

Regulatory & Compliance Alert

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NASD Surveys Member Firms And Develops Member Regulation Program

Member Survey Results As Of June 30, 1998

The National Association of Securities Dealers Inc. (NASD®) sent a survey to its members in late 1997 to evaluate their level of preparedness for the Year 2000 problem. As of June 30, 1998, 5,160 members had responded to the survey. This represents 99.9 percent of the NASD-designated membership. Toward that end, NASD Regulation, Inc., will be preparing disciplinary actions against firms that did not respond to the survey by June 30, 1998. Additionally, the Securities and Exchange Commission (SEC) has also requested a list of all firms that failed to submit a completed survey.

The NASD reported these survey results to the SEC in support of the SEC's *Second Report to the Congress on the Readiness of the U.S. Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000*. The following summarizes the level of response to the survey.

Classification	NASD Designated Members (DM)	NASD (DM) Survey Responses Received	Percent NASD (DM) Responses Received
Introducing	3,220	3,214	99.8%
Clearing	373	373	100%
Others	1,573	1,573	100%
Total	5,166	5,160	99.9%

The survey results indicated that 71 percent of introducing firms, 86 percent of clearing firms, and 74 percent of others have a Year 2000 Plan in place. Note: "Others" refers to limited partnerships, insurance companies, investment companies, mergers and acquisitions companies, and other firms not specifically designated as introducing or clearing.

Also, 58 percent of introducing firms, 75 percent of clearing firms, and 59 percent of other firms responded that they had completed the assessment phase of their Year 2000 plans. Sixty-six percent of introducing firms, 66 percent of clearing firms, and 69 percent of other firms answered that their plans are more than 50 percent complete.

These results, as well as information gathered from other sources, have served as the basis of developing the Year 2000 Member Regulation Plan.

Year 2000 Member Regulation Plan

As the year 2000 grows near, all NASD members have a responsibility to move their Year 2000 program plans forward to ensure continued successful operation. The NASD considers its members to be the first line of action in fulfilling the mission of investor protection and market integrity. If businesses—including NASD member firms—are not ready for the Year 2000, the consequences could be enormous. In order to enhance NASD members' readiness, NASD Regulation, in conjunction with the NASD Year 2000 Program Office, is implementing a comprehensive Year 2000 Member Regulation Plan. Specifics include:

- ***Ongoing Awareness And Education:*** This area focuses on communications with members regarding the progress of the industry in preparing for Year 2000 issues and challenges. Currently, most NASD publications contain articles targeted to increase members' awareness, discuss reporting requirements, and provide helpful hints. In addition, while the staff will not be inspecting or evaluating Year 2000 project plans developed by members or service bureaus, the NASD Year 2000 Program Office provides education through forums and participation in conferences.

For example, NASD staff conducted 34 Year 2000 seminars in May and June 1998. These educational sessions defined the Year 2000 issue and its potential impact on members and firms of all sizes. Speakers and attendees reviewed sample Year 2000 business plans with activity checklists; and participants shared best practices, "how to's", and processes for determining how their businesses will operate after December 31, 1999. Furthermore, the 1998 NASD Regulation Spring Securities Conference prominently featured the Year 2000 issue with keynote speakers and pre-conference workshops.

Another series of educational seminars will be conducted in each NASD District later this year. These sessions will cover contingency planning, testing, legal issues, risk mitigation, third-party dependencies, and more best practices. These types of activities will continue throughout 1999.

- ***Membership Information Collection And Disclosure:*** There will be surveys and reports for members to indicate and certify their progress related to Year 2000 readiness. As mentioned above, one NASD-sponsored survey was distributed in late 1997. On July 1, the SEC approved a temporary rule amendment to SEC Rule 17a-5 to require broker/dealers to file two Year 2000 compliance and disclosure reports. The first report, expected to be released in mid-July, will include two sections. The first section, using a check-box format to answer questions, will be required of all NASD members. The second section, which will appear in a narrative format, will be required of all firms with a \$100,000 or greater net capital reporting threshold. The results of these reports will be made available to the public.

Important Note: Member firms that fail to provide required Year 2000 reports will be subject to disciplinary action for violation of NASD Rule 8210.

- ***Membership Analysis:*** Using data collected from the NASD Year 2000 survey, the two proposed SEC reports, and data gathered by individual calls to member firms, NASD Year 2000 Program Office staff will be able to increase the reporting and analysis of membership risks and readiness. The NASD will also use this data to create charts and reports, evaluate members' progress toward industry milestones, and monitor members' overall Year 2000 contingency plan preparedness.

- **Other Activities:** The NASD will continue its ongoing coordination with the many groups that affect and would be affected by the success of the various Year 2000 initiatives. This includes the SEC, SIA, International Organization of Securities Commissions (IOSCO), NASD Small Firm Advisory Board, and the Municipal Securities Rulemaking Board (MSRB).

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) or the NASD Web Site (www.nasd.com); or contact the NASD Year 2000 Program Office at (888) 227-1330, or via e-mail at y2k@nasd.com.

Cover Stories

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Corporate

NASD Ombudsman Helps Constituents

Now in its second year of operation, the NASD Office of the Ombudsman (the Office) has helped resolve many issues and concerns raised by NASD, Nasdaq, and NASD Regulation constituents—including members, issuers, investors, and NASD staff, among others. The Office provides a forum for these constituents to voice their concerns and complaints about the operations, enforcement, or other activities of the NASD and its subsidiaries. It does not, however, serve as an appeals forum for decisions rendered through the disciplinary or dispute resolution process.

The Office was created in mid-1996 in response to a recommendation from the NASD Select Committee on Structure and Governance (Rudman Report). Bernard Thompson, a 20-year veteran of the NASD, was appointed as Ombudsman at that time.

Where a structured dispute resolution and/or appellate process currently exists, the Office's role will be limited to informing persons of the existence of the appropriate process for resolution and, if necessary, monitoring the outcome. If it is determined that there is no existing procedure or channel for pursuing the matter, the Office will conduct an informal investigation and recommend appropriate actions, if warranted. Matters that may be reviewed by the Office include:

- Inconsistent or biased decisions by NASD staff, or those that result in disparate treatment.
- Complaints that the parties involved are being unduly constrained by an established process.
- Reported weaknesses in NASD controls, practices, or procedures—especially when

the person complaining feels he or she cannot report them to NASD management.

- Complaints that NASD staff has not provided information to which an individual—whether another NASD employee or someone outside the organization—feels he or she is entitled.

For issues in which an established complaint or appellate process exists, at its conclusion, concerns about the process may be reviewed and, when necessary, informally investigated.

The Office, as designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to its attention unless given permission to do otherwise. The only exception, at the sole discretion of the Office, is where a threat of serious physical harm to individuals appears imminent or a critical breach of security is probable. The Office will protect any records and files pertaining to confidential discussions from inspection by all persons, including management.

Questions & Answers

Q. Who may contact the Office?

A. Anyone with a complaint or concern regarding the NASD, NASD Regulation, or The Nasdaq Stock Market®. This would include investors, securities industry professionals, employees of these organizations, and any business or individual that interacts with these organizations.

Q. What types of problems does the Office handle?

A. Any concerns or complaints about the operations, enforcement, or other activities of the NASD, NASD Regulation, and The Nasdaq Stock Market, or their staff members.

Q. When the Office receives complaints, do those complaints become public knowledge?

A. A consultation with the Office is absolutely confidential. In fact, a complaint or concern may be made anonymously.

Q. Who pays for this service?

A. The NASD and its subsidiaries provide and pay for this service for all matters concerning the NASD, NASD Regulation, and The Nasdaq Stock Market. A toll free number is available, (888) 700-0028.

Q. Does the Office have authority to solve every problem?

A. No, that's not the purpose of this Office. The securities industry, the NASD, and its subsidiaries already have many programs and procedures in place for solving problems, resolving disputes, handling complaints, and addressing concerns. The Office will help identify the right avenue, make sure it's available, and help its constituents use that program most effectively.

Q. What if the complaint is about one of the programs or procedures that's supposed to be handling my problem?

A. In that case, the Office can and will take the steps necessary to ensure that the structure and procedure of the existing forums are operating properly, appropriately, and equitably. However, it is not the Office's job to intervene in or overturn decisions made in these forums.

Q. How can we know what the issues and outcome are?

A. Unless you are directly involved in the case, often you will not know specifically what the Office is reviewing. It will depend on the specific issue, your involvement, the process or procedure affected, and whether changes are needed.

Any questions concerning the Office may be directed to [Bernard Thompson](#), Ombudsman, Office of the Ombudsman, NASD, Inc., at (202) 728-8442 or (888) 700-0028.

Continuing Education

Frequently Asked Questions About The New Continuing Education Rules

On March 3, 1998, the SEC approved changes to the Continuing Education Rules of the NASD (see [NASD Notice To Members 98-35](#), April 1998). The changes became effective July 1, 1998, and resulted in the following:

- Registered persons are now required to participate in the appropriate Regulatory Element on the second anniversary of their initial securities registration and every three years thereafter throughout their careers. Registered persons will no longer graduate from the program after their 10th registration anniversary.
- There is now a one-time grandfather provision from the Regulatory Element for those persons registered for 10 years or more in their respective registration as of July 1, 1998.
- Member firms are required to specifically focus on supervisory needs in conducting their annual 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.

There will be a new Regulatory Element computer-based training module developed which will relate to the specific needs of registered principals. The training scenarios in the new module will be made more realistic through the use of audio and video techniques.

Following are answers to frequently asked questions about this new Rule.

Regulatory Element

Q. Who is covered under the Regulatory Element?

A. Previously, all persons registered 10 years or less as measured from their initial securities registration date were covered. Under the new Rule, all persons registered 10 years or less as measured from their initial securities registration as a principal will also be covered, regardless of the amount of time they have been a registered person. It is possible for a person to be covered under the Regulatory Element as a principal yet be grandfathered should such person revert to representative-only registration. For example, a person registered for 15 years would be grandfathered from the Regulatory Element if registered as a registered representative only, but would be covered in a principal capacity if such principal registration occurred during the past 10 years. By surrendering the principal registration, the person would revert to grandfathered status in a registered representative capacity.

Q. How many Regulatory Element training programs will principals have to take?

A: Principals will have to take only one Regulatory Element computer-based training program. When a person reports to a Sylvan Technology Center to take the Regulatory Element training, the Center will administer the correct program depending on the person's securities registration.

Q. What are the principal registrations included under the new Rule?

A: See chart below.

<u>Registration</u>	<u>CRD Position Code</u>
Options Principal	OP (4)
General Securities Sales Supervisor/Branch Manager	SU, BM (8)
NYSE-Only Branch Manager	SM (12)
NYSE Supervisory Analyst	SA (16)
General Securities Principal	GP (24)
Investment Company/Variable Contracts Principal	IP (26)
Financial & Operations Principal	FN (27)
Introducing Broker Financial & Operations Principal	FI (28)

Direct Participation Programs Principal	DP (39)
Municipal Securities Principal	MP (53)
Government Securities Principal	PG
NYSE Compliance Official	No position code; requires Series 8

Q. What are the anniversaries on which all persons must take the Regulatory Element training?

A. Under the new Rule, persons must take Regulatory Element training on the 2nd anniversary of the individual's base date (see below) and every 3rd year thereafter.

Q. Are there any provisions for graduation from the Regulatory Element?

A. There are no provisions for graduating from the Regulatory Element under the new Continuing Education Rule.

Q. How are a person's Regulatory Element anniversaries determined?

A. The Central Registration Depository (CRDSM) determines a person's Regulatory Element anniversaries from a base date, which is the date of the person's initial securities registration. If, however, a person incurs a significant disciplinary action, the anniversaries will be determined from the effective date of the significant disciplinary action.

Q. What is a significant disciplinary action and what is its impact?

A. A significant disciplinary action is defined in the Rule as:

- any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;
- a suspension, or the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or
- an order as a sanction in a disciplinary action to re-enter the Continuing Education Program by any securities governmental agency or securities self-regulatory organization.

A significant disciplinary action causes those who are graduated or grandfathered from the Program to re-enter the Regulatory Element with an immediate session due within 120 days of the effective date of the significant disciplinary action, then on the 2nd anniversary of this base date

and every 3rd year thereafter. A person who incurs a significant disciplinary action and is already covered by the Regulatory Element will have the base date changed to the effective date of the significant disciplinary action. The person must participate in an immediate session within 120 days of this new base date, then on the 2nd anniversary of the base date and every 3rd year thereafter.

Q. Is there any other reason besides a significant disciplinary action why a registered person would re-enter the Regulatory Element?

A. Registered representatives who have graduated or been grandfathered from the Regulatory Element and who subsequently acquire a registration as a principal will re-enter the Regulatory Element for as long as they remain registered as a principal. Note that their anniversaries will be based on the date of their initial securities registration, not on the date of their principal registration.

Q. How did the one-time grandfathering from the Regulatory Element occur?

A. On July 1, 1998, all persons who were graduated from the Regulatory Element were reviewed by CRD. All "graduates" who had been registered as a principal for less than 10 years as of July 1, 1998, re-entered the Regulatory Element. All other "graduates" were grandfathered. They will re-enter the Regulatory Element only if they:

- become the subject of a significant disciplinary action, or
- if registered as a representative only, subsequently become registered as a principal.

Q. How must the annual needs analysis and written training plan differ under the new Rule?

A. Firms must give specific consideration to supervisory training needs when they conduct their annual needs analyses and prepare their written training plans. Training for supervisors must be provided if determined as necessary by a firm. The review of supervisory training needs and implementation of training for supervisors should occur as soon as practical after July 1, 1998, but no later than the date of the annual needs analysis for the firm's 1999 Firm Element.

Any further questions about the changes to the Continuing Education Rule should 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., (202) 728-6911.

Securities Industry/Regulatory Council On Continuing Education Holds Open Meeting

The Securities Industry/Regulatory Council on Continuing Education (the Council) conducted its first open meeting with securities firms on March 26 in New Orleans. The meeting provided a forum for the Council and the firms to discuss various issues concerning the Firm Element of the Securities Industry Continuing Education Program. One of the principal reasons for the meeting was for the Council to obtain feedback from securities firms about the Program.

Twenty-seven firms attended the three-hour meeting. Attendees included NASD, New York Stock Exchange (NYSE), and MSRB members located within the seven states covered by NASD Regulation's District 5 office, based in New Orleans. They represented bank broker/dealers, investment bankers, investment advisers who are also broker/dealers, introducing broker/dealers, retail-oriented firms, and municipal bond firms. The firms attending employ anywhere between 3 and 300 registered representatives.

Attendees heard from and asked questions of a balanced panel comprised of Bob Watts, Council Chairman and Senior Vice President & Chief Compliance Officer of John Hancock Distributors, Inc. and John Hancock Funds, Inc.; Jim Settel, retired Senior Vice President & Corporate Ethics Officer of Prudential Securities, Inc., and Chairman of the Council's Firm Element Committee; Donald van Weezel, Managing Director, Regulatory Affairs, New York Stock Exchange; and Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation.

Bob Watts opened the meeting by speaking about the Council's purpose and objectives. In this regard, the Council recommends and helps develop subject matter for the Regulatory Element computer-based training. It also develops and provides materials to help firms comply with the Firm Element. Publications produced by the Council include the *Guidelines for Firm Element Training*, *Examples of Firm Element Practices and Council Commentary*, and the annual *Firm Element Advisory*. The Council comprises executives from 13 broker/dealers representing a broad cross section of industry firms, and six self-regulatory organizations (SROs).

The following is a brief synopsis of the wide range of topics addressed by the panel during this session:

- *How firms measure the impact of their Firm Element training.*

In general, firms use feedback from questionnaires completed by registered representatives who receive the training, or from examinations that firms administer at training courses. Firms also use vendors and sometimes monitor customer complaints to assess the effectiveness of their Firm Element training.

- *What value is gained from the quarterly Regulatory Element Performance Reports.*

Most of the firms felt that there should be a more specific breakdown of the topics within the Regulatory Element modules, although the firms were divided about showing information about individual performance. Other suggestions were 1) showing performance by job

classification rather than by registration type, and 2) showing the firm's performance over several quarters on the same report rather than for a single quarter.

- *How firms handle registered representatives who refuse to participate in Firm Element training.*

Some firms combine continuing education with their sales meetings so that all registered representatives attend. However, the panel cautioned attendees that continuing education must be administered in a professional environment and focus on substantive rules and regulations that govern the securities industry. Firms generally have internal policies that impose sanctions against individuals for refusing or failing to participate in Firm Element training. Most of the firms prefer to do this rather than have the SROs specify sanctions the firms must take.

- *Should ethics be included in continuing education training.*

Ethics training is important. Firms differ about providing ethics issues in the context of Firm Element training or relying on the Regulatory Element.

- *How helpful do firms find Council publications.*

Overall, attendees found Council publications very useful, especially the *Firm Element Advisory* and *Examples of Firm Element Practices and Council Commentary*, and that periodic communications from the Council are valuable tools.

"The Council hoped the open meeting format would give us valuable feedback on how firms are dealing with the Firm Element, and we are pleased with the information we received," said Bob Watts, Council Chairman. Firm Element Committee Chair, Jim Settel, said "The discussions went very well, and I think the firms appreciated the opportunity to meet the Council and express their views. Many of the firms also enjoyed learning that their experiences are shared by others in the industry and that it is beneficial to compare notes and learn from each other. From the Council's standpoint, we greatly benefited from learning, face-to-face, how the Continuing Education Program can be made more meaningful to securities firms."

The Securities Industry/Regulatory Council on Continuing Education meets periodically throughout the year. The Council will hold its next open meeting on Thursday, August 20 in Denver, Colorado. Firms located within the NASD Regulation District 3 region will receive an invitation. Other firms are welcome to attend in person or to submit issues or questions to be addressed at the meeting. To do this, firms should write the Securities Industry/Regulatory Council on Continuing Education, c/o [John Linnehan](#), Director, Continuing Education, NASD Regulation, 1390 Piccard Drive, Rockville, MD 20850, or call (301) 208-2932.

Testing And Continuing Education Examination Updates

To provide a better level of service to NASD members, NASD Regulation and Sylvan have agreed that certain appointment scheduling activities will become the direct responsibility of NASD Regulation. Effective June 1, 1998, NASDR Field Support Services (FSS), (800) 999-6647, assumed responsibility in the following areas:

Registration Authorization Discrepancies

FSS will assume responsibility for handling registration validation problems and their resolution.

Group Appointment Scheduling

Firms scheduling group appointments (five or more people at one location on the same day) or scheduling five or more individual appointments at one time will do so by calling FSS rather than Sylvan.

Special Accommodations Appointment Scheduling Pursuant To The Americans With Disabilities Act (ADA)

After approving special accommodation requests, FSS will make all arrangements for the accommodation with Sylvan. Firms and candidates need only contact FSS; the current procedure of contacting both FSS and Sylvan will no longer be necessary.

The following options will be available when calling the NASDR FSS Team at (800) 999-6647:

Option 1 - Delivery Support—Select this option if experiencing a CRD registration problem and/or an "invalid" registration problem.

Option 2 - Exam Services—Select this option for:

- Form U-10 Issues
- Paper/Pencil Exam Reservations
- Foreign Exam Reservations

Option 3 - Special Accommodations Appointment Scheduling (ADA)—Select this option to arrange appointments for exam or continuing education sessions that require special accommodations.

Option 4 - Group Appointment Scheduling—Select this option to schedule groups of candidates (more than five people) into one location or multiple locations.

As noted above, these changes in responsibility became effective on June 1, 1998.

Implementation of these processes will be announced in the monthly *NASD Notices to Members*.

Delivery Location List

Below are the current Sylvan delivery location phone numbers. **This list is current as of June 18, 1998.** Appointments can also be scheduled through 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.

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Decatur 205-350-8324

Dothan 344-677-6334

Mobile 334-344-6284

Montgomery 334-262-0043

Alaska

Anchorage 907-563-6601

Arizona

Chandler 602-963-6260

Phoenix (N. 35th 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 510-745-8192

Gardena 310-329-1844

Glendale 818-545-7383

Irvine 714-552-0563

LaJolla 619-454-4384

Piedmont 510-428-4123

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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 408-257-7666

San Jose 408-257-7699

Santa Rosa 707-528-6000

Walnut Creek 510-934-3000

Westlake/Ventura 805-495-6367

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Colorado

Boulder 303-449-1700

Colorado Springs 719-593-1272

Denver 303-692-8745

Littleton 303-972-7276

Pueblo 719-545-0838

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Glastonbury 860-659-0400

Hamden 203-287-9677

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Washington, DC 202-955-5887

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Davie 954-423-0782

Ft. Myers 941-275-1130

Gainesville 352-371-6891

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Miami 305-825-2708

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Carpentersville 847-426-6066

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

Ellettsville 317-422-6710

Ft. Wayne 219-436-2710

Indianapolis (E. 86th 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 319-393-0555

Des Moines 515-223-6650

Kansas

Topeka 785-272-7500

Wichita 316-651-5350

Kentucky

Lexington 606-269-3933

Louisville 502-423-0340

Louisiana

Baton Rouge 504-293-8489

Bossier City 318-742-7349

New Orleans 504-245-2600

Maine

Portland 207-775-5812

Maryland

Bethesda 301-718-9893

Columbia 410-740-8137

Lanham 301-552-3400

Pikesville 410-486-9045

Salisbury 410-341-4100

Massachusetts

Boston 617-345-8980

E. Longmeadow 413-525-4901

Waltham 781-890-0466

Michigan

Ann Arbor 313-665-8916

Grand Rapids 616-957-0368

Lansing 517-372-7410

Livonia 313-462-2750

Portage 616-321-8351

Troy 248-643-7323

Utica 810-739-0270

Minnesota

Bloomington 612-831-7461

Duluth 218-723-1494

Rochester 507-292-9270

St. Cloud 320-529-4830

Woodbury 612-702-6791

Mississippi

Jackson 601-366-6400

Missouri

Ballwin 314-394-7742

Creve Coeur 314-997-1555

Gladstone 816-468-7901

Springfield 417-882-0740

St. Joseph 816-671-9900

Montana

Billings 406-259-1659

Helena 406-443-9205

Nebraska

Columbus 402-562-6027

Omaha 402-334-3440

Omaha 402-334-9449

Nevada

Las Vegas 702-876-4090

Reno 702-829-2700

New Hampshire

Concord 603-228-2911

New Jersey

East Brunswick 732-390-4040

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 607-277-4821

Massillon 516-845-8888

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

Watertown 315-788-6284

White Plains 914-289-0437

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 814-864-6100

Harrisburg 717-652-0646

Lancaster 717-391-6519

North Wales 215-412-7822

Philadelphia 215-238-8380

Pittsburgh (North Hills) 412-367-4620

Pittsburgh (Braddock Ave.) 412-247-4463

Plymouth Meeting 610-941-6284

York 717-755-7471

Puerto Rico

Hato Rey 787-753-6394

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 (Saturn Ln) 281-488-6144

Lubbock 806-785-4400

Mesquite 972-686-3310

Midland 915-520-9418

Odessa 915-461-7888

San Antonio 210-494-7263

Sugar Land 281-491-9211

Waco 254-772-2467

Utah

Orem 801-226-5544

Salt Lake City 801-944-1222

Vermont

Williston 802-872-0845

Virgin Islands

St. Croix 809-773-5751

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

Lynnwood 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

Advertising Regulation

Ask The Analyst

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

Electronic Communications

Q. My firm would like to place on its Web site communications such as mutual fund quarterly updates that the Advertising/Investment Companies Regulation Department has already reviewed and found unobjectionable.

My question is, because the layout and placement of disclosures may change, must we file these communications again when they appear on the Web?

A. You must re-file the communications if your firm has materially changed them from the versions previously filed with the Advertising/Investment Companies Regulation Department. While it is not possible to enumerate here all changes that might be deemed material, you should carefully scrutinize any revisions to the layout and placement of disclosures, as well as other format modifications. For example, if disclosures that originally appeared immediately adjacent to a chart or graph are removed or relocated to a less prominent location, the presentation would need to be refiled as this would constitute a material change.

You must also consider other potentially material changes associated with your modification of how the communication is being used. For example, a quarterly update mailed only to shareholders of a mutual fund is supplemental sales literature. The same update published on a Web site may be subject to different rules if the fund's prospectus is not included on the Web site in accordance with the SEC's interpretive positions on this subject. This material change in how the update is used would necessitate re-filing with the Advertising/Investment Companies Regulation Department.

Broker/Dealer Names

Q. Our firm would like to use a form of its name without including certain corporate modifiers. For example, if our firm were named "Marsupial Corporation" we would like to use the name "Marsupial" without including the word "Corporation." Would this be permissible?

A. Recently, another NASD member firm registered with the U.S. Patent and Trademark Office a form of its name that excluded certain corporate modifier language (i.e., L.L.C.). The firm requested interpretive advice from the NASD Regulation staff as to whether it would be permitted to use this modified form of its name in communications with the public. The firm represented that no other member firm is using another name that might be confusingly similar to the shortened form of its name. Based on this set of facts, the NASD Regulation staff did not object to the firm's use of the shortened form of its name. Given a similar set of facts, the NASD Regulation staff would not object to other members using modified forms of their names that omitted corporate modifiers such as L.L.C., Inc., Corporation, etc. (The [text of the staff interpretive letter](#) may be found on the NASD Regulation Web Site under Members Check Here.)

Approval And Recordkeeping

Q. Must a form letter that goes to 10 people or less be approved by a registered principal?

A. A letter that is sent to more than one person is considered a form letter. Form letters meet the definition of sales literature set forth in NASD Conduct Rule 2210(a)(2) and, therefore, must be approved prior to use and in writing

by a registered principal.

Q. Can a branch office manager with a Series 8 registration approve communications with the public?

A. The Series 8 registration qualifies an individual to approve all sales literature as defined in Rule 2210(a), but not advertisements. A Series 24 registered principal can approve all general securities advertisements and sales literature while a Series 26 registered principal can approve investment company and variable product advertisements and sales literature only.

Compliance

SEC Issues No-Action Letter On Net Capital Treatment For Repos And Reverse Repos Netted By GSCC

On April 1, 1998, in response to a request from the Government Securities Clearing Corporation (GSCC), the SEC Division of Market Regulation issued a no-action letter concerning the appropriate net capital treatment for repurchase and reverse repurchase agreement transactions (repos) that have been netted and guaranteed through GSCC's netting system.

In its request letter, GSCC noted that its netting system totals and nets, on a daily basis, each netting member's buy and sell cash activity, Treasury auction purchases, and repos in a security to establish a single net position as long, short, or flat. After determining the netting member's net settlement positions, corresponding receive and deliver obligations are established, and GSCC becomes primarily obligated as the new counterparty for each transaction and guarantees settlement of all repos that enter its netting system.

GSCC also discussed its risk management procedures that require a daily mark-to-the-market and settlement process, which eliminates each netting member's deficits on repo contracts on a daily basis. Since these deficits are never outstanding for more than one business day, GSCC made its no-action request under paragraph (c)(2)(iv)(F) of SEC Rule 15c3-1. SEC Rule 15c3-1(c)(2)(iv)(F) requires a broker/dealer, when calculating its net capital, to deduct from its net worth certain deficits arising from repo activities. The Rule provides that repo and reverse repo deficits may be reduced by "calls for margin, marks to the market, or other required deposits which are outstanding one business day or less."

Based on GSCC's representations, the SEC issued a no-action letter stating that, when computing net capital, GSCC members that use its netting system are not required to deduct from their net worth deficits arising from repurchase and reverse repurchase agreement transactions (repos), outstanding one business day or less, arising from repo and reverse repo agreements that are netted and guaranteed by GSCC.

Questions concerning the letter may be directed to Diane Waller at (212) 412-8693 or dwaller@gsccl.com, or Jeffrey Ingber at (212) 412-8637 or jingber@gsccl.com at the GSCC.

Fed Adopts Changes To Margin Requirements

Effective, April 1, 1998, the Board of Governors of the Federal Reserve System (Fed) adopted several amendments to Regulation T (Reg T), which governs the extension of credit by and to broker/dealers, as well as amendments to Regulations U and X. In addition, it eliminated Regulation G, which previously applied to credit extended by "other lenders" (*i.e.*, other than banks and broker/dealers). These changes reflect changes to the Fed's statutory authority under the Securities Exchange Act of 1934 (the '34 Act), as amended by the National Securities Markets Improvement Act of 1996 (NSMIA). The Fed retains the authority to adopt rules and regulations regarding the extension of credit where securities (other than exempt securities) are used as collateral. *Compliance with the revised Regulation T is optional until July 1, 1998.*

NSMIA repealed section 8(a) of the '34 Act, which had required broker/dealers obtaining credit against exchange-traded securities to borrow only from other broker/dealers, banks that were members of the Fed, or banks that agreed to abide by certain restrictions applicable to member banks. *Broker/dealers can now borrow money from any lender.* To reflect this change, the Fed deleted Section 15 of Reg T and amended Regulation U. Prior to April 1, 1998, Regulation U applied to extensions of credit by banks only. As of April 1, 1998, Regulation U was amended to include banks and all other U.S. lenders (except broker/dealers). Consequently, Regulation G was eliminated.

Another important change is the creation of the good-faith account. Prior to April 1, 1998, Reg T had provided a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. As of April 1, 1998, Reg T now provides a margin account and four special purpose accounts: the cash account, the special memorandum account, the broker/dealer credit account, and a new account called the "good-faith account".

The good-faith account incorporates the old "nonpurpose," "arbitrage," and "government securities" accounts, and can be used to extend good-faith credit against all non-equity securities. Specifically, the good-faith account may be used for:

- The purchase and sale of non-equity securities on a credit or cash basis.
- Repurchase and reverse repurchase agreements on non-equity securities.
- The purchase and sale of options on non-equity securities.

The good-faith account has no specific payment/margin requirements and does not require sell-out. In theory, transactions in the good-faith account may liquidate to a deficit. However, broker/dealers must comply with NASD Rule 2520 and/or New York Stock Exchange Rule 431 on margin requirements.

Also, it is important to note that the loan value in the good faith account cannot be used to effect transactions in equity securities in the cash or margin accounts. These three accounts *must* be treated separately.

Additional information is available in the June edition of [*NASD Notices to Members*](#). Members also are urged to review the Fed's release in its entirety for a complete discussion

of all changes. The release was published in the January 16, 1998, *Federal Register*.

Questions concerning these changes may be directed to [Samuel Luque](#), Associate Director, Compliance, NASD Regulation, Inc., at (202) 728-8472 or [Susan DeMando](#), Regional Compliance Supervisor, Compliance, NASD Regulation, Inc., at (202) 728-8411.

Compliance Questions & Answers

The NASD Regulation 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. Is a firm allowed to maintain its Reserve Account deposit with its affiliate bank?

A. Yes. SEC Rule 15c3-3 allows a firm to maintain its Reserve Account deposit with its affiliate bank, provided that the Reserve Agreement has the proper language indicating that all deposits are being held for the exclusive benefit of the firm's customers, that they are being kept separate from any other accounts of the firm at the bank, and that at no time will the deposits be used as security for a loan or be subject to any lien or claim of any kind. (Please refer to SEC Rule 15c3-3(f) for the complete required language.) (Source: SEC staff of Division of Market Regulation to NASD, November 1993.)

Q. Is a firm required to designate the last day of the month as the maturity date on a subordinated loan agreement?

A. No. A firm may designate any day of the month as the maturity date on a subordinated loan agreement.

Q. Do transactions between mutual funds in the same family count toward the 10 transactions yearly limit?

A. Yes. Transactions between mutual funds (excluding money market mutual funds) within the same family of funds count toward the 10-transaction limit, except that a single monthly investment of \$1,000 or less into an established mutual fund account for the firm would not be considered as a transaction for the purpose of the 10-transaction limit. (A transaction is either a purchase or sale.) A broker/dealer that effects more than 10 transactions in its investment account during a calendar year will be required by SEC Rule 15c3-1(a)(2)(iii) to maintain \$100,000 in net capital for the remainder of that calendar year. (Source: SEC Staff of Division of Market Regulation to NASD, May 1993 [Q&A]; *NASD Notice to Members* 93-46, July 1993.)

Q. Is an NASD member broker/dealer permitted to pay commissions to a non-member broker/dealer?

A. Generally, only persons who are so registered with an NASD member

may receive commissions from a member for securities or investment banking activity. NASD Rule 2420 prohibits, among other things, payments of commissions to non-NASD-member broker/dealers, except banks.

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

Trading & Market Making

Overview Of Trading And Market Making Surveillance Examination Process

Trading and Market Making Surveillance (TMMS) examinations are conducted by NASD Regulation's Market Regulation Department and the District Offices, with high-volume firms inspected by Market Regulation. This article focuses on Market Regulation exams. As it proceeds with the 1998 examination, the Market Regulation staff would like to take this opportunity to explain certain aspects of the examination process. The overall purpose of the TMMS examination program is to review for member firm compliance with the rules and regulations applicable to trading and market-making functions, to review the sufficiency of the firm's written supervisory procedures and supervisory system with respect to these areas, and to assist member compliance in these areas. Following is a summary of the various stages of a typical TMMS examination.

A. Pre-Examination Document Collection

For most firms, the TMMS examination process begins with a phone call from the staff of the NASD Regulation Market Regulation Department. The purpose of this call is inform the firm that a TMMS examination will be conducted and of the approximate dates on which the on-site portion of the examination is to take place. Generally, within one week of this initial contact the staff will send a letter to the firm confirming the dates of the on-site portion of the examination. This letter also provides the firm with one or more schedules of transactions that the firm executed and reported to the Automated Confirmation Transaction ServiceSM (ACTSM). For each of these schedules, the firm will be asked to provide certain documents that it is required to create and preserve, such as order tickets and customer confirmations. In addition, the staff requests a copy of the firm's written supervisory procedures in place during the review period, as well as all evidence of its supervisory system with respect to its trading and market-making functions. The staff may also request specific information and documents during the course of the TMMS examination. Obviously, to the extent firms are responsive to staff requests for documents, the speed and ease of the TMMS examination process is increased.

B. On-Site Review

A typical TMMS examination reviews for member firm compliance with rules and regulations applicable to trade reporting, ACT compliance, the protection and display of customer limit orders, best execution, customer confirmation disclosures, use of electronic communications networks (which include SelectNetSM), the use of SOESSM, recordkeeping and supervision. During the on-site examination, the staff will meet the firm's trading department and other personnel, familiarize itself with the firm's trading and operations systems, and spend time at the firm's trading desk(s) to observe the trading and market-making functions. At this time, the staff uses the documents and information that the firm provided to conduct the

examination. It is not unusual for the staff to request additional documents or information from the firm or to request fuller explanations of various functions. In this connection, the staff has found that the TMMS examination process is significantly enhanced if members have staff available during the on-site review to respond to staff requests.

At the conclusion of the on-site examination, the staff may (to the extent that any portion of the examination is completed at that time) inform the firm of its initial findings, at which point the firm is free to respond and provide any explanation and additional information regarding these findings that it desires. In many cases, however, the majority of the examination will be completed at the staff's offices. Where appropriate, the staff may request additional information from the firm concerning the examination. The staff attempts to limit to the greatest extent possible the number and scope of additional document requests.

C. Exit Conference

After the staff has completed its examination of the firm, an exit conference is scheduled, either by phone or in person. The primary purpose of the exit conference is to provide the firm with preliminary observations, and to give the firm an opportunity to provide any additional information. The information presented at the exit conference does not represent final findings or conclusions by the NASD Regulation staff. The exit conference is usually attended by the NASD examiners who conducted the examination and a supervisor. At this conference, the staff gives the firm an Exit Conference Form, on which the staff sets forth the items that the staff reviewed during the examination and its specific findings. The staff also gives the firm a copy of the schedules on which the firm can find the specific findings that are referenced in the Exit Conference Form. The firm should view this exit conference as an opportunity to discuss with the staff both the examination process in general and the specific findings of the examination. At the conclusion of this conference, a representative of the firm will be asked to sign a copy of the Exit Conference Form, which is an acknowledgment that the exit conference actually took place.

D. Post-Examination Letter (if necessary)

After review and analysis of all information, including that gleaned from the exit process, the staff sends the firm a Post Examination Letter (PEL) shortly after the exit conference if disciplinary action is anticipated. The PEL formally informs the firm of the staff's findings. This letter gives the firm at least three weeks to provide a written response. The firm should consider this letter as an opportunity to explain to the staff its position with respect to any of the staff's findings in the examination. After issuance of this letter and a review of the firm's response, the matter is referred to the legal staff for disposition if the examination staff concludes that violations may exist and that formal disciplinary action may be necessary.

Direct questions regarding the TMMS examination program to [Susan Lee](#), Associate Director, Market Regulation, NASD Regulation, Inc., at (301) 590-6968.

Municipal Securities

NASD Regulation Launches Innovative Examination Program

In recognition of the low-risk, limited scope of certain examinations, NASD Regulation has crafted the new "Alternative Municipal Examination" (AME) program. The new program for the first time permits off-site examinations of members. Commencing immediately, the AME

program will run on a pilot basis through 1999. Importantly, the flexibility to conduct off-site examinations gives NASD Regulation greater latitude in discharging MSRB Rule G-16 responsibilities. This Rule requires that firms engaging in municipal securities business be examined every 24 months.

Designed in questionnaire format, the AME Module will be mailed directly to select member firms for completion and submission to NASD Regulation staff. In addition to the Module, firms will receive a Rule Reference Information Sheet that cross references the AME Module questions to the appropriate MSRB and NASD rules.

Members eligible for an off-site examination are those municipal securities firms that do not conduct public finance activities. In this regard, a firm that serves as an underwriter, financial adviser, or placement agent for new issue municipal securities is considered to engage in public finance activities. Firms engaged in public finance activities will continue to receive on-site examinations.

Following receipt of the AME Module, District Office staff will thoroughly review the response and, for example, verify that the firm's Municipal Principal and CEO or President signed the AME, and that the firm responded to all of the questions. The staff will also determine whether the firm has engaged in public finance activities. If the analysis reveals that the member provided incomplete or unacceptable responses, further action will be taken ranging from obtaining clarifications over the telephone to immediately conducting an on-site inspection. For quality control purposes, NASD Regulation intends to conduct selected on-site examinations of firms completing the AME Module.

Questions regarding the AME program may be directed to [Judy Foster](#) or [Daniel M. Sibears](#) of Member Regulation at (202) 728-8221.

Municipal Securities Update

Transaction Trade Reporting

As outlined in the [December 1997 Regulatory & Compliance Alert](#), the MSRB transaction reporting system (TRS) for both dealer-to-dealer and customer transactions in municipal securities is critical to public reporting of prices for transparency purposes and to the compilation of an audit trail for regulatory purposes. All municipal securities dealers have an ongoing obligation to report this information promptly, accurately, and completely.

As part of NASD Regulation's routine use of the TRS, it reviews the transaction prices reported for dealer-to-dealer municipal securities transactions. NASD Regulation's District Offices are alerted to situations where the reported difference between the buy and sell price appears to be significant. The resulting District Office inquiry often indicates that the reported price differences are the result of inaccurate or incomplete trade information input. Member firms that have repeated instances of inaccurate, incomplete, or late TRS input may be subject to sanctions for violations of MSRB Rule G-12 or G-14.

Responsibilities Of Clearing Firms

TRS reviews also highlight instances when member firms are recording on their books and records municipal securities sell transactions "As Agent," but the capacity codes disclosed on the customer confirmation is that the transactions are being executed "As Principal."

Additionally, there are instances when the transaction confirmation (even though disclosing a "Principal" capacity code) includes a narrative transaction description of the firm as acting as the customer's "Agent" and identifies the clearing firm as the customer's "Principal." In these instances NASD Regulation thinks that the customer's municipal securities transaction confirmation is, at best, confusing, and more probably, inaccurate and misleading. In either instance, the member firm may, in addition to MSRB Rules G-12 and G-14, and G-8 (books and records), have a significant customer disclosure violation of MSRB Rule G-15 (customer confirmations). Further, in instances when the books and records of the firm indicate that the transaction is being executed "As Agent," NASD Regulation believes the confirmation should properly disclose the transaction remuneration.

This conflict both in transaction capacity and in customer disclosure may be the result of a firm's belief that by executing a municipal securities transaction "As Agent" it can avoid the responsibilities of registering as a municipal securities dealer. This is not correct. Every member firm that effects a transaction (regardless of their capacity "As Agent" or "As Principal") in municipal securities must be registered as a municipal securities dealer.

There may also be a misunderstanding of the role and responsibilities of the clearing firm. In the above-described instances, the clearing firm may be accountable for making inaccurate transaction-reporting system entries, and because the clearing firm produces the transaction confirmation under a clearing arrangement with the selling member, it may also be accountable for providing the investing customer with inaccurate or misleading transaction confirmations.

Political Contributions

NASD Regulation recently selectively reviewed some campaign contribution records to identify campaign contributions made to political parties or candidates either by municipal finance professionals or member firms. The campaign records were then compared to the Forms G-37/38 filings that member firms made to the MSRB. NASD Regulation found a few instances where campaign contributions were recorded as being received by campaign committees but which were not reported on member firm Forms G-37/38. NASD Regulation has instructed the appropriate District Office to follow up. While this review is not a valid sampling for an industry-wide compliance analysis, the results may indicate the need for continuing work by some member firm compliance departments.

Because of the increasing political campaign activity during the remainder of 1998, and because the consequence of non-compliance can result in a two-year ban on certain public finance business, member firms that are engaged in municipal public finance and financial advisory activity are advised to be vigilant in their continuing compliance efforts regarding the reporting of campaign contributions by the firm, executive officers, or municipal finance professionals.

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.

Regulatory Short Takes

SEC Rule 15c3-3(k)(2)(ii) Exemption

Broker/dealers that operate with a minimum net capital requirement of \$5,000 per SEC Rule 15c3-1(2)(vi) and claim the (k)(2)(ii) exemption under SEC Rule 15c3-3 could become subject to a \$250,000 minimum net capital requirement if they receive checks made payable to them. Simply, a broker/dealer is deemed to receive customer funds if the customer's check is made payable to the broker/dealer. However, if an introducing firm receives such a check but promptly instructs customers to make checks payable to the clearing broker/dealer, the firm would not be found to be receiving customer funds. The firm should maintain a record of such instructions, *i.e.*, letter to the customer or memorandum detailing the conversation, to protect its \$5,000 net-capital status.

Normally, receipt of such checks should be an unusual and infrequent occurrence. However, if a pattern emerges wherein a customer(s) repeatedly remits checks made payable to the introducing firm, the broker/dealer will become subject to a \$250,000 minimum net capital requirement. NASD Regulation suggests that the firm's written supervisory procedures address this issue, including steps to return the check to the customer with instructions to make the check payable to the clearing broker/dealer.

As a reminder, SEC Rule 17a-3 requires the firm to maintain a record of any receipt of customer funds, such as a Checks Received and Forwarded blotter.

Members are encouraged to review Receipt of Funds and Securities, *NASD Guide to Rule Interpretations*, page 77 for further clarification. Additional questions may be directed to your local [NASD Regulation District Office](#).

Registered Investment Adviser Customer Status

Routine member examinations conducted by NASD Regulation District Offices have revealed continued confusion over the books and records requirements that apply to customer accounts introduced by registered investment advisers (RIA).

When an RIA opens an account with a broker/dealer for a pool of client monies, the RIA is the customer, as defined by NASD Conduct Rule 3110(c)(4)(B). NASD Conduct Rule 3110(c)(1) applies to such an account and subparagraph (c)(1)(D) specifically requires the broker/dealer to maintain a record reflecting the names of any persons authorized to transact business on behalf of a corporation, partnership, or other legal entity.

However, if the RIA opens an account in the name of an individual client, this creates a customer account that is fully subject to NASD Conduct Rules 3110(c)(2) and (3). An executed Third Party Power of Attorney between the client and the RIA fulfills the requirement of paragraph (c)(3).

When the RIA is a registered representative who establishes a customer account at the employing broker/dealer, NASD Conduct Rule 2510 (Discretionary Accounts) applies.

Finally, when the RIA is a registered representative who establishes a customer account at a broker/dealer other than the employer, NASD Conduct Rules 3030 (Outside Business Activities of an Associated Person) and 3040 (Private Securities Transactions of an Associated Person) apply. *NASD Notices to Members 91-32 and 94-44* provide information regarding the application of these rules.

Questions concerning these Rules and their requirements may be directed to your local [NASD Regulation District Office](#), or [Daniel M. Sibears](#), Vice President, Member Regulation, NASD Regulation, Inc., at (202) 728-6911.

Concessions Receivable

Member firms conducting a variable annuity business are reminded that concessions receivable are allowable assets only if offset by related commissions payable, and only if several conditions are met per SEC Rule 15c3-1.

First, there must be a **written contract on record** between the broker/dealer and the sales representative wherein the representative waives payment of the commission until the firm is in receipt of the concession. If, at any time, the broker/dealer is unable to produce the executed written contract, the concessions receivable must be treated as a non-allowable asset when computing the firm's net capital.

Second, the broker/dealer's liability for the commission payable is limited solely to the proceeds of the related concessions receivable. The firm's calculation of aggregate indebtedness should include that portion of the liability that is payable within 12 months after the net capital computation date. The firm's net capital requirement shall be increased by an amount equal to one percent of the remaining commission payable.

Historically, the firm obtained an opinion of counsel stating that such contract was enforceable in the state in which the broker/dealer and sales representative resided. Now, the firm's Designated Examining Authority may impose this requirement where deemed appropriate.

Members are encouraged to refer to Capital Treatment of Concessions Receivable and Related Commissions Payable, *NASD Guide to Rule Interpretations*, page 9, as well as the [March 1997 issue of the Regulatory & Compliance Alert](#), page 7, for further clarification. Additional questions may be directed to your local [NASD Regulation District Office](#) or to NASD Regulation's Compliance Department at (202) 728-8221.

SEC Emphasizes Standards For Granting Review Of Confidential Treatment Requests By Institutional Investment Managers For Quarterly Reports On Form 13F

Investment managers that exercise investment discretion over accounts holding certain equity securities having an aggregate fair market value of at least \$100 million are required by Section 13(f) of the Securities Exchange Act of 1934 (Exchange Act) to file quarterly reports with the SEC on Form 13F. Section 13(f) requires information on Form 13F to be disseminated promptly to the public. There is recognition that disclosure of certain types of

information could have harmful effects on investment managers and investors. The statute specifies categories of information that the SEC, upon request, may exempt from disclosure and authorizes the SEC to delay or prevent public disclosure of other information as it deems appropriate.

On June 17, 1998, the SEC sent letters to institutional investment managers who file reports on Form 13F and who have sought confidential treatment for information in their filings. The letter stated that (1) information gathered on Form 13F must be disseminated promptly to the public, and (2) confidential treatment will be granted only in those limited instances in which granting the request is in the public interest and the request satisfies the requirements of the Exchange Act and the Freedom of Information Act. The letter emphasized that any request for confidential treatment must be limited to securities holdings that fall into the narrowly defined categories established by the Exchange Act or the SEC. The basis for seeking confidential treatment must be fully substantiated in a confidential treatment application.

Direct questions to [Joseph E. Price](#), Advertising/Investment Companies Regulation, NASD Regulation, Inc., at (202) 728-8877.

The Internet

What's New On The NASD Regulation Web Site?

There have been five major recent additions to the NASD Regulation Web Site: The on-line *NASD Manual*, an Internet guide for registered representatives, *NASD Sanction Guidelines*, the enhanced Public Disclosure Program, and access to downloadable Interim Forms U-4, U-5, and BD.

On-Line NASD Manual—Through Compliance International, Inc.'s books on screen™ product, the complete NASD Manual, including all Notices to Members since 1983, is now live on the NASD Regulation Web Site. The on-line Manual, which will be updated monthly, includes a complete word search capability, and will replace the annual paperback version that was provided free of charge to all NASD member branch offices.

Please note that NASD Rule 8110 requires NASD member firms to have a *Manual* in each branch office. In order to comply with this Rule, members have the option of relying either on Internet access or to purchase a hard-copy paperback at a cost of \$10 each. Anyone who wishes to purchase a paperback copy must do so by contacting MediaSourceSM at (240) 386-4200. (Note: The annual paperback *Manual* is not to be confused with the hard-copy *Manual* that is updated quarterly by CCH Incorporated. This service will continue as usual.)

Guide To The Internet For Registered Reps—This new Web Page provides information regarding compliance requirements and potential liabilities for registered representatives when using the Internet. To get to this Registered Representative Guide, go to the "[Registered Rep Corner](#)" found on the NASDR Web Site's Home Page.

Sanction Guidelines—The publication *Sanction Guidelines* was also recently posted on the Web Site. *Sanction Guidelines* analyzes the most common types of securities violations and the sanctions that are likely to result from NASD disciplinary proceedings. Included are the basic considerations for determining the gravity of an offense and a discussion of the range of appropriate sanctions. It may be accessed through the Home Page or under "Members

Check Here."

Public Disclosure Program On The Internet—In March, a search capability was added to the "[About Your Broker](#)" section of the Web Site. It is now possible to look up a broker or brokerage firm and obtain registration information with a flag indicating whether the individual or member firm has disciplinary information available.

This is the second of three phases in the Public Disclosure Program on the Internet (PDP/I) initiative. Currently visitors to the Site can request a disciplinary report to be sent via e-mail; later this year, this information will be available on-line.

Other Changes And Updates—Interim Forms BD, U-4, and U-5 Available On-line—Interim Forms U-4, U-5, and BD became effective on March 16, 1998, and can be accessed electronically in PDF format. These Interim Forms can be found on the CRD Web Page (under "Members Check Here"). For information on the implementation of these Forms, please see [Special Notice to Members 98-27](#).

E-Mail Notifications—To stay up-to-date with all the changes occurring on the NASD Regulation Web Site, visitors can subscribe to one or more of three e-mail lists available: News and Announcements, Publication Notification, and Changes to the Web Site. There are now hundreds of subscribers receiving e-mails on a regular basis notifying them of important additions to the Web Site. Visitors to the Site can subscribe to these lists by filling out the [feedback form](#). Just click on "Feedback" on the left-hand-side menu bar.

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

Violations

Significant Actions

NASD Regulation Sanctions 13 Former Stratton Oakmont Principals and Registered Representatives for Sales Practice Violations

NASD Regulation announced that 13 individuals, including two former managing directors and principals previously associated with Stratton Oakmont, Inc., have been censured, fined, and suspended or permanently barred from the securities industry. Stratton Oakmont Inc., a broker/dealer, was expelled from the NASD in December 1996.

Jordan Shamah of North Hills, NY, a general securities principal and former managing director and partner in the firm, and Irving Stitsky of Brookville, NY, a general securities principal and former managing director and junior partner in the firm, have consented to be censured and permanently barred from the industry. In addition, Stitsky has been ordered to pay a fine of \$100,000. The allegations against them, which they neither admit nor deny, include engaging in fraudulent sales practices and failing to supervise others who engaged in such practices; fraudulently failing to make a bona fide public distribution during an offering; and violating a lock-up requirement in connection with a public offering. These findings result from three separate NASD Regulation disciplinary actions.

This brings to 13 the number of former principals and employees of Stratton Oakmont who have recently settled sales-practice actions brought against them by NASD Regulation. The settlements are the result of an ongoing, stepped-up effort by NASD Regulation to hold not only brokerage firms accountable for sales practice violations, but also the individual brokers who commit them. Sanctions against these individuals range from suspensions of three months to permanent bars from the securities industry, and fines of up to \$100,000.

In addition, disciplinary proceedings are still pending against 25 individuals formerly associated with Stratton Oakmont.

Correction To Compliance Question & Answer Published In The *Regulatory & Compliance Alert*, March 1998

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 after an offer is accepted by the National Adjudicatory Council.

NASD Disciplinary Actions

NASD DISCIPLINARY ACTIONS

In March, April, May, and June 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

March Actions

Anthony Victor Cincotta, Jr. (Registered Representative, Fort Lauderdale, Florida) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cincotta failed to respond to NASD requests for information.

L. H. Alton & Company (San Francisco, California) and Lewis Hunt Alton (Registered Principal, San Francisco, California) were censured and fined \$40,000, jointly and severally. In addition, the firm was suspended from participation in underwriting activities for 30 business days and ordered to comply with the independent consultant requirements.

Alton was suspended from association with any NASD member in any principal capacity for 30 days, ordered to designate an independent consultant to prepare a report on the firm's supervisory and compliance procedures before acting in any capacity requiring registration as a principal, and ordered to comply with the consultant's recommendations. Alton must also requalify by exam before acting in any principal capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision.

The sanctions were based on findings that the firm, acting through Alton, conducted a securities business while maintaining insufficient net capital, filed inaccurate FOCUS Parts I and II reports, and permitted an unregistered person to act as a representative and principal of the firm. Furthermore, the respondents participated in the underwriting of several "hot issues" without obtaining required information from the purchasers of the hot issues, and failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Requirements. In addition, the firm, acting through Alton, failed to maintain written supervisory procedures relating to the customer complaint reporting requirement.

L. H. Alton & Company and Alton have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Glen McKinley Richards, III (Registered Representative, Delray Beach, Florida) was censured, fined \$1,500, and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Richards failed to pay a \$5,500 arbitration award.

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

Daniel Wright Sisson (Registered Principal, Menlo Park, California) was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative following the suspension. The sanctions were based on findings that Sisson recommended to public customers purchases and sales of securities that were unsuitable in view of the size and frequency of the transactions and in view of the customers' other security holdings, financial situation, and needs.

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

April Actions

Gregory Scott LeSavoy (Registered Representative, Concord, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, LeSavoy consented to the described sanctions and to the entry of findings that he recommended and effected for the account of a public customer purchases and sales of securities without reasonable basis for believing that the transactions were suitable for the customer and without the prior knowledge or consent of the customer.

Stephen Frederick Lim (Registered Representative, Danville, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined

\$8,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Lim consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

May Actions

Essodina Adolph Atchade (Registered Representative, Santa Clara, California) was censured, fined \$200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Atchade misappropriated a customer's funds totaling \$28,000 for his own use and benefit. Furthermore, Atchade provided the customer with fictitious account statements.

The appeal to the National Adjudicatory Council (NAC) was dismissed as abandoned; therefore, this DBCC decision constitutes final action.

Stanley Theodore Deck (Registered Principal, Pleasant Hill, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Deck consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview.

Loren Lynn Obley (Registered Representative, San Francisco, California) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Obley received \$30,000 from public customers in exchange for a personal promissory note issued by Obley to the customers. In connection with that transaction, Obley represented to the customers that he would invest the money in a company with overly optimistic prospects, when in fact, he used the funds for his personal use. Obley also participated in private securities transactions without providing prior written notice to his member firm.

Pacific Genesis Group, Inc. (San Francisco, California), Arch Vincent Zellick (Registered Principal, Alameda, California), Gerald Beldon Porter, Jr. (Registered Principal, San Rafael, California), and Daniel Clive Young (Registered Principal, Payson, Arizona) submitted an Offer of Settlement pursuant to which they were censured. The firm was fined \$15,000, jointly and severally, with Zellick, and fined \$20,000, jointly and severally, with Zellick, Porter, and Young. In addition, the firm must pay \$33,642.50 plus interest in restitution to public customers and Porter must not participate in determining markups or markdowns on municipal securities in connection with transactions in the secondary market for such securities for one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Zellick, permitted individuals to conduct a securities business without being registered in any capacity or when they were in an inactive status for failing to satisfy the Regulatory Element of the Continuing Education Program. The findings also stated that the firm, acting through Zellick, Young, and Porter, effected sales of municipal securities to customers at prices that were unfair and unreasonable.

Thomas Joseph Perkins (Registered Representative, Union City, California) was censured and fined \$22,826.25. The sanctions were based on findings that Perkins sold securities on behalf of his member firm prior to becoming registered with the NASD.

June Actions

Lam Securities Investments, Inc. (San Francisco, California) and Dick Lam (Registered Principal, San Francisco, California) submitted an Offer of Settlement pursuant to which they were censured and fined \$9,500, jointly and severally, and fined \$2,500, jointly and severally, with another individual. In addition, the firm was ordered to obtain approval of all advertisements and sales literature from the NASD prior to use for one year, ordered to review and revise its written supervisory procedures concerning SEC Rule 15c3-1 and advertising and sales material, and provide its new procedures to the NASD. Lam was ordered to requalify as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lam, failed to file with the NASD newspaper advertisements and Web sites on the World Wide Web. The findings also stated that the firm, acting through Lam, failed to establish and implement written supervisory procedures to detect and prevent an individual from disseminating misleading and exaggerated statements on a Web site, and engaged in securities business while failing to maintain minimum required net capital.

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

March Actions

Lori Sue Koppel-Heath (Registered Representative, Altadena, California) was censured, fined \$59,021.31, suspended from association with any NASD member as a general securities representative for 30 days, and required to requalify by exam as a general securities representative. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Koppel-Heath recommended purchases, sales, and redemptions of securities in public customer accounts without having reasonable grounds for believing they were suitable in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by those customers as to their other securities holdings, financial situation, circumstances, and needs.

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

Rance King Securities Corp. (Long Beach, California) and William Rance King, Jr. (Registered Principal, Long Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through King, participated in contingency offerings of limited partnership interests, but failed to promptly transmit funds received in connection with the offerings to properly established bank escrow accounts. According to the findings, the respondents deposited the funds into a bank account controlled by the issuer, or into the bank account of a private escrow company, and commingled the funds with other funds of the escrow company until the contingencies were met.

April Actions

Harry Gliksman (Registered Principal, Beverly Hills, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six

months, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Gliksman recommended to a public customer the purchase of securities without having reasonable grounds for believing that the recommendations were suitable for the customer.

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

Stephen J. Gluckman (Registered Representative, Los Angeles, California) was censured, fined \$55,000, and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Gluckman participated in private securities transactions without providing written notice to his member firm prior to participating in such transactions.

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

Stephen R. Hardage (Registered Representative, Costa Mesa, California) was censured, fined \$41,000, suspended from association with any NASD member in any capacity for 30 days, ordered to pay \$152,000 in restitution to a public customer, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Hardage recommended to a public customer purchases of highly speculative oil and gas limited partnerships without having reasonable grounds for believing that they were suitable for the customer in view of her investment objectives, financial situation, circumstances, and needs.

Hardage's suspension began November 17, 1997, and concluded December 16, 1997.

Donald James Kuehne (Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kuehne consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Kuehne failed to fully respond to NASD requests for information.

Dan Lee Lawrence (Registered Representative, San Marcos, California) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Lawrence consented to the described sanctions and to the entry of findings that he failed to provide written notification to his member firms that he was opening an account with another firm, and failed to notify the executing firm of his association with the member firms.

John L. Prokell (Registered Representative, Laguna Niguel, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$26,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Prokell consented to the described sanctions and to the entry of findings that he made untrue statements and omissions of material facts in connection with the purchase of securities. The findings also stated that Prokell recommended to a public customer the purchase of securities without having reasonable grounds for believing that they were

suitable for the customer. Prokell also failed to respond to NASD requests for information.

Donna R. Roach (Registered Principal, Murrieta, California) was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. The NBCC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Roach took possession and control of public customer checks totaling \$160,000 in connection with the sale of limited partnership interests and deposited the checks into a bank account that she controlled, thereby placing those funds at risk.

May Actions

Aaron Eugene Granath (Registered Principal, Los Angeles, California) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Granath executed unauthorized transactions in the accounts of public customers.

Thomas P. O'Hanlon (Registered Representative, Sherman Oaks, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, O'Hanlon consented to the described sanctions and to the entry of findings that he failed to disclose a personal bankruptcy on his Form U-4.

Michael C. Young (Registered Representative, Los Angeles, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$45,500, barred from association with any NASD member in any capacity, and ordered to pay \$9,100 in restitution to a financial institution. Without admitting or denying the allegations, Young consented to the described sanctions and to the entry of findings that he received \$9,100 from the savings account of a public customer without the customer's knowledge or consent. According to the findings, Young forged the customer's signature on withdrawal slips and converted the funds obtained to his own use and benefit.

June Actions

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

Frank Henry, Jr. (Registered Representative, San Diego, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,000 in restitution to his member firm. Without admitting or denying the allegations, Henry consented to the described sanctions and to the entry of findings that he received \$6,000 from a public customer for investment, failed to execute the purchase on the customer's behalf, and

instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The NASD also determined that, in furtherance of the conversion, Henry falsified a fund statement to evidence the customer's purchase of the fund when in fact no such fund was purchased and the account number on the statement was a nonexistent account.

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

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

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

March Actions

Robert Lloyd DenHerder (Registered Representative, Helena, Montana) was censured, fined \$27,549.41, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam. The SEC affirmed the sanctions following appeal of a January 1997 NBCC decision. The sanctions were based on findings that DenHerder recommended and executed on behalf of a public customer the purchase and sale of securities in the customer's account without having reasonable grounds for believing such transactions were suitable for the customer. DenHerder recommended to, and purchased on behalf of, a public customer shares of a fund without affording the customer the benefit of letter of intent and breakpoint and inter-family discounts. Furthermore, DenHerder guaranteed the customer against loss by providing the customer with a \$39,059 promissory note as reimbursement for losses incurred by the customer in connection with his investments.

Excel Financial, Inc. (Salt Lake City, Utah), Gary R. Beynon (Registered Representative, Salt Lake City, Utah) and Robert L. Sperry (Registered Representative, Salt Lake City, Utah) were censured and fined \$10,000, jointly and severally, and ordered to disgorge \$9,348, jointly and severally. In addition, the firm was ordered to pre-file its advertising and sales literature and obtain a "no objection" response prior to use for 270 days. The SEC affirmed the sanctions following appeal of a July 1996 NBCC decision. The sanctions were based on findings that the firm, acting through Sperry and Beynon, sold securities that were not registered under Section 5 of the Securities Act of 1933 and did not qualify for an exemption. The firm, acting through Beynon and Sperry, distributed literature to public customers that failed to disclose material risks, omitted material facts, and contained exaggerated and misleading statements.

Kenneth Schlenker (Registered Representative, Billings, Montana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schlenker consented to the described sanctions and to the entry of findings that he engaged in securities transactions for his own account and, in connection with this activity, paid for the transactions with checks drawn on a personal bank account he knew to have insufficient funds in contravention of the payment requirements of Regulation

T of the Federal Reserve Board.

April Actions

Otto M. Bruun (Registered Representative, Marysville, Washington) was censured and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Bruun submitted a false reimbursement claim to his member firm, received a check for \$6,095, and retained the funds.

Michael S. Kerr (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Kerr consented to the described sanctions and to the entry of findings that he misrepresented to a public customer the amount of loss incurred on the sale of a municipal security. The findings also stated that Kerr made misrepresentations to a customer regarding sales charges on the redemption and purchase of mutual funds.

Floyd Lee Shilanski (Registered Representative, Anchorage, Alaska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for five months, and required to requalify by exam for any capacity in which he has registered. Without admitting or denying the allegations, Shilanski consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm.

Louis A. Williams (Registered Representative, Tucson, Arizona) was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Williams executed transactions in the accounts of public customers pursuant to implied oral discretionary authority without obtaining written discretionary authority from the customers or written acceptance of the accounts as discretionary by his member firm. In addition, Williams failed to submit correspondence to his member firm for review, preventing the firm from fulfilling its regulatory obligation. Furthermore, Williams prepared order tickets for transactions in customer accounts that contained information he knew to be false.

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

May Actions

Robert E. Bauman (Registered Representative, Keizer, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bauman consented to the described sanctions and to the entry of findings that he failed to forward funds in the amount of \$503.72 received from customers that were intended as insurance policy premium payments to his member firm.

Richard M. Cannon, Jr. (Registered Representative, Tucson, Arizona) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cannon failed to respond to NASD requests for information.

Paul A. Daniels (Registered Representative, Las Cruces, New Mexico) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Daniels participated in private securities transactions for compensation without obtaining written approval from his member firm.

Maureen Louise Flaherty (Associated Person, Portland, Oregon) submitted an Offer of Settlement pursuant to which she was censured, fined \$1,000, and suspended for two years from attempting to take any licensing qualification exam. Without admitting or denying the allegations, Flaherty consented to the described sanctions and to the entry of findings that she had unauthorized material in her possession while taking the Series 7 exam.

Ronald Clifford Gross (Registered Representative, North Bend, Washington) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for 120 days, and ordered to requalify by exam for registration in any capacity. Without admitting or denying the allegations, Gross consented to the described sanctions and to the entry of findings that he recommended purchases and sales of securities for the account of a public customer utilizing margin without having reasonable grounds for believing such recommendations were suitable for the customer.

Stephen C. Hadaway (Registered Representative, South Lake Tahoe, California) was censured, fined \$10,550, and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Hadaway effected unauthorized transactions in the accounts of public customers.

James L. Handlos (Registered Representative, East Tempe, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Handlos consented to the described sanctions and to the entry of findings that he recommended and effected transactions in a customer account that were excessive in number and contrary to the customer's financial circumstances and needs. The findings also stated that Handlos made unsuitable recommendations and transactions in a customer's accounts.

Dena C. Hennessy (Registered Representative, Phoenix, Arizona) was censured, fined \$42,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hennessy obtained checks in the amount of \$4,500 drawn on the accounts of public customers, altered the checks, and misappropriated the funds for her personal benefit. Hennessy also failed to respond to NASD requests for information.

Nelson C. Krum (Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Krum consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm.

Douglas Magnuson (Registered Representative, Lindenhurst, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for six months, required to requalify as a general securities representative, and required to pay \$750 in restitution to a public customer. Without admitting or denying the allegations, Magnuson consented to the described sanctions and to the entry of findings that he made material misrepresentations,

omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that Magnuson engaged in unauthorized trading and failed to follow customer instructions to sell securities.

Thomas P. Read (Registered Representative, Scottsdale, Arizona) was censured, fined \$80,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Read engaged in conduct that he knew would constitute a deception of his member firm and affiliated companies with respect to the sale of a life insurance policy on behalf of a public customer. Moreover, Read obtained approximately \$10,000 to which he was not entitled through a series of illegal deposits and withdrawals. Read also failed to respond to an NASD request for information.

Dominic M. Romano, Jr. (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for five business days, and required to comply with all aspects of his member firm's individual supervisory plan. Without admitting or denying the allegations, Romano consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in customer accounts and failed to follow customer instructions to sell securities. The findings also stated that Romano made misstatements to customers regarding sales charges, the size of positions in the account, and the timing of the issuance of a customer's proceeds check. Romano also provided inaccurate information to the NASD during its investigation of customer complaints.

Dennis Paul Rueb, Jr. (Registered Representative, Copaigue, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$16,200 in restitution to customers. Without admitting or denying the allegations, Rueb consented to the described sanctions and to the entry of findings that he failed to prepare and maintain accurate and complete customer account information. The findings also stated that Rueb exercised discretion in a customer's account without obtaining prior written authorization and failed to follow customer instructions to sell securities. In addition, the NASD found that Rueb effected unauthorized transactions in a customer's account and made material misrepresentations and omissions in connection with the recommendation of a security to a public customer. Furthermore, the findings stated that Rueb made fraudulent price predictions to a customer and failed to respond to NASD requests to appear for an on-the-record interview. The NASD also determined that Rueb failed to update his Form U-4 to disclose material changes in his registration status.

Michael Sabato (Registered Principal, Lindenhurst, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 24 months, and required to pay \$118,370 in restitution to customers. Without admitting or denying the allegations, Sabato consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions and made fraudulent price predictions in the offer and sale of securities. The findings also stated that Sabato failed to follow customer instructions to sell securities.

Kenneth W. Skousen (Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skousen consented to the described sanctions and to the entry of findings that he made improper use of customer funds and securities by commingling the funds of one of his customers into a brokerage account over which he exercised ownership and control. The findings also stated that Skousen engaged in outside business activities

and failed to provide prompt written notice of these activities to his member firm. Skousen also failed to respond fully to NASD requests for information.

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

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

Steven Ray Sumner (Registered Representative, Fort Collins, Colorado) was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sumner recommended that a public customer liquidate an investment in a mutual fund in order to loan the proceeds to a business enterprise, of which Sumner was a principal, when such recommendation was unsuitable for the customer. In addition, Sumner obtained a loan from a public customer while failing to disclose material information relating to the transaction when he knew that he would be unable to repay the loan. Further, Sumner failed to disclose a tax lien levied against him with respect to his business.

W.B. McKee Securities, Inc. (Scottsdale, Arizona) and William B. McKee (Registered Principal, Scottsdale, Arizona) submitted Offers of Settlement pursuant to which the firm was censured, fined \$22,500, and required to retain an independent consultant to review the firm's written supervisory and compliance procedures and its policies and practices with respect to corporate finance. McKee was censured, fined \$14,000, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McKee, compensated a non-member firm in connection with a private placement of securities. The findings also stated that the firm, acting through McKee, participated in a contingency offering and permitted the distribution of funds from the escrow account when terms of the contingency were not met, and sold securities in a fixed price offering at a discount to entities that were not registered broker/dealers.

June Actions

Ronald L. Ahumada (Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ahumada consented to the described sanctions and to the entry of findings that he received funds in the amount of \$15,000 from public customers intended for investment purposes and misappropriated such funds for his own use and benefit.

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

Gregory M. Cooper (Registered Representative, Denver, Colorado) and Wayman L. Morgan (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which they were censured, fined \$30,000 individually, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they solicited outside investments without obtaining their member firm's approval. The findings also stated that Cooper and Morgan made oral misrepresentations and disseminated written misrepresentations about the investment and failed to disclose the risks associated with it. In addition, the NASD determined that Morgan transferred a public customer's funds to an entity purportedly receiving such funds for the investment when he knew that these funds were subject to a risk of loss. Cooper and Morgan also failed to respond to NASD requests for information.

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

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

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

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

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

Joseph Charles & Associates, Inc. (Boca Raton, Florida) and Victor C. Sibilla (Registered Principal, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$12,500, jointly and severally, and

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

Patterson, Travis, Inc. (New York, New York) and David T. Travis (Registered Principal, Englewood, Colorado) submitted an Offer of Settlement pursuant to which they were censured, and fined \$35,000, jointly and severally. Travis was suspended from association with any NASD member in any principal capacity for 20 business days, and the firm was suspended from participation in any initial public offering of any security meeting the definition of "penny stock" for one year. In addition, the firm was required to retain, at or about three months prior to the conclusion of the suspension from participation in "penny stock" underwritings, an independent consultant to review the firm's policies, practices, and procedures with respect to the sale of penny stocks and provide the NASD a copy of the report, together with documentation of the changes implemented by the firm as a result of the consultant's review. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Travis, maintained inventory in amounts exceeding the maximum inventory value permitted by its restriction agreement and employed more registered representatives than its restriction agreement allowed.

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

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

March Actions

Jeffrey Paul Huxtable (Registered Principal, Palatine, Illinois), Gregory Alan Casady (Registered Principal, Kansas City, Missouri), and John Francis Haggerty (Registered Representative, Overland Park, Kansas). Huxtable submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 14 days. In separate decisions, Casady was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for two years, and Haggerty was censured, fined \$80,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Huxtable consented to the described sanctions and to the entry of findings. The findings stated that Huxtable, Casady and Haggerty recommended to public customers the purchase of securities and made untrue statements of material facts and/or omitted to state material facts necessary to make the statements not misleading, and failed to have a reasonable basis for their recommendations. Furthermore, Haggerty made baseless price predictions and/or predictions of future returns to public customers in connection with the recommended securities. Haggerty also failed to respond to NASD requests for information.

Scott Allen Rude (Registered Representative, Plymouth, Minnesota) was censured, fined \$380,280, barred from association with any NASD member in any capacity, and ordered to pay \$72,056 in restitution. The sanctions were based on findings that, without the

knowledge or consent of the customer, Rude obtained possession of a coin collection from the estate of a public customer, sold the collection for \$72,056, and converted the funds to his own use and benefit. Rude also failed to respond to NASD requests for information.

April Actions

David Alan Dunn (Registered Principal, Bellevue, Nebraska) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for three years. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he recommended and executed securities transactions for a public customer without a reasonable basis for believing the transactions were suitable for the customer in view of the nature and size of the investments and the customer's financial situation and needs. The findings also stated that Dunn participated in private securities transactions without obtaining written approval from his member firm.

Ludwig Jay Eisenkramer (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Eisenkramer consented to the described sanctions and to the entry of findings that he exercised discretionary power and effected transactions in the account of a public customer without obtaining prior written authorization from the customer and acceptance of the discretionary account from his member firm.

John Richard Huntebrinker (Registered Principal, Wildwood, Missouri), Patrick Michael Kelly (Registered Representative, Highlands Ranch, Colorado), and David Keith VanHouten (Registered Principal, Denver, Colorado) submitted Offers of Settlement pursuant to which Huntebrinker was censured, fined \$12,000, and suspended from association with any NASD member in any principal capacity for one year. Kelly was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for five days. VanHouten was censured, suspended from association with any NASD member in any capacity for 90 days, and barred from association with any NASD member in any principal capacity. In addition, VanHouten must pay \$75,000 in restitution to public customers and submit to additional supervision by his member firm for six months following the suspension. Thereafter, VanHouten and his member firm must submit a report to the NASD detailing the additional supervision over VanHouten's activities.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Huntebrinker, Kelly, and VanHouten, in connection with the purchase of recommended securities by public customers, employed devices to defraud customers by recommending and urging customers to buy speculative securities by making baseless price predictions and predictions of returns. The findings also stated that the respondents engaged in improper conduct inconsistent with just and equitable principles of trade, intentionally employed devices to defraud customers by making untrue statements of material facts, and recommended that customers purchase and hold securities without a reasonable basis.

VanHouten's suspension will begin May 18, 1998, and will conclude August 14, 1998.

Tammy S. Kwikkel-Elliott (Registered Representative, Jackson, Missouri) was censured, fined \$5,000, and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Kwikkel-Elliott submitted a promotional

materials reimbursement request form under false pretenses to her member firm and received reimbursement funds of \$879.60.

Arthur Lee Ruby (Registered Principal, Overland Park, Kansas) and Robert Cavin McAlexander (Registered Principal, Ballwin, Missouri) submitted Offers of Settlement pursuant to which Ruby was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for two years. McAlexander was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ruby employed devices to defraud public customers by recommending and urging customers to buy speculative securities through baseless price predictions and predictions of returns.

The NASD also determined that Ruby, in recommending and urging customers to purchase securities, engaged in improper conduct inconsistent with just and equitable principles of trade with respect to the transactions. The findings also stated that Ruby and McAlexander omitted or misstated material information in sales of securities to customers and failed to have a reasonable basis for their recommendations of these securities.

Kevin Michael Ruby (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for three years. Without admitting or denying the allegations, Ruby consented to the described sanctions and to the entry of findings that, in connection with purchases of recommended securities by public customers, Ruby made baseless price predictions and predictions of returns, and made untrue statements and omissions of material facts. The findings also stated that Ruby recommended that customers purchase securities without having a reasonable basis.

Marc Gruntwagin Swensen (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a trader. Without admitting or denying the allegations, Swensen consented to the described sanctions and to the entry of findings that Swensen, acting through member firms, effected transactions in securities at prices that were unfair and unreasonable.

Swensen's suspension began March 16, 1998, and concluded April 14, 1998.

May Actions

Edward Galbreath Blackman, IV (Registered Principal, Highlands Ranch, Colorado) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for 60 days, and barred from association with any NASD member in any principal capacity. In addition, Blackman must pay \$75,000 in restitution to public customers following the suspension period and submit to additional supervision by his member firm for six months following the suspension. Without admitting or denying the allegations, Blackman consented to the described sanctions and to the entry of findings that he employed devices to defraud customers by recommending and urging customers to buy speculative and unseasoned securities, and by making baseless price predictions and predictions of returns.

The findings also stated that Blackman made untrue statements and omissions of material facts and recommended that customers purchase or hold specified securities without a reasonable basis for such recommendations. Furthermore, the NASD found that Blackman failed to supervise registered representatives properly and adequately, and encouraged

them and others to participate in high-pressure, boiler room tactics to market speculative and unseasoned companies to customers without concern as to whether these recommendations were suitable for the customers. Blackman also recommended and placed orders for the purchase and sale of securities in a customer's account without a reasonable basis for believing the transactions were suitable for the customer's investment objectives and financial situation.

Brian Clarence Jorgensen (Registered Representative, Cedar Falls, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000,000, and permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jorgensen consented to the described sanctions and to the entry of findings that he converted customer funds in the amount of \$1,274,253 to his own use and benefit without the customers' knowledge or consent. According to the findings, Jorgensen failed to invest their funds into the insurance or securities products they selected, and made unauthorized withdrawals, loans, or redemptions from the customers' existing insurance products or securities accounts.

Michael J. Tierney (Registered Representative, Eagan, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$710,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tierney consented to the described sanctions and to the entry of findings that he received checks in the amount of \$142,000 intended for investment purposes from a public customer and, without the customer's knowledge or consent, deposited the checks into his bank account, misused \$122,622.36, and converted \$19,377.64 to his own use and benefit.

June Actions

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

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

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

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

Scott Thomas Smith (Registered Representative, Shoreview, Minnesota) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his employer, he transferred \$3,856 from his employer's settlement account to his personal account and converted the funds to his own use and benefit. Smith also misrepresented to his employer that he had not received a \$500 check from the settlement account when, in fact, it had been deposited in his personal bank account. On the basis of this misrepresentation, Smith was paid an additional \$500 that he converted to his own use and benefit.

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

March Actions

Donald R. Gates (Registered Representative, Cabot, Arkansas) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for three months, and required to requalify by taking and passing the Series 7 exam. The DBCC imposed the sanctions following a remand by the NBCC. The sanctions were based on findings that Gates accepted payments based on commissions earned from transactions in a public customer's account when he knew or should have known that, at the time the transactions occurred, he was not properly registered with the NASD or approved as an agent in the appropriate state.

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

Gary D. Gipson (Registered Representative, Jonesboro, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Gipson consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase transactions on behalf of public customers and did not have reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. The findings also stated that Gipson engaged in private securities transactions without prior written notice to, and approval from, his member firm.

April Actions

James D. Forrest (Registered Representative, Colleyville, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Forrest consented to the described sanctions and to the entry of findings that he withdrew \$34,260.73 from a public customer's mutual fund and converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that Forrest induced a customer to purchase a variable life insurance policy by using the

cash value of an existing policy and providing the customer with an insurance update form that contained omissions and misrepresentations regarding the anticipated yield and value of the policies.

Furthermore, the NASD found that Forrest induced a customer to withdraw \$38,000 from an existing variable annuity and to invest those funds in a single premium fixed annuity, and failed to disclose that there was a surrender charge associated with the withdrawal from the annuity. The NASD also determined that Forrest induced a customer to purchase shares of a trust fund by misrepresenting that the dividends from the fund would be adequate to pay the premiums for an existing life insurance policy.

Dell R. Hughes (Registered Representative, Broken Arrow, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for one week, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Hughes consented to the described sanctions and to the entry of findings that, in connection with a public customer's purchase of a variable annuity product, he provided a document that contained misleading information. According to the findings, the document stated that the customer's initial deposit of \$83,229.61 in the variable annuity would grow to approximately \$166,000.00 by the end of five years.

ProEquities, Inc. (Birmingham, Alabama) and Nancy C. Alcorn (Registered Principal, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Alcorn, failed to enforce and maintain adequate supervisory procedures to ensure compliance with the NASD's Continuing Education requirements, and allowed three individuals to maintain their representative registrations with the firm although the individuals were not actively engaged in the securities business of the firm. The findings also stated that the firm, acting through Alcorn, allowed an individual to effect transactions in customers' accounts when he was not properly registered with the NASD.

Robert L. Shatles (Registered Principal, Northport, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, jointly and severally with a member firm, and suspended from association with any NASD member in any principal capacity for 10 days. Without admitting or denying the allegations, Shatles consented to the described sanctions and to the entry of findings that Shatles, acting on behalf of a member firm, failed to establish, maintain, and enforce proper supervisory procedures governing the review and monitoring of customer complaints and incoming correspondence. The findings also stated that Shatles, acting on behalf of a member firm, failed to exercise reasonable and proper supervision over an individual.

May Actions

Hattier, Sanford & Reynoir (New Orleans, Louisiana), Gus A. Reynoir (Registered Principal, New Orleans, Louisiana) and Vance G. Reynoir (Registered Principal, New Orleans, Louisiana) were censured and fined \$60,000, jointly and severally. In addition, the firm was required to engage an independent auditor within 90 days to review its books and records and supervisory procedures and to implement the auditor's recommendations in a manner satisfactory to the NASD. G. Reynoir and V. Reynoir were suspended from association with any NASD member in any capacity for 30 days, suspensions not to run concurrently. G. Reynoir and V. Reynoir were required to requalify as a general securities

principal and as a municipal securities principal, respectively, within 180 days or be suspended until they requalify. The SEC affirmed the sanctions following appeal of an October 1996 NBCC decision. The sanctions were based on findings that the firm, acting through G. Reynoir and V. Reynoir, issued 453 confirmations that misrepresented the capacity in which trades were executed.

This action has been appealed to the United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Keith Ruffler (Registered Representative, Spotswood, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for one week. In addition, Ruffler must remove certain restrictive language in a confidentiality clause of a settlement agreement with a public customer. Without admitting or denying the allegations, Ruffler consented to the described sanctions and to the entry of findings that he failed to forward to a public customer proceeds in the amount of \$26,855 from the sale of a common stock. Instead, the NASD found that Ruffler misused the funds and executed an unauthorized purchase of warrants in the customer's account totaling \$25,520. The findings also stated that Ruffler entered into a settlement agreement with a public customer that contained improper language prohibiting the customer from cooperating with an investigation by any regulatory agency, including the NASD.

June Actions

Kendall D. Gregory (Registered Representative, Biloxi, Mississippi) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of a public customer, thereby exercising discretion in those accounts, without having obtained prior written authorization from the customer and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Gregory executed individual purchase transactions in one of the customer's accounts without informing the customer that such purchases could have been executed at reduced sales charges at the various breakpoint levels under the rights of accumulation features of such fund. Moreover, Gregory failed to provide the customer with the benefit of reduced sales charges for purchases of the subject fund that exceeded the breakpoint levels.

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

District 6 - Texas

March Actions

None

April Actions

None

May Actions

Juan Manuel Correa (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$4,000, suspended from association with any NASD member in any principal capacity for two years, and ordered to requalify by exam in any capacity. Without admitting or denying the allegations, Correa consented to the described sanctions and to the entry of findings that, acting through a member firm, Correa effected securities transactions while failing to maintain sufficient net capital. The findings also stated that Correa failed to provide notification of the firm's net capital deficiency to the SEC and failed to supervise an individual properly to prevent unauthorized trading.

Frank J. Ingersoll (Registered Representative, San Antonio, Texas) was censured, fined \$388,535, barred from association with any NASD member in any capacity, and ordered to pay \$301,088 in restitution to customers. The sanctions were based on findings that Ingersoll distributed misleading and fraudulent sales literature to the public. In addition, Ingersoll failed to disclose to customers material adverse information in connection with the sale of stock taken from accounts he owned or controlled, and failed to disclose to customers and his member firm the total remuneration he received in connection with sales of securities.

Juan Carlos Martinez (Registered Representative, Houston, Texas) was censured, fined \$1,245,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martinez made improper use of customer funds and caused his member firm to effect options transactions by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings also stated that Martinez caused false, fictitious, and misleading account statements to be issued, and thereby failed to observe high standards of commercial honor and just and equitable principles of trade. Martinez also failed to respond to NASD requests for information.

Jeffery Steven Stone (Registered Representative, Dallas, Texas) was censured, fined \$10,000, suspended from association with any NASD member until he satisfies an arbitration award, and suspended for an additional 30 days in all capacities. The sanctions were based on findings that Stone failed to adhere to the terms of a \$158,680.76 arbitration award to his former member firm.

June Actions

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

customers and his member firm the total remuneration he received or would receive from the transactions.

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

March Actions

Escalator Securities, Inc. (Palm Harbor, Florida) and Howard A. Scala (Registered Principal, Tarpon Springs, Florida) were censured and fined \$70,000, jointly and severally, and Scala was fined \$10,000, individually. In addition, the firm was expelled from NASD membership and ordered to pay \$40,695 plus interest in restitution, and Scala was barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision.

The sanctions were based on findings that an affiliate company received common stock from issuers, deposited the stock into its account with Escalator Securities, Inc., and then sold it to the firm. After receiving such stock from the affiliate, Scala solicited and recommended to public customers that they purchase the stock and failed to disclose to such customers that the source of the securities they purchased was the affiliate of the firm. In addition, Scala purchased stock for his son's account while in possession of material non-public information. The firm, acting through Scala, effected principal transactions with public customers at prices that were not reasonably related to the prevailing market price and were not fair taking into consideration all relevant circumstances, and knew that it was charging unfair and fraudulent markups.

Richard Timothy Greene (Registered Representative, Pittsboro, North Carolina) was censured, fined \$10,000, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Greene forged a public customer's signature on four documents.

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

Frank R. Hudson (Registered Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Hudson consented to the described sanctions and to the entry of findings that he failed to supervise reasonably the handling of a public customer's account by a registered representative in order to prevent and/or detect suitability violations.

Richard Kulaszewski (Registered Representative, West Belmar, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,939.50, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Kulaszewski consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the account of a public customer.

Geoffrey A. Newman (Registered Representative, Ft. Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, Newman consented to the described sanctions and to the entry of findings that he deposited \$64,950 of his personal funds into customers' securities accounts, thereby sharing in losses disproportional with his interest in the accounts.

Jesus Peraza, Jr. (Registered Representative, Miami, Florida) was censured, fined \$260,000, barred from association with any NASD member in any capacity, and ordered to pay \$48,000 plus interest in restitution. The sanctions were based on findings that Peraza failed to respond to NASD requests for information. Peraza also converted \$48,000 to his own use and benefit, without the knowledge or authorization of the rightful owner or with the legal authority to do so.

Sean P. Sheehan (Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Sheehan consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers.

Jaime Luis Torres-Paulino (Registered Representative, Levittown, Puerto Rico) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Torres-Paulino consented to the described sanctions and to the entry of findings that he forged a registered representative's signature as the agent-of-record on life insurance applications submitted by public customers and forged the representative's endorsement on a \$596.10 commission check. The findings also stated that Torres-Paulino failed to respond to NASD requests for information.

April Actions

Feltman & Co. (Atlanta, Georgia) and Jack E. DeLong, Jr. (Registered Principal, Dunwoody, Georgia). The firm was censured, fined \$100,000, and expelled from NASD membership. DeLong was censured, fined \$30,000, and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that the firm permitted six individuals to conduct a securities business without being registered with the NASD and failed to update its Form BD in a timely manner to reflect that it had replaced its financial and operations principal. In addition, the firm, acting through DeLong, failed to maintain complete, current, and accurate books and records, conducted a securities business while failing to maintain its minimum required net capital, and filed FOCUS reports Part I and II that materially overstated its net capital.

DeLong has appealed this action to the NAC and the sanctions imposed against him are not in effect. The findings and sanctions imposed in the decision as to DeLong may be increased, decreased, modified, or reversed by the NAC.

Howard Gostfrand (Registered Principal, Aventura, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gostfrand consented to the described sanctions and to the entry of findings that he made misrepresentations to a public customer to discourage the customer from selling shares of stock from the account over which he had trading authority.

Charles M. Hollis (Registered Representative, Spartanburg, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$90,000, and barred from association with any NASD member in any capacity. Without

admitting or denying the allegations, Hollis consented to the described sanctions and to the entry of findings that he changed the address of record of an insurance policy he sold to a public customer, secured a \$18,000 loan against the policy without the customer's knowledge or authorization, and converted the proceeds of the loan to his own use and benefit.

Robert L. Wallace (Registered Principal, Naples, Florida) was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Wallace caused an advertisement that contained misleading, unwarranted, and exaggerated statements to be published in a newspaper.

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

May Actions

Jairo A. Baquero, Jr. (Registered Representative, Staten Island, New York) and Edward Machado (Registered Representative, Parlin, New Jersey) submitted Offers of Settlement pursuant to which Baquero was censured and required to pay \$10,405.20 in restitution to public customers. Machado was censured and required to pay \$11,583.75 in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Baquero and Machado received commissions on sales of securities that were excessive and unfair.

Frank J. DeCola (Registered Representative, Brooklyn, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam. The sanctions were based on findings that DeCola telephoned public customers to solicit interest in opening securities accounts and purchasing stock. During the course of the conversations, DeCola made several material misrepresentations regarding himself and the stock.

Escalator Securities, Inc. (Tarpon Springs, Florida) and Howard A. Scala (Registered Principal, Tarpon Springs, Florida) were fined \$50,000, jointly and severally. The firm was also ordered to pay \$106,359.16 plus interest in restitution and barred from executing principal transactions in equity securities with retail customers except for unsolicited liquidating transactions. Scala was barred from association with any NASD member in any principal, proprietary, or supervisory capacity. The NBCC imposed the sanctions following a remand as to sanctions from the SEC. The sanctions were based on findings that the firm and Scala charged excessive prices to public customers in the sale of equity securities and debentures. The prices charged included markups ranging from five to 350 percent above the prevailing market price. In addition, the firm, acting through Scala, charged fraudulently excessive markups in excess of 10 percent above the prevailing market price.

William G. McNamara (Registered Principal, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for two years. In addition, McNamara is required to disgorge \$13,020 in commissions. Without admitting or denying the allegations, McNamara consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm.

Wayne B. Vaughan (Registered Representative, Atlanta, Georgia), William A. Lobb (Registered Principal, Atlanta, Georgia) and Paul L. Vogel (Registered Principal,

Suwanee, Georgia). Vaughan was censured, suspended from association with any NASD member in any capacity for 20 business days, and thereafter in any registered capacity until he has requalified by taking and passing the appropriate qualification exam. Lobb was censured and fined \$10,000. Vogel was censured, fined \$10,000, suspended from association with any NASD member in any principal or supervisory capacity for 30 days, and suspended thereafter in any principal or supervisory capacity until he has requalified by taking and passing the appropriate qualification exam. The sanctions were based on findings that Vaughan recommended and effected a course of trading activity in a public customer's account without having reasonable grounds for believing that such trading activity was suitable for the customer in view of the customer's other securities holdings, financial situation, and needs. In addition, the findings stated that Lobb and Vogel failed to reasonably supervise the handling of the account by Vaughan in order to prevent and detect the suitability violations.

This action was called for review as to respondents Vaughan and Lobb and the sanctions as to these respondents are not in effect pending consideration of the review.

Michael L. Yancey (Registered Representative, Lake Park, Georgia) was censured, fined \$2,500, suspended from association with any NASD member in any capacity for six months, and further suspended until he requalifies as an investment company and variable contracts products representative by taking and passing the Series 6 exam. The sanctions were based on findings that Yancey obtained \$100 from a public customer intended for the repayment of an insurance policy loan and for payment of an insurance policy premium, and misappropriated the funds for his own use and benefit without the customer's knowledge or authorization.

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

June Actions

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

Coldicutt and Kantor have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

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

Reports Part I and II that materially overstated the firm's net capital.

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

Richard G. Dunn (Registered Representative, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he forged a policyholder's signature on a policy change application that increased the face amount of an insurance policy owned by the customer from \$150,000 to \$350,000.

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

Kishor Parekh (Registered Principal, Miami, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Parekh consented to the described sanctions and to the entry of findings that he sent a letter to the Dade County, Florida Commission and several publications concerning Dade County's financial advisor, falsely portraying that the president of another member firm was the author and sender of the letter.

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

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

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

March Actions

Joseph S. Baba (Registered Representative, Kirkland, Washington) and Richard M. Eisenmenger (Registered Principal, Schaumburg, Illinois) submitted an Offer of Settlement pursuant to which Baba was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 30 business days. Eisenmenger was censured, fined \$7,500, jointly and severally with a member firm, and suspended from acting in any supervisory or management capacity with any NASD member for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Baba recommended and effected purchases of

securities for the account of a public customer that were unsuitable for the customer. The findings also stated that Eisenmenger failed to establish, maintain or enforce written supervisory procedures and otherwise failed to supervise Baba to prevent the occurrence of such violations.

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

The appeal to the NBCC by Bafo was dismissed as abandoned, therefore, the DBCC decision constitutes final action.

William Alexander Bass (Registered Representative, Manhattan, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$105,000, barred from association with any NASD member in any capacity, and required to pay \$763 in restitution to a member firm. Without admitting or denying the allegations, Bass consented to the described sanctions and to the entry of findings that he submitted to his member firm disbursement request forms causing loans to be made against variable life insurance policies owned by public customers. The NASD found that, based on the submission of the forms, the member firm issued checks totaling \$20,463.24 and, without the customers' knowledge or consent, Bass deposited one check for \$763 into a bank account in which he had an interest and used the remaining funds as payment of other insurance policies owned by the customers.

Daniel C. Boss (Registered Representative, Mendon, New York) was censured, fined \$215,000, barred from association with any NASD capacity, and required to pay \$39,100 in restitution to a customer. The sanctions were based on findings that Boss received \$40,000 from a public customer for investment purposes recommended by Boss, and without the customer's knowledge or consent, used the funds for some purpose other than for the benefit of the customer. Boss also failed to respond to NASD requests for information.

The appeal to the NBCC by Boss was dismissed as abandoned, therefore, the DBCC decision constitutes final action.

April Actions

Harris Felsen (Registered Representative, Coral Springs, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined \$13,000. Without admitting or denying the allegations, Felsen consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a premium in the immediate aftermarket, in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Felsen failed to provide written notification to his member firms that he was opening an account with another firm and failed to provide written notification to the executing firms of this association with the member firms prior to opening the account.

Keith L. Mohn (Registered Representative, West Bloomfield, Michigan) was censured, fined \$52,222, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mohn participated in private securities transactions while failing to give written notice to his member firm of his intention to engage in such activities.

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

Jere Thomas Wickert (Registered Principal, Chicago, Illinois) was censured, fined \$9,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Wickert recommended and effected index options transactions in customers' accounts in the absence of a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, experience, financial situations, or needs.

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

May Actions

Robert J. Amico (Registered Principal, Webster, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam in any capacity. Without admitting or denying the allegations, Amico consented to the described sanctions and to the entry of findings that he sold a promissory note to a public customer and guaranteed the customer that he would pay him any unpaid sums due on the promissory note.

Danford Mark Byrens (Registered Representative, Olivet, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Byrens consented to the described sanctions and to the entry of findings that he failed to remit \$225.55 in customer funds to his member firm's insurance affiliate.

Robert B. DiMarco, Jr. (Registered Principal, Boca Raton, Florida) and Brian E. Baginski (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which DiMarco was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Baginski was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to respond fully to NASD requests for information.

Nicholas Freund (Registered Representative, Great Neck, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$21,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Freund consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a premium in the immediate aftermarket in violation of the NASD Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Freund failed to provide written notification to his member firms that he was opening accounts with other firms, and failed to provide written notification to the executing firms of his association with member firms prior to opening the accounts.

Patrick Allen Hannahs (Registered Representative, New Concord, Ohio) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hannahs received \$5,000 from a public customer to purchase a certificate of deposit for the customer's account. Without the customer's

knowledge or consent, Hannahs misused the funds by improperly holding those funds for approximately four months. Hannahs also failed to respond to NASD requests for information.

Timothy R. Hutchinson, Jr. (Registered Representative, Bay Village, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$217,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hutchinson consented to the described sanctions and to the entry of findings that he converted customer funds in the amount of \$43,500 to his own use and benefit.

Norman M. Merz (Registered Principal, Clinton Township, Michigan) was censured, fined \$110,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Merz participated in private securities transactions and accepted compensation as a result of an outside business activity. Merz also failed to give his member firm written notice of his intention to engage in such activities.

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

Charles Shulkin (Registered Representative, Arlington Heights, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$64,773, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shulkin consented to the described sanctions and to the entry of findings that he received \$12,954.62 from public customers with instructions to deposit or use the proceeds on behalf of the customers. The NASD found that Shulkin deposited the checks into an account he controlled without the customers' knowledge or consent and used the proceeds for purposes other than for the benefit of the customers.

John R. Whitlow (Registered Representative, Normal, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$225,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Whitlow consented to the described sanctions and to the entry of findings that he wrote checks totaling \$45,000 from a public customer's money market mutual fund account, failed to use the funds for any investment purposes, and used the funds for his own purposes and for salaries and expenses of a corporation of which he was a majority shareholder.

June Actions

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

Larry Dean Bryan (Registered Representative, Edwardsville, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$58,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bryan consented to the described sanctions and to the entry of

findings that he received a check for \$10,000 from a public customer with instructions to use the funds to open a money market account in the customer's name. The NASD found that Bryan, without the customer's knowledge or consent, added another customer's name to the account application form as joint tenant with right of survivorship, listed a post office address on the money market account instead of the customer's home address, drew checks payable to himself in the amount of \$7,500, and used the funds for some purpose other than for the benefit of the customer. Bryan also failed to respond to NASD requests for information.

Charles Joseph Cottone (Registered Representative, Gobles, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$16,768 in restitution to a public customer. Without admitting or denying the allegations, Cottone consented to the described sanctions and to the entry of findings that he received \$23,817 from a public customer with instructions to purchase securities products. Contrary to the customer's instructions and without the customer's knowledge or consent, Cottone failed to invest the funds in any securities products and instead used the funds for some purpose other than for the benefit of the customer.

Gerald Divozzo (Registered Representative, Mount Clemens, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Divozzo consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities on a private basis and failed to give his member firm prior written notice of, or obtain prior written authorization to participate in, such activities.

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

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

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

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

Podesta & Co. (Chicago, Illinois) was censured, fined \$26,250, and fined \$5,000, jointly and severally, with an individual. The NAC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that the firm participated as an underwriter in a negotiated underwriting of certain bonds within two years of having made political contributions to officials of the issuer. In addition, the firm failed to file Form G-37 reports with the Municipal Securities Rulemaking Board (MSRB) in a timely manner and failed to establish, maintain, or enforce written supervisory procedures to prevent the

occurrence of the conduct described above.

Christopher S. Wolf (Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wolf consented to the described sanctions and to the entry of findings that he failed to respond, or to respond completely, to NASD requests for information and to appear for an on-the-record interview.

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

March Actions

Arthur W. Chick (Registered Representative, Medford, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, ordered to pay restitution to a public customer, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member as a general securities principal for five years. In addition, Chick must requalify by exam as a general securities representative. Without admitting or denying the allegations, Chick consented to the described sanctions and to the entry of findings that he recommended and effected in the accounts of public customers the purchases of securities without having reasonable grounds for believing that such recommendations were suitable for the customers.

Furthermore, the NASD found that in inducing and effecting the purchases, Chick failed to disclose that the respective securities were speculative investments and entailed substantial risks, and failed to disclose material facts to the customers regarding the securities. The NASD also found that Chick effected unauthorized transactions in a customer's account, failed to execute a customer's sell order, and made price predictions to a customer about a stock.

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

William C. Dolfi (Registered Representative, Pittsburgh, Pennsylvania) was censured, fined \$40,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dolfi participated in private securities transactions without providing prior written notice to his firm. Dolfi also failed to respond to NASD requests for information.

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

Brian J. Walsh (Registered Principal, Medford, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$60,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended from association with any NASD member as a general securities principal for five years. In addition, Walsh must requalify by exam as a general securities representative. Without admitting or denying the allegations, Walsh consented to the

described sanctions and to the entry of findings that he recommended to public customers the purchase of securities without having reasonable grounds to believe the securities were suitable for the customers. The findings also stated that, in inducing and effecting the purchases, Walsh failed to disclose material facts to the customers, including that the securities were speculative investments, the risks associated with speculative securities generally, or the specific risk associated with the respective securities.

Michael A. Woloshin (Registered Representative, Medford, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Woloshin consented to the described sanctions and to the entry of findings that he recommended to a public customer a series of purchases and sales of securities while lacking a reasonable basis to believe them suitable for the customer in that such transactions entailed transactional costs which were excessive in comparison to the account's resources and the customer's financial situation and needs.

April Actions

Richard J. Eaton (Registered Representative, West Chester, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eaton consented to the described sanctions and to the entry of findings that he effected the sale of stock from the accounts of public customers and caused his member firm to issue drafts totaling \$20,028.72 against the accounts without the prior request or authorization of the customers. The findings also stated that Eaton failed to deliver the drafts to the customers, endorsed the drafts over to himself, and deposited the drafts into his bank account without the prior authorization or consent of the customers.

Jose Santos Perez (Associated Person, Baltimore, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he provided his member firm with a false social security number so that his employment records were incorrect.

Charles W. Tanner, Jr. (Registered Representative, Butler, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam for any capacity in which he is to be registered upon the conclusion of the suspension. Without admitting or denying the allegations, Tanner consented to the described sanctions and to the entry of findings that he affixed signatures purporting to be that of the customers to receipts and insurance applications without their prior authorization or consent. The findings also stated that Tanner sent to a public customer a letter inaccurately describing her variable insurance policy as being a savings account and life insurance contract and made specific projections of future value without having a reasonable basis for such projections. Furthermore, the NASD determined that Tanner removed a page from an insurance policy issued to a customer and failed to deliver the remainder of the policy.

May Actions

Douglas R. Bevers (Registered Principal, Devon, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any supervisory capacity and from performing any supervisory

functions for 90 days, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Bevers consented to the described sanctions and to the entry of findings that, acting on behalf of a member firm, he failed to enforce various supervisory procedures and failed to supervise an individual reasonably and properly.

Bevers' suspension began February 16, 1998, and will conclude May 15, 1998.

Holger Claus Dietze (Registered Representative, Chantilly, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Dietze consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities without notifying his member firm of such transactions and activities.

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

John Graeme MacHorton (Registered Representative, Sterling, Virginia) submitted an Offer of Settlement pursuant to which he was censured, fined \$3,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, MacHorton consented to the described sanctions and to the entry of findings that he sent correspondence to a public customer asking for a donation for securities-related work without obtaining prior approval from his member firm. The findings also stated that MacHorton used insinuating and inappropriate language in a telephone message to the customer.

Lambert L. Owens (Registered Representative, West Deptford, New Jersey) was censured, suspended from association with any NASD member in any capacity for six months, required to requalify by exam, and ordered to pay \$3,013 plus interest in restitution to a member firm. The sanctions were based on findings that Owens caused his member firm to issue two policy loan checks totaling \$5,013 against his brother's insurance policies. Owens endorsed and negotiated the checks and retained the proceeds without the prior authorization of his brother.

Lee B. Spahn (Registered Representative, Baltimore, Maryland) submitted an Offer of Settlement pursuant to which he was censured, fined \$8,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Spahn consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to a public customer in light of the customer's other security holdings, financial situation, or needs.

The House of Securities Company, Inc. (Frederick, Maryland), William Floria (Registered Principal, Jefferson, Maryland), and Christopher A. Weir (Registered Principal, Frederick, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the respondents were censured and fined \$10,000, jointly and severally. Weir was suspended from association with any NASD member in any capacity for 15 days. In addition, Floria and Weir must each 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 Floria and Weir,

failed to maintain accurate and complete books and records. The findings also stated that the firm, acting through Floria, conducted a securities business when the firm did not have the minimum required net capital. Furthermore, the firm, acting through Floria and Weir, failed to give timely notification of the firm's net capital deficiencies and filed inaccurate FOCUS I and II reports.

Anna Lynn Vernon (Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Vernon consented to the described sanctions and to the entry of findings that she completed life insurance applications for individuals and signed agent reports that contained misrepresentations regarding her relationship with the individuals.

June Actions

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

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

Merrill W. Sywenki (Registered Representative, Lehigh, Pennsylvania) was censured, fined \$338,500, barred from association with any NASD member in any capacity, and ordered to pay \$57,700 in restitution to public customers. The sanctions were based on findings that Sywenki misappropriated customer funds in the amount of \$57,700 intended for investment purposes and intentionally converted the funds to his personal use. Furthermore, Sywenki prepared false account statements representing that the funds received from the customers were used to purchase securities and further concealed his misuse by falsely representing to the customers that certain payments they received were dividend payments.

District 10 - the five boroughs of New York City

March Actions

Gary Berger (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity, with the right to reapply for association after 18 months. In addition, Berger must requalify by exam prior to acting in any capacity requiring qualification. Without admitting or denying the allegations, Berger consented to the described sanctions and to the entry of findings that he disseminated to public customers letterhead and business cards identifying a firm as an investment banker when the firm was not a registered broker/dealer or an investment advisor. The findings also stated that the letterhead failed to disclose the names and addresses of the member firms with which he was associated or the fact that the securities were offered through those member firms. Furthermore, the NASD determined that Berger purchased shares of stock in the accounts of public customers without the customers' knowledge or consent. Berger also failed to respond to NASD requests for information.

John M. Columbia (Registered Representative, Staten Island, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam. The sanctions were based on findings that Columbia executed the purchases of stock in the account of a public customer without the customer's prior knowledge, authorization or consent.

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

Laurette Fraser (Registered Representative, Teaneck, New Jersey) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fraser was in possession of unauthorized materials during a qualification exam.

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

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

Ronald B. Klimkowski (Registered Representative, Syosset, New York) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Klimkowski failed to honor an \$11,500 arbitration award. Klimkowski also failed to respond to NASD requests for information.

Pamela Michelle Powell (Registered Representative, Union, New Jersey) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Powell failed to respond to NASD requests for information.

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

Michael Barrington Walters (Registered Representative, Roosevelt, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam before acting in any capacity. Without admitting or denying the allegations, Walters consented to the described sanctions and to the entry of findings that he purchased shares of stock for a customer without the customer's knowledge, authorization or consent. The findings also stated that Walters engaged in inappropriate sales tactics by misleading a public customer into believing that a confirmation slip sent to the customer was for information purposes only and never informing the customer that it was actually an agreement to a purchase transaction. Walters also failed to respond to NASD requests for information.

Alon Randall Winton (Registered Principal, Chatsworth, California) submitted an Offer of Settlement pursuant to which he was censured and fined \$18,000. Without admitting or denying the allegations, Randall consented to the described sanctions and to the entry of findings that he purchased shares of a hot issue that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation. The findings also stated that Winton failed to provide written notification to his member firm that he was opening an account with another firm, and failed to provide written notification to the executing firm of his association with the member firm prior to opening an account.

April Actions

Jerard Basmagy (Registered Principal, Middletown, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in all principal capacities for six months, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Basmagy consented to the described sanctions and to the entry of findings that, in connection with his member firm's participation in public offerings, distributions of common stock, and financial and underwriting activities, Basmagy failed to establish, implement, maintain, and enforce adequate supervisory procedures.

Howard Berger (Registered Principal, Roslyn Heights, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Berger consented to the described sanctions and to the entry of findings that he, acting on behalf of a member firm, permitted a registered person to perform duties while his registration status was inactive due to his failure to timely complete an NASD Continuing Education requirement. The findings also stated that Berger, acting on behalf of a member firm, failed to report to the NASD statistical and summary information relating to customer complaints received by the firm, and failed to adopt, maintain, and enforce adequate written supervisory procedures and systems.

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

Mark Michael Furman (Registered Representative, Pompano Beach, Florida) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Furman participated in private securities transactions and failed to notify his member firm of such transactions. Furman also failed to respond to NASD requests for information.

Global Equities Group, Inc. (New York, New York) and Michael Henry Christ (Registered Principal, Lynbrook, New York) submitted an Offer of Settlement pursuant to which they were censured and fined \$40,000, jointly and severally, and the firm was fined an additional \$10,000. Christ was suspended from association with any NASD member in any capacity for 10 business days and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to report or to report accurately transactions to the Automated Confirmation Transactions SystemSM (ACTSM) in

violation of applicable securities laws and regulations regarding trade reporting.

In addition, the NASD found that the firm, acting through Christ, failed to report to the NASD statistical and summary information relating to written customer complaints received by the firm, permitted an individual to perform duties as a registered person while the individual's registration status was deemed to be inactive, failed to maintain books and records to demonstrate compliance with the NASD Continuing Education rules, and failed to implement, maintain, and enforce a supervisory system that was reasonably designed to achieve compliance with the NASD's rules to detect and prevent the above violations.

Frank J. Kelly (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$257,165.80, barred from association with any NASD member in any capacity, and required to pay \$37,841.45 in restitution to a member firm. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he falsified insurance applications on behalf of individuals and submitted the forms to his member firms for the purpose of obtaining commission payments. Furthermore, in the course of the scheme to defraud, the NASD found that Kelly forged an individual's signature without the person's knowledge, consent, or authorization. The findings also stated that Kelly failed to respond to NASD requests for information.

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

Christopher Mormando (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, required to disgorge \$286 in commissions, and required to pay \$30,904 in restitution to public customers. Without admitting or denying the allegations, Mormando consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers.

James Pellizzi (Registered Representative, Melville, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$667,637.82, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pellizzi consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Pellizzi failed to respond to NASD requests for information and to appear for an on-the-record interview.

Matthew Brian Proman (Registered Representative, Oceanside, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Proman consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Proman failed to respond to NASD requests to appear for an on-the-record interview or to respond to NASD requests for information.

Paul A. Signorelli, Sr. (Registered Representative, Wall, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$127,060 in restitution to a customer. Without admitting or denying the allegations, Signorelli consented to the

described sanctions and to the entry of findings that he withdrew \$58,000 from the accounts of public customers, deposited the funds into the bank account of a business entity he established and controlled, and used the funds for his own use and benefit. The findings also stated that Signorelli received \$50,000 from a public customer for a trust fund and instead used the funds for his own use and benefit without the prior knowledge, authorization, or consent of the customer.

Furthermore, the NASD determined that Signorelli failed to notify his member firm that he was engaging in the private practice of law, received \$16,560 from a public customer with the understanding that he would invest the funds in a company that Signorelli had dealt with on prior occasions, and instead deposited the funds into his personal checking account and used the funds for his own benefit. The NASD also found that Signorelli signed authorizations and notarized the signatures even though the signatures were not genuine and he was not qualified to act as a notary public. Signorelli also failed to update his Form U-4 to reflect criminal charges and submitted a Form U-4 that contained false and misleading information regarding the aforementioned arrest.

John C. Simonetti (Registered Principal, Ronkonkoma, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any principal capacity for six months, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Simonetti consented to the described sanctions and to the entry of findings that, in connection with his member firm's participation in public offerings, distributions of common stock, and financial and underwriting activities, Simonetti failed to establish, implement, maintain, and enforce adequate supervisory procedures.

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

Giuseppe Temperino (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge \$259,117.23 in commissions. Without admitting or denying the allegations, Temperino consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. The findings also stated that Temperino failed to appear for an on-the-record interview.

Michael Trocchio (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, required to disgorge \$250 in commissions, and required to pay \$26,305.50 in restitution to customers. Without admitting or denying the allegations, Trocchio consented to the described sanctions and to the entry of findings that he executed securities transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers. The findings also stated that Trocchio failed to follow customers' instructions to sell securities.

Bruce David Warshaw (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$810,000 in restitution. Without admitting or denying the allegations, Warshaw consented to the described sanctions and to the entry of findings that he engaged in private securities

transactions and failed to provide prior written notice to, or receive the approval of, his member firm to engage in these transactions. The findings also stated that Warshaw failed to exercise due diligence in connection with the offer of sales of securities to ascertain the financial status of the stock, including, but not limited to, its assets, liabilities, and net worth. Furthermore, the NASD determined that Warshaw recommended and effected the purchase of securities for public customers without having a reasonable basis for making the recommendations based upon their other security holdings, financial situation, and needs.

Keith Youngswick (a/k/a Keith Young) (Registered Representative, Great Neck, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$56,900, barred from association with any NASD member in any capacity, and ordered to pay \$34,500 in restitution to customers. Without admitting or denying the allegations, Youngswick consented to the described sanctions and to the entry of findings that he made fraudulent and material misrepresentations and material omissions to public customers in order to induce the customers to purchase stock in a private placement offering. The findings also stated that Youngswick solicited customers to purchase securities when the customers did not qualify in the placement offering under state securities laws and were in violation of the Blue Sky laws.

May Actions

Christopher Accardi (Registered Representative, Huntington Station, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as an investment company and variable contracts representative. Without admitting or denying the allegations, Accardi consented to the described sanctions and to the entry of findings that he misrepresented to public customers the nature of documents they had signed at the time of their purchase of life insurance policies. According to the findings, the documents the customers signed at the time of the purchase were not for the cancellation and transfer of funds from their fixed rate policies to their new policies. Rather, the documents caused loans to be taken out on the customers' fixed rate policies, which was never the customers' intention. The findings also stated that Accardi made several alterations to the paperwork the customers had signed in connection with the purchase of life insurance policies and forged the customers' initials on various components of their policies without the customers' prior knowledge or consent.

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

Charles Cochran (Registered Representative, Wichita, Kansas) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Cochran consented to the described sanctions and to the entry of findings that he failed to provide his member firm with prior written notice of his participation in private securities transactions in the form of a compensation agreement with another member firm.

Gary J. Dorsi (Registered Principal, Marlboro, New Jersey) was censured, fined \$50,000, suspended from association with any NASD member in any capacity for 60 days, barred in any principal capacity, and required to requalify by examination in all capacities prior to reassociating with a member firm. The sanctions were based on findings that Dorsi, as a branch office manager, engaged in, and substantially assisted others in engaging in,

high-pressure sales practices. The findings also stated that Dorsi failed to exercise effective oversight of the sales activities in his branch office to detect and prevent improper sales practices.

Paul T. Fiorini (Registered Principal, Los Angeles, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fiorini failed to respond to NASD requests for information.

Rodney Gocool (Registered Representative, Bronx, New York) was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$404.60 in restitution. The sanctions were based on findings that Gocool received funds in the amount of \$404.60 from public customers as insurance premium payments. Gocool failed to follow the customers' instructions and misappropriated their funds for his personal use. Gocool also failed to respond to NASD requests for information.

Barbara Diane Halpern (Registered Principal, Weston, Connecticut) submitted an Offer of Settlement pursuant to which she was censured, fined \$20,000, suspended from association with any NASD member as a FINOP for 90 days, and required to requalify by exam as a FINOP. Without admitting or denying the allegations, Halpern consented to the described sanctions and to the entry of findings that a member firm, acting through Halpern, conducted a securities business while failing to maintain the minimum required net capital.

Robert Craig Kaapke (Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined \$17,828.14, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Kaapke consented to the described sanctions and to the entry of findings that a member firm, acting through Kaapke, failed to make a bona fide distribution of public offerings by effecting sales of units to restricted persons.

Landmark International Equities, Inc. (Westbury, New York) and Scott Eliasoph (Registered Representative, Westbury, New York). The firm was censured and fined \$22,872.51. Eliasoph submitted an Offer of Settlement pursuant to which he was censured, fined \$16,808.76, and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that the firm permitted Eliasoph to perform duties as a registered person while his registration status with the NASD was inactive. In addition, the firm failed to report to the NASD statistical and summary information relating to customer complaints received by the firm and failed to adopt, maintain, and enforce adequate written supervisory procedures and systems. Without admitting or denying the allegations, Eliasoph consented to the described sanctions and to the entry of findings that he performed duties as a registered person while his registration status was inactive due to his failure to timely complete the Regulatory Element of the NASD's Continuing Education rules.

Michael V. Lipkin (Registered Principal, New York, New York) was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lipkin arranged to have an impostor take the Series 7, 24, and 63 exams on his behalf. Lipkin also failed to respond to NASD requests to appear for an on-the-record interview.

Edward O'Reilly (Registered Representative, Mount Kisco, New York) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that O'Reilly failed to respond to NASD requests to appear

for an on-the-record interview.

VTR Capital, Inc. (New York, New York) and Edward Joseph McCune (Registered Principal, Juno Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured, fined \$12,000, jointly and severally, and required to update and revise the firm's written supervisory procedures and compliance manual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McCune, failed to disclose adequate information on order tickets and customer confirmations, and failed to maintain an internal record of persons designated as supervisory personnel and their responsibilities. The findings also stated that the firm, acting through McCune, failed to establish and enforce written supervisory procedures.

Furthermore, the NASD determined that the firm conducted a securities business while failing to maintain the required minimum net capital and failed to maintain written supervisory procedures reasonably designed to achieve compliance with all applicable rules. Moreover, the firm, acting through McKee, failed to establish written supervisory procedures to include a provision for the principal review of subscription-way transactions and the firm did not evidence the principal review of subscription-way transactions in a private placement. The firm also sold securities to customers in a public offering and assessed a miscellaneous charge in addition to the public offering price of the securities.

June Actions

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

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

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

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

The appeal to the NAC was dismissed as abandoned; therefore, this DBCC decision

constitutes final action.

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

March Actions

Cyriaque A. Gonda (Registered Representative, Bridgeport, Connecticut) was censured, fined \$95,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gonda misappropriated for his own use and benefit customer funds totaling \$15,200 intended for investment. Gonda also failed to respond to NASD requests for information.

William E. Stead (Registered Representative, Castleton, New York) was censured, fined \$350,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stead failed to respond to NASD requests for information. Furthermore, Stead obtained funds totaling \$68,725 from public customers, represented to the customers that the funds were to be invested for the customers, and instead, converted the funds to his own use and benefit.

April Actions

George C. Bryant, II (Registered Representative, Bridgeport, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$1,000,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bryant consented to the described sanctions and to the entry of findings that he misappropriated \$259,800 in funds from the account of a public customer. According to the findings, checks were drawn on the customer's account. Bryant requested that he be allowed to hand-deliver these checks to the customer. Instead, they were deposited into Bryant's personal checking account.

James C. Rich (Registered Representative, Battle Creek, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$500,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rich consented to the described sanctions and to the entry of findings that he forged variable annuity redemption request forms of a public customer and converted \$112,000 to his own use and benefit.

May Actions

Timothy C. Adams (Registered Representative, Cambridge, Massachusetts) was censured, 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.

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

June Actions

Edward W. Breault (Registered Representative, Hopedale, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined

\$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Breault consented to the described sanctions and to the entry of findings that he forged and converted checks from public customers totaling \$20,935.77.

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

Market Regulation Committee

March Actions

C.P. Baker & Company, Ltd. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm exceeded the applicable options position contracts 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.

Ernst & Company (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate as late transactions in Nasdaq National Market[®] securities and Nasdaq SmallCapSM securities to the ACT. The findings also stated that the firm failed to accurately report eligible securities to ACT, improperly aggregated individual executions of orders in an OTC equity security, and failed to preserve broker order memoranda properly. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, limit orders, and recordkeeping.

M. H. Meyerson & Company, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$24,000, and ordered to pay \$350 plus interest in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to identify two aggregated transaction reports in Nasdaq National Market securities in a manner directed by the NASD. The findings also stated that the firm reported to ACT the incorrect transaction price in an OTC Equity security, reported to ACT the incorrect symbol in a Nasdaq SmallCap security, failed to designate as late to ACT a Nasdaq security and Nasdaq SmallCap securities, and to correctly designate securities to ACT.

Furthermore, the NASD found that the firm failed to contemporaneously execute customer limit orders, failed to show the time of entry on memoranda of broker orders, and failed to use reasonable diligence to ascertain the best inter-dealer market for a stock. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, and the limited order protection interpretation.

Nash, Weiss & Company (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$16,000. Without

admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute customer limit orders after it executed transactions for its own market making account, failed to show on memoranda of brokerage orders the correct time of execution, and failed to identify an aggregate transaction report in a Nasdaq National Market security in a manner directed by the NASD. The findings also stated that the firm failed to designate transactions as late, and reported the incorrect execution time of Nasdaq securities transactions to ACT.

Furthermore, the NASD determined that the firm failed to accept or decline a transaction within 20 minutes after execution, reported on Form T reports transactions in Nasdaq and OTC Equity securities in situations where the electronic entry of trade data was feasible, and failed to correctly designate securities transactions to ACT, Nasdaq and OTC Equity securities. In addition, the NASD found that the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and limit orders.

Raymond James and Associates, Inc. (St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate as late to ACT transactions in Nasdaq National Market and SmallCap securities. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and rules regarding trade reporting and recordkeeping.

Wien Securities Corp. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to designate as late to ACT transactions in Nasdaq National Market, Nasdaq SmallCap, and OTC equity securities. The findings also stated that the firm failed to preserve properly a memorandum of each brokerage order, and any other instruction for the purchase or sale of securities, and a memorandum of each purchase and sale for the firm's account. In addition, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, the limited order protection interpretation, and customer confirmations.

April Actions

Martin J. Cunnane, Jr. (Registered Representative, Woodside, New York) was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for three years. The SEC affirmed the sanctions following appeal of a March 1997 NBCC decision. The sanctions were based on findings that Cunnane opened accounts for public customers without authorization and effected unauthorized trades in each account.

Deutsche Morgan Grenfell/C.J. Lawrence, Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely and accurately report to ACT Nasdaq and Over-The-Counter securities. The findings also stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures with respect to its trade reporting.

East Shore Partners, Inc. (Melville, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was censured, fined \$12,500, and required to immediately

revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received and executed short sale orders without making an affirmative determination and executed an order for shares of stock incorrectly marked as a long sale order instead of a short sale order. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures.

Greater Metropolitan Investment Services, Inc. (Mendham, New Jersey) and James T. Patten (Registered Principal, Bernardsville, New Jersey) were fined \$55,000, jointly and severally. Patten was censured and fined \$175,000 individually, suspended from association with any NASD member as a registered representative for one year, and suspended in a principal capacity for two years. In addition, Patten must not associate with any NASD member in any capacity until he requalifies by exam. The NAC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Patten intentionally reported fictitious and substantive transactions to The Nasdaq Stock MarketSM (Nasdaq[®]) at or near the close of the market in order to affect the closing price of the securities. In addition, Patten effected transactions between accounts that he owned and controlled which involved no change in beneficial ownership, and published and circulated reports of purchase and sale transactions which he knew or should have known were non-bona fide. Furthermore, the firm and Patten violated the firm's restriction agreement with the NASD by effecting more than an occasional transaction per month in the firm's investment account without obtaining prior approval to modify the agreement and failed to enforce supervisory procedures to detect and deter marking the close activity.

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

H. J. Meyers & Company, Inc. (Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations regarding the limit order protection interpretation and trade reporting.

Ko Securities, Inc. (Seattle, Washington) and Terrance Y. Yoshikawa (Registered Principal, Seattle, Washington) were fined \$10,000, jointly and severally. In addition, the firm was suspended from proprietary trading and market making for five business days and Yoshikawa must attend a compliance conference with NASD Market Regulation staff. The SEC affirmed the sanctions following appeal of a January 1997 NBCC decision. The sanctions were based on findings that the firm and Yoshikawa concealed the true ownership of a common stock on five occasions to prevent the firm from falling below its minimum required net capital. Furthermore, in an attempt to reduce the risk of, or to prevent the firm from experiencing net capital difficulties, the firm and Yoshikawa sold the stock from the firm's inventory account to two accounts at the firm owned by Yoshikawa, and shortly thereafter repurchased the stock into the firm's inventory account at an agreed upon time and at essentially the same terms.

Ko Securities, Inc., has appealed this action to the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Morgan Stanley & Company, Inc. (New York, New York) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$26,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures.

Piper Jaffray, Inc. (Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$13,300, required to remit \$7,597 in profits, and required to undertake to immediately revise its written supervisory procedures relating to the short sale and Small Order Execution SystemSM (SOESSM) rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report short sale transactions to ACT and executed short sale transactions at or below the inside bid in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures.

Valery Shtraykher (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,500, suspended from association with any NASD member in any capacity for three years, and subjected to special supervision for two years should he decide to associate with a member firm. Without admitting or denying the allegations, Shtraykher consented to the described sanctions and to the entry of findings that he made material misrepresentations and omissions to public customers regarding a stock. The findings also stated that Shtraykher failed to execute sell orders for customers, thereby imposing upon them unauthorized positions and failed to respond completely to an NASD request for information.

Sutro & Company, Inc. (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$17,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of finding that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain and enforce adequate written supervisory procedures.

May Actions

ABN AMRO Chicago Corporation (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to maintain adequate written supervisory procedures relating to trade reporting and the Limit Order Protection Interpretation.

Castle Securities Corporation (Freeport, New York) and Michael T. Studer (Registered Principal, Rockville Centre, New York) were fined \$25,000, jointly and severally, and required to pay \$19,373.56 plus interest in restitution to customers. In addition, Studer was suspended from association with any NASD member in any capacity for 30 days and required to requalify by exam as a general securities principal. The SEC affirmed the sanctions following appeal of an October 1996 NBCC decision. The sanctions were based on findings that the firm manipulated the price of a common stock in that it used its dominant and controlling position in the market to establish and maintain an artificial and inflated price

of the stock, and arbitrarily increased that price when it was known there was little or no investor or dealer interest in the stock and no favorable news or developments concerning the stock. Furthermore, the firm charged its retail customers unfair and fraudulently excessive mark-ups ranging from 16 to 66 percent over the prevailing market price for the common stock. The firm, acting through Studer, also failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the firm's customers from being charged manipulated prices and unfair and fraudulently excessive markups in a common stock.

The firm and Studer have appealed this action to the United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

Emmett A. Larkin Company, Inc. (San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file reports with the NASD with respect to customer accounts that had established an aggregate position of 200 or more option contracts. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures designed to achieve compliance with the applicable NASD rules relating to reporting options positions.

Everen Securities, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$18,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, registration, and limit orders.

John J. Fiero (Registered Principal, Jersey City, New Jersey) was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for six months. The SEC affirmed the sanctions following appeal of a March 1997 NBCC decision. The sanctions were based on findings that Fiero failed to provide on-the-record testimony to the NASD.

Fiero has appealed this action to the United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

LaJolla Capital Corp. (San Diego, California) and Harold Bailey Gallison, Jr. (Registered Principal, Cardiff, California). The firm was censured, fined \$100,000, and required to retain an independent consultant to audit and monitor its compliance program for two years. Gallison was censured, fined \$100,000, barred from association with any NASD member in a principal or supervisory capacity, and required to requalify by exam in any other capacity. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that the firm and Gallison failed to establish, maintain, or enforce a supervisory system reasonably designed to achieve compliance with the federal securities laws and regulations. In addition, Gallison failed to supervise properly in order to detect and deter alleged violations by the firm's registered representatives.

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

Rodman & Renshaw, Incorporated (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and limit orders.

Tucker Anthony, Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$22,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations.

Wm. V. Frankel & Company, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$18,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. The firm executed short sale transactions at or below the inside bid when the inside bid was below the preceding inside bid. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, limit orders, market-making functions, and short sales.

June Actions

A.S. Goldmen & Company (Iselin, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the ACT in violation of applicable securities laws and regulations regarding trade reporting. Furthermore, the NASD found that the firm failed to maintain adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, recordkeeping, the Limit Order Protection Interpretation, and the registration of persons with the NASD.

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

D. H. Blair & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$12,000, and required to implement and provide to the NASD revised written supervisory procedures concerning

trade reporting and limit orders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and limit orders. Furthermore, the NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and the Limit Order Protection Interpretation.

James T. Patten (Registered Principal, Bernardsville, New Jersey) was censured, fined \$55,000, jointly and severally with a member firm, fined \$175,000 individually, suspended from association with any NASD member as a registered representative for one year, and suspended in a principal capacity for two years. In addition, Patten must not associate with any NASD member in any capacity until he requalifies by exam. The NAC affirmed the sanctions following appeal of a Market Regulation Committee decision to the SEC. The sanctions were based on findings that Patten intentionally reported fictitious and substantive transactions to The Nasdaq Stock Market at or near the close of the market in order to affect the closing price of the securities. In addition, Patten effected transactions between accounts that he owned and controlled, which involved no change in beneficial ownership, for the purpose of creating a false and misleading appearance of active trading in the securities at issue. Patten also published and circulated reports of purchase and sale transactions which he knew or should have known were not bona fide.

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

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

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

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

recordkeeping.

Enforcement Department

March Actions

None

April Actions

Mark Slakter (Registered Representative, Upper Saddle River, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 11 months. Without admitting or denying the allegations, Slakter consented to the described sanctions and to the entry of findings that he prepared sales scripts that contained only positive information regarding the issuers and securities to which they related and failed to disclose any adverse news or description of risk factors. Furthermore, the scripts contained materially false and misleading information, improper price predictions, and inappropriate comparisons to other securities. The findings also stated that Slakter executed a Form U-4 that was false, failed to disclose his employment with two member firms, and misrepresented his position with a non-securities related business.

Slakter's suspension began March 30, 1998, and will conclude June 29, 1999.

May Actions

Chad Beanland (Registered Representative, N. Babylon, New York), Andrew Friedman (Registered Principal, New York, New York), Howard S. Gelfand (Registered Principal, Roslyn, New York), Bonnie C. Vandenberg (Registered Representative, New York, New York), and David S. Heredia (Registered Representative, Long Beach, New York) submitted Offers of Settlement pursuant to which Beanland was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Friedman was censured, fined \$50,000, and barred from association with any NASD member in any capacity, and Gelfand was censured, fined \$20,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam prior to acting in a supervisory capacity with any member firm. Vandenberg was censured, fined \$10,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam prior to becoming associated with any member firm. Heredia was censured, fined \$100,000, and barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Beanland, Friedman, Vandenberg, and Heredia engaged in baseless and improper price predictions, and Beanland, Friedman, and Heredia made false promises to limit losses in customer accounts. The findings also stated that Friedman made improper guarantees against losses to customers; Friedman, Vandenberg, and Heredia engaged in unauthorized trading in customer accounts; Friedman and Heredia made improper promises to customers to make up losses in their accounts; Friedman failed to testify before the NASD in an investigation; Beanland made false statements as to the minimum amount of securities customers had to buy and provided false testimony in connection with an NASD investigation; Vandenberg and Heredia made misrepresentations as to specific issuers and the risk of an investment; and Heredia made improper and baseless comparisons between unrelated securities and made a false claim of access to

inside information.

Furthermore, the findings stated that Heredia refused to execute sell orders; Vandenberg and Heredia aggressively discouraged customers from selling securities; and Gelfand failed to exercise adequately his supervisory duties by allowing registered representatives under his supervision to use sales scripts that were materially false and misleading in connection with the sale of speculative securities.

Patrick G. Hayes (Registered Principal, Valley Stream, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any principal or supervisory capacity for six months, and required to requalify by taking the Series 24 exam before acting in that capacity. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that he failed to satisfy his supervisory obligations by approving fraudulent sales scripts.

Samuel R. Weber (Registered Representative, Dix Hills, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Weber consented to the described sanctions and to the entry of findings that he failed to follow customer orders to sell securities and provided false information to the NASD during its investigation of the matter. The findings also stated that Weber made unfair comparisons between securities, made baseless price predictions, and sold highly speculative securities to customers, contrary to the customers' requests. Furthermore, the NASD found that Weber executed an unauthorized transaction in a public customer's account and allowed customers to buy units in an initial public offering only if they first purchased shares of common stock offered by the issuer. Weber also misled customers into making risky investments, made material misrepresentations to a customer regarding a security, and falsified customer account information.

June Actions

Lauren Lessard (Registered Representative, Northport, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined \$15,000, suspended from association with any NASD member in any capacity for three months, required to pay \$5,335 in restitution, and required to requalify by taking the Series 7 exam. Without admitting or denying the allegations, Lessard consented to the described sanctions and to the entry of findings that she engaged in unauthorized trading, price predictions, and improper tie-ins of securities held by a public customer, and sold shares of a public customer's securities without authorization. The findings also stated that Lessard used the proceeds to make an unauthorized purchase of other securities in that customer's account. The findings also stated that Lessard allowed a public customer to purchase securities in initial public offerings only if that customer committed to buy the stock of the same issuers in the aftermarket at a four to one ratio. Lessard also made improper price predictions in soliciting a public customer to purchase securities.

Richard Ringel (Registered Representative, Old Bethpage, New York) and Peter Rubenstein (Registered Representative, Bayside, New York) submitted Offers of Settlement pursuant to which Ringel was censured, fined \$50,000, and barred from association with any NASD member, and Rubenstein was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ringel and Rubenstein made unauthorized transactions in the accounts of public customers and made baseless

and improper price predictions as to speculative securities. The findings also stated that Ringel and Rubenstein misled customers as to the risk of investing in a new issue, including false promises to limit customers' potential losses, and that Rubenstein made baseless and improper comparisons among unrelated securities to a customer.

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

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