

# Regulatory & Compliance Alert

---

A Publication of NASD Regulation, Inc.

12.1 March 1998

## Year 2000 Update For NASD Members

According to recent industry research about the Year 2000 challenge, securities firm management should be fundamentally aware of this issue at this time. Industry experts have stated that by mid-1998, a typical securities firm should have a Year 2000 plan with these activities completed: review of all business aspects to determine where Year 2000 failures may occur; completion of an inventory of any replacement or renovations required; identification of costs and resources; and notification of suppliers and partners to assess and certify their Year 2000 readiness. The plan should also define how the firm will test or validate its Year 2000 readiness, including options for participating in industry-wide testing, and contain contingency planning approaches.

NASD Regulation, Inc., urges all members of the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) to implement their action plans effectively so that they achieve timely Year 2000 compliance. All member firms have a responsibility to make the changes needed for continued successful operation. The scope of Year 2000 plans should extend to all information technology systems (internal and external) used to conduct a securities business and other business support systems (e.g., telephone, power, elevators, etc.).

Be aware that computer failures related to Year 2000 problems generally will not be considered a defense to violations of firms' regulatory or compliance responsibilities nor a mitigation of sanctions for such violations.

### ***Year 2000 To Be Featured At NASD Regulation Conference***

In response to members' requests for more Year 2000 information, discussion of Year 2000 issues will be a prominent feature of this year's Spring Securities Conference to be held May 20-22 in Washington, DC. On Wednesday, May 20, NASD Regulation<sup>SM</sup> will hold a pre-conference session devoted to the Year 2000 challenge and address such topics as best practices, legal issues, and industry testing. Additionally, a Year 2000 General Session will be held on the last day of the Securities Conference – Friday, May 22 – where participants from the NASD and others in the securities industry will discuss regulatory and compliance issues of interest to NASD members.

NASD members will receive a conference brochure and registration materials through the mail later this month. Also, check the "[Conferences and Events](#)" section of the [NASD Regulation Web Site](#) for conference updates.

### ***SEC Proposes Year 2000 Rule***

The Securities and Exchange Commission (SEC) is soliciting comment on a temporary Rule amendment for Rule 17a-5 under the Securities Exchange Act of 1934. The proposed Rule would require member firms that had a minimum net capital requirement of \$100,000 or more on December 31, 1997, to file two reports regarding their Year 2000 compliance. The first report

would be due 45 days after the Rule's adoption. For further information about the proposed Rule, visit [www.sec.gov](http://www.sec.gov).

For further information about the Year 2000 challenge in general and/or NASD's Year 2000 Program, visit the Year 2000 Web Pages on either the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) or the NASD Web Site ([www.nasd.com](http://www.nasd.com)); or contact Lyn Kelly at the NASD Year 2000 Program Office, at (301) 590-6342, or via e-mail at [y2k@nasd.com](mailto:y2k@nasd.com).

## ***NASD Order Audit Trail Rules Approved By The SEC***

The SEC approved [NASD Order Audit Trail System<sup>SM</sup> \(OATS\)<sup>SM</sup> Rules 6950 through 6957](#) on March 6, 1998. The Rules require member firms to capture and report to OATS specific data elements related to the handling or execution of orders for Nasdaq<sup>®</sup> equity securities. Member firms also must record order information to the hour, minute, and second. NASD Regulation will use this data to recreate events in the life cycle of an order and more completely monitor the trading practices of member firms.

The Rules also require members to synchronize the business clocks used to record OATS data. OATS Rule 6953, Synchronization of Member Business Clocks, applies to **all** member firms that are required to record order, transaction, or related data required by the By-Laws or other NASD rules. Synchronization of all business clocks, including both computer system clocks and mechanical time-stamping devices, is required.

OATS reporting will be implemented in phases. By March 1, 1999, electronic orders received by Electronic Communication Networks (ECNs) or at the trading departments of market makers are subject to reporting. Electronic orders are defined as orders that are captured in an electronic order-routing or execution system. By August 1, 1999, all electronic orders are subject to reporting. By July 31, 2000, all manual or non-electronic orders are subject to reporting.

The types of orders that must be reported under the Rules include those received from a customer for handling or execution, those received from another member firm for handling or execution, and those originated by a department or desk within a firm for execution by another department or desk within that same member firm. Order events that must be reported under the Rules include the receipt, modification, cancellation, execution, or routing of an order to another member firm, another department of the same firm, or an ECN. Orders for a firm's proprietary account and orders executed between market makers in the same security are generally exempted.

To expand upon the requirements of the Rules, the NASD published [the OATS Technical Specifications, First Edition](#) on March 9, 1998. This document details the operational and technical requirements for submitting order reports to OATS. This document and copies of [NASD Rules 6950 through 6957](#) are available via the [NASD Regulation Web Site](#). To obtain the latest information or to ask questions about OATS, contact the OATS Support Center. The Center is open Monday through Friday from 8 a.m. until 6 p.m., Eastern Time. The e-mail address is [oatscsc@nasd.com](mailto:oatscsc@nasd.com). The telephone numbers are (888) 700-OATS and (301) 590-6503.

## ***NASD Regulation Clarifies New Membership And Registration Rules***

On August 7, 1997, the SEC approved the NASD Rule 1010 Series that governs the membership application process.

The NASD Rule 1010 Series creates uniform standards for the new membership application process, restriction agreement changes, and change of ownership, control, or operations. Additionally, the new Rules define the responsibilities of the parties involved in the membership application process and identify specific time frames that must be adhered to by Applicants and NASD Regulation staff. In the event an Applicant misses a designated deadline, the application will lapse, absent a showing of good cause. A written request for an extension of any deadline must be sent to the [NASD Regulation District Office](#) processing the application. Milestone deadlines are especially important in the new member process as membership fees are not refundable upon a lapse of the application.

### ***Membership Standards***

NASD Regulation's primary objective in the membership application process is determining whether the Applicant or member meets the standards for admission to, or continuance in, membership contained in NASD Rule 1014. The membership application process is a dynamic exercise in which all relevant circumstances surrounding an application are evaluated. It identifies and seeks to resolve key issues. In addition, the process provides assistance to the Applicant or member, enabling it to become informed and educated, capable of conducting its business in compliance with all applicable rules and regulations and consistent with just and equitable principles of trade.

### ***New Member Applications***

Under the new rules, Applicants must submit their applications in two separate parts. The two-part submission was created to expedite the review process. As detailed in NASD Rule 1013, 'Part One' must be submitted to NASD Regulation's Organization Processing section. 'Part Two' of the application filing must be sent to the [NASD Regulation District Office](#) in which the Applicant intends to have its principal place of business. Foreign Applicants must submit all materials to:

Office of District Oversight and Coordination  
Manager, Membership  
1735 K Street, 6th Floor  
Washington, D.C. 20006

Applications must be submitted by a commercial courier service that generates a written confirmation of receipt or of attempts at delivery. The application is deemed received upon delivery of the second part of the application to the appropriate [NASD Regulation District Office](#) (or to District Oversight in the case of a Foreign Applicant). Applicants may be required to provide additional information as outlined in NASD Rule 1013(a)(2).

### ***Membership Agreements***

NASD membership requires execution of a Membership Agreement. From time to time after becoming a member, a firm may desire to amend its Membership Agreement. NASD Rule 1017 requires that a member submit a written application to modify or remove any of the restrictions on its business activities contained in the Membership Agreement. This application must include facts showing that the circumstances that gave rise to the restriction have changed and state specifically why the restriction should be removed in light of the membership standards set forth in NASD Rule 1014.

### ***Changes Of Ownership, Control, Or Operations***

NASD Rule 1018 requires member firms to notify the appropriate District Office of any of the following events constituting a change in ownership, control, or operations of the member at least 30 days prior to the occurrence of such event(s):

- a merger of the member with another member;
- an acquisition by the member of another member;
- an acquisition of substantially all of the member's assets;
- a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital; or
- a material change in the member's operations.

A member shall provide a detailed written explanation of the change; a description of who the parties to the transaction are; and the details of whether there will be any accompanying changes in the management, supervision, or activities of the firm. If applicable, a copy of the contract or agreement governing the transaction should be attached.

#### ***Imposition Of Interim Restrictions***

Under NASD Rule 1018, the District Office staff may impose interim restrictions on the member until the continuing membership application process is completed or for some other appropriate time period. For example, if a municipal securities broker/dealer submits written notification that the sole municipal principal is planning to resign or other key personnel of the existing member are planning to cease functioning in their prior roles, the member's operations may be limited through the use of interim restrictions.

#### ***Review By The National Adjudicatory Council***

#### ***Procedures Regarding An Appeal Of A District Office Staff Decision***

Under NASD Rule 1015, an Applicant or member may file a written request for a review of the District Office staff's decision with NASD Regulation's National Adjudicatory Council within 25 days after service of the decision. A copy of this request must simultaneously be sent to the District Office where the Applicant filed its membership application. A request for review must include, with specificity, the reasons why the applicant believes that the decision is inconsistent with the membership standards set forth in NASD Rule 1014, or otherwise should be set aside. Moreover, written requests must indicate whether a hearing is requested.

#### ***Procedures Regarding Waivers Of The Two-Principal Requirement And Exemptions To The Financial And Operations Principal Requirement***

The NASD Rule 1010 Series outlines two principal registration requirements for Applicants and members. The first one is the two-principal requirement<sup>1</sup> and the second is the requirement to have at least one person qualified and registered as a Financial and Operations Principal.<sup>2</sup> A waiver of the two-principal requirement or an exemption from the Financial and Operations Principal requirement may be granted based on the Applicant conducting a limited scope business or having only one registered person. The decision to waive or exempt an Applicant or member from either one of these requirements is made by the [NASD Regulation District Office](#) staff reviewing the membership application.

Under NASD Rule 9610(a), if requesting a waiver from the NASD two-principal requirement or an exemption from the NASD Financial and Operations Principal requirement, the Applicant or member must submit the original request in writing to the appropriate [District Office](#), with copies to the Office of the General Counsel, NASD Regulation. Refer to the [NASD Web Site](#) for more detailed instructions.

It is important to note that under NASD Rule 9610(b), a request for a waiver or exemption must contain the following:

- the Applicant's name and address;
- the name of the person associated with the Applicant who will serve as the primary contact for the application;
- the Rule from which the Applicant is seeking exemption or waiver; and
- a detailed statement of the grounds for granting the exemption or waiver.

### ***Resource Materials And Inquiries***

NASD Regulation urges members and their associated persons to review the new Rules. The NASD Rule 1010 Series and an accompanying [Special NASD Notice to Members 97-55](#) were published electronically on the [NASD Regulation Web Site](#). In addition, the booklet *How To Become a Member*, which will provide additional guidance for Applicants, will soon be available electronically on the NASD and NASD Regulation Web Sites. For members without access to the Internet, the full text of the Rules in printed format is available from [NASD MediaSource<sup>SM</sup>](#) at (240) 386-4200, and the booklet will also be available within a few months.

*Questions regarding the NASD Rule 1010 Series may be directed to the following NASD Regulation staff members: [Mary Dunbar](#) at (202) 728-8252, [Beth D. Kiesewetter](#) at (202) 728-8813, or [Daniel M. Sibears](#) at (202) 728-6911.*

---

1 Pursuant to NASD Membership and Registration Rule 1021(e), an Applicant for membership, except a sole proprietorship, must have at least two registered principals, unless that requirement is waived. The Rule provides for waivers to be granted "in situations which indicate conclusively" that only one principal is required.

2 Pursuant to NASD Rule 1022(b), an Applicant for membership must have a Financial and Operations Principal, unless exempted under the NASD Rule 9600 Series. Exemptions from the Financial and Operations Principal requirement are only available for Applicants that would otherwise require Series 27 registration, and not for Applicants that require Series 28 registration.

## **Cover Stories**

---

### ***Year 2000 Update For NASD Members***

According to recent industry research about the Year 2000 challenge, securities firm

management should be fundamentally aware of this issue at this time. Industry experts have stated that by mid-1998, a typical securities firm should have a Year 2000 plan with these activities completed: review of all business aspects to determine where Year 2000 failures may occur; completion of an inventory of any replacement or renovations required; identification of costs and resources; and notification of suppliers and partners to assess and certify their Year 2000 readiness. The plan should also define how the firm will test or validate its Year 2000 readiness, including options for participating in industry-wide testing, and contain contingency planning approaches.

NASD Regulation, Inc., urges all members of the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) to implement their action plans effectively so that they achieve timely Year 2000 compliance. All member firms have a responsibility to make the changes needed for continued successful operation. The scope of Year 2000 plans should extend to all information technology systems (internal and external) used to conduct a securities business and other business support systems (e.g., telephone, power, elevators, etc.).

Be aware that computer failures related to Year 2000 problems generally will not be considered a defense to violations of firms' regulatory or compliance responsibilities nor a mitigation of sanctions for such violations.

### ***Year 2000 To Be Featured At NASD Regulation Conference***

In response to members' requests for more Year 2000 information, discussion of Year 2000 issues will be a prominent feature of this year's Spring Securities Conference to be held May 20-22 in Washington, DC. On Wednesday, May 20, NASD Regulation<sup>SM</sup> will hold a pre-conference session devoted to the Year 2000 challenge and address such topics as best practices, legal issues, and industry testing. Additionally, a Year 2000 General Session will be held on the last day of the Securities Conference – Friday, May 22 – where participants from the NASD and others in the securities industry will discuss regulatory and compliance issues of interest to NASD members.

NASD members will receive a conference brochure and registration materials through the mail later this month. Also, check the "[Conferences and Events](#)" section of the [NASD Regulation Web Site](#) for conference updates.

### ***SEC Proposes Year 2000 Rule***

The Securities and Exchange Commission (SEC) is soliciting comment on a temporary Rule amendment for Rule 17a-5 under the Securities Exchange Act of 1934. The proposed Rule would require member firms that had a minimum net capital requirement of \$100,000 or more on December 31, 1997, to file two reports regarding their Year 2000 compliance. The first report would be due 45 days after the Rule's adoption. For further information about the proposed Rule, visit [www.sec.gov](http://www.sec.gov).

For further information about the Year 2000 challenge in general and/or NASD's Year 2000 Program, visit the Year 2000 Web Pages on either the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) or the NASD Web Site ([www.nasd.com](http://www.nasd.com)); or contact Lyn Kelly at the NASD Year 2000 Program Office, at (301) 590-6342, or via e-mail at [y2k@nasd.com](mailto:y2k@nasd.com).

### ***NASD Order Audit Trail Rules Approved By The SEC***

The SEC approved [NASD Order Audit Trail System<sup>SM</sup> \(OATS\)<sup>SM</sup> Rules 6950 through 6957](#) on March 6, 1998. The Rules require member firms to capture and report to OATS specific data elements related to the handling or execution of orders for Nasdaq<sup>®</sup> equity securities. Member firms also must record order information to the hour, minute, and second. NASD Regulation will use this data to recreate events in the life cycle of an order and more completely monitor the trading practices of member firms.

The Rules also require members to synchronize the business clocks used to record OATS data. OATS Rule 6953, Synchronization of Member Business Clocks, applies to **all** member firms that are required to record order, transaction, or related data required by the By-Laws or other NASD rules. Synchronization of all business clocks, including both computer system clocks and mechanical time-stamping devices, is required.

OATS reporting will be implemented in phases. By March 1, 1999, electronic orders received by Electronic Communication Networks (ECNs) or at the trading departments of market makers are subject to reporting. Electronic orders are defined as orders that are captured in an electronic order-routing or execution system. By August 1, 1999, all electronic orders are subject to reporting. By July 31, 2000, all manual or non-electronic orders are subject to reporting.

The types of orders that must be reported under the Rules include those received from a customer for handling or execution, those received from another member firm for handling or execution, and those originated by a department or desk within a firm for execution by another department or desk within that same member firm. Order events that must be reported under the Rules include the receipt, modification, cancellation, execution, or routing of an order to another member firm, another department of the same firm, or an ECN. Orders for a firm's proprietary account and orders executed between market makers in the same security are generally exempted.

To expand upon the requirements of the Rules, the NASD published [the OATS Technical Specifications, First Edition](#) on March 9, 1998. This document details the operational and technical requirements for submitting order reports to OATS. This document and copies of [NASD Rules 6950 through 6957](#) are available via the [NASD Regulation Web Site](#). To obtain the latest information or to ask questions about OATS, contact the OATS Support Center. The Center is open Monday through Friday from 8 a.m. until 6 p.m., Eastern Time. The e-mail address is [oatssc@nasd.com](mailto:oatssc@nasd.com). The telephone numbers are (888) 700-OATS and (301) 590-6503.

## ***NASD Regulation Clarifies New Membership And Registration Rules***

On August 7, 1997, the SEC approved the NASD Rule 1010 Series that governs the membership application process.

The NASD Rule 1010 Series creates uniform standards for the new membership application process, restriction agreement changes, and change of ownership, control, or operations. Additionally, the new Rules define the responsibilities of the parties involved in the membership application process and identify specific time frames that must be adhered to by Applicants and NASD Regulation staff. In the event an Applicant misses a designated deadline, the application will lapse, absent a showing of good cause. A written request for an extension of any deadline must be sent to the [NASD Regulation District Office](#) processing the application. Milestone deadlines are especially important in the new member process as

membership fees are not refundable upon a lapse of the application.

### ***Membership Standards***

NASD Regulation's primary objective in the membership application process is determining whether the Applicant or member meets the standards for admission to, or continuance in, membership contained in NASD Rule 1014. The membership application process is a dynamic exercise in which all relevant circumstances surrounding an application are evaluated. It identifies and seeks to resolve key issues. In addition, the process provides assistance to the Applicant or member, enabling it to become informed and educated, capable of conducting its business in compliance with all applicable rules and regulations and consistent with just and equitable principles of trade.

### ***New Member Applications***

Under the new rules, Applicants must submit their applications in two separate parts. The two-part submission was created to expedite the review process. As detailed in NASD Rule 1013, 'Part One' must be submitted to NASD Regulation's Organization Processing section. 'Part Two' of the application filing must be sent to the [NASD Regulation District Office](#) in which the Applicant intends to have its principal place of business. Foreign Applicants must submit all materials to:

Office of District Oversight and Coordination  
Manager, Membership  
1735 K Street, 6th Floor  
Washington, D.C. 20006

Applications must be submitted by a commercial courier service that generates a written confirmation of receipt or of attempts at delivery. The application is deemed received upon delivery of the second part of the application to the appropriate [NASD Regulation District Office](#) (or to District Oversight in the case of a Foreign Applicant). Applicants may be required to provide additional information as outlined in NASD Rule 1013(a)(2).

### ***Membership Agreements***

NASD membership requires execution of a Membership Agreement. From time to time after becoming a member, a firm may desire to amend its Membership Agreement. NASD Rule 1017 requires that a member submit a written application to modify or remove any of the restrictions on its business activities contained in the Membership Agreement. This application must include facts showing that the circumstances that gave rise to the restriction have changed and state specifically why the restriction should be removed in light of the membership standards set forth in NASD Rule 1014.

### ***Changes Of Ownership, Control, Or Operations***

NASD Rule 1018 requires member firms to notify the appropriate District Office of any of the following events constituting a change in ownership, control, or operations of the member at least 30 days prior to the occurrence of such event(s):

- a merger of the member with another member;

- an acquisition by the member of another member;
- an acquisition of substantially all of the member's assets;
- a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital; or
- a material change in the member's operations.

A member shall provide a detailed written explanation of the change; a description of who the parties to the transaction are; and the details of whether there will be any accompanying changes in the management, supervision, or activities of the firm. If applicable, a copy of the contract or agreement governing the transaction should be attached.

### ***Imposition Of Interim Restrictions***

Under NASD Rule 1018, the District Office staff may impose interim restrictions on the member until the continuing membership application process is completed or for some other appropriate time period. For example, if a municipal securities broker/dealer submits written notification that the sole municipal principal is planning to resign or other key personnel of the existing member are planning to cease functioning in their prior roles, the member's operations may be limited through the use of interim restrictions.

### ***Review By The National Adjudicatory Council***

#### ***Procedures Regarding An Appeal Of A District Office Staff Decision***

Under NASD Rule 1015, an Applicant or member may file a written request for a review of the District Office staff's decision with NASD Regulation's National Adjudicatory Council within 25 days after service of the decision. A copy of this request must simultaneously be sent to the District Office where the Applicant filed its membership application. A request for review must include, with specificity, the reasons why the applicant believes that the decision is inconsistent with the membership standards set forth in NASD Rule 1014, or otherwise should be set aside. Moreover, written requests must indicate whether a hearing is requested.

#### ***Procedures Regarding Waivers Of The Two-Principal Requirement And Exemptions To The Financial And Operations Principal Requirement***

The NASD Rule 1010 Series outlines two principal registration requirements for Applicants and members. The first one is the two-principal requirement<sup>1</sup> and the second is the requirement to have at least one person qualified and registered as a Financial and Operations Principal.<sup>2</sup> A waiver of the two-principal requirement or an exemption from the Financial and Operations Principal requirement may be granted based on the Applicant conducting a limited scope business or having only one registered person. The decision to waive or exempt an Applicant or member from either one of these requirements is made by the [NASD Regulation District Office](#) staff reviewing the membership application.

Under NASD Rule 9610(a), if requesting a waiver from the NASD two-principal requirement or an exemption from the NASD Financial and Operations Principal requirement, the Applicant or member must submit the original request in writing to the appropriate [District Office](#), with copies to the Office of the General Counsel, NASD Regulation. Refer to the

[NASD Web Site](#) for more detailed instructions.

It is important to note that under NASD Rule 9610(b), a request for a waiver or exemption must contain the following:

- the Applicant's name and address;
- the name of the person associated with the Applicant who will serve as the primary contact for the application;
- the Rule from which the Applicant is seeking exemption or waiver; and
- a detailed statement of the grounds for granting the exemption or waiver.

### ***Resource Materials And Inquiries***

NASD Regulation urges members and their associated persons to review the new Rules. The NASD Rule 1010 Series and an accompanying [Special NASD Notice to Members 97-55](#) were published electronically on the [NASD Regulation Web Site](#). In addition, the booklet *How To Become a Member*, which will provide additional guidance for Applicants, will soon be available electronically on the NASD and NASD Regulation Web Sites. For members without access to the Internet, the full text of the Rules in printed format is available from [NASD MediaSource<sup>SM</sup>](#) at (240) 386-4200, and the booklet will also be available within a few months.

*Questions regarding the NASD Rule 1010 Series may be directed to the following NASD Regulation staff members: [Mary Dunbar](#) at (202) 728-8252, [Beth D. Kieseewetter](#) at (202) 728-8813, or [Daniel M. Sibears](#) at (202) 728-6911.*

---

1 Pursuant to NASD Membership and Registration Rule 1021(e), an Applicant for membership, except a sole proprietorship, must have at least two registered principals, unless that requirement is waived. The Rule provides for waivers to be granted "in situations which indicate conclusively" that only one principal is required.

2 Pursuant to NASD Rule 1022(b), an Applicant for membership must have a Financial and Operations Principal, unless exempted under the NASD Rule 9600 Series. Exemptions from the Financial and Operations Principal requirement are only available for Applicants that would otherwise require Series 27 registration, and not for Applicants that require Series 28 registration.

## **Regulation**

---

### ***NASD Regulation Postpones Rule Relating To Supervision Of Correspondence***

NASD Regulation has postponed the effectiveness of Rule changes recently approved by

the SEC governing the supervision and record retention requirements relating to correspondence, including electronic mail (File SR-NASD-97-24). These changes were scheduled to take effect on February 15, 1998. Postponing the effective date will allow NASD Regulation to consider and address concerns that have been voiced since the adoption of the changes, including issues focusing on the effect the Rule changes will have on the review of incoming correspondence and the scope of the obligation of member firms to control the use of electronic communications systems that registered persons use to communicate with their customers. After considering these issues, NASD Regulation will issue a notice providing a new effective date or proposing further changes.

A similar proposal by the New York Stock Exchange was approved and is effective. Pending effectiveness of the NASD proposal, NASD members that also are New York Stock Exchange member firms may rely on that Rule in structuring their supervision programs for the review of correspondence.

For further information about this subject, contact the NASD Regulation Office of General Counsel at (202) 728-8071.

### ***NASD Regulation Permits Electronic Methods For Holding Annual Interviews Or Meetings With Registered Representatives***

NASD Regulation is clarifying the application of the annual compliance meeting requirements of NASD Rule 3010. Such meetings may be conducted by electronic means, provided certain safeguards are met.

#### ***Interpretation***

NASD Rule 3010 governs supervisory issues for NASD members. Under subpart (a)(7), the Rule requires the participation of each registered representative, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative are discussed (hereinafter "compliance conference" or "conference"). Compliance conferences may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's place of business.

Technological advances in electronic communications led NASD Regulation to consider the various means of communication through which members can effectively conduct the compliance conference required by NASD Rule 3010(a)(7). In this regard, NASD Regulation will permit members to hold the required conference with registered representatives via video conference, interactive classroom setting, or other electronic means, provided certain safeguards are in place.<sup>1</sup>

Members choosing to conduct compliance conferences other than in person with representatives must ensure that the communication means used permit interactive communication. This means, at a minimum, that the representatives that attend the compliance conference must be able to hear presenters live and, in an interactive environment, ask questions and engage in dialogue with the presenters. Presenters may use supplemental learning and communications tools such as videotapes or computer programs that include informational or instructional materials from persons who are not

physically present.

In addition to ensuring an interactive environment for all compliance conferences, members conducting such conferences through electronic means or aids may bear a heightened responsibility associated with electronic communications. As with all compliance conferences, members must ensure that representatives scheduled to appear at a particular location in fact arrive at and stay for the entire conference.

While no standardized procedures are mandated, firms' written supervisory procedures must be designed and implemented to reasonably ensure compliance with NASD Rule 3010(a)(7). These procedures may include, among other things:

- designating an appropriate person to oversee compliance with the Rule;
- implementing and maintaining a tracking system that includes the identities of representatives participating in compliance conferences, the time and place of the conference for each representative, the means through which the conference was conducted, the identity of the person conducting the conference, and the substantive areas covered during the conference; and
- proctoring the compliance conference to ensure that representatives required to be present attend and remain at the conference for the designated period of time.

Questions concerning this article should be directed to [Daniel M. Sibears](#), Vice President, Member Regulation, NASD Regulation, Inc., at (202) 728-6911.

---

<sup>1</sup> This position modifies a previous March 31, 1997, staff position with respect to the holding of compliance meetings via video conference technology.

### ***NASD Regulation Approves Use Of Electronic Signatures By Members Under Certain Conditions***

On November 26, 1997, NASD Regulation's Office of General Counsel issued an interpretive letter to a member firm permitting the use of electronic signatures, under certain conditions, in approving new customer accounts and securities transactions under NASD Rules 3110(c)(1)(C) and 3010(d). The interpretive letter is available to members and has been published on the NASD Regulation Web Site under "Interpretive Letters, [NASD Rule 3010](#) or [3110](#)."

NASD Rule 3110(c)(1)(C) requires members to maintain, for each customer account opened after January 1, 1991, a signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account. NASD Rule 3010(d) requires that each member establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions and all correspondence of its registered representatives pertaining to the solicitation or execution of any securities transaction.

Since the Rules do not expressly provide for an electronic signature, the interpretive letter

requested interpretive guidance on whether electronic signatures may be used in place of manual signatures to acknowledge the review and approval by a qualified Series 24 principal of new customer account applications or packages.

In issuing the interpretive position, the NASD staff set forth five conditions or safeguards that a member must follow if the member elects to use electronic signatures. The failure to follow any of the five listed conditions or safeguards in the firm's elective use of electronic signatures may cause the firm to fail to comply with the requirements of the Rules. The conditions or safeguards are as follows:

- (1) The system will allow NASD examining staff immediate access to required records and will contain appropriate indexing and cross-referencing capabilities to assure access to all relevant documents and records, and retention of the records and documents in accord with the NASD and SEC's record retention requirements and rules.
- (2) The system will permit NASD examining staff to download documents, records, and information, and permit printing these documents in hard copy.
- (3) The system provides for adequate security and restriction of access to authorized employees and principals only. Company-wide user profiles are created with previously approved authority to conduct reviews and approvals. Passwords are changed periodically and are safeguarded against unauthorized use.
- (4) The broker/dealer will maintain current written policies and procedures at each branch site that utilizes the electronic system that accurately describe the system, its safeguards, and its operating procedures to assure compliance with the Rules.
- (5) The broker/dealer will conduct periodic reviews, at least annually, of the policies, procedures, and operations to assure that the system operates as designed and documented and in accord with the requirements of NASD and SEC rules.

A member should gather and read the staff interpretive letter in its entirety before it elects to use electronic signatures. In addition, please note that the opinions expressed in the interpretive letter are staff opinions only and have not been reviewed or endorsed by the Board of Directors of NASD Regulation. The interpretive letter responds to the issues that were raised based on the facts as represented, and does not address any other rule or interpretation of the NASD or all the possible regulatory and legal issues involved.

If you have any questions regarding this position or interpretive letter, please contact [David A. Spotts](#), Office of General Counsel, NASD Regulation, Inc., at (202) 728-8014.

### ***Notification Of Closing Of Washington District Office***

As many are already aware, a decision was made in June of last year to close the Washington, D.C. NASD Regulation District Office. That District Office officially closed its doors on January 31, 1998.

This notification is to advise readers that the functions of the former D.C. District Office have been divided between the Philadelphia and Atlanta NASD Regulation District Offices. Specifically, the Philadelphia Office (District 9) has assumed responsibility for member firms

located in Maryland and the District of Columbia, while member firms located in Virginia have been reassigned to the Atlanta Office (District 7). Please be sure to direct any communications and mail to the appropriate NASD Regulation District Office. The addresses and numbers for both District Offices are displayed below:

NASD Regulation Atlanta District 7 Office  
3490 Piedmont Road, NE  
Atlanta, GA 30305  
(404) 239-6100  
Fax: (404) 237-9290

NASD Regulation Philadelphia District 9 Office  
11 Penn Center  
1835 Market Street, 19th Floor  
Philadelphia, PA 19103  
(215) 665-1180  
Fax: (215) 496-0434

## Compliance

---

### *Compliance Questions & Answers*

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

**Q:** SEC Rule 17a-5(e)(4) specifies that the Securities Investor Protection Corporation (SIPC) supplemental report "shall be bound separately " when filing audited financial statements. Is it unacceptable for the report to be bound together with the rest of the audited financial statements?

**A:** Yes. The report must be bound separately from the other materials. Any firm that has incorrectly filed its SIPC supplemental report should re-file the report according to the Rule. The requirement to submit the supplemental report separately was added to the Rule at the request of the industry, which did not want SIPC supplemental reports made available to the public. (SEC Division of Market Regulation to NASD Regulation staff, September 3, 1997). Note: No SIPC Assessment report has been required for 1996, 1997, and 1998.

**Q:** When an audited financial statement is inadequate under SEC Rule 17a-5, to which entities should the amended information be furnished? Should the new information be filed with a facing page with an oath or affirmation?

**A:** One copy of the amendment must be filed with the regional or district office of the SEC and the NASD Regulation District Office that identified the deficiency. Two copies must also be filed at the SEC's Washington, DC offices. The amendment must include a new facing page with an original oath or affirmation.

If the missing information is a schedule that would otherwise be blank, then

the blank schedule does not need to be filed. For example, if the firm does not have subordinated liabilities, it does not need to file a blank Statement of Changes in Liabilities Subordinated to Claims of General Creditors. (SEC Division of Market Regulation to NASD Regulation staff, September 3, 1997.)

**Q:** If there are no material differences between either or both of the auditor's Computation of Net Capital and Computation for Determination of the Reserve Requirement and the broker/dealer's most recent unaudited FOCUS Part II or Part IIA filing, what filing must be made under SEC Rule 17a-5?

**A:** If no material differences exist, a statement so indicating must be filed under SEC Rule 17a-5(d)(4). (SEC Division of Market Regulation to NASD Regulation staff, September 3, 1997.)

**Q:** What licensing or registration qualifications are required of the auditor who signs the member's annual audited financial statements?

**A:** SEC Rule 17a-5(d)(1) requires the annual audited financial statements to be audited by "an independent public accountant." Depending on the laws in effect in the auditor's place of residence or principal office, the auditor will need to be either a certified public accountant (CPA) or a public accountant. The Rule addresses the qualifications that are required, saying that an auditor who is a CPA must be "duly registered in good standing as such under the laws of his [that is, the CPA's] place of residence or principal office;" while an auditor that is a public accountant must be "in good standing and entitled to practice as such under the laws of his place of residence or principal office" (SEC Rule 17a-5(f)(1)).

**Q:** For net capital purposes, what is the proper treatment when a broker/dealer offers a settlement with regulators or others?

**A:** The broker/dealer must take a charge to capital at the time an "offer" is made.

*Questions regarding this information may be directed to the NASD Regulation [Compliance Department](#) at (202) 728-8221.*

## **Advertising Regulation**

---

### ***Advertising Update***

In 1997 the Advertising/Investment Companies Regulation Department of NASD Regulation reviewed over 60,000 communications with the public filed by member firms. The staff reviews material to ensure members' compliance with the NASD Conduct Rules covering advertising and sales literature as well as applicable standards of the SEC, the Municipal Securities Rulemaking Board, and the Securities Investors Protection Corporation.

To facilitate the filings process, the Department is rolling out a new version of the filings cover sheet. The [new cover sheet](#) follows the text of this article. Members are encouraged to print out and copy this sheet for use in future filings with the Department.

### ***Registered Principal Approval Required***

The NASD Conduct Rules require a registered principal to approve in writing advertising and sales literature prior to use. While most advertising compliance personnel are aware of this standard, some may not recognize that they have an additional approval responsibility when filing material with the Department. Specifically, when filing communications pursuant to one of the requirements set forth in NASD Conduct Rule 2210(c), a registered principal must approve the material before it is sent to the Department.

The NASD adopted this requirement in 1995 in light of a concern that members were using the Department's staff as a stand-in for their own compliance efforts.

While the staff continues to offer advice and assistance to members in preparing compliant advertising, its primary role is regulatory rather than advisory. The staff reviews material with an eye towards detecting rule violations. Firms and their compliance personnel are responsible for ensuring that only compliant communications are used. Thus, the Conduct Rules specify that members file only those advertisements or sales literature that have been reviewed and approved by a registered principal.

This internal approval is critical in situations where the rules permit firms to file communications after they are used. For example, a member firm can use a mutual fund advertisement, and then wait until up to 10 days before filing the communication with the Department. When a firm takes advantage of this so-called "post-use" filing requirement, the internal review and sign-off of the registered principal plays an essential role in ensuring that the firm's communications with the public are compliant.

The Advertising/Investment Companies Regulation Department staff must surveil and enforce members' compliance with this internal approval requirement. To facilitate this effort, the Department has modified its procedures to accept only those filings that include documentation of a registered principal's approval. Members must identify the name of the registered principal who reviewed and approved the communication and the date of the approval on the [cover sheet](#) or letter accompanying the filing.

### ***Date Of First Use***

As part of its review, the Advertising/Investment Companies Regulation Department staff must also determine whether a member has filed its advertising or sales literature in a timely manner pursuant to the filing requirements set forth in NASD Conduct Rule 2210(c). Since 1995, the Rule has required members to identify the date of first use (or intended first use, if a communication has not been used yet), when filing communications with the Department. The [cover sheet](#) provided at the end of this article prompts members to provide this date-of-first-use information as well as documentation of the internal approval.

Members with questions regarding the filing process or the [cover sheet](#) provided below should call the Advertising/Investment Companies Regulation Department at (202) 728-8330 and ask to speak to the analyst assigned to their firm.

### **New Advertising & Sales Literature Filing Cover Sheet**

View [PDF file](#)<sup>1</sup> 5 kB

---

1 For your convenience, this Web Page makes the new Advertising & Sales Literature Filing Cover Sheet available in PDF (Portable Document Format). If you do not have the Adobe<sup>®</sup> Acrobat Reader 3.0 to view PDF files, please click [here](#) to download the free plug-in.

## **Continuing Education**

---

### ***SEC Approves Amendments To Continuing Education Rules***

On March 3, 1998, the SEC approved revisions to the NASD's Membership and Registration Rule 1120—Continuing Education Requirements. The text of the SEC approval appears in the March 11 issue of the *Federal Register*—see 63 FR 11939. The changes will become effective July 1, 1998. (Also see [NASD Notice to Members 98-35](#) for more information.) Following is a synopsis of these Rule changes.

#### ***New Regulatory Element Training Module***

Currently, the Regulatory Element computer-based training does not distinguish between registered representatives and principals. All registered persons take the same computer-based training material. The new Rule calls for the development of a new Regulatory Element computer-based training program related to the specific needs of registered principals. Persons registered as principals who are required to take the Regulatory Element will participate in the training designated for principals, while all other registrations will participate in the current Regulatory Element training.

The new program for registered principals will have the scenario-based format of the current Regulatory Element computer-based training. What will be different is that the scenarios illustrate principal-specific situations and will be rendered more realistic through multimedia use of audio and visual techniques.

#### ***One-Time Grandfathering From The Regulatory Element***

Revised NASD Rule 1120 allows a one-time exemption for persons currently graduated from the Regulatory Element by providing that those persons who have been registered for more than 10 years as of the effective date of the Rule (July 1, 1998), and who have not been the subject of a significant disciplinary action during the past 10 years, will continue to be excluded from required ongoing participation in the Regulatory Element. However, persons registered as principals will have to have been registered in this capacity for more than 10 years in order to be grandfathered. Therefore, those principals who have graduated from the Regulatory Element requirements based on their initial registration date, but who have not been registered as a principal for over 10 years, will be required to re-enter the Regulatory Element.

#### ***Required Regulatory Element Training Time Frames***

The new Rule also addresses the time frames in which registered persons must participate

in the Regulatory Element computer-based training. Specifically, the revised Rule does away with graduation by requiring ongoing participation in the Regulatory Element throughout registered persons' careers on the second anniversary of their initial securities registration and every three years thereafter. This changes the current requirement that all registered persons complete Regulatory Element training on three occasions, namely, within 120 days of the second, fifth, and 10th anniversaries of their initial securities registration, and once a person completes the 10th anniversary training requirement, he or she is graduated and is not required to participate further in the Regulatory Element unless he or she is subject to significant disciplinary action.

### ***Changes To The Firm Element***

Finally, the current Rule requires that, for the Firm Element, each member conduct an annual analysis of its training needs and administer such training, as is appropriate, to its registered persons on an ongoing basis. Training topics must be specifically related to its business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The modified Rule will require members to also focus specifically on supervisory needs in conducting their analysis of training needs, and if it is determined that there is a specific need for supervisory training for registered principals, it must be addressed in the Firm Element training plan.

*Questions concerning the proposed Rule may be directed to [John Linnehan](#), Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932, or [Daniel M. Sibears](#), Vice President, Member Regulation, NASD Regulation, Inc., at (202) 728-6911.*

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

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<sup>®</sup> Certification Centers. The Sylvan network now provides delivery at 240 locations in the continental U.S., Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Centers are now beginning to open in Canada and plans are underway to provide international delivery.

Below is a current list of Sylvan delivery locations and local center phone numbers for candidate appointment scheduling. Appointments can also be made by calling Sylvan's National Registration Center (NRC) at (800) 578-6273.

*For further information, you may contact [Linda Christensen](#), Member Regulation, NASD Regulation, Inc., at (610) 627-0377.*

[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
-----------	--------------

### **Arizona**

Chandler	602-963-6260
Phoenix (N. 35 <sup>th</sup> Ave.)	602-548-8220
Phoenix (Central Ave.)	602-252-9299
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.Slausen)	310-337-6696
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 302-734-7494

**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

**Idaho**

Boise 208-322-3555

**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

Springfield 413-525-3251

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

**Montana**

Billings 406-259-1659

Helena 406-443-9205

**Nebraska**

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 505-884-6033

**New York**

Albany 518-869-6119

Amherst/Buffalo 716-565-0570

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  
Forest Hills 718-520-8707

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**

Charlotte	704-364-7758
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	513-745-9674
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

Erie 800-578-6273

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

Scranton 714-341-8874

York 717-755-7471

**Puerto Rico**

Hato Rey 787-753-6394

**Rhode Island**

Cranston 901-942-8552

**South Carolina**

Charleston 803-766-5599

Greenville 864-676-1506

Irmo 803-749-0356

**South Dakota**

Sioux Falls 605-338-1446

**Tennessee**

Chattanooga 423-894-6249

Clarksville 931-647-2003

Franklin 615-790-5018

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 512-441-1978

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
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

### ***Appointment Scheduling - 2nd Quarter Update***

Due to an increase in volume anticipated by other Sylvan clients, demand for appointments at Sylvan Testing Centers will peak during the months of June and July. Sylvan is taking a proactive approach to ensure that Centers have the capacity to handle the increased volume of business. However, candidates who will require Continuing Education and exam appointments during the June/July timeframe are encouraged to schedule their appointments as far in advance as possible.

## **Municipal Securities**

---

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

NASD Regulation continually conducts surveillance of members engaged in municipal securities activities. The following is an overview of some of the key issues that NASD Regulation has identified through its surveillance program.

#### ***Delivery Of Official Statements – MSRB Rule G-36***

Two trends have emerged through NASD Regulation's review of Form G-36 filings. Member firms with branch offices that have municipal underwriting responsibilities are more likely to have late or erroneous filings than are member firms with municipal underwritings centralized in a single location. In some cases, the primary municipal underwriting office is in compliance, but the late filings are occurring at the branch level. This may be indicative of ineffective operating procedures and may expose the firm to sanctions arising from late Form G-36 (OS) and G-36 (ARD) filings.

Additionally, many firms are late in filing their required Form G-36 because they are improperly applying the Municipal Securities Rulemaking Board's (MSRB) 10 business day filing requirement to *all* municipal underwriting and refinancing filings. For those municipal securities subject to SEC Rule 15c2-12 member firms must send to the MSRB—within one business day of receipt from the issuer, but no later than 10 business days after a final

agreement to purchase—two copies of both MSRB Form G-36 and the final official statement. However,

- advance refunding documents and MSRB Form G-36 (ARD) must be sent to the MSRB within five business days of security delivery from the issuer; and
- municipal securities not subject to SEC Rule 15c2-12 or amended official statements must be sent to the MSRB within one business day of receipt from the issuer.

### ***Political Contributions – MSRB Forms G-37/38***

In reviewing recent MSRB Rule G-37/38 forms filings, NASD Regulation found a number of common mistakes, including:

- Contributions and Payments—MSRB Rule G-37 specifies, in part, that contributions made to issuer officials or payments made to political parties be identified by category (*i.e.* dealer, dealer controlled PAC, MFP controlled PAC, MFP, or executive officer). NASD Regulation found that some member firms report the contribution and/or payment amount but do not correctly identify the contributor by category.
- Consultants—MSRB Rule G-38 specifies, in part, that member firms must clearly describe compensation arrangements and disclose the total dollar amount paid during the time period. If compensation is calculated by a success fee resulting from securities business developed, member firms must disclose how the success fee will be arrived at and the related dollar amount of the payment must be separately identified. NASD Regulation is finding that the success fee percentage is disclosed but the resulting dollar amount is not separately identified.

### ***Professional Qualification And Continuing Education – MSRB Rules G-2 And G-3***

Preliminarily, NASD Regulation has found instances when member firms are registered as municipal securities dealers and are reporting income from municipal securities transactions but NASD Regulation's review of professional qualifications records indicates that there is no identified municipal securities principal. In some cases the member firm improperly believes that qualification as a general securities principal (Series 24 examination) satisfies the professional qualification requirements for being a municipal securities principal. Taking and passing a Series 53 qualification examination is needed to meet the qualification standards of a municipal securities principal.

Similarly, NASD Regulation has identified member firms that are registered as municipal securities dealers but report zero income or activity in municipal securities for two or more years. While there is no requirement that member firms registered as municipal securities dealers conduct a minimum amount of municipal securities business, the reported inactivity may jeopardize the firm's associated municipal securities principals professional qualification status (see MSRB Rule G-3(b)(ii)(C) and MSRB interpretation number .36 dated January 15, 1987). Additionally, member firms that are inactive in municipal securities must comply with the Firm Element and Regulatory Element of the continuing education requirements of MSRB Rule G-3(h).

*Questions on this article may be directed to [Malcolm Northam](#) or [Judy Foster](#), Fixed Income Securities Regulation, NASD Regulation, Inc., at (202) 728-8085 or (202) 728-8462, respectively.*

## Prime Broker Accounts

---

### *Trade Reporting Of Transactions Pursuant To A Prime Brokerage Agreement*

NASD Regulation reminds NASD members of their trade reporting obligations in "riskless" principal transactions involving prime brokerage arrangements where the "customer" in the arrangement is a broker/dealer. In such transactions, two trades must be reported: (1) the trade between the executing broker and the contra-side; and (2) the trade between the executing broker and the broker/dealer "customer" under the prime brokerage arrangement. As detailed below, however, if the "customer" is not a broker/dealer, only one trade report would be required.

Prime brokerage arrangements are established to facilitate the clearance and settlement of securities trades for highly capitalized investors who actively participate in the market. They are designed to provide a centralized clearing facility and custodian for all of the customer's trades and resultant securities positions, regardless of the number of brokers used by the customer to execute its transactions.

These arrangements involve at least three parties – the prime broker, the customer, and the executing broker(s). The prime broker clears and settles the trades executed by one or more executing brokers at the direction of the customer. The obligations of the respective parties are specified in contracts between the prime broker and executing broker(s), and in individual contracts between each party and the customer.

Accordingly, the customer may place orders directly with the various executing brokers who are party to the prime brokerage arrangement. Each executing broker holds an account in the name of the prime broker for the benefit of the customer, and will record the customer's trade in such account.

On trade date, the customer notifies the prime broker of the trade performed by the executing broker. The prime broker issues a confirmation to the customer and computes all applicable credit and Regulation T amounts. The executing broker confirms the trade with the prime broker, who then generally has until the close of business of trade date plus one to affirm or disaffirm the trade. The prime broker will affirm the trade if its information matches with that of the executing broker, and if the trade is within the credit limits and other parameters established for the customer's account.

The prime broker issues at least a monthly statement to the customer, which notes all of the customer's securities transactions during the subject period as well as resultant securities positions and monetary balances. Additionally, on the day following each trade placed with the executing broker(s), the prime broker sends notification of such trade(s) to the customer, based upon the information provided by the customer. If the customer has properly designated that the executing broker(s) send the trade confirmation(s) to the customer in care of the prime broker, the prime broker must inform the customer in writing that the confirmation is available to the customer without charge promptly upon request.

Where the customer in a prime brokerage arrangement is a registered broker/dealer, reporting requirements for principal transactions by the executing broker differ from those where the customer is a non-broker/dealer. Both situations are subject to NASD Rule

4632(d)(3)(A), which generally provides that for principal transactions the reporting member (the executing broker in the prime brokerage arrangement) must report separately each purchase and sale transaction. However, the application of the "riskless principal" exception to trade reporting is different depending on whether or not the "customer" is a non-broker/dealer. In sum, as detailed below, if the "customer" is a non-broker/dealer, the riskless principal exception applies and there should be only one trade report; conversely, if the "customer" is a broker/dealer, the riskless principal exception does not apply and there should be two trade reports.

A "riskless" principal transaction is a transaction in which a member that is not a market maker in the security, after having received from a customer an order to buy (sell), purchases (sells) the security as principal to then satisfy the order. Subsection (d)(3)(B) provides that such occurrence shall be reported as one transaction in the same manner as an agency transaction.

The "riskless" principal transaction exception does not apply to prime brokerage trades where the customer in the prime brokerage arrangement is a registered broker/dealer, however. Subsection (d)(3)(B) limits the exception to those instances where the subject order is for the account of a customer. In this regard, NASD Rule 0120 provides that the term "customer" shall not include a broker or dealer. Accordingly, the exception described in subsection (d)(3)(B) may not be relied upon in any situation where the order being facilitated by the reporting member was entered for the proprietary account of a registered broker/dealer.

Principal transactions by the prime brokerage executing broker on behalf of another broker/dealer must be reported as separate purchase and sale transactions; and, the subject broker/dealer must be identified as a party to the second transaction. As noted above, where a member who is not a market maker in a given security executes a proprietary order entered by another broker/dealer on a riskless principal basis, however, the initial and the facilitation transactions must be reported as separate trades.

Alternatively, the executing broker may "give up" the prime brokerage customer in the initial trade report pursuant to a "give up" arrangement between the two parties. In a "give up" arrangement, a member who reports or accepts a trade in the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) on behalf of another member would identify in the ACT screen "give up" box the member on whose behalf the trade was being reported or accepted. Where the executing broker accepts a trade that has been reported by another member, the reporting member would have to report the trade with the executing broker as the contra-side and identify the prime brokerage customer as the contra-side "give up." The executing broker may then accept the trade as presented. This would avoid a second trade report and ensure that the prime brokerage customer is identified to the NASD. "Give up" arrangements should be set out in writing and submitted to the Nasdaq Market Operations Department.

*Any questions concerning this matter may be directed to Richard McDonald, Senior Attorney, Market Regulation, NASD Regulation, Inc., at (301) 590-6444.*

## **SEC No-Action Letters Extended**

**Prime Broker Accounts**—On December 30, 1997, the SEC granted a permanent extension of its January 25, 1994, no-action letter that permits broker/dealers to treat a prime-broker

account as if it were a broker/dealer credit account pursuant to Section 220.11 of Regulation T. The SEC had twice previously extended the relief granted in the letter and has now granted permanent status to that relief.

The term "prime-broker account" refers to an account maintained by a broker/dealer (usually a full-service firm) to facilitate the clearing and settling of securities transactions for highly capitalized investors who are active market participants. A unique feature of these accounts allows the customers to place orders directly with one or more other registered broker/dealers (the executing broker).

The no-action letter establishes certain conditions that broker/dealers must meet to treat these accounts as broker/dealer credit accounts. In particular, the letter clarifies the responsibilities and obligations of the prime broker, the executing broker, and the customer.

In addition, the SEC has granted an extension, until December 31, 1998, of relief contained in a July 9, 1997, no-action letter for broker/dealers that engage in prime brokerage activities with certain investment advisers that are no longer required to be registered under Section 203 of the Investment Advisers Act of 1940.

**Good Foreign Control Locations for SEC Rule 15c3-3**—On December 31, 1997, the SEC extended its interim approval of foreign control locations in states that were previously part of the former USSR as satisfactory locations for customer fully paid and excess margin securities under the possession and control requirements of SEC Rule 15c3-3. SEC approval is extended now until December 31, 1998.

Under SEC Rule 15c3-3, broker/dealers must obtain prompt possession and control of all fully paid and excess margin securities that belong to customers. Subparagraphs (c)(4) and (c)(7) of the Rule allow the SEC, upon application, to designate foreign depositories, foreign clearing agencies, foreign custodian banks, or other locations as satisfactory control locations for customer fully paid and excess margin securities. The original approval to use foreign control locations in the former USSR states was granted through December 31, 1997. Following inquiries from firms seeking to continue to use these locations after that date, the SEC extended its approval until December 31, 1998.

*Questions concerning these matters may be directed to your local [NASD Regulation District Office](#), or to Samuel Luque, Jr., Associate Director, [Compliance](#), NASD Regulation, Inc., at (202) 728-8472.*

## The Internet

---

### ***What's New On The NASD Regulation Web Site: Recent Additions***

The [NASD Regulation Web Site](#) continues to grow both in its size and usage. For example, more than 350 subscribers have requested to be included on the Web Site's mailing lists. Through these lists, NASD Regulation can keep interested Site visitors informed about new postings, such as new publications and news announcements. To join, choose the "Feedback" option on the left menu bar from anywhere on the Site. At the end of the short survey, visitors may check the appropriate boxes in order to add their e-mail address to the

lists.

Following are some of the recent additions to the Site.

**Continuing Education**—NASD Regulation revises sections of its Web Site on a regular basis. Two new publications have been added to the Continuing Education Web Page—*Firm Element Practices and Council Commentary* and *The Continuing Education Program*. Together they will help provide guidance to members in complying with the requirements of the Securities Industry Continuing Education Program.

**Information And Services Directory**—The updated service directory is now easier to access. This topical index covers most aspects of NASD Regulation's business. It provides visitors with a contact name or department and a phone number. This resource complements the recent addition of a "[Department and Contacts](#)" section, where each NASD Regulation department is described and an e-mail contact is provided.

**Year 2000**—The year 2000 is coming fast, and NASD Regulation has included new information to keep members updated; specifically, a "Service & Product Information" section that provides status, testing, and other data on products or services supplied by the NASD, NASD Regulation, and Nasdaq. This area will continue to be updated periodically. Also added is an important memo directed to all international NASD member firms.

**Interpretive Letters**—New interpretive letters are being added to the Site on a regular basis. So far in 1998, there have been six letters added to this area. To help draw attention to the new letters NASD Regulation is now placing a clearly identifiable "New" symbol next to recent additions.

**Interim Forms U-4, U-5, and BD**—The SEC recently approved Interim Forms U-4, U-5, and BD. These forms will become effective on March 16, 1998. Electronic copies of the Interim Forms U-4, U-5, and BD are available on the Site under the CRD<sup>SM</sup> section of "Members Check Here." These forms may be printed from the Site and used by members. Also see the CRD Web Page for a special letter to members regarding the interim forms and for an interpretive "question and answer" section pertaining to usage of the Form U-4.

**Announcements**—Members are reminded that the NASD Regulation Web Site is an excellent way to keep abreast of the latest regulatory news and developments. Through the Web Site, NASD Regulation is making immediately available notices and announcements that impact members' daily business. Why wait to receive the paper notice, check the NASD Regulation Web Site frequently.

For more information about the NASD Regulation Web Site, contact [Bruce Spates](#), Director, Internet and Investor Education, NASD Regulation, Inc., at (301) 590-6070.

### **NASD Manual On-Line Soon**

The *NASD Manual* will soon appear in electronic format via the Internet. It will soon be housed on the NASD Regulation Web Site.

## **Trading & Market Making**

---

## ***Transaction Reporting And Quotation Obligations On FIPS***

On April 11, 1994, The Nasdaq Stock Market began the operation of the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) for members to quote and report transactions in high-yield bonds. FIPS was created to facilitate the over-the-counter trading of high-yield, corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. The goals in the creation of FIPS were similar to those which led to the creation of Nasdaq—to increase the transparency of the marketplace, thereby encouraging investment and growth. This article, which is very similar to [NASD Notice to Members 98-10](#) (January 1998), provides an overview of some of the rules and regulations governing FIPS securities. Members are reminded of their obligations to comply with these rules and are encouraged to contact the Nasdaq and NASD Regulation staff noted below if they have any questions regarding FIPS and its associated rules.

### ***Overview Of FIPS Participants***

A "FIPS broker" or "FIPS broker's broker" is any member of the NASD that is regularly engaged in the business of effecting transactions in high-yield bonds for the accounts of others.

A "FIPS dealer" is a member of the NASD that is engaged in the business of buying and selling high-yield bonds for its own account (or through a broker or otherwise) and holds itself out as being willing to buy and sell such securities on a continuous and regular basis.

A "FIPS participant" is any member of the NASD in good standing that is a FIPS registered broker or dealer, according to the requirements of NASD Marketplace Rule 6230.

### ***Transaction Reporting Obligations (NASD Marketplace Rule 6240)***

FIPS securities are classified into two categories for transaction reporting purposes: Mandatory Bonds and Non-Mandatory Bonds.

- Mandatory Bonds consist of the most actively traded top-tier FIPS securities (currently totaling 50 bonds). Transactions in these bonds must be reported to FIPS within five minutes after execution (see NASD Marketplace Rule 6240(a)).
- Non-Mandatory Bonds consist of all other high-yield bonds not quoted on FIPS. There are approximately 1,400 Non-Mandatory Bonds. Unlike Mandatory Bonds, transactions in Non-Mandatory Bonds are not subject to a five-minute reporting requirement. Instead, transactions in Non-Mandatory Bonds must be reported into FIPS by 5 p.m., Eastern Time on the day on which the transaction occurred (see NASD Marketplace Rule 6240(b)).
- Member firms can receive a current list of all Mandatory and Non-Mandatory Bonds by contacting [Joanie Rizzo](#) at (212) 858-3975, or by visiting [www.nasdaqfips.com](http://www.nasdaqfips.com).

The obligation to report transactions to FIPS depends on the role of each party to the transaction. In transactions between:

- A FIPS dealer and a FIPS broker's broker—only the broker's broker reports the

trade.

- Two FIPS dealers—only the sell-side dealer reports the trade.
- A FIPS participant and non-participant—only the FIPS participant reports the trade.
- Transactions executed on an exchange are not required to be reported into FIPS.

### ***Quotation Obligations (NASD Marketplace Rule 6230)***

If a FIPS dealer actively trades a FIPS Mandatory Bond in its capacity as a FIPS dealer, it must enter and maintain firm quotations into the FIPS system for that bond. Failure to quote in accordance with the FIPS rules may result in disciplinary action.

Quotations may be one- or two-sided and must be reasonably related to the prevailing market in each bond. Quotes must reflect a minimum size of 100 bonds (\$100,000 par value) and be in increments of 1/8 of a point. FIPS dealers may enter firm quotations into FIPS under their own names or through a FIPS broker. Quotes entered under a FIPS dealer's own name will be identified as such; all others will bear the name of the broker, with the dealer remaining anonymous.

A FIPS broker must transmit all quotes that it receives from FIPS dealers to FIPS for dissemination to all FIPS participants and the public through market data vendors (via the Bond Quotation Dissemination Service [BQDS] data feed).

Please Note: If a FIPS participant is not actively trading a particular FIPS security and only executes transactions to accommodate customer orders, it still has an obligation to report these trades to the NASD.

### ***Frequently Asked Questions***

The following questions may arise regarding the reporting of FIPS trades:

**Q:** If a firm is not a FIPS dealer or broker's broker, does it have to report a trade in a FIPS security to the NASD?

**A:** Yes. All transactions executed by a firm in FIPS securities must be reported to the NASD, subject to limited exceptions (see NASD Marketplace Rule 6240(c)). The reporting guidelines for these securities are set forth according to the Mandatory or Non-Mandatory Bond classifications described above. This would include all firms that trade high-yield bonds on a principal, riskless principal, or agency basis.

**Q:** What securities are eligible for quoting on FIPS?

**A:** FIPS securities are OTC high-yield, fixed-income corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. It is also probable that a non-rated issue may be a FIPS-eligible security.

**Q:** If a broker/dealer is a correspondent of a clearing firm, will that clearing firm report transactions to FIPS on the broker/dealer's behalf?

**A:** Not necessarily. The obligation to report is with the firm that executes the trade, whether

it is for its own inventory or on behalf of a customer. While some clearing firms do assume the responsibility to report transactions on behalf of their correspondents, member firms should not always assume that their clearing firm is reporting trades in FIPS securities on their behalf.

**Q:** Do the transaction reporting obligations for FIPS securities only apply to transactions in FIPS securities executed on a firm's high-yield trading desk?

**A:** No. All compliance officers should be certain that every part of their firm is reporting FIPS transactions. Many traders assume, in the normal course of business, that the high-yield trading desk is reporting all of the firm's FIPS transactions and that the firm's obligations under the rules are being fulfilled. This may not be completely accurate. For example, there are high-yield desks that trade crossover bonds and utility desks that trade bonds that are rated BB+ or lower. These desks may be located in different areas and/or different floors in a particular firm. Regardless of the trading desk that executes FIPS transactions, the firm is obligated to report all of its FIPS transactions. It is important that all compliance officers and head traders are aware of the rules and regulations applicable to transactions in FIPS securities. Member firms must have a supervisory system (which includes written supervisory procedures) in place that is reasonably designed to achieve compliance with the rules and regulations relating to transactions in high-yield corporate debt securities.

### **Contact List**

If you have any questions or concerns regarding FIPS, please contact the following:

Nasdaq  
General Questions  
Justin Tubiolo  
(212) 858-4419

Technology Questions  
Jim Schroder  
(212) 858-4321

FIPS Service Desk  
Cheryl Glowacki  
(203) 385-6373

FIPS Subscriber Services  
Stacey Galullo  
(800) 777-5606

FIPS Literature  
Joanie Rizzo  
(212) 858-3975

MarketWatch  
TradeWatch  
(800) 211-4953  
(301) 590-6890

NASD Regulation, Inc.  
Regulatory Questions

Stephen Simmes  
(301) 590-6451

For information concerning FIPS, please consult [www.nasdaqfips.com](http://www.nasdaqfips.com). If a daily e-mail subscription containing the complete list of FIPS mandatory and non-mandatory issues would be of interest to your firm, please send an e-mail to [fipsfeedback@nasd.com](mailto:fipsfeedback@nasd.com). The entire list can also be obtained by calling [Joanie Rizzo](mailto:Joanie.Rizzo) at (212) 858-3975.

## ***Automated Systems For Compliance With The Limit Order Display Rule***

In August 1996 the SEC adopted the Limit Order Display Rule, SEC Rule 11Ac1-4, which requires a market maker that receives a customer limit order that is priced better than its current quote, and is not immediately executed, to display it to the entire marketplace. Limit orders priced equal to a market maker's quote must also be displayed if the market maker's quote is equal to the national best bid or offer and the limit order is greater than or equal to 10 percent of the size of the market maker's quote. Under normal market conditions a market maker must display a limit order within 30 seconds after receipt by the trader or specialist that will display the order.<sup>1</sup> Increasingly, members are using automated systems to comply with the Limit Order Display Rule. While NASD Regulation encourages member firms to use technological solutions to comply with their regulatory obligations such as the SEC's Order Handling Rules, NASD Regulation reminds members of the importance of monitoring instances where such automated systems may be routinely disabled or manually overridden.

### ***Market Opening***

It has come to the attention of NASD Regulation that some members may be routinely disabling their automated systems for the display of limit orders in stocks for which they make a market for a set number of minutes at the opening of the market. NASD Regulation emphasizes that failure to display a limit order within 30 seconds violates the SEC's Limit Order Display Rule if the market for that security is trading under normal market conditions.

Whether conditions at the market opening are normal, or how soon after the opening market conditions return to normal, varies from stock to stock and from day to day. The SEC's Division of Market Regulation has noted that "because of the special circumstances involved in setting an opening price in the OTC market and the volume of orders that may accumulate at the opening, OTC market openings should not currently be viewed as 'normal market conditions' for purposes of the Limit Order Display Rule. Therefore, OTC market makers will not be required to include limit orders in the opening quote or to display limit orders within 30 seconds of receipt during the period shortly following the opening. Nevertheless, the Division believes that limit orders held at the opening must be displayed as soon as practicable under the circumstances." (Emphasis added.)<sup>2</sup> In response to questions about that statement, the SEC's Division of Market Regulation stated 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." (Emphasis added.)<sup>3</sup>

Accordingly, NASD Regulation believes that the practice of not displaying limit orders for all stocks in which a member acts as a market maker for a set amount of time at the opening

each day is inconsistent with the SEC's interpretation of the Limit Order Display Rule.

### ***Manual Overrides Of Limit Order Display***

It has also come to the attention of NASD Regulation that some members have included features in their automated limit order display systems that allow traders to manually override display of individual orders. While temporary overrides are appropriate under certain circumstances, such as where a limit order would lock or cross a market or when a trader intends to immediately execute the order, NASD Regulation reminds member firms of their obligation to monitor instances where such systems are overridden or disabled to ensure that such temporary overrides do not preclude limit orders from being displayed in accordance with the Limit Order Display Rule. In this connection, NASD Regulation reiterates the need for firms to develop supervisory systems and procedures to ensure that temporary overrides do not extend beyond permissible lengths and that they are only being used in appropriate situations.

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

---

<sup>1</sup> Securities and Exchange Act Release No. 34-37619A (September 6, 1996) at pages 76-77; See also, Letter from Richard R. Lindsey ("Lindsey"), Director, Division of Market Regulation, Securities and Exchange Commission, to Joseph R. Hardiman, President, NASD, dated November 22, 1996 ("Interpretive Letter") at page 2.

<sup>2</sup> Interpretive Letter at pages 2-3.

<sup>3</sup> Letter from Lindsey to Richard G. Ketchum, Chief Operating Officer, NASD, dated January 3, 1997 at page 9.

### ***Procedures For Obtaining Exemptions From Certain Association Rules Administered By The Market Regulation Department***

On August 7, 1997, the SEC approved an NASD rule filing that, among other things, formalized the procedures that member firms must follow to obtain exemptions from the rules administered by the NASD Regulation Market Regulation Department. As amended, the NASD Rule 9600 Series establishes procedures that firms must follow to request exemptions from, among others, NASD rules relating to position and exercise limits for index warrants, position and exercise limits for options (NASD Conduct Rules 2850, 2851, and 2860), and the filing of blue sheet information in an automated format (NASD Procedural Rule 8211). Member firms are reminded of their obligation to follow these procedures when requesting an exemption from the foregoing Rules. A description of the procedures is set forth below.

NASD Conduct Rules 2850, 2851, and 2860 impose a ceiling on the number of index warrants, index options, and equity options that can be held or exercised. NASD Regulation staff may grant exemptions from these Rules in "highly unusual circumstances." NASD Rules 8211, 8212, and 8213 require that member firms provide trading data in an automated format with respect to any transaction or transactions that are the subject of a request for information made by the NASD. If a firm is unable to provide the requested trading

information in an automated format, the firm should obtain written approval of the NASD.

Pursuant to the NASD Rule 9600 Series, the member seeking an exemption from NASD rules relating to position and exercise limits and filing blue sheet information must file a written application with the Market Regulation Department. Blue Sheet exemption requests should be forwarded to the attention of Anne Marie Simmes, Team Leader, Market Regulation Department, and will generally be responded to by the next business day. Exemption requests relating to position and exercise limits for index warrants, index options, and equity options should be forwarded to the attention of Joseph Alotto, Supervisor, Market Regulation Department. Exemption requests may be forwarded to the Market Regulation Department via facsimile at (301) 590-6481. A copy of the application for the exemption should also be provided to the Office of General Counsel of NASD Regulation.

The application must include the member's name and address, the name of the person associated with the member who will serve as the primary contact for the application, the rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application to be publicly available in whole or in part, the member should include a detailed statement with supporting facts in the application showing good cause for treating the application or decision as confidential in whole or in part.

After considering the written application, NASD Regulation staff will issue a written decision setting forth its findings and conclusions and serve the decision upon the member that files the application ("applicant"). After the decision is served on the applicant, the decision will be made publicly available unless NASD Regulation staff determines that the applicant has shown good cause for treating the application or decision as confidential.

Appeal procedures are set forth in NASD Rule 9630. If an applicant is dissatisfied with the decision, the applicant may appeal the decision to the National Adjudicatory Council (NAC) by filing a written notice of appeal within 15 calendar days after service of the decision. The written notice of appeal must contain a brief statement of the findings and conclusions as to which exception is taken. The NAC may order oral argument. If the applicant does not want the NAC's decision to be publicly available in whole or in part, the applicant must include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential. An applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the NAC. The NAC will provide expedited review in those situations where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant.

After the filing of the notice of appeal, the NAC may designate a Subcommittee to hear oral argument, if ordered, and consider any new evidence that the applicant can show good cause for not including in its application. The Subcommittee will recommend to the NAC a disposition of all matters on appeal. After considering the Subcommittee's recommendation and all matters on appeal, the NAC will affirm, modify, or reverse the decision, will issue a written decision setting forth its findings and conclusions, and serve the decision on the applicant. The decision will be effective upon service and constitutes final action of the NASD.

*Any general questions regarding the NASD Rule 9600 Series or NAC reviews should be directed to Sharon Zackula, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8985. Specific questions relating to exemptions for filing blue sheet information should be directed to Anne Marie Simmes, Team Leader, Market Regulation Department, NASD Regulation, Inc., at (301) 590-6157, and specific questions relating to exemption requests for options position and exercise limits should be directed to*

Joseph Alotto, Supervisor, Market Regulation Department, NASD Regulation, Inc., at (301) 590-6845.

## **Reminder Of Affirmative Determination Requirements**

NASD Regulation reminds members that NASD Conduct Rule 3370 requires members to make an affirmative determination prior to executing a short sale and to maintain a written record of that affirmative determination. NASD Conduct Rule 3370 governs affirmative determination requirements for both long and short sales. In customer short sales, a firm must make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer for delivery within three business days. Similarly, for short sales effected in a firm's proprietary account, the firm must make an affirmative determination that it can borrow the security or otherwise provide for delivery of the security by settlement date. (Short sales for a member's own account are exempt from the affirmative determination requirement, however, if they are "bona fide market making transactions by a member in securities in which it is registered as a Nasdaq market maker, ...bona fide market maker transactions in non-Nasdaq securities in which the market maker publishes a two-sided quotation in an independent quotation medium, or ... transactions which result in fully hedged or arbitrated positions." See NASD Conduct Rule 3370(b)(2)(B).)

NASD Regulation further reminds members that this Rule applies to **all** short sales that are not otherwise exempt from coverage under the Rule. For instance, many members receive short sale orders electronically through proprietary electronic order routing systems and the Internet. NASD Regulation reiterates its long-standing position that firms must make an affirmative determination for **all** short sales prior to executing the sale (absent an exemption), whether the order is received by telephone or through an electronic transmission. A failure to do so will result in a violation of the Rule.

To be in compliance with the Rule, a firm must also maintain a written record of the affirmative determination for each customer short sale order or non-exempt proprietary transaction. The Rule sets out a number of recordkeeping requirements to demonstrate that the requisite affirmative determination has been made. Specifically, the Rule states, in pertinent part that:

(B) To satisfy the requirement for an "affirmative determination" contained in paragraph (b)(2) above for customer and proprietary short sales, the member or person associated with a member must keep a written record which includes:

(i) if a customer assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the member within three (3) business days; or

(ii) if the member or person associated with a member locates the stock, the identity of the individual and firm contacted who offered assurance that the shares would be delivered or that were available for borrowing by settlement date and the number of shares needed to cover the short sale.

(C) The manner by which a member or person associated with a member annotates compliance with the "affirmative determination" requirement

contained in subsection (b)(2) above (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified by this Rule and, therefore, shall be decided by each member. Members may rely on "blanket" or standing assurances that securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule, provided: (i) the information used to generate the "blanket" or standing assurance is no less than 24-hours old; and (ii) the member delivers the security on settlement date. Should a member relying on a blanket or standing assurance fail to deliver the security on settlement date, the Association shall deem such conduct inconsistent with the terms of this Rule, absent mitigating circumstances adequately documented by the member.

In this connection, one manner by which a firm may comply with the Rule is to rely on a list of securities from its clearing firm or otherwise that contains those securities that are "easy to borrow." Under the Rule, this list must be no more than 24-hours old. NASD Regulation staff has become aware that some members are inappropriately relying on "hard to borrow" lists (i.e., lists reflecting stocks that are difficult to borrow or unavailable to borrow) to comply with the Rule. Please note that NASD Regulation considers these "hard to borrow" lists to be inconsistent with the terms of the Rule and not sufficient for making an affirmative determination. If a firm relies on a "hard to borrow" list, the firm will not have made an appropriate affirmative determination and will be considered to be in violation of NASD Conduct Rule 3370.

*Please direct any questions regarding this article to Yvonne Huber, Market Regulation, NASD Regulation, Inc. at (301) 590-6358.*

## **Books & Records Alert**

---

### ***NASD Regulation Reminds Members Of Obligations To Maintain Accurate Records***

A branch manager who sells securities to a customer, but endeavors to direct the commissions to a registered representative in her branch because she is over her allotted production, may not accomplish the directed commission by falsifying the order ticket to reflect that the sale was transacted by the registered representative to whom she is directing the commission. An associated person, who is licensed as an Investment Company Products/Variable Contracts Limited Representative (Series 6), but who sells corporate securities to a customer, may not falsify the order ticket by inserting the registered representative number of an associated person licensed to sell corporate securities.

NASD Conduct Rule 3110 requires members to keep and preserve books and records in conformity with all applicable laws, rules, and regulations of the NASD. The SEC has repeatedly held that the requirement to maintain records encompasses the requirement that such records and reports be true and accurate. [See *In re Cost Containment Services, Inc.*, Exchange Act Rel. No. 35370 (May 18, 1995); *In re Dillon Securities, Inc.*, 51 S.E.C. 142 (1992).]

NASD Regulation reminds members that order tickets, and documents generated from information contained on the order tickets, such as commission runs, must accurately reflect

the associated person who consummated the transaction. There are no scenarios in which persons associated with member firms are permitted to alter order tickets to falsely reflect the registered representative who executed the transaction. Moreover, order tickets and other firm documents may not be falsified to evade licensing requirements.

Falsifying firm records, including order tickets, compromises the audit trail and subjects offenders to disciplinary action and serious sanctions.

Please direct any questions or comments about this article to the Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

### ***NASD Regulation Reiterates Requirement That Firms Mark Their Order Tickets To Denote When Such Orders Are Reported To ACT As Part Of An Aggregated Transaction Report***

NASD Regulation staff has detected an increase in the failure of NASD members to comply with NASD rules that require firms to mark their order tickets to denote when such orders are reported to ACT as part of an aggregated or "bunched" transaction report. NASD rules permit, under the conditions set forth in NASD Marketplace Rule 4632(f)(1) for Nasdaq National Market<sup>®</sup> Securities and NASD Marketplace Rule 4642(f)(1) for Nasdaq SmallCap<sup>SM</sup> Securities, the aggregation, for transaction reporting purposes, of individual executions of orders in a security at the same price into a single transaction report. Provided these conditions are satisfied, subsection (f)(2) of each of these rules provides that "[t]he reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by the Association."

NASD Regulation staff reiterates that the exclusive means by which the NASD has directed that NASD members identify aggregated transaction reports in Nasdaq securities to ACT is with the ".B" trade reporting modifier.

NASD Regulation staff further reiterates that the NASD has directed NASD members to indicate on the order ticket for a transaction in a Nasdaq security that it was bunched for trade reporting purposes. Failure to designate order tickets in such a manner could be viewed as conduct inconsistent with NASD trade reporting and recordkeeping rules. An NASD member may indicate this fact on the order ticket in the following ways: "bunched", "aggregated", or ".B". The staff is aware, however, that some NASD members use unique designations other than "bunched", "aggregated", or ".B" to identify order tickets that are part of an aggregated or bunched transaction report. Such designations are *per se* not violative of NASD rules, provided the NASD member can adequately document that such designation is used exclusively and consistently to identify order tickets of aggregated transaction reports.

Please be advised that NASD rules do not permit, under any circumstances, the aggregation, for transaction reporting purposes, of individual executions of orders in listed securities, OTC Equity Securities, and non-Nasdaq securities into a single transaction report.

*Questions regarding the aggregation of trade reports may be directed to Peter D. Santori, Attorney, Market Regulation, NASD Regulation, Inc., at (301) 208-2935.*

## ***NASD Regulation Reminds Member Firms Of Their Books And Recordkeeping Obligations With Respect To Brokerage Orders***

NASD Regulation reminds members of their recordkeeping obligations under SEC Rules 17a-3 and 17a-4 with respect to the preparation and maintenance of order memoranda for all brokerage orders. Although the following requirements apply to all orders, the purpose of this alert is to reiterate that these requirements also apply to orders entered into SOES<sup>SM</sup> (Small Order Execution System<sup>SM</sup>), SelectNet<sup>SM</sup>, or any Electronic Communication Network (ECN) that are modified, canceled, or rejected.

SEC Rule 17a-3(a)(6) requires the preparation of "a memorandum of each brokerage order, and of any instructions given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order entered, the time of entry, the price at which executed and, to the extent feasible, the time of the execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such member, broker or dealer, or any employee thereof, shall be so designated. The term 'instruction' shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term 'time of entry' shall be deemed to mean the time when such member, broker or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received." SEC Rule 17a-4(b)(1) requires that these records shall be preserved for a period of not less than three years, the first two years in an accessible place.

NASD Regulation's Market Regulation Department, in the course of routine surveillance activities, has discovered that several firms either did not prepare order memoranda for modified, canceled, or rejected orders, or did not maintain such memoranda if they had been prepared at all.

The failure to produce or maintain these records has impeded NASD Regulation's ability to thoroughly conduct its regulatory responsibilities. As a result, disciplinary actions have been pursued for violations of SEC Rules 17a-3 and 17a-4, as well as the NASD's own recordkeeping rule, NASD Conduct Rule 3110. As such, members are hereby reminded of these obligations to ensure that they are complying with these SEC and NASD recordkeeping requirements.

*Questions regarding this article may be directed to Peter D. Santori, Attorney, Market Regulation, NASD Regulation, Inc., at (301) 208-2935.*

## **Violations**

---

### ***NASD Regulation Levies Largest Advertising Fine Ever***

NASD Regulation fined Fundamental Service Corporation, Inc., and two senior executives a total of \$125,000 for distributing more than one million copies of false and misleading advertising materials to investors nationwide in connection with the sale of one of its proprietary no-load mutual funds. Fundamental, based in New York City, distributes fixed income mutual funds. The firm markets its products primarily through advertising and sales

materials. This is the largest fine ever assessed by NASD Regulation in a case where the violations stem primarily from advertising and sales materials.

Fundamental, which neither admitted nor denied NASD Regulation's findings, was also sanctioned for making misrepresentations to NASD Regulation's Advertising/Investment Companies Regulation Department. As part of the settlement, Fundamental must pre-file all of its advertising and sales literature with NASD Regulation for three years and must retain, at its own expense, an outside consultant to review its procedures for two years.

The firm's Vice President, Dr. Vincent J. Malanga, was fined \$100,000 jointly with Fundamental; suspended for 30 days in all capacities; and required to re-take certain qualification examinations. He has also agreed not to apply for registration as a general securities principal for three years. Fundamental's head of marketing, David P. Wieder, was fined \$25,000 and suspended for 30 days in all capacities. He has also agreed not to apply for registration as a general securities principal as long as he remains associated with Fundamental. Wieder was also sanctioned for making misrepresentations to NASD Regulation's Advertising/Investment Companies Regulation Department. In their settlements, Malanga and Wieder neither admitted nor denied NASD Regulation's findings.

NASD Regulation found that from October 1992 through December 1994, the firm, along with Malanga and Wieder, marketed Fundamental's U.S. Government Strategic Income Fund to hundreds of thousands of investors through direct mail advertising that dramatically overstated the fund's safety and stability; omitted important risk disclosure and information on potential volatility; and materially misrepresented the nature of the portfolio.

### ***Significant Actions Brought Against Firms***

- NASD Regulation announced that Daiwa Securities America Inc., has been fined \$100,000 and has paid at least \$590,000 in restitution and interest to two American institutional customers who were overcharged on the purchase and sale of Japanese securities traded on the Tokyo and Osaka Stock Exchanges. The firm was also censured.

Former Daiwa Vice President Kenji Sasaki – the broker for the two customers – was suspended from the brokerage industry for two years, fined \$35,000, and censured. Daiwa Securities America, a U.S. broker/dealer regulated by the NASD, is a wholly owned subsidiary of Daiwa Securities Co., Ltd., based in Tokyo. Daiwa, which neither admitted nor denied NASD Regulation's findings, was sanctioned for violating anti-fraud and compensation disclosure rules. Sasaki, who also neither admitted nor denied the allegations, was sanctioned for violating the antifraud rules, as well as aiding and abetting Daiwa's violations. Sasaki settled with NASD Regulation following the filing of an October 1997 complaint.

- NASD Regulation issued a complaint against VTR Capital, Inc., and three individuals alleging fraud in connection with the unregistered distribution and fraudulent manipulation of Interiors, Inc., common stock, resulting in more than \$400,000 in illegal profits. The complaint names VTR's President and sole owner at the time of the allegations, Edward J. McCune; a trader at IAR Securities Corp. (formerly known as I.A. Rabinowitz & Co.), Howard R. Perles; and a trader at Wien Securities Corp., Laurence M. Geller. NASD Regulation does not allege that

Interiors (who was not named in the complaint) knew that the price of its shares was being manipulated.

The complaint alleges that in April 1995, VTR and McCune agreed to serve as financial consultants for Interiors to assist the company in selling 300,000 shares, or 28 percent of the company's outstanding common stock. On April 18, 1995, five short-term investors, including VTR's outside counsel, agreed to purchase all 300,000 shares at \$.93 per share. The five investors did not immediately sell their holdings to VTR.

The complaint then alleges that in manipulative trading from April 19 through April 21, VTR artificially raised Interiors' price per share by more than 100 percent to above \$2 per share. During this period, VTR sold to about one hundred investors, shares of Interiors that it did not have in its inventory. VTR planned to cover this short position by purchasing the shares in a pre-arranged transaction with the five investors at \$.95 to \$.98 per share. NASD Regulation also alleges that VTR used high-pressure sales tactics, including cold calling, to sell the stock to investors once it reached the \$2 level. Furthermore, the complaint alleges that VTR and McCune artificially inflated Interiors' reported trading volume by 42 percent through fraudulent circular trading. According to the complaint, Perles and Geller made it possible for the circular trading to occur by exchanging Interiors' shares with VTR and McCune. NASD Regulation also alleges that VTR and McCune made more than \$400,000 in illegal profits.

- NASD Regulation announced that Morgan Stanley & Co., Inc., has been fined \$35,000 and will pay more than \$80,000 in restitution after settling charges that the firm failed to provide three customers the best execution possible in the sale of common stock. The firm was also censured. NASD Regulation also cited Morgan Stanley for violating the rules and regulations relating to trade reporting and recordkeeping in connection with the transactions.

Morgan Stanley, which neither admitted nor denied NASD Regulation's findings, will promptly repay the three investors restitution and interest. According to NASD Regulation's findings, all three customers placed their orders with Morgan Stanley prior to the market's opening on February 8, 1996. Had the three orders been executed promptly, the customers could have received a higher price for their shares than they did.

- NASD Regulation ordered A.S. Goldmen & Co., Inc., to pay a \$200,000 fine and more than \$1 million in restitution and interest to more than 500 customers in at least 35 states. Three of A.S. Goldmen's officials were also sanctioned; all three must retake their exams to re-enter the brokerage industry.

After an eight-day hearing, NASD Regulation's District 10 Business Conduct Committee (DBCC) found that the Iselin, N.J.-based A.S. Goldmen manipulated the price of warrants in Innovative Tech Systems Inc., received excessive underwriting compensation, charged its customers excessive markups in connection with the initial after-market trading of the warrants, and did not adequately supervise its staff to prevent these violations. The manipulation and the overcharging, which occurred over a four-day period from July 26 through July 29, 1994, resulted in more than \$1 million in illicit profits. A.S. Goldmen has appealed this decision.

NASD Regulation found no evidence that Innovative Tech Systems, which was (and still is) listed on The Nasdaq Stock Market's SmallCap<sup>SM</sup> Market at the time, knew that the price of its shares was being manipulated.

For more information about these cases, please refer to the [listing of press releases](#) found on the NASD Regulation Web Site.

## NASD Disciplinary Actions

---

### ***NASD DISCIPLINARY ACTIONS***

*In January and February 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

#### **January Actions**

None

#### **February Actions**

**Essodina Adolph Atchade (Registered Representative, Santa Clara, California)** was fined \$200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Atchade received \$28,000 from a public customer for the purchase of securities and misappropriated the funds to his own use and benefit. Atchade also provided a customer with fictitious account statements that falsely reflected that the customer had securities accounts with Atchade as well as the value of the accounts.

Atchade has appealed this action to the National Business Conduct Committee (NBCC) and the sanctions are not in effect pending consideration of the appeal.

**Henry Raoul Fisher (Registered Representative, Coronado, California)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fisher failed to pay two arbitration awards for \$850,500 and \$10,000. Fisher also failed to respond to NASD requests for information.

**Ashton N. Gowadia (Registered Representative, Newport Beach, California)** was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. The NBCC affirmed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Gowadia failed to respond to NASD

requests for information.

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

**Larry Ira Klein (Registered Principal, Walnut Creek, California)** submitted an Offer of Settlement pursuant to which he was fined \$160,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Klein consented to the described sanctions and to the entry of findings that he permitted an individual to act as a registered representative and sell securities when the individual was not registered with the NASD in any capacity. The findings also stated that Klein recommended to public customers the purchases of Collateralized Mortgage Obligations (CMOs) without having reasonable grounds for believing the recommendations were suitable for the customers based upon the facts disclosed by the customers concerning their other security holdings and their financial situation and needs. Furthermore, the NASD found that, in connection with the sale of CMOs to public customers, Klein failed to disclose to the customers that the CMOs' market value and terms could vary significantly with fluctuations in interest rates.

**Frank Anton Malinowski (Registered Principal, El Macero, California)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Malinowski participated in private securities transactions without providing prior written notification to his member firm.

**Onofre Edrozo Ranchez (Registered Representative, Aiea, Hawaii)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ranchez collected insurance premiums from insurance customers and did not promptly forward the premiums to his member firm. In addition, Ranchez signed customers' names to policy reinstatement applications and submitted them to his member firm. Ranchez also failed to respond to NASD requests for information.

**Sound Advice Investments, (Danville, California), Gray Emerson Cardiff (Registered Representative, Moraga, California), and Harley Neal Hill (Registered Principal, Orinda, California)** submitted an Offer of Settlement pursuant to which the respondents were fined \$10,000, jointly and severally. The firm and Cardiff were fined \$5,000, jointly and severally, and the firm was suspended from membership in the NASD for 15 business days. Cardiff was suspended from association with any NASD member in any capacity for 15 business days, and Hill was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hill and Cardiff, participated in the sales of a limited partnership offering and received customer funds without depositing the funds into an escrow account or otherwise treating them in accordance with SEC Rule 15c2-4.

The findings also stated that the firm, acting through Hill and Cardiff in connection with the offering, failed to return investor funds when terms of the contingency were not met and failed to provide investors with disclosure as to the financial ability of the issuer to purchase the remaining securities. In addition, the NASD found that the firm, acting through Cardiff, permitted an individual to act as a registered representative, and sell securities to public customers on behalf of the firm, without being registered with the NASD in any capacity.

*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*

## **January Actions**

**John Gregory D'Angelo (Registered Principal, Newport Beach, California)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member as a financial and operations principal for 30 days. Without admitting or denying the allegations, D'Angelo consented to the described sanction and to the entry of findings that a member firm, acting through D'Angelo, failed to compute accurately the amount required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers. The findings also stated that D'Angelo, acting on behalf of a member firm, failed to maintain possession and control of all fully paid for customer securities.

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

**Tony Hyung Park (Registered Representative, Mission Viejo, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Park failed to respond to NASD requests for information.

**Scott A. Richards (Registered Representative, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for one year and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Richards 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 describing the proposed transactions and his proposed role therein.

**Stephen Phillip Ross (Registered Representative, Agoura Hills, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ross failed to respond to NASD requests to appear for an on-the-record interview.

**Peter Adam Schur (Registered Representative, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Schur consented to the described sanctions and to the entry of findings that he effected purchases of securities in the account of public customers without their knowledge or consent.

**James Howard Stovesand (Registered Principal, Santa Barbara, California)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Stovesand consented to the described sanctions and to the entry of findings that he engaged in a course of conduct that resulted in the mishandling and/or misuse of his member firm's branch office budget. The NASD found that Stovesand directed another individual to pay salaries to non-registered individuals either from his own personal funds or deductions from his income and reimbursed the individual for the payment through directed commissions. Furthermore, the NASD determined that Stovesand effected the

reimbursements by submitting false seminar expense receipts to his member firm.

**Gary P. Taylor (Registered Representative, Newbury, California)** was fined \$663,167, barred from association with any NASD member in any capacity, and required to pay \$128,633.36 in restitution to public customers. The sanctions were based on findings that Taylor received checks totaling \$128,633.36 from public customers for the purchase of shares of common stocks. Taylor failed to purchase the stocks, cashed the checks, and converted the funds for his own use.

Furthermore, Taylor fabricated confirmation notices in order to make it appear that purchases had been made on behalf of customers. In addition, Taylor failed to respond to NASD requests for information.

**Bruce Nairn Whitman (Registered Representative, Stamford, Connecticut)** submitted an Offer of Settlement pursuant to which he was fined \$13,268, ordered to requalify by exam as a general securities representative, and ordered to pay \$15,550 in restitution to a public customer. Without admitting or denying the allegations, Whitman consented to the described sanctions and to the entry of findings that he executed numerous purchase and sale transactions in various securities without authorization from the respective account holder.

### **February Actions**

**Anthony Keith Adams (Registered Representative, San Diego, California)** was fined \$58,375 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams made misrepresentations to a public customer concerning the purchase and sale of stocks. Relying on the misrepresentations, the customer delivered funds to Adams, and in an attempt to conceal the fact that the purchase had been liquidated for non-payment, Adams recommended that the customer sell the stock and later misrepresented to the customer that he had sold the stock without the customer's consent because of falling prices. Adams then terminated his employment with his member firm, became employed with another member firm, instructed the customer to transfer the account to his new member firm, and misrepresented to the customer that the check should be made out in Adams' name. Adams received a \$5,000 check from the customer and misused the funds. Adams also failed to respond to NASD requests for information.

**Craig R. Lodge (Registered Representative, San Diego, California)** was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$110,324.85 in restitution to public customers. The sanctions were based on findings that Lodge received \$110,324.85 from public customers for deposit in a pension plan account. Lodge failed to open the account for the customers and misused the funds. Lodge also failed to respond to NASD requests to appear for an on-the-record interview.

**Brooks S. McClary (Registered Representative, Tujunga, California)** was fined \$45,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm \$990. The sanctions were based on findings that McClary purchased shares of stock for the account of a public customer without the customer's authorization or consent. McClary also failed to respond to NASD requests for information.

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

## January Actions

**James Adams (Associated Person, Littleton, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$313,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he made improper use of customer securities and funds totaling \$62,422.14 by transferring the amount to an account over which he exercised control and/or ownership without the customer's authorization.

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

**John Edward Flanagan, Jr. (Registered Representative, Hauppauge, New York)** submitted an Offer of Settlement pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Flanagan consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers to applications for the purchase of variable contracts and to variable annuity surrender forms without the authorization or consent of the customers. The findings also stated that Flanagan purchased annuities for the accounts of public customers and effected the surrender of the annuities without the prior authorization and consent of the customers. Furthermore, the NASD found that Flanagan failed to respond to NASD requests for information and appear at an on-the-record interview.

**Peter E. Gradwohl (Registered Representative, Montlake Terrance, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gradwohl consented to the described sanctions and to the entry of findings that he accepted \$50,000 from public customers intended for investment in securities. The findings stated that Gradwohl failed to establish an account for the customers, failed to use the funds for their intended purposes, and instead, used the funds for his own purposes.

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

**Kunz & Cline Investment Management Inc. (Salt Lake City, Utah) and Kevin D. Kunz (Registered Principal, Fruit Heights, Utah)** were fined \$30,000, jointly and severally. The firm was suspended from participation in any public or private offering of securities in the capacities of lead underwriter, primary placement, or sales agent until it retains an independent consultant to review its operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities. Kunz was fined \$5,000, suspended from association with any NASD member in any principal capacity for one year, suspended from association with any NASD member in any capacity for one month, and required to requalify by exam as a principal.

The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda that contained material misrepresentations and omissions. The firm, acting through Kunz, also offered and sold securities that were neither

registered nor exempt from registration. Furthermore, the firm, acting through Kunz, made recommendations to purchase securities that were unsuitable for certain customers and permitted an unregistered person to recommend the securities and execute the transactions that resulted from those recommendations. In addition, Kunz compensated an unregistered person in connection with his participation in securities transactions.

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

**M.G.S.I. Securities, Inc. (Houston, Texas)** 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 recommended and sold highly volatile, highly complex CMO derivatives to a public customer, contrary to the customer's stated investment objectives and needs. The findings also stated that the firm failed to disclose to the customer the unsuitability of the recommended investments and made numerous material misrepresentations and material omissions of fact to the customer in connection with the recommendation. The NASD also found that the firm failed to implement, maintain, and enforce adequate supervisory procedures.

**Brian Prendergast (Registered Representative, Engelwood, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Prendergast acted as a securities broker without complying with the registration provisions of the federal securities law and induced and effected securities transactions by means of a deceptive and fraudulent device or contrivance. Prendergast also solicited transactions by using a private placement memorandum that contained materially misleading projections of returns, exaggerated claims, and misleading representations and omitted to disclose material information. In addition, Prendergast distributed sales literature that failed to conform to the standards for sales literature and placed an advertisement in a newspaper that failed to comply with requirements for advertisements. Furthermore, Prendergast failed to disclose to his member firm that he had established accounts at another member firm and failed to disclose to the other firm his association with his member firm. Prendergast also failed to respond to NASD requests for information.

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

### **February Actions**

**Daniel S. Hellen (Registered Representative, Selden, New York)** was fined \$7,000, suspended from association with any NASD member in any capacity for 15 business days, ordered to requalify by exam in all capacities, and ordered to pay \$18,000 in restitution to customers. The sanctions were based on findings that Hellen effected transactions in customer accounts without obtaining the prior authorization of the customers.

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

**Gerald Cash McNeil (Registered Representative, North Bergen, New Jersey)** was fined \$20,000, suspended from association with any NASD member in any capacity for 20 days, and required to requalify by exam in all capacities. In addition, McNeil must pay \$3,712.50 plus interest in restitution to a public customer. The sanctions were based on findings that

McNeil executed unauthorized trades in the accounts of public customers.

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

**Schneider Securities, Inc. (Denver, Colorado), Thomas J. O'Rourke (Registered Principal, Denver, Colorado), S. Peter Duray-Bito (Registered Principal, Littleton, Colorado), Keith A. Koch (Registered Representative, Littleton, Colorado), and Scott B. Olson (Registered Representative, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000 and ordered to disgorge \$9,145 in commissions, fined \$5,000, jointly and severally, with Duray-Bito, and fined \$10,000, jointly and severally, with O'Rourke and Duray-Bito. Furthermore, O'Rourke was suspended from association with any NASD member in any supervisory capacity for five business days and required to requalify by exam as a general securities principal, and Koch and Olson were fined \$10,000, jointly and severally, and ordered to disgorge \$3,996 in commissions, 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 Koch and Olson, sold securities to public customers that were neither registered nor exempt from registration.

The findings also stated that the firm, acting through Duray-Bito, received checks from customers in payment for securities in a private placement offering and failed to forward such checks within the required time period to an established bank escrow account. Furthermore, the NASD found that the firm, acting through O'Rourke and Duray-Bito, failed to establish, maintain and/or enforce written supervisory procedures, and the firm, acting through O'Rourke, failed to supervise Koch and Olson properly in connection with the public offering.

**Gary Sherman (Registered Principal, Scottsdale, Arizona)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Sherman failed to supervise a registered representative in a manner reasonably designed to prevent suitability violations.

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

### **January Actions**

None

### **February Actions**

**Andover Securities, Inc. (Kansas City, Missouri), Kent Warren Miller (Registered Principal, Leavenworth, Kansas), and Tarlton Snead Gosney (Registered Principal, Ridgefield, Washington)** submitted an Offer of Settlement pursuant to which the firm was fined \$20,000. Miller was fined \$5,000, suspended from association with any NASD member in any principal capacity for five business days, and Gosney was fined \$1,500 and suspended from association with any NASD member in any capacity for one business day. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with a private placement offering, the firm, acting through Miller, failed to deposit investor funds in a separate bank account or an escrow account, and conducted a securities business while failing to maintain its minimum required net capital. In addition, the NASD found that the firm, acting through Miller and Gosney, defrauded investors by omitting to state material facts necessary to make the

statements made in the offering not misleading.

The NASD also determined that Miller failed to supervise the firm's activities adequately and properly, and failed to take additional steps to ensure that a private placement memorandum contained no misstatements or omissions of material fact. The findings also stated that the firm, acting through Miller, failed to establish and maintain adequate written supervisory procedures.

**James Michael Duncan (Registered Representative, Brunswick, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,500 and suspended from association with any NASD member in any capacity for one business day. Without admitting or denying the allegations, Duncan consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prior written notification to his member firm. Duncan also shared in a customer's securities account without obtaining prior written authorization from his member firm.

**Harry Matthew Grey (Registered Representative, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Grey consented to the described sanction and to the entry of findings that he recommended to public customers numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the size and frequency of the transactions, and the nature of the accounts.

**David W. McKellin (Registered Representative, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, McKellin consented to the described sanctions and to the entry of findings that he recommended a series of securities transactions to a public customer that were unsuitable for the customer based upon the frequency of the transactions, and the customer's age, investment experience, and financial resources.

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

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

### **January Actions**

**Gregory D. Dial (Registered Representative, Baton Rouge, Louisiana)** was fined \$65,000, barred from association with any NASD member in any capacity, and ordered to pay \$30,590.24 in restitution to a member firm. The sanctions were based on findings that Dial exercised discretion in the account of public customers without having obtained prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm. Dial also recommended and engaged in purchase and sale transactions in the account of public customers without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. In addition, Dial failed to properly indicate on 14 trade order tickets, for transactions in mutual funds, that such transactions involved mutual fund switches, thus causing his member firm's

books and records to be inaccurate. Furthermore, Dial failed to respond timely and completely to NASD requests for information.

**S.C. Costa Company (Tulsa, Oklahoma) and Steven C. Costa (Registered Principal, Tulsa, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$100,000, jointly and severally. The firm was expelled from NASD membership and Costa was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Costa, failed to exercise reasonable and proper supervision over an individual.

**Susan A. Shackleton (Registered Representative, Woodland Hills, California)** submitted an Offer of Settlement pursuant to which she was fined \$5,800 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Shackleton consented to the described sanctions and to the entry of findings that she sent correspondence to the attorney of a public customer that was misleading. The findings also stated that Shackleton sent correspondence to the attorney of a public customer on the letterhead of a bank instead of her member firm.

### **February Actions**

**Russell M. Bartlett (Registered Principal, Lilburn, Georgia)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Bartlett consented to the described sanction and to the entry of findings that, in connection with a promotion of mutual funds to the investing public, he failed to disclose adequately his association with his member firm in correspondence and other communications.

**Gregory S. Campbell (Registered Representative, Birmingham, Alabama)** submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanctions and to the entry of findings that he forged the signature of a public customer to a customer agreement with a member firm. The findings also stated that Campbell executed unauthorized transactions in the account of a public customer, and recommended and engaged in speculative, excessive purchase and sale transactions, on margin, that were unsuitable. Furthermore, the NASD found that Campbell caused his member firm's books and records to be inaccurate in that he marked "unsolicited" on order tickets and indicated on new account documentation for the public customer that the customer had 10 years of prior experience trading stocks and bonds when, in fact, the customer had only six months of experience.

**Mark A. Lefkowitz (Registered Representative, Parlin, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Lefkowitz consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the securities accounts of public customers.

**Richard C. McDavitt (Registered Representative, Nashville, Tennessee)** was fined \$10,000, suspended from association with any NASD member in any capacity for six weeks, required to requalify by exam by taking and passing the Series 6 exam, and required to pay restitution to his member firm. The sanctions were based on findings that McDavitt received a \$5,000 check from a public customer intended for the purchase of stock. McDavitt failed to

execute such purchase and, instead, deposited the check into his personal account.

**Vincent A. Padulo, Jr. (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Padulo consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers. The findings also stated that Padulo failed to follow a customer's instructions to sell stock.

#### *District 6 - Texas*

#### **January Actions**

**Michael Allen Aragon (Registered Representative, Newport Beach, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Aragon failed to respond to NASD requests for information.

**Jose Antonio Caballero (Registered Representative, Allen, Texas)** was fined \$40,000, barred from association with any NASD member in any capacity, and ordered to requalify by exam. The sanctions were based on findings that Caballero received a \$9,813.11 check from a public customer for investment purposes and failed to invest such monies on behalf of the customer. Caballero also failed to respond to NASD requests to appear for an on-the-record interview.

**Anthony Wayne Heuermann (Registered Representative, Spring, Texas)** was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Heuermann effected private securities transactions and failed to provide written notice to his member firm. Furthermore, Heuermann engaged in the investment banking business, but failed to register with the NASD in the category of registration appropriate to the function he performed. Heuermann also failed to respond to NASD requests for information.

**David Grayland Pate, Sr. (Registered Representative, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$18,100 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Pate consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with written notice describing in detail the proposed transaction and his proposed role therein. The findings also stated that Pate was employed by or accepted compensation from another member firm as a result of business activity outside the scope of his relationship with his member firm, even though he had not provided prompt written notice to his member firm.

**Kenneth Alan Rosenfield (Registered Representative, Mission Viejo, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rosenfield failed to respond to NASD requests for information.

**Robert Joseph Sucarato (Registered Representative, Old Bridge, New Jersey)** was fined \$20,000 and barred from association with any NASD member in any capacity. The

sanctions were based on findings that Sucarato failed to respond completely to NASD requests for information.

### **February Actions**

**Bill Warren Travis (Registered Representative, Burleson, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$5,000, jointly and severally with a member firm, and suspended from association with any NASD member in any capacity for three business days. In addition, Travis must requalify as a financial and operations principal as a prerequisite for future association with an NASD member firm in any capacity. Without admitting or denying the allegations, Travis consented to the described sanctions and to the entry of findings that a member firm, acting through Travis, failed to comply with Regulation T in that, with respect to customer transactions, the firm failed to obtain full cash payment for customer purchases within one payment period of the date on which non-exempted securities were purchased, and failed to cancel or otherwise liquidate such transactions promptly. The findings also stated that the firm, acting through Travis, effected transactions in securities after it failed to make a required deposit to its reserve bank account and failed to deposit promptly monies received from offerings into a separate bank account.

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

### **January Actions**

**John L. Lopez (Registered Representative, Marietta, Georgia)** was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam as an investment company and variable contracts products representative. The sanctions were based on findings that Lopez forged the signature of a registered representative on a variable annuity application, suitability questionnaire and disclosure form for a public customer. Lopez also failed to respond to NASD requests for information.

**Frank A. McCanham (Registered Representative, Columbus, Georgia)** was fined \$5,000, suspended from association with any NASD member in any capacity for two years, required to requalify as a general securities representative, and required to pay restitution. The sanctions were based on findings that McCanham effected private securities transactions outside the regular course or scope of his employment with his member firm and failed to provide written notice to, or obtain approval from, his member firm.

McCanham's suspension began on February 14, 1995 and concluded on February 14, 1997.

### **February Actions**

**Barron Chase Securities, Inc. (Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000, ordered to pay restitution to customers, and required to retain an independent consultant to review the firm's policies, practices and procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to notify the NASD of secured demand note deficiencies, and failed to make accurate net capital calculations. The findings also stated that the firm effected principal sales of securities to public customers at prices that were not reasonably related to the prevailing market price and were unfair taking

into consideration all relevant circumstances. Furthermore, the NASD determined that the firm failed to maintain and preserve the memoranda of principal purchases and sales of stock with retail customers and broker/dealers, and failed to maintain and preserve confirmation of customer transactions.

**Peter A. Bocchino (Registered Representative, Kissimmee, Florida)** was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bocchino made misrepresentations to public customers regarding investments they had made at the recommendation of Bocchino.

**Joseph G. Chiulli (Registered Principal, Lynbrook, New York)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to an NASD request for information.

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

**Charles C. Cronin, Jr. (Registered Representative, Winston-Salem, North Carolina)** was fined \$45,000, barred from association with any NASD member in any capacity, and required to pay \$5,618.08 plus interest in restitution to a member firm. The sanctions were based on findings that Cronin accepted a \$5,000 cashier's check from a public customer intended for the purchase of mutual fund shares and converted the funds to his own use and benefit. Cronin also failed to respond to NASD requests for information.

**Christopher K. Cutchens (Registered Representative, Pace, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision.

The sanctions were based on findings that Cutchens failed to respond to NASD requests for information.

**Edward C. W. Donner, III (Registered Principal, Palm Beach, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Donner, acting on behalf of a member firm, filed erroneous trade reports on transactions in securities listed on The Nasdaq Stock Market. Donner also failed to respond to an NASD request for information.

**Michael D. Farkas (Registered Representative, Miami Beach, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$4,000 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Farkas consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers.

**William H. Gerhauser (Registered Principal, Surrey, Great Britain) and William C. Gerhauser (Registered Principal, Tampa, Florida)** were fined \$15,000, jointly and severally. In addition, W.H. Gerhauser was required to requalify by exam as a financial and operations principal and W.C. Gerhauser was required to requalify by exam as a general securities principal. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the Gerhausers, acting on behalf of a member firm, conducted a securities business while failing to maintain adequate net capital. The firm, acting through W.H. Gerhauser, filed inaccurate FOCUS Part I and IIA reports, failed to maintain accurate books and records, and failed to give telegraphic notice of a net

capital deficiency.

W.H. Gerhauser and W.C. Gerhauser have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**John W. Hardin (Registered Representative, Columbia, South Carolina)** was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hardin induced a public customer to purchase an insurance policy, falsified information on the application, and forged the customer's signature on the application form that he submitted to his member firm. Hardin also switched two insurance policies of public customers into another product and changed the customers' address on the policies to his personal address without the knowledge or authorization of the customers.

**Ronald W. Howell (Registered Representative, Atlanta, Georgia)** was fined \$35,000, barred from association with any NASD member in any capacity, and ordered to pay \$3,000 plus interest in restitution to a member firm. The sanctions were based on findings that Howell failed to respond to NASD requests for information. Howell also converted \$3,000 received from a public customer for investment purposes to his own use and benefit.

**David J. Karrass (Registered Representative, New York, New York)** was fined \$26,096.85 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Karrass effected unauthorized transactions in the securities accounts of public customers. Karrass also failed to respond to NASD requests for information.

**Mohammed L. Khan (Registered Representative, Apopka, Florida)** was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam by taking and passing the Series 6 exam. The sanctions were based on findings that Khan participated in outside business activities without disclosing his participation in such activities to his member firm.

**Steven A. Kirschbaum (Registered Representative, Coral Spring, Florida)** was fined \$50,000 and barred from association with any NASD member in any capacity, with the right to reapply after three years. The sanctions were based on findings that Kirschbaum forged the signatures of customers on "Change of Dealer" or new account forms.

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

**Darren L. Klemp (Registered Representative, Clearwater, Florida)** was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions after appeal of an Atlanta DBCC decision. The sanctions were based on findings that Klemp failed to notify his member firm of an outside business activity and failed to respond to NASD requests for information.

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

**Leandro J. Obenauer (Registered Representative, Boynton Beach, Florida)** was fined \$46,045, barred from association with any NASD member in any capacity, and ordered to pay \$5,209 in restitution to a public customer. The sanctions were based on findings that Obenauer recommended to a public customer that he wire the balance in a securities

account maintained with a firm to a new member applicant firm, of which Obenauer was president, so that additional investments could be made on behalf of the customer. Instead, Obenauer failed to make the additional investments as represented and misused these funds without the customer's knowledge or consent. Obenauer also failed to respond to NASD requests for information.

**Allen R. Prewitt (Registered Representative, Bradenton, Florida)** was fined \$10,000, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam by taking and passing the Series 7 exam. The sanctions were based on findings that Prewitt failed to complete his Form U-4 accurately.

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

**Kenneth T. Tripoli (Registered Representative, Fort Lauderdale, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tripoli consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request for information.

**Fenton B. Turck, III (Registered Representative, Cliffside Park, New Jersey)** was barred from association with any NASD member in any capacity and required to pay \$775,000 plus interest in restitution to customers. The sanctions were based on findings that Turck furnished a false and misleading offering memorandum to investors. Furthermore, Turck engaged in outside business activities and failed to provide prior written notice to, and obtain prior written approval from, either of his member firms. Turck also failed to respond to NASD requests for information.

**Charles R. Weeks (Registered Representative, Dunwoody, Georgia)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Weeks participated in private securities transactions while failing to provide his member firm written notice of these transactions. Weeks also participated in business activities outside the scope of his employment with his member firm and failed to disclose such activities to his member firm.

*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*

## **January Actions**

**City Securities Corporation (Indianapolis, Indiana) and James Allen Merten (Registered Principal, Zionsville, Indiana)** were fined \$15,000, jointly and severally. The NBCC imposed the sanction following review of a Chicago DBCC decision. The sanction was based on findings that the firm, acting through Merten, failed adequately to supervise an individual. In addition, the firm allowed an individual to engage in selling option contracts without proper registration.

**Miguel Angel Cruz (Registered Representative, Shelby Township, Michigan)** was fined \$30,000, suspended from using sales literature and advertisements for one year, and required to file and obtain from the NASD Advertising Department a "no objection" letter

concerning all of his advertisements and sales literature prior to use. In addition, Cruz must pay \$6,544.12 in restitution to customers and requalify by exam as an investment company and variable contracts representative. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Cruz made unsuitable recommendations and misrepresentations of material facts to public customers in connection with sales of variable life insurance policies. In addition, Cruz circulated radio advertisements to the public that were misleading and did not comport with the NASD's advertising rule. Cruz also engaged in outside business activities without providing prompt written notice to his member firm.

**Del Brooks Gieche (Registered Representative, Imlay City, Michigan)** was fined \$180,000, barred from association with any NASD member in any capacity, and required to pay \$32,039.65 in restitution. The sanctions were based on findings that Gieche withdrew \$32,039.65 from the securities account of a public customer without the customer's knowledge or consent and used the proceeds for some purpose other than for the benefit of the customer. Gieche also failed to respond to NASD requests for information.

**Michael J. Hewitt, Jr. (Registered Representative, Linwood, Michigan)** was fined \$95,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,081 in restitution to a member firm. The sanctions were based on findings that Hewitt purchased, for his combined assets program account at his member firm, stock index put option contracts totaling \$9,616 and failed to pay his member firm for the purchase. Furthermore, Hewitt withdrew \$5,465 from his account at his member firm when he had insufficient funds in the account and used the funds for some purpose other than for the benefit of his member firm. Hewitt also failed to respond to NASD requests for information.

**Eugene Gerome Johnson, II (Registered Representative, Waukegan, Illinois)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$300 in restitution. The sanctions were based on findings that Johnson obtained \$300 from a public customer intended for the purchase of an insurance policy, failed to follow the customer's instructions, and used the funds for some purpose other than the benefit of the customer. Johnson also failed to respond to NASD requests for information.

**John N. Salerno (Registered Principal, Chicago, Illinois)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Salerno purchased and sold securities for the account of a public customer without their knowledge or consent. Salerno also failed to respond to NASD requests for information.

**Gerald James Stoiber (Registered Representative, Mokena, Illinois)** was fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. However, the fine may be reduced by any amounts Stoiber pays in restitution to public customers. The SEC affirmed the sanctions following appeal of a March 1996 NBCC decision. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior written notice to, and obtain prior written approval from, his member firm to engage in such activities.

Stoiber filed a petition for judicial review in the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

## **February Actions**

**American Investment Services (East Peoria, Illinois) and Lisa J. Strong (Registered**

**Principal, Peoria, Illinois)** submitted an Offer of Settlement pursuant to which they were fined \$24,000, jointly and severally. In addition, Strong must requalify by exam as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Strong, failed to establish, maintain or enforce written supervisory procedures to prevent or detect a registered representative's use of unauthorized wire transfers from a customer's accounts. The findings also stated that the firm, acting through Strong, conducted a securities business while failing to maintain its minimum required net capital and prepared inaccurate net capital computations. Furthermore, the NASD found that the firm, acting through Strong, prepared and submitted inaccurate FOCUS IIA reports to the NASD and failed to comply with the terms of its Restrictive Agreement. The NASD also determined that the firm failed to file promptly with the NASD information about the settlement of one customer complaint, and statistical and summary information regarding customer complaints against registered representatives of the firm.

**John Lawrence Bridges, Jr. (Registered Representative, New York, New York)** was fined \$1,012,000, barred from association with any NASD member in any capacity, and required to pay \$198,400 in restitution. The sanctions were based on findings that Bridges caused wire transfers totaling \$198,400 to be issued from the securities accounts of a public customer and directed to his personal bank account without the authorization, knowledge, or consent of the customer. Bridges also failed to respond to NASD requests for information.

**Herbert L. Davis, Jr. (Associated Person, Milwaukee, Wisconsin)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis obtained a check payable to a public customer and without the customer's authorization, knowledge or consent, signed the customer's name to the check and used the proceeds for some purpose other than for the benefit of the customer. Davis also failed to respond to NASD requests for information.

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

**Tina R. Diaz (Registered Representative, Appleton, Wisconsin)** submitted an Offer of Settlement pursuant to which she was fined \$5,000, barred from association with any NASD member in any capacity, and ordered to pay \$150 in restitution to her member firm. Without admitting or denying the allegations, Diaz consented to the described sanctions and to the entry of findings that she took \$100 to \$150 from self-service boxes her member firm maintained and used the funds for her own benefit without the knowledge or consent of the member firm.

**August Ghilarducci (Registered Representative, Bensenville, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$42,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ghilarducci consented to the described sanctions and to the entry of findings that he received funds totaling \$8,001.38 from public customers for the purchase of insurance policies and deposited the funds into his account, using only \$3,607.91 to purchase an insurance policy, and using the remaining funds for some purpose other than the benefit of the customers. Ghilarducci also failed to respond to NASD requests for information.

**Mark A. Goldman (Registered Principal, Roslyn Heights, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Goldman failed to cooperate in an NASD investigation.

**Investors Associates, Inc. (Hackensack, New Jersey) and George Bradley Taylor (Registered Principal, Wheaton, Illinois)** submitted Offers of Settlement pursuant to which the firm was fined \$10,000 and Taylor was suspended from acting in a supervisory or managerial capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Taylor, failed to establish, maintain or enforce written supervisory procedures regarding unsuitable and excessive trading in a customer's account.

**Robert Neal Kent, Jr. (Registered Representative, Stevens Point, Wisconsin)** submitted an Offer of Settlement pursuant to which he was fined \$60,000, barred from association with any NASD member in any capacity, and required to pay \$8,000 in restitution to a member firm. Without admitting or denying the allegations, Kent consented to the described sanctions and to the entry of findings that he obtained an \$8,000 check from a public customer with instructions to transfer a limited partnership interest to her, failed to follow these instructions, and used the proceeds for some purpose other than the benefit of the customer. Kent also failed to respond to NASD requests for information.

**Robert Dennis Larsen (Registered Representative, Linden, Wisconsin)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Larsen consented to the described sanctions and to the entry of findings that he created false and misleading suitability documents and altered tax return documents for public customers who purchased limited partnership units. Furthermore, the NASD found that Larsen recommended the purchase of limited partnership units to public customers when he did not have a reasonable basis for believing that such recommendations were suitable for the customers in light of their financial situation and needs.

**Michael Joseph Lomec (Registered Representative, Hazel Crest, Illinois)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lomec recommended and effected securities transactions for the account of a public customer and engaged in such activities without having a reasonable basis for believing that such recommendations were suitable for the customer. Lomec also failed to respond to NASD requests for information.

**Lavonn M. Mahar (Registered Representative, Cassville, New York)** submitted an Offer of Settlement pursuant to which she was fined \$287,000, barred from association with any NASD member in any capacity, and ordered to pay \$53,338.73 in restitution to customers. Without admitting or denying the allegations, Mahar consented to the described sanctions and to the entry of findings that she received \$53,338.73 from public customers for investment purposes and used the funds for her own use and benefit. Mahar also failed to respond to NASD requests for information.

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

**Leonardo Edward Townsend (Registered Representative, Oak Park, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Townsend consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of stock for the account of a public customer without having a reasonable basis for believing that the recommendations were suitable for the customer based upon the facts known to him concerning the nature of the securities purchased for the account, and the customer's investment objectives, financial

situation and needs.

**Darnell Alexander Willis (Registered Representative, Chicago, Illinois)** was fined \$25,000, barred from association with any NASD member in any capacity, and required to disgorge \$900 to public customers. The sanctions were based on findings that Willis engaged in unauthorized transactions in the accounts of public customers. Willis also failed to respond to NASD requests for information.

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

### **January Actions**

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

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

**Andrew L. Solice (Registered Representative, Philadelphia, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Solice consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

### **February Actions**

**Carl C. Baggs (Registered Representative, Merion Station Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on finding that Baggs failed to respond to NASD requests for information.

**Donald L. Huber (Registered Representative, Cherry Hill, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 10 days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Huber consented to the described sanctions and to the entry of findings that he recommended and effected unsuitable transactions in the accounts of public customers. The NASD found that Huber failed to conduct a reasonable and adequate investigation into the investment to comprehend fully the nature of the units and the risks associated with the investment. Furthermore, the NASD determined that, in inducing and effecting the purchases of securities, Huber engaged in deceptive and/or fraudulent devices or practices and failed to disclose material facts regarding the securities.

**Robert J. Koester, Jr. (Associated Person, Clarks Summit, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Koester consented to the described sanctions and to the entry of

findings that, after taking and failing the Series 63 exam, he subsequently created a document purporting to show a passing test grade that he presented to his member firm as being authentic.

**Terrence P. Larkin (Registered Representative, Blue Bell, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$17,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Larkin consented to the described sanctions and to the entry of findings that he came into possession of checks issued by a life insurance agency to policyholders or applicants for insurance totaling \$3,490.24 for the purpose of delivering the checks to the payees. The NASD found that Larkin failed to deliver such checks to the payees, affixed the purported endorsements of the payees to the checks without their authorization or consent, affixed his own second endorsement upon such checks, and deposited the checks into his own bank account.

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

**Brian S. Psaila (Registered Representative, Kingston, Pennsylvania)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Psaila failed to respond to NASD requests for information. Psaila also received \$7,000 from a public customer in connection with an application for a variable annuity and failed to remit the funds and application to his member firm.

**Lawrence J. Rozanski (Registered Representative, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity, with the right to reapply with the NASD after 10 years. Without admitting or denying the allegations, Rozanski consented to the described sanctions and to the entry of findings that he engaged in a course of conduct intended to deceive a public customer about the status of the customer's account at his member firm and about the profitability, in aggregate, of the trading activity in the account. Rozanski also failed to respond to NASD requests for information.

**Brian L. Shegon (Registered Representative, Mohnton, Pennsylvania)** was fined \$100,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Shegon received checks from public customers and converted the funds to his own use and deposited the funds into his own account. Shegon also failed to respond to NASD requests for information.

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

## **January Actions**

**Max Curt Altolaquirre (Registered Representative, Bellerose, New York)** was fined

\$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Altolaguirre engaged in acts of misrepresentations, forgery, falsification of records, and improper use of customer funds.

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

**Ezenwa Myke Ekenyere (Registered Representative, Brooklyn, New York)** was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$40,918.73. The sanctions were based on findings that Ekenyere arranged to have an impostor take the Series 7 exam on his behalf. Ekenyere also failed to respond to NASD requests for information and to appear for an on-the-record interview.

**Samuel Feratovic (Registered Representative, Brooklyn, New York)** was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay disgorgement. The sanctions were based on findings that Feratovic arranged to have an impostor take the Series 7 exam on his behalf. Feratovic also failed to respond to NASD requests to appear for an on-the-record interview.

**Dean James Liakos (Registered Representative, Rego Park, New York)** was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$105,419.36. The sanctions were based on findings that Liakos arranged to have an impostor take the Series 7 exam on his behalf. Liakos also failed to respond to NASD requests for information.

**Christos Margaritis (Registered Representative, Bayside, New York)** was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay disgorgement. The sanctions were based on findings that Margaritis arranged to have an impostor take the Series 7 exam on his behalf. Margaritis also failed to respond to NASD requests to appear for an on-the-record interview.

## **February Actions**

**David A. Blech (Registered Principal, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Blech failed to respond to NASD requests for information.

**Daniel Cevallos (Registered Representative, Brooklyn, New York)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cevallos executed unauthorized securities transactions in the account of a public customer without the customer's knowledge or consent. Also, Cevallos falsified records to prevent detection and to camouflage his failure to execute a customer's order.

**Steven R. Cloyes (Registered Representative, Glenville, Connecticut)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cloyes consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. The findings also stated that Cloyes failed to pay

a \$24,300 arbitration award.

**Alan S. Daniel (Registered Representative, Holland, Pennsylvania)** 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. Without admitting or denying the allegations, Daniel consented to the described sanctions and to the entry of findings that, while associated with member firms, he opened and maintained securities accounts with other member firms without obtaining pre-approval or disclosing the existence of those accounts. Furthermore, the NASD found that, in conjunction with the opening of accounts at various member firms, Daniel failed to disclose his status as an associated person and provided those member firms with incomplete and incorrect information. Moreover, the NASD determined that Daniel failed to advise the member firms that he was associated with that he was opening and/or maintaining accounts away from the member firm with which he was licensed.

**Priyantha DeSilva (Registered Representative, New York, New York)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeSilva submitted false insurance applications on behalf of public customers and submitted falsified applications to his member firm that caused the transfer of funds from the customers' bank accounts without authorization. In addition, DeSilva failed to deliver refund checks to public customers and instead, cashed the checks and converted the proceeds to his own use and benefit. DeSilva also failed to respond to NASD requests to appear at an on-the-record interview.

**Herschel E. Dwellingham, II (Registered Representative, New York, New York)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dwellingham caused warrants to be purchased in the account of a public customer without the customer's knowledge, authorization or consent. Dwellingham also failed to respond to NASD requests for information.

**Steven Michael Gerstel (Registered Representative, Matawan, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$11,542.10. Without admitting or denying the allegations, Gerstel consented to the described sanction and to the entry of findings that he opened a securities account at a member firm, placed an order to purchase securities, and failed to provide written notification to the executing firm that he was associated with another firm. Furthermore, the NASD determined that Gerstel failed to provide written notification to his member firm of his intention to open such account. The findings also stated that Gerstel purchased shares of stock that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

**Andrew Fensmark Harris (Registered Representative, Bronx, New York)** was fined \$5,000, suspended from association with any NASD member in any capacity for two months, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Harris failed to return one of five sheets of NASD scratch paper to the testing staff after completing the morning session of the Series 7 exam.

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

**Ilana Abby Knapp (Registered Principal, Basking Ridge, New Jersey)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were

based on findings that Knapp failed to respond to NASD requests for information.

**Joseph James Labuz (Associated Person, Brooklyn, New York)** was fined \$59,625.17 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Labuz received a \$10,925.15 check from a public customer and converted the funds for his own use and benefit without the customer's knowledge or consent. Labuz also failed to respond to NASD requests for information.

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

**Anthony A. Luisi (Registered Representative, Marlboro, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five days. At the conclusion of the suspension, for 35 days thereafter, Luisi must not engage in any activities for which registration with the NASD would be required and must not engage in the creation, review, approval or dissemination of advertisements or sales literature. Without admitting or denying the allegations, Luisi consented to the described sanctions and to the entry of findings that he accepted the title of compliance officer of his member firm, signed letters, and sent advertising and sales literature to the NASD at a time when he had no experience in compliance matters.

**Brandon J. Mader (Registered Representative, Hauppauge, New York)** was fined \$72,820 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mader executed unauthorized trades in public customer accounts without the customers' prior knowledge or consent. Mader also failed to respond to NASD requests for information.

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

**James P. Minsky (Registered Representative, Aventura, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Minsky consented to the described sanctions and to the entry of findings that he effected trades in the public customers' accounts without the customers' knowledge or authorization. The findings also stated that Minsky failed to execute a customer's order to sell stock.

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

**Thomas Michael Savich (Registered Representative, North Hollywood, California)** was fined \$64,812.35 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Savich arranged to have an impostor take the Series 7 exam on his behalf. Savich also failed to respond to NASD requests to give testimony during an on-the-record interview.

**Andrew D. Schiff (Registered Representative, New York, New York)** was fined

\$57,292.62 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schiff executed transactions in customer accounts without the customers' knowledge, authorization or consent.

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

**Jeffrey L. Streich (Registered Representative, New York, New York)** was fined \$65,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Streich made fraudulent and material misrepresentations and material omissions to public customers in the recommendation of purchases in an offering.

**George Thompson (Registered Principal, Toms River, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$407,500.68 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that, in his capacity as his member firm's cashier, Thompson prepared and issued 24 checks totaling \$68,000 that were drawn on his member firm's principal cash account and converted the funds for his own use and benefit without the permission or authority of his member firm. The findings also stated that Thompson filed a Form U-4 that failed to report his employment with a member firm. Furthermore, the NASD found that Thompson failed to respond to NASD requests to appear for an on-the-record interview.

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

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

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

## **January Actions**

**Jane E. Cipriani (Registered Representative, Baltic, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cipriani consented to the described sanctions and to the entry of findings that she forged the names of public customers onto insurance disbursement forms to obtain checks totaling \$1,021.85. The NASD found that Cipriani converted the funds to her own use and benefit without the customers' knowledge or consent.

**Vincent R. DiGiulio (Registered Principal, Warwick, Rhode Island)** was fined \$90,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DiGiulio engaged in private securities transactions outside the regular scope of his employment with his member firm without giving prior written notice to his member firm. DiGiulio also failed to respond to NASD requests for information.

**John F. Keenan (Registered Representative, Warwick, Rhode Island)** was fined \$90,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Keenan engaged in private securities transactions outside the regular scope of his employment with his member firm without giving prior written notice to his member firm. Keenan also failed to respond to NASD requests for information.

**David A. Leonard (Registered Representative, Exeter, New Hampshire)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Leonard withheld and misappropriated to his own use and benefit policyholder funds totaling \$2,000. Leonard also failed to respond to NASD requests for information.

**Todd J. Loucks (Registered Representative, Oneonta, New York)** was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Loucks prepared and filed with his member firm a fictitious application wherein he forged the signature of a public customer on a variable annuity application without the customer's knowledge or consent.

### **February Actions**

**Timothy C. Adams (Registered Representative, Cambridge, Massachusetts)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams failed to respond to NASD requests for information.

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

**Albert C. Levesque (Registered Representative, Assonet, Massachusetts)** was fined \$950,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Levesque received \$230,586 intended to be invested in a mutual fund account and a bank account and he misappropriated \$190,478 of the funds to his own use and benefit.

**Peter F. Scribner (Registered Representative, Melrose, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,000. Without admitting or denying the allegations, Scribner consented to the described sanction and to the entry of findings that he made an unsuitable securities recommendation to a public customer.

**Gerald M. Shapiro (Registered Representative, Haverhill, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shapiro consented to the described sanctions and to the entry of findings that he converted \$1,500 and misused \$3,000 in a public customer's funds.

### *Market Regulation Committee*

### **January Actions**

**C.P. Baker & Company, Ltd. (Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or

denying the allegations, the firm consented to the described sanction and to the entry of findings that it held, on behalf of a customer account, unhedged short position contracts that exceeded the application position limit. The findings also stated 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 concerning the NASD's option position limit rules.

## **February Actions**

**Mayer & Schweitzer, Inc. (Jersey City, New Jersey)** submitted an Offer of Settlement pursuant to which the firm was fined \$29,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it entered or maintained quotations in Nasdaq during normal business hours that caused a locked market condition to occur in 10 securities and a crossed market condition to occur in two securities.

**Nash, Weiss & Company (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported 150 transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limited orders. The finding also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules.

**Troster Singer Corporation (Jersey City, New Jersey)** submitted an Offer of Settlement pursuant to which the firm was fined \$40,000 and required to pay \$158,361.85 plus interest in restitution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to fulfill its obligation when executing customer limit orders into an automated execution system. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure that customer limit orders were accepted and executed in accordance with NASD rules.