account.

### **August Actions**

**B. Alicia Campos (Associated Person, Northbrook, Illinois)** was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that a member firm acting through Campos effected transactions in securities when it failed to maintain its minimum required net capital, prepared inaccurate trial balances and net capital computations, and filed inaccurate FOCUS Part I and IIA reports. In addition, Campos was associated with a member firm while failing to qualify and/or register in the appropriate capacity prior to engaging in such capacity. Campos also failed to respond fully to NASD requests for information.

**John Melvin Davis (Registered Representative, Bellwood, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice or receive approval from his member firm of his intention to engage in such activities.

**Robert Walter Gleiche (Registered Principal, Timonium, Maryland)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$37,500, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Gleiche consented to the described sanctions and to the entry of findings that, on numerous occasions, he purchased shares of stock that traded at a premium in the immediate aftermarket, in contravention of the Board of Governors' Interpretation on Free-Riding and Withholding. The findings also stated that Gleiche failed to give written notice to his member firm that he opened accounts with other firms, and failed to provide written notification to the executing firms of his association with the member firm.

**James M. Ortiz (Associated Person, Chicago, Illinois)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ortiz failed to respond to NASD requests for information.

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

information and to appear for an on-the-record interview.

**Ronald L. Wallen (Registered Principal, Farmington, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$500,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wallen consented to the described sanctions and to the entry of findings that he obtained a total of \$201,673.85 from public customers with instructions to use the funds to purchase mutual funds and high interest mortgage loans. The findings stated that Wallen failed to follow the customers' instructions and used the funds for investments in other companies, to pay his firm's office expenses, to pay himself, and for purposes other than the benefit of the customers. Wallen also failed to respond fully to NASD requests for information.

### **September Actions**

**James A. Bahl (Registered Representative, Moline, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$12,646, barred from association with any NASD member in any capacity, and ordered to pay \$2,529.22 in restitution to customers. Without admitting or denying the allegations, Bahl consented to the described sanctions and to the entry of findings that he took cash payments for insurance from public customers and used the proceeds for some purpose other than for the benefit of the customers, without their knowledge or consent. Furthermore, the NASD found that Bahl then made the payments those customers intended be made with the cash payments from checks he received from other customers who had given him the checks to make insurance premium payments and to pay back a loan they had taken on one of their insurance policies. The NASD determined that Bahl took a total of \$2,529.22 from these customers' checks in this manner without their knowledge or consent.

**Guy Weiland Courtney (Registered Principal, Barrington, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Courtney consented to the described sanctions and to the entry of findings that he failed to respond fully to NASD requests for information.

**James Patrick Felton, Jr. (Registered Representative, Random Lake, Wisconsin)** was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on finding that Felton failed to respond to NASD requests for information.

**Kevin Lee Otto (Registered Representative, Milwaukee, Wisconsin)** was censured, fined \$110,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Otto received \$22,000 from a public customer for investment purposes and, without the customer's knowledge or consent, invested the funds in corporations or business entities which Otto operated and/or controlled and deposited the funds in a bank account or bank accounts which he controlled or had an interest, and used the funds for some purpose other than for the benefit of the customer until he returned the customer's funds at a later date.

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

**Randall J. Schultz (Registered Principal, Lowell, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$475,000, barred from association with any NASD member in any capacity, and required to pay

\$95,000 in restitution to a member firm. Without admitting or denying the allegations, Schultz consented to the described sanctions and to the entry of findings that he obtained a total of \$95,000 from public customers by making representations about the use of the funds, failed to follow said representations, and used the funds for a corporation that he owned or for some purposes other than for the benefit of the customers.

District 9 - Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and New Jersey

### **July Actions**

**Brian D. Angiuli (Registered Representative, Port Washington, New York)** was censured, fined \$16,694, 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 Angiuli effected securities transactions in the account of a public customer without the customer's authorization.

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

**Mary Margaret Hart (Registered Representative, Scranton, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests to appear for testimony.

**Honor, Townsend & Kent, Inc. (Horsham, Pennsylvania) and Michael D. Sweeney (Registered Principal, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,000, 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 Sweeney, failed to provide the Firm Element training required by the NASD's Continuing Education Program to some of its registered representatives.

### **August Actions**

**Alicia Allen (Registered Representative, Laurel, Maryland)** submitted an Offer of Settlement pursuant to which she was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

**Donald J. Berg (Registered Representative, Broomall, Pennsylvania)** was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that Berg made unsuitable recommendations to public customers and engaged in excessive trading in their accounts, and presented one customer a document that purported to show that his securities account was worth substantially less than it was actually worth in order to deceive the customer. In numerous instances involving several customers without the respective customer's knowledge or authorization, Berg requested his member firm to issue a check to the customer, obtained possession of the check, and either caused the check to be deposited to the securities account of another customer or converted

the funds to his own benefit. In several instances, Berg caused a check payable to a customer by a third party to be credited to the securities account of another customer without the knowledge or authorization of the customer to whom the check was payable. Moreover, Berg obtained possession of blank checks issued to a customer for writing checks against her money market fund, wrote checks payable to himself, and converted the funds to his own benefit. Berg also failed to respond to NASD requests for information.

**Kenneth Alan Brown (Registered Representative, Murrysville, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Arthur A. Bykonen (Registered Representative, Charlottesville, Virginia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Bykonen consented to the described sanctions and to the entry of findings that he established a joint securities account in the name of a public customer and the customer's son, signed the customers' names on the account form, initialed the form with both their initials, falsely stated the son's birth date in order to conceal the fact that the son was a minor, and submitted the form without disclosing either that the signature and initials of the son were not authentic or that the date of birth was false. The findings also stated that Bykonen's signature guaranteed stock powers signed by the customer with his own name and that of his son while knowing that the purported signatures of the son were not authentic.

**Edward Golick (Registered Principal, Del Mar, California)** was censured, fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Golick failed to respond to NASD requests to appear for an on-the-record interview.

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

**Eliezer Gurfel (Registered Representative, San Mateo, California)** was censured and barred from association with any NASD member in any capacity. NAC affirmed the sanctions following appeal of a Washington D.C. DBCC decision. The sanctions were based on findings that Gurfel forged the endorsement of the president of his member firm on checks, negotiated each check, and converted the proceeds to his own use and benefit.

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

**Joseph Paul Malyszek (Registered Representative, Clarks Summit, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$3,000,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Malyszek consented to the described sanctions and to the entry of findings that he received approximately \$600,000 from public customers intended for investment purposes, failed to invest the funds as represented, and instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

**Parker/Hunter Incorporated (Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined

\$29,707 and fined an additional \$1,000, jointly and severally, with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it acted as a junior co-managing underwriter in a negotiated offering of securities by an issuer with which it was precluded from engaging in a municipal securities business. The findings also stated that the firm failed to file quarterly reports timely and failed to include certain information on quarterly reports filed with the MSRB. Furthermore, the NASD determined that the firm failed to prepare and/or maintain the listing and records in the proper format and failed to implement certain of its established written policies and procedures to achieve compliance with MSRB Rules G-8(a)(xvi) and G-37.

**Mark A. Reilly (Associated Person, Doylestown, Pennsylvania)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Reilly failed to respond to NASD requests for information.

**Edward Lee Willis Sr. (Registered Principal, Southhampton, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$300,000, barred from association with any NASD member in any capacity, and ordered to pay \$143,500 in restitution to public customers. Without admitting or denying the allegations, Willis consented to the described sanctions and to the entry of findings that he received checks totaling \$143,500 from public customers for the purpose of purchasing franchises. The NASD determined that Willis never completed the purchases, and instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

### **September Actions**

**Maximo Justo Guevara (Registered Representative, Philadelphia, Pennsylvania)** was censured, fined \$33,992, barred from association with any NASD member in any capacity, and ordered to pay restitution of \$78,000, plus interest. The sanctions were based on findings that Guevara recommended the purchase of securities when he had no reasonable basis to believe that such recommendations were suitable for the customers based upon the information disclosed to him by the customers about their personal situations, financial circumstances, investment objectives, and other matters. Guevara also participated in private securities transactions without providing his member firm prompt written notice of his participation in such activities.

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

**Robert Lee Lent (Registered Representative, Brownsville, Pennsylvania)** was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lent failed to respond to NASD requests for information.

**James P. Tarone (Registered Representative, Whitehall, Pennsylvania)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tarone failed to respond to NASD requests for information.

**Deanna Lee Williams (Registered Representative, North Wales, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that she impersonated another individual and took the Pennsylvania Life

Insurance Agent Exam for her. The findings also stated that Williams failed to timely respond to NASD requests for information.

District 10 - the five boroughs of New York City

### **July Actions**

**Donald Clyde Bozzi, Jr. (Registered Representative, Basking Ridge, New Jersey)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bozzi submitted false insurance applications containing numerous misstatements of fact that he knew or should have known were false. Bozzi also provided false information in written and testimonial form during the course of an NASD investigation.

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

**Jawahar K. Doshi (Registered Principal, Bayside, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Doshi entered into an oral agreement with a public customer whereby he agreed to reimburse the customer for any and all future losses incurred in the customer's account in return for a share of any profits generated. Doshi also failed to respond truthfully to the NASD during an on-the-record interview.

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

**Ilya Fisher (a/k/a Ilya Fikher, Elliot Fisher and Elliot Fikher, Registered Representative, Rego Park, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$70,000, barred from association with any NASD member in any capacity and ordered to disgorge \$38,789.55 to the NASD. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Fisher had an impostor take the Series 7 and 63 exams on his behalf and gave false and misleading testimony to the NASD during an on-the-record interview.

**Nicholas L. Keating, III (Registered Principal, Toms River, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$12,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by taking the Series 26 exam. Without admitting or denying the allegations, Keating consented to the described sanctions and to the entry of findings that he signed the names of public customers on account applications after the customers had signed similar forms acknowledging their transaction. The findings also stated that Keating signed the name of a licensed agent on life insurance applications after the customers had signed the applications.

**Robert E. Ligowski (Registered Representative, Matawan, New Jersey) and Louis C. Marchione, Jr. (Registered Representative, N. Massapequa, New York)** submitted an Offer of Settlement pursuant to which they were each censured, fined \$2,500, suspended from association with any NASD member in any capacity for two weeks, and required to

requalify by exam as a general securities representative. If the respondents fail to requalify, they will be suspended from association with any NASD member until they have requalified. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they charged public customers unfair prices in connection with the sale of warrants. Furthermore, Ligowski and Marchione failed to make a reasonable inquiry as to the fairness of the prices charged and had discretion in the pricing of these transactions. Ligowski and Marchione also charged gross commissions ranging from 12 to 30 percent of the total dollar amount paid by the customers in transactions in the subject securities.

**R.D. White & Co., Inc. (New York, New York)** submitted an Offer of Settlement pursuant to which the firm was censured and fined \$20,000, and fined \$5,000, jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NASD on a timely basis statistical and summary information regarding customer complaints and a securities consent judgment entered into with the State of New Jersey Bureau of Securities. The findings also stated that the firm failed to develop and maintain a continuing and current education program for its registered persons and to develop a written training plan. In addition, the NASD determined that the firm failed to establish, maintain, and enforce adequate supervisory systems as well as written supervisory procedures reasonably designed to ensure its compliance with reporting and continuing education requirements.

**Terence Taylor (Registered Representative, Locust Valley, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$40,000, barred from association with any NASD member in any capacity, and ordered to pay \$21,500 in restitution to a public customer. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he misused the funds of a public customer through a wire transfer of \$21,500 into his personal bank account. According to the findings, the customer was misled into believing he was a customer of Taylor's firm and that the funds were being used to purchase securities. The findings also stated that Taylor failed to respond to an NASD request for information.

**Michael S. Wachs (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$250,000, barred from association with any NASD member in any capacity and required to make full restitution to his member firm. Without admitting or denying the allegations, Wachs consented to the described sanctions and to the entry of findings that he misappropriated \$20,800,000 in proceeds by means of false and fraudulent pretenses, representations, and promises for the sale of certain of his member firm's assets and then diverted the proceeds to himself and others.

### **August Actions**

**Gerard Joseph Arrigale, Jr. (Registered Representative, Middle Village, New York)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for six months, ordered to requalify by exam as a corporate securities limited representative, and ordered to complete the Regulatory Element of the NASD's Continuing Education Program as a condition to his return to the securities industry following completion of the suspension. The sanctions were based on findings that Arrigale falsely represented himself to be another broker, and requested the execution of securities transactions under the account number of a public customer, without the customer's knowledge, authorization, or consent.

**Samuel George Busada (Registered Principal, Saddle Brook, New Jersey)** submitted an

Offer of Settlement pursuant to which he was censured, fined \$620,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Busada consented to the described sanctions and to the entry of findings that he misappropriated customer funds totaling \$123,853.83 for his own use. The findings also stated that Busada aided in the fraudulent assignment of a deceased public customer's partnership interest and allowed a \$1,500 check to be deposited into his account even though he knew it was an asset of the customer's estate.

**Raymond Andrew Frias (Registered Representative, Merrick, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Frias consented to the described sanctions and to the entry of findings that he executed securities transactions in the account of a public customer without the customer's knowledge, authorization, or consent.

**Mark Arthur Hanna (Registered Representative, Manhasset, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hanna consented to the described sanctions and to the entry of findings that he failed to respond completely to NASD requests for information.

**Paul George Karkenny (Registered Representative, Amityville, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$283,008.13, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Karkenny consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 exam on his behalf. The findings also stated that Karkenny solicited an aftermarket purchase for shares of stock from a public customer prior to the effective registration date of the security by the SEC and failed to follow the customer's instructions regarding the purchase. Karkenny also executed securities transactions in the account of public customers without the customers' prior knowledge, authorization, or consent.

**William John Mooney (Registered Principal, Bayside, New York)** was censured, fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Mooney failed to timely respond to NASD requests for information.

**Rafael Pinchas (Registered Representative, Hillcrest, New York)** was censured, fined \$219,821, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Pinchas made recommendations to and effected securities and options transactions in public customers' accounts including margin transactions that were excessive and unsuitable without having reasonable grounds to believe that the transactions were appropriate for the customers in light of their investment objectives, other security holdings, and financial situation and needs. In addition, Pinchas engaged in a scheme to misappropriate funds from the same customer's account by giving his member firm a letter of authorization purportedly signed by the customer authorizing the transfer of \$6,000 to the account of another customer. The funds were subsequently given to Pinchas without the customer's authorization.

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

**Joseph Russo III (Registered Representative, Staten Island, New York)** submitted a

Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$202,990.97 to the NASD. Without admitting or denying the allegations, Russo 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. Russo also failed to respond truthfully to the NASD during an on-the-record interview.

**Anthony Dennis Schiano (Registered Representative, Franklin Square, New York)** was censured, fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify in all capacities prior to functioning again in any capacity that requires requalification. The sanctions were based on findings that Schiano failed to comply with Regulation T of the Federal Reserve Board in that he purchased shares of stock in his own cash account at his member firm when he knew or should have known that he did not have sufficient funds in his account to pay for the purchase. Moreover, Schiano never had the intent to make full cash payment for the stocks in a prompt fashion or otherwise before selling them. In addition, Schiano wrote purchase order tickets and entered orders via computer or telephone for his personal securities account at a time when he knew he was not qualified to do so.

**Aleksandr Shvarts (Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, 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 principal capacity for 30 business days. In addition, Shvarts must requalify by exam as a general securities principal and will be suspended until he requalifies. Without admitting or denying the allegations, Shvarts consented to the described sanctions and to the entry of findings that he failed to timely execute customers orders to sell stock on either a principal or agency basis.

**Stratton Oakmont, Inc. (Lake Success, New York)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that, acting through its registered principals and registered representatives, the firm engaged in a practice of executing unauthorized transactions in the accounts of its customers when it did not have discretionary trading authority for any of these accounts. The findings also stated that the firm attempted to convince public customers to enter into transactions, and executed the transactions despite the customers' refusal to do so. Furthermore, the NASD determined that the firm executed trades without any communication with the customers and at times when its registered representatives knew that the customers were on vacation or were otherwise unavailable, and exceeded the authorized dollar or share amount in transactions authorized by the customers. In addition, the NASD found that the firm executed authorized sell orders but used the proceeds to buy other securities without, or contrary to, the customers' authorization or instructions.

**Emilio Fernando Valdes (Registered Representative, Holmdel, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Valdes consented to the described sanctions and to the entry of findings that he falsified records by signing transfer authorization forms causing the transfer of funds between public customers' accounts in order to win a sales contest sponsored by his member firm. The findings also stated that Valdes failed to respond fully to NASD requests for information.

## **September Actions**

**Scott David Bobrow (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Bobrow consented to the described sanctions and to the entry of findings that, in order to reach his sales quota, Bobrow altered the records of public customers, enrolled them in a financial planning service program, and changed their mailing addresses in order to conceal the charges to be assessed against their accounts, all without the customers' knowledge or authorization.

Bobrow's suspension commenced with the opening of business on August 12, 1998, and concludes at the close of business September 25, 1998.

**Thomas Franklin Bridgman (Registered Representative, Staten Island, New York)** submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for eight months, and required to undertake a three-year period of enhanced supervision upon completion of the suspension. Without admitting or denying the allegations, Bridgman consented to the described sanctions and to the entry of findings that, in an effort to conceal a net short position he incurred in his member firm's proprietary account, he entered a fictitious buy order for treasury notes in his firm's computerized trading blotter. In an effort to conceal unrealized trading losses he incurred from the previous day's trading activities, he entered fictitious profitable trades on his firm's books and records to offset the losses.

Bridgman's suspension commenced with the opening of business on September 1, 1997, and concluded at the close of business April 30, 1998, and is deemed served.

**Lawrence Paul Bruno, Jr. (Registered Representative, Brooklyn, New York)** was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$678,067 in commissions. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Bruno arranged to have an impostor take the Series 7 exam on his behalf.

**Santino A. Carnemolla (Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$51,400, barred from association with any NASD member in any capacity, and ordered to pay \$13,471.89 in restitution to customers. Without admitting or denying the allegations, Carnemolla consented to the described sanctions and to the entry of findings that he executed securities transactions in the accounts of public customers without the knowledge, consent, or authorization of the customers. The findings also stated that Carnemolla failed to respond to NASD requests for information.

**Kevin Joseph Guarino (Registered Representative, Garden City, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Guarino failed to respond to NASD requests to appear for an on-the-record interview.

**Investors Associates, Inc. (Hackensack, New Jersey) and Herman Epstein (Registered Principal, Franklin Lakes, New Jersey)** submitted an Offer of Settlement pursuant to which they were censured and fined \$20,000, jointly and severally, and Epstein was suspended from association with any NASD member as a general securities 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 Epstein, failed to file customer complaint statistics and failed to establish written procedures to supervise the activities of its associated persons reasonably designed to achieve compliance with the

NASD reporting requirements.

**John M. Martello (Registered Representative, Staten Island, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martello executed an unauthorized transaction in the account of a public customer. Martello then made threats and misrepresentations to the customer to force the customer to agree to and to pay for a trade he did not want. Martello also failed to respond to NASD requests to appear for an on-the-record interview.

**Frank Rocky Mazzei (Registered Representative, Oceanport, New Jersey)** was censured, fined \$24,087, suspended from association with any NASD member in any capacity for two to six months, ordered to pay \$41,974.89, plus interest in restitution to a public customer, and required to requalify by exam before acting in any capacity that requires qualification. If Mazzei pays the full amount of restitution to the customer within the first two months of his suspension then his six-month suspension will be deemed to be satisfied. However, if he fails to make full restitution within this two-month period, then he must serve the complete six-month suspension. The sanctions were based on findings that Mazzei made unsuitable recommendations to a public customer without having a reasonable basis to believe that his recommendations were suitable for the customer in light of the customer's age, financial situation and needs, and stated investment objectives. Mazzei also churned the customer's account by engaging in excessive trading for the purpose of generating commissions and in disregard of the customer's interest. In addition, Mazzei made misrepresentations and omissions as to the nature and meaning of an activity letter sent to the customer by Mazzei's member firm, induced the customer to sign it, and never informed the customer of the losses sustained in his account.

**Steven J. Napoli (Registered Representative, Belle Mead, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Napoli consented to the described sanctions and to the entry of findings that he received \$10,000 in cash from a public customer intended for paying premiums on an individual variable life insurance policy. The NASD determined that Napoli remitted \$7,300 of the funds, commingled the remaining \$2,700 received from the customer with his personal funds, and converted the funds to his own use and benefit without the customer's knowledge, authorization, or consent. Napoli also failed to respond to NASD requests for information.

**William Francis Palla (Registered Principal, Haverford, Pennsylvania)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that he failed to respond to NASD requests for information.

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

**David M. Pessa (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$919,459.10 in commissions. Without admitting or denying the allegations, Pessa consented to the described sanctions and to the entry of findings that he caused units of stock to be purchased in the account of a public customer without the customer's knowledge, authorization, or consent. The findings also stated that Pessa arranged to have an impostor take the Series 7 exam on his behalf and failed to respond to NASD requests for information and to appear for an on-the-record interview.

**Richard Vandervoort Singer, II (Registered Principal, Roslyn, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Singer consented to the described sanctions and to the entry of findings that he executed the purchases of warrants and shares of preferred stock in the account of a public customer without the customer's knowledge, authorization, or consent. Singer also failed to appear for an on-the-record interview.

**Stratton Oakmont, Inc. (Lake Success, New York)** submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it arranged sales of large quantities of securities in initial public offerings (IPOs) with pre-arrangement that the purchasers of the securities would sell or "flip" the securities back to the firm at a predetermined price in the immediate aftermarket. The findings also stated that the firm bid for or purchased securities for its own account prior to its completion of a public distribution and pre-sold securities in the aftermarket prior to the close of certain offerings. Furthermore, the NASD determined that the firm required customers to buy securities in the aftermarket as a condition of obtaining securities in IPOs, manipulated the price of a security, and charged excessive markups. Moreover, the firm violated the NASD's Free-Riding and Withholding Interpretation and failed to supervise its trading activities.

District 11 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Monroe, Livingston, and Steuben; and the five boroughs of New York City)

### **July Actions**

**Arthur R. Hall (Registered Representative, Amston, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hall consented to the described sanctions and to the entry of findings that he commingled funds of a public customer totaling \$10,617.34 with those of his bookkeeping and advisory business, independent of his member firm.

### **August Actions**

**Michael J. Falco (Registered Representative, Marshfield, Massachusetts)** was censured, fined \$6,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contracts products representative. The sanctions were based on findings that Falco forged a public customer's signature on an insurance document without the customer's knowledge or consent. Falco also failed to respond to NASD requests for information.

**Michael McCormick (Registered Representative, Bethel, Connecticut)** was censured, fined \$125,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCormick withheld and misappropriated at least \$23,052.35 from public customers and converted the funds to his own use and benefit. McCormick also failed to respond to NASD requests for information.

## September Actions

**Paul Joseph Digangi (Registered Representative, Cheshire, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Digangi consented to the described sanctions and to the entry of findings that he misappropriated to his own use and benefit a total of \$7,850 from a public customer in connection with a life insurance policy and a variable investment plan. In connection with the misappropriations, Digangi forged the signature of the customer on checks, a disbursement request, and fund withdrawal forms.

## Market Regulation Committee

### July Actions

None

### August Actions

International Correspondent Trading, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. In addition, the firm must undertake to revise immediately its written supervisory procedures regarding short-sale rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale orders in securities and failed to maintain a written record of the affirmative determination made for such orders. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with Short-Sale Rules.

### September Actions

**Bear, Stearns & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$33,500, and required to pay restitution and interest totaling \$1,084 to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to Automated Confirmation Transaction Service (ACT) in violation of applicable securities laws and regulations regarding trade reporting and customer limit orders. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, best execution, the Limit Order Protection Interpretation, firm quote obligations, and the reporting of options positions to the NASD.

**Herzog, Heine, Geduld, Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. The firm must also undertake to revise its written supervisory procedures relating to firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation.

**Johnson Rice & Company, L.L.C. (New Orleans, Louisiana)** submitted a Letter of

Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. The firm also consented to a compliance conference. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, and with NASD rules concerning front running. The findings also stated that the firm failed to enforce its written supervisory procedures concerning transactions for or by associated persons that required an associated person to obtain prior written approval of the manager before purchasing or selling any securities for his or her account.

**Michael Joseph Markowski (Registered Principal, Miami Beach, Florida) and Joseph F. Riccio (Registered Representative, Palm Harbor, Florida).** Markowski was censured, fined \$300,000, and barred from association with any NASD member in any capacity, and Riccio was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Markowski and Riccio effected numerous transactions in an underwritten security and induced others to purchase and sell such securities at artificial prices by means of manipulative, deceptive, and other fraudulent devices and contrivances. In addition, the respondents published quoted prices for the security which they knew or should have known were not bona fide and were published for manipulative, deceptive, and fraudulent purposes. Furthermore, Markowski was responsible for not taking appropriate action to address his member firm's violations of certain terms in its restriction agreement with the NASD and failed to respond timely to NASD requests to appear for an on-the-record interview.

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

**Mayer & Schweitzer, Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation.

**M. H. Meyerson & Co., Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation. 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 concerning the SEC's Firm Quote Rule and other related rules of the NASD.

**Piper Jaffray, Inc. (Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation. 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 concerning the SEC's Firm Quote Rule and other related rules.

**Robertson, Stephens & Company (San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined

\$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders and thereby failed to honor its published quotation. 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 concerning the SEC's Firm Quote Rule and other related rules.

## Enforcement Department

### July Actions

**William B. Badinelli, Jr. (Registered Principal, West Nyack, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 20 days, and required to requalify by exam for the Series 24 registration before again acting in that capacity. Without admitting or denying the allegations, Badinelli consented to the described sanctions and to the entry of findings that, in his capacity as his member firm's compliance director, Badinelli failed to establish, maintain, and enforce adequate supervisory procedures reasonably designed to prevent excessive markups.

**Thomas Niemczyk (Registered Principal, Syosset, New York)** submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any member firm. Without admitting or denying the allegations, Niemczyk consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions pertaining to highly speculative securities. The findings also stated that Niemczyk engaged in unauthorized trading in the accounts of public customers and discouraged, and refused to accept, sell orders from customers on several occasions.

### August Actions

**Matthew L. Bloom (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by exam prior to becoming associated with any NASD member. Without admitting or denying the allegations, Bloom consented to the described sanctions and to the entry of findings that he failed to execute, refused to accept, or aggressively discouraged sell orders from public customers and engaged in unauthorized trading in customer accounts. The findings also stated that Bloom made baseless and improper price predictions pertaining to highly speculative securities and falsely promised to limit a customer's potential loss. Furthermore, Bloom promised to make up prior losses with new trading.

**Lawrence Todd Smith (Registered Representative, Jericho, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any NASD member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he made unauthorized trades in the account of a public customer and made baseless and improper price predictions as to speculative securities to customers. The findings also stated that Smith falsely promised to limit customer losses, induced a customer to purchase an unsuitably risky security, and falsely told the customer that the security was not risky. Furthermore, the NASD determined that Smith failed to execute a customer sell

order, made false representations to a customer as to an issuer's business prospects, and falsified the new account documentation of a customer to create the appearance that the customer could and wanted to invest in speculative securities. Smith also failed to testify truthfully to the NASD regarding its investigation of the matter.

### **September Actions**

**Michael Andrew Harrington (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Harrington consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD.

**Daniel Mark Porush (Registered Principal, Oyster Bay Cove, New York), Paul Joseph Greco (Registered Representative, Syosset, New York), Frank Riccuiti, Jr. (Registered Representative, Long Beach, New York), and Clifford Bryan Olshaker (Registered Representative, Brooklyn, New York)** submitted Offers of Settlement pursuant to which Porush was censured, fined \$500,000, and barred from association with any NASD member in any capacity. Greco was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any member firm. Riccuiti was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by taking the Series 7 exam before again acting in that capacity, and Olshaker was censured, fined \$2,500, suspended from association with any NASD member in any capacity for two months, and required to requalify by exam prior to becoming associated with any member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Porush failed to exercise his supervisory responsibilities by allowing registered representatives under his supervision to engage in widespread fraudulent sales practices and other egregious misconduct. The findings also stated that Greco and Riccuiti, engaged in baseless and improper price predictions as to speculative securities and engaged in unauthorized trading in customer accounts. Riccuiti made false promises to limit customers' losses, made a misrepresentation as to a specific issuer, and mislead customers as to the risk of investing in specific securities. Also, the NASD determined that Greco required at least one customer to purchase aftermarket stock in order to receive units in an IPO, and induced a customer to purchase a security by promising that it would make up for prior losses. The NASD also found that Olshaker created sales scripts for use by his firm's retail sales force that were not fair, complete, and balanced presentations because they included only positive information about the issuers and securities and failed to present any risk factors or negative information.

**Aaron Jones Yorke, IV (Registered Principal, New York, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Yorke consented to the described sanctions and to the entry of findings that he terminated without justification an IPO after five days of after-market trading on the Nasdaq SmallCapSM Market.

Yorke's suspension commenced with the opening of business on August 10, 1998, and will conclude at the close of business October 8, 1998.

