Follows Large Firm Sweep

NASDAQ CENTRAL

NASDAQ, SEC, And Others Launch Joint Regulatory Examination Sweep

At a Congressional hearing, Securities and Exchange Commission (SEC) Chairman Arthur Levitt, Jr., announced plans for another joint regulatory examination sweep in coordination with the NASD, the New York Stock Exchange, and the North American Securities Administrators Association. Addressing the U.S. House Telecommunications and Finance Subcommittee of the Energy and Commerce Committee, Levitt said, "Rather than focus on specific large firms as we did during the Large Firm Project."

(Continued page 2)

NASDAQ Expresses Concern About Members Acting As Investment Advisers

In Notice to Members 94-44 (May 15, 1994), the NASD clarified the applicability of Article III, Section 40 of the NASD Rules of Fair Practice (RFP) to certain activities of persons registered as representatives with an NASD member and as an investment adviser (RR/RIA) with the SEC. In particular, the Notice addressed supervision of securities transactions conducted by RR/RIAs "away from" their employer/member.

Since issuance of Notice to Members 94-44, the NASD is aware that some RR/RIAs receive data downloads from broker/dealers and/or registered investment advisory firms that support the investment advisory and brokerage activities they conduct away from their member firms. Afterwards, RR/RIAs may use this information to generate performance reports for their clients.

When members and RR/RIAs create or recreate performance reports for securities transactions, there is a substantial risk that calculations may be inaccurate or incomplete, resulting in material misrepresentations or omission of facts. Consequently, the supervisory responsibilities outlined in Article III, Section 40 of the RFP may require an NASD member to determine whether to permit associated persons to develop performance reports for securities transactions and, if so, to review them before distribution to clients. The review would be designed to ensure that such reports are not inaccurate, misleading, or do not otherwise violate NASD or SEC rules. In particular, members should review standards in Article III, Section 35 (the NASD rule that governs member communications with the public) and applicable SEC regulations.

Questions relating to members’ compliance responsibilities under Article III, Section 40 may be directed Daniel Sibears, Director, Regulatory Policy, at (202) 728-6911, or Sarita Cypress, Attorney, Regulatory Policy, at (202) 728-8203.
Levitt told the Subcommittee of plans to use information in the NASD Central Registration Depository (CRD) to target "problem" registered representatives who have been the subject of customer complaints, arbitration proceedings, or disciplinary actions, and who have changed employment frequently. "The Large Firm Project, as well as the recent Penny Stock Sweep, demonstrate that, by coordinating our resources, we can make significant progress to reduce fraud, abuse, and manipulation and add to overall investor confidence in the securities markets," Levitt said.

**NASD Officer Testifies**

During the hearing, John E. Pinto, NASD Executive Vice President of Regulation, testified about sales-practice regulation of "problem" registered representatives. "We agree with the findings of the SEC Report on large firms and a GAO study that 'problem' brokers, while certainly not widespread or pervasive, nevertheless deserve the increased attention of regulators," Pinto told the Subcommittee. "These individuals with histories of compliance problems are a major focus of NASD examination efforts through focused sales-practice investigations that are being given the highest regulatory priority across the country by the NASD in each of its 14 District Offices."

Highlighting a number of initiatives in this area, Pinto described the NASD's multi-million dollar redesign of the CRD system, which will help regulators identify and flag "problem" brokers, and will identify firms and branches for examination in a more effective way. Pinto described the NASD's newly developed interim automated system, which analyzes the current registered representative population by drawing data from CRD as well as NASD regulatory data bases.

Pinto also discussed a proposed reporting rule issued for member comment in December 1994. The proposed rule will require members to report to the NASD the occurrence of certain specified material events and quarterly statistical data on customer complaints. Pinto stressed the importance of this information as additional regulatory intelligence and the need to maintain it in a regulatory data base for use by the NASD and other regulators.

Pinto went on to explain the critical importance of providing qualified immunity to members in connection with Form U-5 filings to encourage firms to report more accurately the rea-
sions for an employee’s termination. “The NASD strongly endorses the SEC’s recommendation for qualified immunity and supports rulemaking or legislation in seeking the most effective approach to devise uniform policies on liability and qualified immunity,” he said.

In response to an issue raised in the GAO study on the subject of so-called rogue brokers, the NASD is also working to share data with other financial service industries. The NASD has a long-standing policy of sharing relevant regulatory information with the states, has recently met with bank regulators, and is providing information to state insurance commissioners on “problem” representatives who are also insurance agents.

In support of testimony by Chairman Levitt, Pinto reiterated the NASD’s long-standing and proactive position on the importance of continuing education and agreed to work with the SEC on its announced tougher stance on barred individuals. “We are delighted that the SEC is supporting a harsher position on the ability of barred individuals to return to the industry,” he said. “At the NASD, we have always taken the position that a bar is a bar.”

Regulation

NASD Asks Members To Comment On Disclosure Of Partnership Valuations On Customer Statements

The NASD is proposing amendments to Article III, Section 45 of its Rules of Fair Practice that would require certain disclosures and reporting of Direct Participation Program (DPP) securities on customer account statements. (The most common DPP securities held in customer accounts are units of limited partnership interest.)

Members were asked to comment by January 31, 1995, on the proposal that would require that DPP securities held by the member or listed on a customer account statement be segregated from other securities. In that case, DPP securities may then be listed on the account statement without a price, but must include a remark saying accurate pricing information is not available because no active secondary market exists. However, if a DPP security is listed on the account statement with a price, the amendments would prohibit the value from being aggregated with the value of other securities held for the customer, or included in calculating the net worth of the customer’s securities.

The proposal also requires members to provide a statement disclosing how the value was reached, and to advise the customer that since DPP securities are illiquid, the disclosed value may not be realized if the customer needs to sell the security in the near future.

Comments from members will be considered by the NASD Board and appropriate committees. Before becoming effective, the proposed amendments must be approved by the SEC.

Provisions Explained

The planned amendments establish a general requirement that DPP securities on a customer account statement (even if not held by the member) must be segregated from other securities. This can be done by grouping all DPP securities and placing them below a demarcation line on the statement. This requirement would also cover any description of DPP securities listed by the member on an account statement, even if the member does not possess or control the securities. This provision recognizes that often DPP securities were sold originally in uncertificated form.

If a customer’s ownership of DPP securities is listed without a price and there is no active secondary market in the securities, the proposal would require members to include a narrative statement explaining the difficulty of pricing DPP securities. If a value is disclosed for DPP securities, it must not be aggregated with other non-DPP securities to reach a total value of the securities held in the customer account. Further, the methodologies used for obtaining or deriving the value of DPP securities must be adequately disclosed and a disclaimer added, indicating the value may not be realizable if the customer must liquidate the DPP securities sooner than expected.

Brief History

The NASD Direct Participation Programs Committee (DPP Committee) and Operations Committee studied how DPP security values are reported to investors on customer account statements. The Committees realize that currently some members report purchase price as the value of partnership interests on customer account statements, which is usually not equivalent to the current market value. Further, members that list DPP securities at purchase price tend to include that amount in the aggregate total current value of all securities held in the customer’s account. The Committee is concerned
about this practice, because DPP securities are generally illiquid and the purchase price often is not related to current value.

The Committees also reviewed issues that occur when members report partnership securities on customer account statements without a price. This practice is growing, and appears to reflect how difficult it is to establish a definitive current value for DPP securities. It also reinforces to customers that they purchased an illiquid security that cannot easily be valued until the partnership is liquidated.

However, the Committee is conscious of regulatory and practical business considerations that might make a member want to place a value for DPP securities on a customer account statement. For example, when members act as fiduciaries for individual retirement accounts or ERISA plans, Departments of Labor and Treasury regulations require that a value be obtained or derived, and reported at least annually. Thus, members acting as fiduciaries often report a value for these accounts on the customer statement.

The Committee is also aware that some members, general partners, and independent third-party services are using sophisticated valuation methods to evaluate DPP securities. These techniques include the appraisal of the underlying assets, an analysis of income expected to be earned by the partnership, discounted to a current value, or a recent sales analysis. The Committee believes that it would benefit investors to see how these values were reached, and that information should appear on a customer’s account statement.

For more information on this subject, see Notice to Members 94-96 (December 1994) or call Charles L. Bennett, Director, Corporate Financing Department, at (301) 208-2736.

Regulation Business Line Develops Interpretive Letters Data Base For Members

In response to input from members regarding service quality, the NASD Regulation Business Line compiled a series of interpretive letters from several NASD departments into a hard-copy data base. The data base was recommended by the Directors Service Quality Committee (DSQC), a staff group focusing on customer service initiatives, in order to provide a uniform, comprehensive system to notify members about key NASD interpretations. A two-step program is underway to compile and disseminate the interpretations.

Initially, a hard copy of the interpretive letters and an accompanying master index was created. Included are key interpretive letters from selected NASD Departments: the Office of General Counsel, Advertising, Corporate Finance, Market Surveillance, and Regulatory Policy. Quarterly, during 1995, more letters from these and other NASD departments will be added to the data base and index.

In the initiative’s second phase, the Regulation Business Line will automate the interpretive letters data base, and a vendor will begin to develop an electronic data base for interpretive positions. As soon as it is ready, the data base will be distributed for testing to NASD District Offices, using CDs and/or diskettes. After testing by District Offices, the interpretive letters data base will be available to the NASD membership before the end of 1995.

While the data base is under development, members may request selected interpretive positions from the Regulatory Policy Department. A hard-copy index of interpretive letters should be available during the first quarter of 1995.

New Address And Telephone Number To Report Lost And Stolen Securities

The SEC Securities Information Center (SIC) new mailing address to report lost and/or stolen securities is P.O. Box 9151, Boston, MA 02205. The telephone number for inquiries is (617) 345-4900; for general information call (617) 345-4910.

SEC Rule 17f-1 governs the Lost and Stolen Securities Program which requires broker/dealers, municipal dealers, and government securities broker/dealers to register with the SEC’s designe(see the SIC), and to file reports and make inquiries regarding lost, stolen, and counterfeit securities.

Exemptions from registration with the SIC include the requirement that a broker/dealer’s firm has not handled security certificates within the previous six months. However, the exemption does not apply to new broker/dealers. They must register with the SIC program unless they meet one of the available exemptions.

See Rule 17f-1 for more information, or call Susan Lang, Senior Research Analyst, at (202) 728-6969.
Compliance Questions & Answers

Through its Compliance and other departments, the NASD Regulation Business Line receives many inquiries from members on a variety of topics. To more effectively inform members on matters of common interest, Regulation plans to periodically provide to members, through the Regulatory & Compliance Alert, a question and answer feature designed to enhance communication with members on important and timely regulatory and compliance issues. Our first installment is on Regulation T, margin eligibility, mutual fund issues, and related matters.

Q. What is an exempt security under Regulation T (issued by the Federal Reserve Board of Governors)?

A. An exempt security is one that is not subject to the federal margin requirements of Regulation T. These include direct or indirect obligations guaranteed as to principal or interest by the U.S. government or any state, municipality, or political subdivision, or any other security defined as exempt by the Federal Reserve. Although exempt, a security is still subject to NASD maintenance requirements.

Q. What securities are eligible for purchase on margin?

A. Regulation T, issued by the Federal Reserve Board of Governors, defines a marginable security as any:

- Security listed or registered on a national securities exchange.
- Non-Nasdaq National Market and foreign security listed in the Federal Reserve Board's quarterly publication “List of Marginable OTC Stocks and List of Foreign Margin Stock.”
- Security issued by an open-end investment company or unit investment trust registered under Section 8 of the Investment Company Act of 1940. Although Regulation T allows the margining of open-end investment trusts, the margin use of such investment is limited because these investments can be used only as margin collateral if they have been owned by the customer for 30 calendar days.

The Federal Reserve Board's (Fed) quarterly report is available by calling its publication department at (202) 452-3244(5), or by writing Publication Services, Mail Stop 127, 20th and C Streets, NW, Washington, DC 20551.

Q. How does the Fed determine if a security is margin eligible?

A. Each quarter, the Fed reviews all Nasdaq securities to determine which meet the requirements for initial or continued inclusion on the list of OTC margin stocks under Regulation T, Section 220.17. The Fed notifies all securities issuers of securities that meet the margin eligibility requirements before publication of the next quarterly report. A security cannot be margined until the report is publicly disseminated.

Q. What is the difference between a wire-order and a subscription-order mutual fund dealer?

A. Wire order refers to the purchase or redemption of investment company shares using the telephone or other electronic means. Firms engaging in wire-order transactions must prepare and send confirmations and maintain customer accounts and other records required by SEC Rules 17a-3 and 17a-4. Subscription or application order refers to a method whereby customers complete an application and attach a check payable to the fund or its agent, and let the firm process the application and check, or mail both directly to the fund for processing. (See questions 11 and 12 in Notices to Members 92-72 and 93-30 for minimum net capital requirements of wire and subscription order mutual fund dealers.)

Q. Can the annual compliance meeting with the broker/dealer's registered persons that is required under Article III, Section 27 of the NASD Rules of Fair Practice be conducted over the telephone?

A. No. A telephone interview or video conference does not comply with the rule. The meeting must be conducted “in person.” The rule states the meeting may be individual or collective, and the compliance discussions may take place in connection with discussions or presentations on other topics. It is permissible to show a videotape before or as part of the demonstration. (See Notice to Members 89-34.)

Q. What are the minimum requirements to qualify for the NASD's installment payment plan for fines and costs imposed as a result of a disciplinary action?

A. The installment payment plan will be permitted only for fines and/or costs of $5,000 and above. A minimum 25 percent down payment of total fines and/or costs must be made as the initial payment.

Q. What interest rate applies for installment payment plans for fines and costs?

A. The rate on the unpaid balance of fines and/or costs is based on the current prime rate plus three percentage points.
How To Prevent Common Customer Complaints About Mutual Fund Sales Abuses

Customer complaints submitted to the NASD indicate that many involve mutual fund sales abuses, such as switching or failure to offer breakpoints. When conducting a supervisory review, look for the following elements that may help you prevent or detect such activity in your customer accounts.

**Mutual Fund Switching**

*Mutual fund switching problems occur when salespersons recommend, without a reasonable basis, the liquidation of a customer’s existing mutual fund to purchase another mutual fund with related investment objectives to generate additional sales commissions.*

- A pattern of customers selling one mutual fund and purchasing another, usually with charges involved.
- Inadequate written supervisory procedures that may hinder effective review for evidence of switches.
- Customer complaints concerning switches and whether they are fully investigated.
- Regular, periodic reviews of customer accounts to find evidence of switches. (Most switches occur on different days and often in different months.)
- A requirement that the firm must have a written customer authorization for the liquidation of one mutual fund to purchase another fund when commission charges are involved.
- Where a switch is initiated, the customer should enjoy an economic gain, considering the charges involved. In these cases, customers should be contacted by a manager or supervisor. When a customer initiates a switch, such action may not absolve a broker/dealer or registered representative from liability.

**Mutual Fund Breakpoints**

*Breakpoint problems occur when salespersons recommend the sale of investment company shares in dollar amounts “just below” the point at which the sales charge is reduced on quantity transactions.*

- Firm records that may show sales of two or more mutual funds to the same customer at the same time in amounts apparently below a breakpoint, presumably for diversification reasons.

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**When conducting a supervisory review, look for the following elements that may help you prevent or detect such activity in your customer accounts.**

- A pattern of customers purchasing a large quantity of one mutual fund at amounts just below the breakpoint.
- Clear, written supervisory procedures to review for sales just below breakpoints. These routines should indicate who is responsible to ensure disclosure of breakpoints.
- A plan that provides for regular review of customer accounts for breakpoint sales. Occasionally, problems appear only after several months of activity.
- Indications that customers knowingly sign a letter that clearly discloses the breakpoints, thus waiving the opportunity for reduced sales transaction charges.
- A method to question registered representatives to determine the reasons for sales just below the breakpoint, and whether customers are notified when the reasons for sales make no sense.
- Procedures that furnish the customer with the option of completing a “Letter of Intent” for purchases within a 13-month time frame.

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National Association of Securities Dealers, Inc.  January 1995
Guide To Locating Advertising And Sales Literature Rules

In reviewing member advertising and sales literature, the Advertising Regulation Department staff generally refers to NASD, Municipal Securities Rulemaking Board (MSRB), and SEC advertising rules and guidelines. Following is a list of applicable rules and regulations frequently cited by the Advertising Regulation Department.

<table>
<thead>
<tr>
<th>NASD Rules</th>
<th>SEC Rules</th>
<th>Other Rules</th>
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| Approval And Filing Requirements And Standards For All Communications With The Public Including Proper Broker/Dealer Identification | The “Tombstone Advertising Rule”  
• SEC Rule 134, Securities Act of 1933  
• Paragraph 5281, NASD Manual (page 5041); CFR 230.124 | Approval Requirements And Standards For Municipal Securities Sales Material  
• Rule G-21, MSRB Rules  
• Paragraph 3601, MSRB manual (page 4869) |
| Article III, Section 35, NASD Rules of Fair Practice  
Paragraph 2195, NASD Manual (page 2173-14) | The “Generic Advertising Rule” For Mutual Funds And Other Investment Company Securities  
• SEC Rule 135A, Securities Act of 1933  
• Paragraph 5282, NASD Manual (page 5045); CFR 230.135a | Requirements For Identifying Securities Investor Protection Corporation (SIPC) Membership In Advertising  
• Article 11, Section 4, SIPC By Laws  
• Available from Advertising Department staff at (202) 728-8330 |
| Approval And Filing Requirements And Standards For Government Securities Advertising And Sales Literature | The “Omitting Prospectus Rule” For Mutual Funds And Other Investment Company Securities  
• SEC Rule 482, Securities Act of 1933  
• Paragraph 5283, NASD Manual (page 5055); CFR 230.482 | Guidelines For Government Securities Advertising  
• Available from Advertising Department staff at (202) 728-8330 |
| Section 8, NASD Government Securities Rules  
Paragraph 2428, NASD Manual (page 2267) | The “Investment Company Sales Literature Rule”  
• SEC Rule 156, Securities Act of 1933  
• Paragraph 5285, NASD Manual (page 5061); CFR 230.156 | Guidelines For Discount Brokerage Service Communications  
• Available from Advertising Department staff at (202) 728-8330 |
| Restrictions On Advertising Non-Branch Office Locations  
• Article III, Section 27(g)(2), NASD Rules of Fair Practice  
Paragraph 2177, NASD Manual (page 2118) | The “Sales Literature Rule” for Performance of Open-End Mutual Funds and Variable Annuities  
• SEC Rule 34b-1, Investment Company Act of 1940  
• Paragraph 5284, NASD Manual (page 5057); CFR 270.34b-1 | Guidelines Regarding Communications With The Public About Collateralized Mortgage Obligations (CMOs)  
• Paragraph 2195, NASD Manual (page 2175) |
| Approval And Filing Requirements And Standards For All Options-Related Communications With The Public  
• Article III, Section 35A, NASD Rules of Fair Practice  
Paragraph 2195A, NASD Manual (page 2185) | | Guidelines Regarding Communications With The Public About Variable Life Insurance And Variable Annuities  
• Paragraph 2195, NASD Manual (page 2180) |

NASD Regulatory & Compliance Alert  
January 1995
**Q.** Can a member produce and use one-on-one comparisons between mutual funds?

**A.** Yes, but the comparison, which is held to very vigorous standards, must be complete and fair. Comparisons between specific products are easy to distort toward a bias, especially when the member drawing the comparison has a proprietary interest in one of the products. This is why many members receive critical comments from the Advertising Regulation Department about such comparisons.

Pursuant to Article III, Section 35(d)(2)(M) of the Rules of Fair Practice, direct or indirect comparisons must make clear the purpose of the comparison and provide a fair and balanced presentation, including any material differences between the subjects of the comparison. Such differences include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors to make the comparison fair.

**Q.** Is there a minimum type size for the text of advertisements and sales literature?

**A.** Members should clearly and legally communicate information that is important to an investor’s decision whether to invest. Members should not rely on footnotes to balance a presentation. Instead, important information such as risk factors or costs of an investment should appear on or near the relevant section of the communication. In addition, members should avoid overly technical explanations or caveats, as these may do more harm than good. See Article III, Section 35(d)(1)(D) of the Rules of Fair Practice for more information about these requirements.

Although there is no universal type-size rule, investment company communications subject to SEC Rule 482 are required to be in at least 8-point type. However, even in a Rule 482 communication, members may need to use a larger size type to assure that a presentation is fair and not misleading.

**Q.** Are there any limitations on the filing of reprinted mutual fund reports, such as Morningstar reports?

**A.** According to Article III, Section 35(c)(1) of the Rules of Fair Practice, reprinted mutual fund research reports should be filed with the Advertising Regulation Department when intended for use promreetingly as sales literature. If a Morningstar report is given to one person in response to that person’s request, such use would be considered individual correspondence, rather than sales literature, and the piece would not have to be filed.

Mutual fund research reports such as Morningstar reports should be approved before use by a firm’s compliance principal. They may be distributed to the public when preceded or accompanied by a prospectus for the fund. If the reports cite fund performance, they should include the SEC-required standard annualized returns. The reports should also include an explanation of the methodology of any rankings or ratings cited.

**Q.** The Advertising Regulation Department recently sent a message to filers requesting that they include the date of first use or publication in cover letters accompanying all filings. When should members implement this change?

**A.** This policy is effective now. The date of first use or publication is an important tool in ensuring that the filing requirement deadlines are honored. Having this information allows the Advertising Regulation Department to provide faster service because its analysts will avoid delays involved in contacting the member to find out the date. The date of first use also helps ensure that the comments are appropriate because knowing whether a piece has been used with the public can affect the Department’s recommendations for remedial action. Also, keep in mind that Article III, Section 35(d)(2)(A) of the Rules of Fair Practice states that the date on which sales literature is first published or distributed is necessary information.

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**NASD To Allow Payment For Filings By Credit Card**

Beginning in 1995, the Advertising Regulation Department will offer members the option to pay for filings by VISA or Master Card. The Department will issue a notice before implementation.
Rule Interpretations

NASD Rules Of Fair Practice Say Family Members May Not Buy “Hot Issues”

Recent disciplinary actions indicate that members may not be fully aware that the NASD Free-Riding and Withholding Interpretation under Article III, Section 1 of the Rules of Fair Practice prohibits sales or purchases of “hot issues” by persons associated with members or their immediate families. Hot issues are securities of a public offering that trade at an immediate premium when secondary market trading begins.

For example, consider members or persons associated with members purchasing hot issues directly from an issuer, without underwriter or selling group assistance. Some members believed that this was not a violation of the Interpretation that resulted from these facts because the purchase was made directly from an issuer, not a member firm. However, the Interpretation clearly states that all hot issues, including those that are self-underwritten, are subject to the rule’s provisions.

In another application of the Interpretation regarding purchases by a member’s immediate family, there is a limited exemption available for family not supported directly or indirectly by the member. The exemption requires that the hot-issue purchase is consistent with the person’s normal investment practices and that the purchase is not substantial, either in the aggregate or in proportion to sales to other persons. The exemption applies only to immediate family members and not to registered persons. (More complete explanations of immediate family mem-

IPO Investment Partnership Provisions Emphasized Under Free-Riding And Withholding Interpretation

In response to member inquiries, the NASD emphasizes member responsibilities under its Free-Riding and Withholding Interpretation as it applies to investment partnerships and corporations.

The question posed by initial public offering (IPO) underwriters is: If a registered investment adviser buys shares of a “hot issue” for the benefit of an investment partnership or corporation, is it adequate to obtain a verbal affirmation from the adviser that no beneficial owner is a restricted person and make a record on the order ticket, or is it necessary to procure either a current list of the names of all persons having a beneficial interest in the account, or a legal opinion?

At issue is whether such sales are covered by Section 7 of the Interpretation that permits the sale of hot-issue securities to a domestic bank, domestic branch of a foreign bank, trust company, or other conduit for an undisclosed principal under the interpretation or that the transaction should be treated as a sale under the Investment Partnerships and Corporations provisions of the Interpretation.

The NASD’s position is that such accounts should be governed by the Interpretation’s investment partnership provisions, rather than treating the investment adviser as an “other conduit for an undisclosed principal.” Section 7 predates the investment partnership provisions of the Interpretation; the partnership provisions were initially adopted in 1973 and substantially amended in 1988. The investment partnership provisions were established to create specific responsibilities by member firms when selling hot-issue securities to investment partnerships or corporations. It would be inappropriate to permit those provisions to be circumvented by allowing an investment adviser to buy the securities on behalf of the investment partnership or corporation.

Members active in this segment of the business should review details in the Investment Partnerships and Corporations section of the Free-Riding and Withholding Interpretation. If you have questions about this subject, call Craig Landauer, NASD Associate General Counsel, at (202) 728-8291, or your local District Director.

The NASD is considering proposed rule changes to exempt certain securities industry professionals from the Interpretation. Currently, however, the Interpretation applies to all registered persons, including those in limited-purpose registration categories such as investment company securities, variable contracts, and direct participation pro-


January 1995
Member Comment Sought On Rule To Let
Registered Reps Lend To Or Borrow From Customers

The NASD Board recently approved
Notice to Members 94-93 (December
1994) to solicit member comment on a
proposed amendment to Article III of
the Rules of Fair Practice. The planned
rule would require registered persons to
provide prior notification to, and obtain
prior approval from, their employing
member firm before personally borrow-
ing funds or securities from a customer,
or before lending funds or securities to a
customer. Under the proposed rule, the
notification and the advance approval
must be in writing.

The comment period expired January
31, 1995. Before becoming effective,
the rule must be adopted by the Board
and the membership, and then filed for
SEC approval.

In May 1994, the Board’s Advisory
Council recommended that the NASD
consider adopting a rule that would
require registered persons to notify their
employing member when personally
borrowing funds or securities from cus-
tomers. The National Business Conduct
Committee (NBCC) backed the
Council’s proposal and recommended to
the Board to expand coverage of the
proposed rule to include lending of
funds or securities, in addition to
borrowing of funds or securities, by reg-
istered persons with their customers.
The NBCC also advocated that the
member, upon prior written notification
by the registered person, must record in
writing the approval or disapproval of
the proposed transaction with the cus-
tomer.

The NBCC’s determinations were based
partly on several recent NASD discipli-
inary actions confirming examples of
abuse where registered representatives
borrowed funds or securities from cus-
tomers. Specifically, the SEC affirmed
two NASD disciplinary actions where
the principal violation focused on regis-
tered representatives that borrowed
funds from customers, but did not repay
them.

In approving this rule proposal for com-
ment, the Board recognizes that many
member firms prohibit this type of con-
duct by their registered persons. Thus,
this rule amendment proposes to estab-
lish a regulatory framework for member
firms that now permit this practice.

A member’s prior knowledge that a reg-
istered representative intends to borrow
funds or securities from or loan funds or
securities to its customers, and the
member’s subsequent approval, may
serve as an effective deterrent to poten-
tial misconduct. It will also improve
the member’s ability to monitor and sup-
ervise the activities of its registered per-
sonnel by serving as an information
gathering source for members about
additional activities of their registered
persons that may go beyond the scope
of their normal activities. With that
information, members would be able to
evaluate, before granting approval,
whether these activities are an unnec-
essary risk to the customer and/or the
member.

Finally, the notice requirement will
place an affirmative obligation on the
representative that could be separately
charged in a disciplinary action if not
followed. Questions about this proposal
may be directed to Daniel M. Sibears,
Director, Regulatory Policy, at
(202) 728-6911.

NASD Requests Comment On Rules To
Govern Members Operating On Bank Premises

The NASD is requesting comment by
February 15, 1993, on proposed amend-
ments to its Rules of Fair Practice to
adopt rules governing broker/dealers
operating on financial institution
premises. The proposed rules embrace
investor protection principles similar to
those in a recent no-action letter from
the SEC to the Chubb Securities
Corporation. (The Chubb Letter
addresses broker/dealer networking
agreements with financial institutions; see Regulatory & Compliance Alert,
October 1994, page 15.)

The proposed rules provide NASD
members with clear guidance to address
activities of bank-affiliated and
networking broker/dealers who operate
on financial institution premises. Before
becoming effective, the NASD Board
and the membership must adopt the rule
amendments, and they must be
approved by the SEC.

Background
On November 24, 1993, the SEC staff
issued the Chubb Letter that describes
the SEC’s policy regarding certain bro-
ker/dealers operating on the premises of
financial institutions. Following the
release of the Chubb Letter, on February
15, 1994, the four banking agencies—
the Board of Governors of the Federal
Reserve System, the Federal Deposit
Insurance Corporation, the Office of the
Comptroller of the Currency, and the
Office of Thrift Supervision—issued an
Interagency Statement on Retail Sales of
Non-deposit Investment Products (the
Interagency Statement). That statement
adopts many of the investor protection
concepts in the Chubb Letter, and
directs banks to follow such principles
when making direct sales of securities to
customers, while overseeing activities of NASD members selling securities on financial institution premises.

To assist members doing business on the premises of financial institutions to comply with the NASD Rules of Fair Practice, the federal securities laws, and applicable banking regulations, Notice to Members 94-47 (June 1994) advised members regarding the policies described in the Chubb Letter and the Interagency Statement. Bank-affiliated members and members participating in bank networking arrangements previously were told by the NASD to take precautions to protect investors addressing issues of investor confusion.

In particular, Notice to Members 94-16 (March 1994) reminds members of mutual fund sales practice obligations, citing the explosive growth of fund sales by bank-affiliated and networking broker/dealers. Similarly, Notice to Members 93-87 (December 1993) guides members on reinvesting maturing certificates of deposits in mutual funds, focusing on NASD members affiliated with financial institutions or participating in networking arrangements. In addition, Notice to Members 93-87 describes the specific disclosure requirements for money market, fixed income, and equity funds, and points out specific concerns that may arise in connection with sales of mutual funds on bank premises.

Rationale For Proposed Rules

Although the Chubb Letter provides regulatory guidance for some members operating on financial institution premises, the NASD believes further action is necessary to establish uniform, consistent standards to govern this activity. The Chubb Letter focuses specifically on broker/dealer networking arrangements, but does not address the regulatory obligations of bank-affiliated broker/dealers. Accordingly, action is necessary to ensure the existence of a level playing field for bank-affiliated members, and members operating on bank premises under networking agreements. Further, because the Chubb Letter is a “no-action” position, it may be seen as a guideline, or an interpretive position rather than a rule requirement or regulation designed for investor protection.

Description Of Proposed Rules

The proposed rules apply exclusively to the activities of NASD members that are conducting broker/dealer services on the premises of a financial institution where retail deposits are taken. Although applicable to all customers of such members, the main focus of the proposed rules is to minimize confusion by retail customers. Broker/dealer services are defined as services that include, but are not limited to, conducting an investment banking business, recommending any security, giving investment advice, describing investment vehicles, discussing the merits of any security or type of security with a customer, exercising judgment regarding securities and investment alternatives, accepting customer orders, transmitting orders, or handling customer funds or securities.

The proposed new rules also require that a member, operating on the premises of a financial institution, enter into a written agreement with that institution that describes the conditions and responsibilities of the parties. Conditions for conducting broker/dealer services on the premises of a financial institution include the member’s physical location, customer disclosure, compensation, supervisory responsibilities, customer solicitation, and communications with the public.

This written “Networking and Brokerage Affiliate Agreement” required by the proposed rules must stipulate that the broker/dealer will have exclusive responsibility for securities activities conducted through the broker/dealer at its financial institution location. Significantly, the agreement must contain provisions whereby the member agrees to notify the financial institution if any associated person of the member who is also an employee of the financial institution (dual employee) is terminated for cause by the member.

In turn, under the terms and conditions of the written agreement, the financial institution must agree to allow supervisory personnel of the member, and SEC and NASD representatives, to have access to the financial institution’s premises where the member conducts broker/dealer activities so they may conduct examinations, and perform any other regulatory responsibilities regarding a member. Further, the financial institution must agree to monitor the unregistered employees of the financial institution to ensure that they perform only clerical and ministerial-related functions regarding investment-related services of the member.

The written agreement also must stipulate that the financial institution agrees that its unregistered employees will not receive any compensation, cash or non-cash, that is based on the effectiveness or the success of referrals of financial institution customers to the member. Importantly, the written agreement must contain provisions whereby the financial institution agrees that any dual employee whom the member suspends from association with the member, or whom the SEC, the NASD, or any other regulatory or self-regulatory organization bars or suspends from association with the member or any other broker/dealer, will be terminated or suspended, respectively, from any securities activities conducted directly by the financial institution.

To minimize customer confusion, the proposed rules require that the member’s broker/dealer services function in a physical location distinct from the area where retail deposits are taken. Member’s disclosure obligations require
that, when an account is opened, the member obtain a written acknowledgment from each customer that products purchased or sold by the member:

- are not insured by the Federal Deposit Insurance Corporation;
- are not deposits or obligations of the financial institution;
- are subject to investment risks, including possible loss of principal invested; and
- are not protected by the Securities Investor Protection Corporation (SIPC) as to loss of principal.

The compensation provisions of the proposed rules prohibit the member from making any payments, including referral fees, to individuals employed with the financial institution who are not registered with the member. Broker/dealer services offered by the member must be provided only by persons associated with the member. To comply with the supervisory requirements of Article III, Section 27 of the NASD Rules of Fair Practice, associated persons must be properly supervised by the member in light of the member’s particular activities conducted at the financial institution. In this regard, the rules require that the member designate a registered principal to supervise its associated persons at the financial institution location, and the member also must register its location at the financial institution as a branch office.

With regard to the member’s communications with the public and the solicitation of customers, the rules stipulate that materials used to promote the member’s broker/dealer services are considered materials of the member, and must comply with Article III, Section 35 of the NASD Rules of Fair Practice. Additionally, the rules address how the financial institution may be referenced in advertising and promotional materials, so as to ensure that it is clear that the broker/dealer services are furnished by the member and not the financial institution. Finally, the rules prohibit the member from using confidential financial information kept by the financial institution to solicit customers for its broker/dealer services.

“We are confident that these actions taken by the NASD and other agencies will help establish the standard of conduct for securities firms operating on bank premises and to provide appropriate disclosures to investors in order to avoid confusion, understand investment risks, and address general customer protection issues,” said John E. Pinto, NASD Executive Vice President, Regulation. For more information on these proposed rules, contact R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325, or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911.

New Customer Complaint Rules Proposed By NASD

The NASD requests comments on a proposed amendment to Article III of the Rules of Fair Practice (Rules) to require members to report to the NASD the occurrence of specified events and quarterly summary statistics concerning customer complaints. The rule would provide important new regulatory information to help the NASD quickly identify problem members, branch offices, and registered representatives to more aggressively detect and investigate sales-practice violations. If adopted, the proposed rule would significantly parallel comparable provisions of New York Stock Exchange (NYSE) Rule 351.

Comments received by January 31, 1995, will be considered by the NASD in formulating an amendment to the Rules. Before becoming effective, any change must be adopted by the NASD Board and the membership and filed with the SEC for approval.

Reasons For Proposal
Concerned about sales-practice abuses by some registered representatives associated with broker/dealers, the NASD introduced its 1994 regulation program that required each District Office to identify and conduct intense sales-practice examinations of main offices, branch offices, and individuals associated with such offices who may pose regulatory concerns, including past misconduct related to abusive sales and trading practices.

In this connection, the NASD developed an interim automated system that draws on the Central Registration Depository (CRD) and NASD internal regulatory systems to profile and analyze all registered representatives. When incorporated with NASD regulatory systems that contain, for example, information about all examinations, District Business Conduct Committee (DBCC) disciplinary actions, customer complaints, and terminations for cause, the NASD can more precisely and expeditiously profile registered representatives who may pose regulatory risks to investors.

This new initiative will complement action taken by the NASD during the past several years to:

- Increase sanctions for sales-practice violations.
- Emphasize improving the hiring and termination practices at member firms.
• Commit additional resources to sales-practice cases.

Member supervisory systems, practices, and procedures also remain the subject of increased scrutiny. Any members employing individuals with a history of compliance or disciplinary problems should now be aware of their heightened standard of supervisory responsibility targeted to address the known past problems of the specific individual.

The proposed amendment to Article III of the Rules will significantly strengthen the existing regulatory and surveillance efforts to address sales-practice abuses by requiring member firms to report the occurrence of certain events and summary statistics concerning customer complaints. Specifically, critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member, is not required by Form U-4 or other NASD filings. Therefore, this information is not available to NASD staff on a routine or timely basis. In view of this, the NASD believes that the members’ affirmative obligation to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly aid the NASD’s ability to quickly identify problem representatives and to respond appropriately.

The SEC clearly supports the adoption of a customer complaint reporting rule in its Large Firm Project Report. That report followed a cooperative effort with the NASD, SEC, and NYSE that examined hiring and retention practices of nine of the largest broker/dealers in the United States. Similarly, the General Accounting Office (GAO) in its report Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers, recommended that member firms’ customer complaint information be computer captured and used as an additional regulatory tool to identify potential problem firms.

Amendments As Proposed

Subsection (a) of the rule would require member firms to file a report with the NASD when any of 10 different specified events occur. These events vary significantly, ranging from situations where a court, government agency, or self-regulatory organization (SRO) determines a violation of securities laws occurred, to circumstances where a firm receives a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. Subsection (b) of the proposed rule requires each person associated with an NASD member to properly report to the member the existence of any of the 10 conditions covered in Subsection (a).

Subsection (c) of the rule further requires members to report to the NASD statistical and summary information regarding written customer complaints received by the member firm, or relating to the firm or any of its associated persons. Importantly, Subsection (e) of the proposed rule eliminates the possibility of unnecessary regulatory duplication by providing an exemption from filing with the NASD for members already subject to another SRO’s similar reporting requirements. NYSE Rule 351 is the only such rule in place.

Currently, Part V of Schedule C to the NASD By-Laws requires members to promptly notify the NASD in writing of any disciplinary action that the member takes against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines exceeding $2,500, or any other significant limitation on activities. As this existing disclosure requirement is incorporated into the proposed rule in Subsection (a)(10), the NASD proposes to rescind this part of Schedule C with the adoption of the new rule. For more information on this issue, see Notice to Members 94-95 (December 1994).

Questions about this subject may be directed to Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911.

Members Are Reminded About Open-Order Repricing Requirements That Took Effect September 15

Members are reminded to adjust the price and size of open orders by the amount of any dividend, payment, or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. Beginning September 15, 1994, members were required to comply with new Section 46 of Article III of the NASD Rules of Fair Practice, regardless of whether automated repricing systems are available internally on proprietary systems or from outside vendors.

Currently, the Small Order Execution System (SOES™) limit-order file will “pend” an order (remove it from the automatic execution mode) when the security trades ex-dividend. Such orders are held and not executed until the member confirms or corrects the price. Orders not reconfirmed by the member are canceled. Effective September 15, 1994, members must reprice pended orders according to the rule.

For more information on order repricing, see Notice to Members 94-63 (August 1994). Direct any questions about this subject to Dorothy Kennedy, Assistant Director, Nasdaq Market Operations, at (203) 385-6243.
Arbitration

Uniform Filing Fee For Unspecified Arbitration Claims Gets NASD Nod; Needs SEC Approval

The NASD Board approved a National Arbitration Committee proposal to amend Sections 43(e) and 44(e) of the Code of Arbitration (Code) to increase the non-refundable filing fee for industry parties when submitting claims, disputes, or controversies that do not involve, disclose, or specify monetary relief. The proposed rule changes encourage specificity regarding the amount claimed by increasing the non-refundable fee for unspecified claims to $500. The SEC must approve the rule changes before they become effective.

Under present regulations, claim filing fees designate a $500 fee for all industry claims, but a party that does not disclose or specify monetary damages need submit only a nonrefundable $250 fee. Consequently, there has been an increase in circumstances where industry parties do not disclose the monetary amount of their claim, so that their fee is reduced to $250 from $500.

Education

Meeting Dates Set For March

NASD Sponsors Industry Training Seminar; Guidelines For Firm Element Get Underway

In November 1994, the NASD Board formally approved establishment of a structured continuing education requirement for the securities industry. Immediately thereafter, the NASD and five other self-regulatory organizations (SROs) filed rule proposals governing the continuing education program with the SEC. If approved by the SEC, the program will become effective July 1, 1995. Developed by the Securities Industry/Regulatory Council (Council), the training program is aimed at furnishing a continuing education program for securities industry professionals.

In anticipation of the program’s enactment, the Council is sponsoring a series of one-day seminars that will introduce members and others to details of the two-part plan. The program would establish a continuing education plan for securities industry professionals that would require uniform training on regulatory matters (Regulatory Element), and ongoing training programs tailored by firms to keep their employees current on job- and product-related specific subjects (Firm Element). Details about the Continuing Education Program Seminar to be held in four different cities on March 7, 9, 14, and 15 are available by calling (202) 728-6900.

Firm Element Guidelines
To help broker/dealers meet their responsibilities under the Firm Element of the Continuing Education Program, a subcommittee of the Council is drafting a guidebook. An early framework of the Firm Element Guidebook focuses on a specific needs analysis that firms must perform to properly develop and implement an annual training plan to educate covered registered persons. To help firms plan, develop, execute, and document training programs pursuant to the Firm Element, the Guidebook identifies several pertinent factors that will help all firms establish their training needs:

- Economic and market conditions, especially as they affect investment products/services offered.

- Existing and planned business initiatives, particularly new services, investment strategies, and their associated risks.

- Legal and regulatory developments.

- Input from the firm’s product development, compliance and legal, internal audit, trading, operations, and sales/marketing departments.

- Regulatory reviews, investigations, and disciplinary actions.

- Performance of covered associated persons in the Regulatory Element. (For more information about the Regulatory Element, see Regulatory and Compliance Alert, October 1994, page 14.)

Any additional questions about this subject may be directed to Frank J. McAuliffe, Vice President, Membership, at (301) 590-6694; or Daniel M. Siebens, Director, Regulatory Policy, at (202) 728-6911.
Violations

Two Principals Suspended: Fines Total $175,000

NASD Fines Citadel Funding For Violations Connected With Highly Leveraged Repo Transactions

The NASD took disciplinary action against The Citadel Funding Corp. (Citadel) of Denver, Colorado, and three of its principals, Robert I. Kessler (Kessler), Karen Haschenburger (Haschenburger), and Michael A.J. Farrell (Farrell) for violations involving highly leveraged repo transactions.

Pursuant to an Offer of Settlement in which the respondents neither admitted nor denied the allegations, Citadel, Haschenburger, and Farrell were fined $150,000, jointly and severally, and Kessler was fined $25,000. In addition, Haschenburger was suspended from association with any NASD member in any capacity for 15 days, as was Farrell for 30 days. Haschenburger and Farrell must requalify by examination.

The NASD found that Citadel, on six separate occasions, conducted a securities business but failed to maintain minimum financial standards required under federal net capital securities laws. Kessler and Haschenburger were found to be responsible for all of these violations, while Farrell was found responsible for one of the net capital violations.

In addition, the NASD determined that in connection with two of the net capital violations, Citadel, acting through Kessler and Haschenburger, failed to send prompt telegraphic notice of the violations to the SEC and the NASD. These net capital deficiencies resulted from the firm’s failure to accurately account for certain highly leveraged lending and borrowing transactions it used to finance its operations, and purchases of large amounts of securities by customers of its affiliate, Kessler-Ehrlich Investments, Inc. These borrowing and lending transactions, known as repurchase and reverse repurchase agreements (repos), involved transfer of large amounts of U.S. government and mortgage-backed securities to collateralize approximately $900 million in financing arrangements.

Additionally, the NASD found further violations in that Citadel, acting through Kessler, Haschenburger, and Farrell, maintained materially inaccurate books and records and filed inaccurate specialized financial FOCUS Reports with the NASD. Furthermore, Citadel, Kessler, and Farrell allowed Farrell to represent himself as president of Citadel and to act as a principal of the firm without being properly qualified.

“This NASD enforcement action is indicative of our commitment to focus our regulatory efforts on significant activity in highly leveraged financing arrangements and on the financial integrity of our member firms,” says Frank Birgfield, District Director of the NASD Denver District Office. “Based on the facts and findings in this matter, we believe the interests of the investing public are well served.”

Registered Representatives Must Disclose All Material Adverse Interests To Customers

When a registered representative recommends the purchase or sale of a stock to a customer, he or she must not only avoid affirmative misstatements, but must also disclose material adverse facts about which the salesperson is, or should be, aware. This includes disclosure of all so-called material adverse interests, including a self-interest, that could influence the salesperson’s recommendation or the customer’s decision to purchase or sell the security. (See In re Gilbert A. Zwetsch, Securities Exchange Act Release No. 30092, pages 3-4, December 18, 1991, 50 SEC Docket 812, 815-16.) In two recent NASD disciplinary actions, the NASD found that registered representatives failed to make necessary disclosures of material adverse interests to their customers.

In the first case (In re Michael A. Niebuhr, Complaint No. C02940011, October 19, 1994), an individual acted as both a trader and a registered representative and received free shares of a penny stock from his firm’s president. Niebuhr later sold a portion of those shares directly from his personal account to a retail customer without disclosing his material adverse interest. The National Business Conduct Committee affirmed the findings of the District Business Conduct Committee (DBCC) for District 2, that Niebuhr failed to disclose “that he was selling his own . . . stock at the same time he was recommending that the customer
purchase it; that the stock that would be used to fill the customer’s purchase order would be the same shares that he was selling; and that he was selling shares he had received from the firm’s president at no cost.”

The NASD found that Niebuhr’s lack of disclosure, especially given his zero-cost basis in the stock, to be a serious violation of Article III, Sections 1 and 18 of the NASD Rules of Fair Practice, and affirmed sanctions consisting of a censure, restitution of $4,414, a fine of $15,000, and a 90-day suspension in all capacities. Niebuhr appealed that decision to the SEC.

In the second case, the NASD’s DBCC for District 9 imposed sanctions against a former registered representative, Dale E. Barlage. Pursuant to a Letter of Acceptance, Waiver and Consent (AWC), Barlage consented to findings that he recommended and sold stock directly from his personal account to customers without disclosing his material adverse interest in that security, in violation of Article III, Sections 1 and 18 of the NASD Rules of Fair Practice.

In this instance, the NASD specifically alleged that Barlage failed to disclose: (1) that he was selling his personal holdings in a security at the same time he was recommending its purchase to customers; (2) that the customers’ purchase orders would be filled using shares crossed directly from his personal account; and (3) that he had acquired his shares from the daughter of the issuer’s president at a substantially discounted price. The NASD also alleged that Barlage made several fraudulent misrepresentations and price predictions to customers in connection with those sales.

Without admitting or denying the allegations, Barlage consented to findings and to the imposition of a censure, a fine of $200,000, and a permanent bar in all capacities.

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**COMPLIANCE SHORT TAKES**

Effective November 30, 1994, the SEC approved an NASD proposal requiring members to annotate their affirmative determinations regarding stock availability made in connection with short sales. The rule change amends the Prompt Receipt and Delivery of Securities Interpretation issued by the NASD Board of Governors under Article III, Section 1 of its Rules of Fair Practice. As amended, the Interpretation requires members to annotate their affirmative determinations as to stock availability that are required to be made when effecting short sales for their own proprietary account or the account of a customer.

This rule change will enable the NASD to more effectively examine with affirmative determination requirements. It also makes clear the NASD's long-standing policy that firms cannot rely on daily fax sheets of “borrowable stocks” to satisfy their affirmative determination requirements under this Interpretation. The annotation requirement precludes this practice because members now have to annotate the name of the person contacted and number of shares for each short sale. For more information, see Notice to Members 94-80 (November 1994). Questions regarding this subject should be directed to NASD Market Surveillance, at (301) 590-6080, or Thomas R. Gira, Assistant General Counsel, at (202) 728-8957.

The SEC approved an NASD rule proposal to require Consolidated Quotation System (CQS) market-maker participation in the Computer Assisted Execution System (CAES) and ITS/CAES effective October 31, 1994. The approval implements these rule changes concerning trading in exchange-listed securities by NASD market makers:

- All CQS market makers in Rule 19c-3 securities must register as ITS/CAES market makers.
- All CQS market makers in non-Rule 19c-3 securities must register as CAES market makers.
- All CQS market makers must input a minimum size of 500 shares in their quotations.
- All CQS market makers must abide by the excess spread parameters for CQS securities in Part V of Schedule D to the NASD By-Laws.
- All CQS market makers may enter principal orders into CAES.

These changes are intended to enhance the quality and liquidity of the markets provided by CQS market makers in exchange-listed securities, improve opportunities for customers to receive automated executions of their orders in the third market, and make the Intermarket Trading System (ITS) a more effective market-link mechanism in exchange-listed securities.

More detail about mandatory market-maker participation in ITS/CAES is in Notice to Members 94-81 (November 1994). Questions about this rule change should be directed to Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250, or

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Thomas R. Gira, Assistant General Counsel, at (202) 728-8957. Questions concerning the ITS/CAES Market Maker Application Agreement should be directed to Market Data Services at (301) 948-6162.

Effective November 25, 1994, the Board of Governors of the Federal Reserve System (Fed) adopted several amendments to Regulation T (credit by broker/dealers) regarding payment periods for government securities purchases and transactions. One amendment deletes references to a specific number of days in which customers must meet initial margin calls or make full cash payment for securities purchases; instead the amendment establishes that the “payment period” will be two business days beyond “the standard securities settlement cycle in the United States” as defined in SEC Rule 15c6-1.

Presently, standard settlement is five days after trade date and Regulation T requirements must be met in seven business days. There is no change until June 1, 1995, when SEC Rule 15c6-1 becomes effective. (Recent SEC action changed the effective date to June 5.) Then, the standard settlement period will be three business days (T+3) and payments required by Regulation T must be made in five business days. Broker/dealers are required to liquidate customer purchases if they have not received payment within the required time period. Currently, amounts of $500 or less are exempt from this requirement. The amendments to Regulation T increase this de minimis amount to $1,000.

Under certain circumstances, broker/dealers can obtain a time extension for a customer who has not made full cash payment or met an initial margin call within the payment period. Regulation T currently permits a broker/dealer to request these extensions from any self-regulatory organization. As amended, Regulation T requires that these extensions be granted only by a broker/dealer’s designated examining authority.

Among the changes to Regulation T are technical amendments to the language concerning cash accounts. These changes ensure that the time periods in which extensions must be obtained and when the “90-day freeze” may be lifted are consistent for certain transactions in which settlement exceeds the standard settlement period.

The changes to Regulation T include two amendments that affect transactions in government securities that:

- Exempt from Regulation T broker/dealers registered with the SEC solely as government securities broker/dealers (Section 15C broker/dealers).
- Create a new account for customers of general securities broker/dealers in which transactions in government securities may be effected and that is exempt from the other provisions of Regulation T.

For a detailed description of these amendments, see Notices to Members 94-53 (July 1994) and 94-89 (November 1994), and the October 25, 1994, Federal Register, which contains the Federal Reserve’s release adopting these changes. Questions about this subject may be directed to Derick Black, NASD Compliance Department, at (202) 728-8225.

The SEC recently approved proposed rules requiring broker/dealers to disclose to investors any payments they receive for order flow, including information about internalization of order flow, and affiliated practices.

Effective April 3, 1995, members will have to disclose to investors on their transaction confirmation receipts if the member received payment for the order flow of a security transaction. Comments on the proposal were due to the SEC by December 15. (See Release No. 34-34903 in the November 2, 1994, Federal Register.)

Effective November 1, 1994, transaction reports submitted to the NASD on Form T should be sent to the NASD Market Surveillance Department, 9513 Key West Avenue, Rockville, MD 20850-3389. Previously, these reports were sent to Nasdaq Market Operations in Trumbull, CT. This procedural change was filed for immediate effectiveness with the SEC on October 3, 1994, and is being incorporated into various trade-reporting rules.

For the first time, the North American Securities Administration Association (NASAA) published proposed revisions to Form U-4 and Form U-5 for public comment. The forms are being revised for implementation scheduled to coincide with the start up of the redesigned Central Registration Depository (CRD). See Notice to Members 94-74 (September 1994).

Member firms that expect to take internal disciplinary action against employees that also are subject to NASD disciplinary procedures should follow the NASD policy on suspensions to avoid conflicting suspension dates. An NASD-imposed suspension following a disciplinary review process is not effective until set by the NASD president and published in NASD Notices to Members, usually two
months after the action becomes final (see table below). Respondents, attorneys, or member firms may not negotiate suspension dates.

If a suspension is imposed as a sanction, it begins at the opening of business on the Monday after the 15th of the month in which it is published in NASD Notices to Members. If the suspension is stayed pending an appeal to the SEC, the disciplinary action is so noted.

<table>
<thead>
<tr>
<th>Disciplinary Action</th>
<th>When Final</th>
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<tbody>
<tr>
<td>Letter of Acceptance, Waiver, and Consent</td>
<td>After approval by NBCC and issuance by DBCC</td>
</tr>
<tr>
<td>Offer of Settlement</td>
<td>After approval by NBCC and issuance by DBCC</td>
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| DBCC Decision | 45 days from issuance, unless appealed |
| NBCC Decision | 30 days from issuance, unless appealed |

In Notice to Members 94-80, the NASD announced that the SEC approved an NASD rule change that amends the Prompt Receipt and Delivery of Securities Interpretation issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice. Specifically, the Interpretation, as amended, requires members to annotate their affirmative determinations as to stock availability, which is required when effecting short sales for their own proprietary account or the account of a customer. This rule change, scheduled to be effective last November 30, was postponed to January 9, 1995.

On October 28, 1994, the SEC approved an NASD proposal to include quotations from national securities exchanges in the calculation of excess spread parameters for CQS securities. Effective November 21, 1994, the maximum allowable spread for CQS securities is 125 percent of the average of the three narrowest market-maker spreads, and the average spread calculation will include quotations from national securities exchanges. Under earlier rules, market makers in CQS securities could not enter quotations in CQS securities that exceeded the NASD parameters for maximum allowable spreads. At that time, the maximum spread was 125 percent of the average of the three narrowest spreads in each security, with the limitation that the maximum allowable spread could never be less than one quarter of a point. That calculation method only factored in quotations disseminated by CQS market makers, without considering exchange-disseminated quotations. The NASD proposed this change so that the excess spread parameters for CQS securities would better reflect, and relate to, quotations by all market makers in such securities. Call Glen Shipway, Nasdaq Market Operations, at (203) 385-6250, if you have questions about this new procedure.

On November 9, 1994, the SEC approved amendments to MSRB Rule G-14, regarding reports of sales or purchases, and procedures for reporting inter-dealer transactions. The rule change should increase transparency in the municipal securities market through collecting and disseminating aggregate market data activity to public investors concerning price and volume information on such transactions.

In August, September, and October 1994, the NASD announced the following disciplinary actions against those 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

August Actions

Weldsboe Morgan Securities, Inc. (Los Angeles, California), Rene R. St. Pierre (Registered Representative, Meadow Valley, California), and Richard Anthony Lanni (Registered Principal, Los Angeles, California). The firm was fined $15,000 and Lanni was fined $10,000. In addition, the firm must submit a letter to the NASD describing steps it has taken to detect and prevent further violations. St. Pierre was fined $25,000 and suspended from association with any NASD member in any capacity for 30 days. The National Business Conduct Committee (NBCC) imposed the sanctions following review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that St. Pierre exercised effective control over the account of public customers and engaged in excessive transactions, commonly referred to as "churning." In the account. These transactions were unsuitable for the customers in view of the size and frequency of the recommended transactions; and the customers' financial situation and needs. In connection with such activities, the firm, acting through Lanni, failed to take the appropriate steps to enforce the firm's written supervisory procedures in the firm's Reno office to prevent the violations alleged, and to otherwise supervise St. Pierre.

September Actions

Reynolds Pamp Anjun (Registered Representative, Pittsburg, California) was fined $5,000, barred from association with any NASD member in any capacity, and required to pay $2,587.31 in restitution to a member firm. The sanctions were based on findings that Anjun received from two public customers funds totaling $2,587.31 intended for the purchase of insurance but, instead, misappropriated and converted the funds to his own use and benefit.

Donald Marquis Bickerstaff (Registered Representative, San Anselmo, California) was fined $30,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the action following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bickerstaff forged a customer's signature on insurance policy change and rein

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Michael Richard Jacks (Representative, San Francisco, California) was found guilty of embezzlement pursuant to which he was fined $28,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Jacks consented to the described sanctions and to the entry of findings that he engaged in unauthorized securities transactions in the accounts of a custodian without the customer's prior knowledge and consent. The findings also stated that Jacks agreed with customers to make up losses suffered in their accounts without the knowledge of his firm's member.

Sharon Marie Smith (Representative, San Francisco, California) was fined $26,000, barred from association with any NASD member in any capacity, and ordered to pay $1,000 in costs to a participant or member firm. The sanctions were based on findings that Smith received $13,000 from a public customer to purchase stock but failed to itemize $1,000 of fees charged. In addition, Smith failed to respond to NASD requests for information.

Steve C. Wang (Representative, San Francisco, California) was fined $2,000, suspended from association with any NASD member in any capacity for one year, and required to return his earnings by examination before becoming associated with any NASD member following the suspension. The sanctions were based on findings that Wang failed to respond to NASD requests for information in a timely manner.

August Actions

Joseph P. Christian (Representative, Stayton, Oregon) was fined $70,000, barred from association with any NASD member in any capacity, and ordered to return $13,500 to a customer to settle the charge of diverting ill-gotten gains in the amount of $30,359. The sanctions were based on findings that Christian offered and sold one-person nominee accounts as representation for shares of the stock of a member firm acquired from a public customer and caused a false report to be filed with the SEC.

Findley H. Marsh (Representative, Irvine, California) submitted in lieu of an Offer of Settlement pursuant to which he was fined $5,200, suspended from association with any NASD member as a direct participation program principal for six months, and ordered to respond to examination in any principal capacity that he had been associated with a securities firm or that he had engaged in securities business without engaging in a principal capacity or having passed a qualification examination for principal.

September Actions

October Actions

Allen Dewey Hawkins (Representative, Rancho Palos Verdes, California) was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. The objection to the sanctions was based on findings that Hawkins did not engage in unauthorized securities transactions in the accounts of public customers.

August Actions

Michael Scott Azrat (Representative, Portland, Oregon) was fined $40,000 and barred from association with any NASD member in any capacity. In addition, Azrat paid $5,100 in restitution to a public customer. The sanctions were based on findings that Azrat engaged in unauthorized securities transactions in the accounts of a public customer.

Joan Elisa Carter (Representative, Murray, Utah) was fined $60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carter submitted to her member firm five facsimile applications for the purchase of five securities products.

Cary Daniels Clark (Representative, Frisco, Colorado) was fined $80,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Clark submitted to her member firm five facsimile applications for the purchase of five securities products.

First Inland Securities, Inc. (Spokane, Washington) and Glenn Lamaye Otmar (Representative, Spokane, Washington) were fined $5,000, jointly and severally, and required to pay, jointly and severally, restitution of $28,925.70 to public customers. In addition, Otmar was required to pay restitution as a general securities principal. The SEC imposed the sanctions following an appeal of an April 1993 NASD decision. The sanctions were based on findings that the firm, acting through Otmar, effected 14 sales of common stock at unfair prices, taking into consideration all relevant factors in that sales resulted in marks from 14 to 57 percent over the firm's contemporaneous cost.

Joseph Steven Giordano, Jr. (Representative, Seattle, Washington) was fined $15,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Giordano consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Interpretation with respect to Free-Riding and Withholding, Giordano purchased the proceeds of an authorized sale of stock to purchase another security when he was instructed to distribute the funds to the customers.
offerings that immediately traded at a premium in the secondary market. According to the findings, Gowand personnel misstated these transactions by retaining about $5,542 of the profits generated from these transactions.

Traci Lynn Gramenz (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which she was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gramenz consented to the described sanctions and to the entry of findings that she solicited a customer to purchase shares of securities and instructed the customer to wire her member firm’s clearing firm, FCA. Gramenz represented to the customer that the funds would be credited to the account of another customer of the firm and that the shares would be transferred into the appropriate account upon receipt of payment. Contrary to the representations made to the customer, the NASD found that Gramenz failed to transfer the shares to the customer’s account. The findings also stated that Gramenz failed to respond to NASD requests for information.

Robert Hultb (Registered Principal, Phoenix, Arizona) and Cary DePriest (Registered Principal, Phoenix, Arizona) was fined $1,500 jointly and severally, with a former member firm, and jointly and severally with the firm required to pay $42,246.75 in restitution to customers. In addition, DePriest is disqualified for examination as a securities principal. The firm also received a fine of $1,000.

Lea F. Pisko (Registered Principal, Safford, Arizona) and Amy L. Fosgreen (Registered Representative, Mesa, Arizona) was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $181,000 in restitution to customers. Fosgreen was barred from association with any NASD member in any capacity.

Jon Gurne Nevers (Registered Principal, Scottsdale, Arizona) was fined $2,500 and barred from association with any NASD member in any capacity. The firm also received a fine of $5,000 and was required to pay $181,000 in restitution to customers. Nevers also consented to the described sanctions and to the entry of findings that he solicited a customer to purchase shares of securities and instructed the customer to wire a co-conspirator. The firm also received a fine of $100,000.

Michael Ben Lavigne (Registered Principal, Spokane, Washington) was fined $10,000 and barred from association with any NASD member in any capacity. The firm also received a fine of $100,000.

John S. Watson (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for one year or until the fine is paid, whichever is longer. Without admitting or denying the allegations, Watson consented to the described sanctions and to the entry of findings that he solicited a customer to purchase securities and instructed the customer to wire a co-conspirator. The firm also received a fine of $5,000.

Stephan House Herron (Registered Principal, Bellevue, Washington) was fined $120,000 and barred from association with any NASD member in any capacity. The firm also received a fine of $120,000.

Klaus Langheinrich (Registered Representative, Murray, Utah) was fined $40,000 and barred from association with any NASD member in any capacity. The firm also received a fine of $40,000.

Michael Gregory Sweney (Registered Representative, Spokane, Washington) was fined $100,000. The firm also received a fine of $100,000.

The findings also stated that Bausman received $143,000 from the same customer and represented that in return for the use of these funds he would provide the customer with 1% of the trading profits in the account ($10,000) and that the $143,000 would be returned. The NASD also determined that the $143,000 was used by Bausman to repay a loan he had taken out with another individual and was never returned to the customer. In addition, the NASD determined that Bausman engaged in insider trading in the securities of companies with which he was associated or from whom he solicited funds.

Franklin-Lord, Inc. (Scottsdale, Arizona) and John E. Catcath (Registered Principal, Scottsdale, Arizona). The firm was fined $20,000 and suspended from NASD membership for 12 months. Catcath was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days, and ordered to pay $5,000 in restitution to customers. The firm also received a fine of $5,000.

Stuart J.D. Mills (Registered Principal, Englewood, Colorado) was fined $10,000 and suspended from association with any NASD member in any capacity for one year. In addition, Mills must repay $5,000 in restitution to customers. The firm also received a fine of $5,000.

The findings also stated that Bausman received $143,000 from the same customer and represented that in return for the use of these funds he would provide the customer with 1% of the trading profits in the account ($10,000) and that the $143,000 would be returned. The NASD also determined that the $143,000 was used by Bausman to repay a loan he had taken out with another individual and was never returned to the customer. In addition, the NASD determined that Bausman engaged in insider trading in the securities of companies with which he was associated or from whom he solicited funds.
ranging from 23.08 to 40 percent of the total price paid by customers. Moreover, Mills failed to disclose to his customers that those prices were unfair and unreasonable.

Jeffrey Michael Pieper (Registered Representative, Thousand, Oregon) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pieper consented to the described sanctions and to the entry of findings that he signed a customer's name on a company proceeds check made payable to the customer in the amount of $2,026.56 and deposited the check into his own bank account.

Ratliff Securities, Inc. (Phoenix, Arizona) and John D. Ratliff, Sr. (Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which they were fined $5,000, jointly and severally, and Ratliff was required to qualify by examination as a direct participation program principal or cease to function in that capacity until he successfully requalifies. In addition, the firm was suspended from NASD membership and Ratliff was suspended from association with any NASD member in any capacity. Without admitting or denying the allegations, Ratliff consented to the described sanctions and to the entry of findings that he failed to properly supervise an employee, $1,497.60 to his firm for reimbursement on the return of a machine and converted $675.44 to his own use and benefit.

September Actions

Rick D. Althoff (Registered Representative, Yankton, South Dakota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegation, Althoff consented to the described sanctions and to the entry of findings that he misappropriated $10,228.29 and endorsed the checks to an account that was used to fund three disability policies without the customer's knowledge or consent. The NASD also found that Althoff forged customer names to numerous insurance documents.

Robert Joseph Suenlentrop (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $42,500, suspended from association with any NASD member in any capacity for five years, and required to pay $25,000 in restitution. Without admitting or denying the allegation, Suenlentrop consented to the described sanctions and to the entry of findings that, in contravention of the SEC's Free-Riding and Wrongful Interpretation, he sold shares of a "hot" issue to restricted persons. Suenlentrop's suspension commenced September 12, 1994.

October Actions

Mark Allen Elliott (Registered Representative, Independence, Missouri) was fined $7,700 and suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of a June 1993 NASBIC decision. The sanctions were based on findings that Elliott failed to respond to NASD requests for information concerning a customer complaint.

Edward C. Faris, II (Registered Principal, Excelsior, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and suspended from association with any NASD member in any capacity. Without admitting or denying the allegations, Faris consented to the described sanctions and to the entry of findings that he made written representations to a public customer concerning the purchase of securities in which he made price predictions, without having a reasonable basis.

Shearson Lehman Brothers, Inc. n/k/a Lehman Brothers Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was fined $10,000 without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it misused customer funds in the amount of $5,000, accepted them as investment in a life insurance policy and failed to apply the funds as required or return the funds to the public customer. Furthermore, the NASD found that Arboagot failed to exercise reasonable care in selecting and supervising a registered representative and failed and neglected to establish, maintain, and enforce proper supervisory procedures governing the handling of public customer funds. In addition, the NASD determined that Arboagot accepted two $10,000 cash payments from public customers, which were not approved by the firm as desirable life insurance policies and failed to file the required currency reports for the receipt of cash in the amount of $10,000 or more from a customer.

Raymond B. Caboon (Registered Representative, Tuscaloosa, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $125,000, barred from association with any NASD member in any capacity, and ordered to demonstrate that full restitution of at least $18,000 has been made to the appropriate parties. Without admitting or denying the allegations, Caboon consented to the described sanctions and to the entry of findings that he signed a public customer's name to documents in connection with the handling of her account without the customer's knowledge or consent. Furthermore, the NASD found that Caboon converted about $158,391.16 to his own use and benefit by causing checks to be drawn on annuities owned by the same customer and depositing them into his personal checking account, without the customer's knowledge or consent. In addition, the findings stated that Caboon failed to respond to NASD requests for information.

Kenneth R. Jew, Jr. (Registered Representative, Jackson, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Jew consented to the described sanctions and to the entry of findings that he signed the names of two public customers to a margin agreement in an attempt to accommodate the customers, but without their knowledge or consent.

In addition, the NASD found that Jew engaged in margin purchase transactions in the joint account of the same customers without having reasonably determined that this purchase was suitable for the customers on the basis of their financial situations, investment objectives, and needs.

James R. Hill (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000, suspended from association with any NASD member in any capacity for one month, and required to qualify by examination as a general securities representative. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that he executed a discretionary sale transaction in the account of a public customer without the customer's knowledge or consent. The findings also stated that Hill executed a trade in the same account on the order of the customer's husband, without obtaining a third party power of attorney to take such directions.

Furthermore, the NASD found that Hill sent correspondence to a public customer wherein he proposed creating the customer's account in connection with losses incurred. In addition, the NASD determined that Hill sent correspondence to the same customer that led the customer to believe that he would be repaid for trading losses of $1,476, thereby sharing in the losses in the account. Furthermore, this correspondence was not approved by a principal of Hill's member firm. The findings further stated that Hill failed to respond to a timely manner to NASD requests for information.

Mark R. Loft (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $17,500 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Loft consented to the described sanctions and to the entry of findings that, in an attempt to circumvent sales charges, he falsified public customers' bank account data. The findings also stated that Loft knowingly provided false and misleading information in correspondence sent to a public customer regarding the current market value of the customer's portfolio. Furthermore, the NASD found that Loft failed to obtain prior approval from his member firm before transacting the written information in the correspondence. In addition, the NASD determined that Loft recommended and engaged in purchase and sale transactions in the

August Actions

Gary E. Arbogast (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 90 days. The NBCC imposed the sanctions following review of a Kansas City NBCC decision. The sanctions were based on findings that, without the knowledge or consent of a public customer, Schieler falsified a money market statement of another customer by changing the name and address of the firm customer. Schieler then sent the falsified statement to the first customer to cover his losses sustained in the account.
account of the aforementioned customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation, investment objectives, and needs. The findings further stated that Lewis exercised discretion in the customer's account without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Sherry Lynn Parman (Representative, Greenville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Parman consented to the described sanctions and the entry of findings that she made material misrepresentations orally and through newspaper advertisements concerning the rate of return on variable annuity products to public customers to induce them to invest in variable annuities. The findings also stated that Parman failed to include in the advertisements necessary data, including the name of the member and failed to obtain prior written approval from her member firm for the placement of the advertisements.

Furthermore, the NASD found that Parman obtained a cashier's checks totaling $6,612.30 and deposited such checks into the customers' accounts, thereby increasing in their accounts. In addition, the NASD determined that Parman forced the public customers' signatures on hand-written checks in a manner that the cashier's checks were signed by her deposited into the customers' annuity accounts.

Kevin W. Roberts (Registered Principal, Biloxi, Mississippi) was fined $50,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Roberts executed unauthorized transactions in the account of a public customer without the customer's knowledge or consent. In addition, Roberts failed to respond to the aforementioned transactions on the books and records of his member firm.

Harold S. Simpson, Sr. (Representative, Jackson, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Simpson consented to the described sanctions and to the entry of findings that he deposited a $25,575 check into the account of a public customer to compensate for losses that were incurred in the customer's account. The NASD also found that Simpson sought commissions from the same customer on the brokerage of his member firm without having obtained prior approval of the correspondence by a principal of the firm. In addition, the findings stated that Simpson received a personal check from the same customer but he failed and neglected to refer the complaint to his branch office manager.

Sherwood A. Taylor (Representative, Naselle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $300,000, barred from association with any NASD member in any capacity, and ordered to pay $25,000 in restitution to his member firm. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

In addition, the NASD determined that Taylor recommend ed the purchase and sale transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customer on the basis of their financial situations, investment objectives, and needs. The findings further stated that Taylor made payments disbursed from his personal funds, to a public customer to reimburse the customer for losses incurred in her accounts.

Joey Wade Whiteide (Registered Representative, McAlester, Oklahoma) submitted an Offer of Settlement pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $300,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Whiteide consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers without providing prior written notice to his member firm. The NASD also found that Whiteide failed to make complete and timely payments to investors in accordance with the terms of promissory notes he issued to public customers. In addition, the findings stated that Whiteide failed to respond adequately to NASD requests for information.

September Actions

Hamid R. Daneshy (Associated Person, Oklahoma City, Oklahoma) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Daneshy consented to the described sanctions and to the entry of findings that he violated testing procedures by bringing written materials with him into the testing area for the purpose of assisting him on the examination.

Gary L. Fogleman (Registered Representative, Knoxville, Tennessee) was fined $30,000, barred from association with any NASD member in any capacity, and required to pay $4,500 in restitution to his member firm. The sanctions were based on findings that Fogleman 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. Fogleman also misrepresented to the same customer the net equity value of the customer's account and failed to respond to NASD requests for information.

Robert J. Francis (Registered Representative, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which he was fined $12,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Francis consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior written notice to and approval from his member firm.

In addition, the findings stated that Fogleman failed to respond timely to NASD requests for information.

Charles L. Lawlessen (Associated Person, Corbin, Kentucky) submitted an Offer of Settlement pursuant to which he was fined $12,500 and suspended from association with any NASD member in any capacity, and required to pay $41,556 in restitution. Without admitting or denying the allegations, Lawlessen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions from public customers totaling $41,556 for the purchase of variable insurance products, money market certificates, and a variable annuity product. The NASD also determined that Lawlessen converted the funds to his own use and benefit without the customer's knowledge or consent.

Gregory E. Opara-nadi (Registered Representative, Jackson, Mississippi) was fined $225,000, barred from association with any NASD member in any capacity, and required to pay $6,458 in restitution to a former customer.

The sanctions were based on findings that Opara-nadi received a $4,000,000 check from a public customer to be the beneficiary of a public customer. The check was intended for the purchase of a life insurance policy but Opara-nadi converted the funds to his own use and benefit without the customer's knowledge or consent.

Richard D. Whitman (Registered Representative, Knoxville, Tennessee) submitted a Letter of Acceptance. Without admitting or denying the allegations, Whitman consented to the described sanctions and to the entry of findings that he executed three unauthorized transactions in the account of public customers without their knowledge or consent. In addition, the findings stated that Whitman executed the account of public customers without obtaining prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm.

October Actions

William H. Cantrell (Registered Representative, Shreveport, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cantrell consented to the described sanctions and to the entry of findings that he offered to sell unregistered securities in violation of Section 5 of the Securities Act of 1933. In addition, the findings stated that Cantrell engaged in private securities transactions without prior written notice to his member firm.

Devon Resources Financial Corporation (Tulsa, Oklahoma), Catherine W. Yes (Registered Principal, Tulsa, Oklahoma), Jeffrey A. Haver (Registered Representative, Ontario, Canada), and James M.C. Haver (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which they were fined $15,000 jointly and severally. In addition, the findings stated that the defendants engaged in private securities transactions without prior written notice to their member firm.

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

Ricky Lee Grady (Registered Representative, Jackson, Tennessee) was fined $15,000, barred from association with any NASD member in any capacity, and ordered to pay $3,000 in restitution to his former member firm. The sanctions were based on findings that Grady signed the names of two public customers to checks issued to them by his member firm, deposited the checks into his personal bank account, thereby converting the funds to his own use and benefit without the customers' knowledge or consent.

Gary D. Hamby (Registered Representative, Louden, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $105,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hamby consented to the described sanctions and to the entry of findings that he deposited the funds in his personal account, thereby converting the funds to his own use and benefit without the customers' knowledge or consent.

In addition, the findings stated that Hamby submitted a completed application along with a cashier's check in the amount of $1,513.30 to purchase a variable life insurance policy on behalf of a public customer. Hamby then signed the customer's name to the application without the knowl-
edge or consent of the customer and received $2,360.75 in commissions to which he was not entitled.

Masters Financial Group, Inc. (Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required minimum net capital.

Herbert B. Moriarty, III (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for 6 months. Without admitting or denying the allegations, Moriarty consented to the described sanctions and to the entry of findings that he signed the names of four public customers to three requests for account transfer without the knowledge or consent of the customers.

Fred C. Smith (Registered Representative, Tupelo, Mississippi) submitted an Offer of Settlement pursuant to which he was fined $350,000, barred from association with any NASD member in any capacity, and required to pay $134,700 in restitution to the appropriate parties. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he used NASD funds to finance fictitious stock transactions. Furthermore, the NASD found that Smith provided letters to individuals wherein he characterized them against losses in their investment portfolios. In addition, the NASD determined that Smith engaged in sales of securities to public customers, and failed and neglected to become properly registered with the NASD as a general securities representative prior to engaging in such acts. Also, the findings stated that Smith failed to respond to NASD requests for information.

District 6—Texas

August Actions

FEC Securities Corporation (Dallas, Texas) and Earl Carter Bills, II (Registered Principal, Dallas, Texas) submitted an Offer of Settlement pursuant to which they were fined $5,000, jointly and severally. The firm was also expelled from NASD membership. Bills was suspended from association with any NASD member in any capacity for one year and required to report to NASD for a period of one year. Without admitting or denying the allegations, Bills suspended from association with any NASD member in any capacity, and disqualified from serving in any capacity with any NASD member. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Bills, failed to report as a broker-dealer, as required by NASD, to the SEC. The findings also stated that the firm, acting through Bills, failed to maintain its minimum required net capital and failed to promptly forward for deposit into an escrow account at least 10 customer checks. In addition, the NASD determined that the firm, acting through Bills, failed to maintain customer funds as an escrow account over which the respondents had no control or to which the respondents had no direct access. The findings further stated that the firm, acting through Bills, deposited and withdrew funds on the same date from escrow accounts while continuing to sell units of the limited partnerships to its customers, and failed to file accurate FOCUS Part IIA reports.

Gerald Thomas Nolan (Registered Representative, Dallas, Texas) was fined $5,000 and suspended from association with any NASD member in any capacity, and ordered to pay $18,750 in restitution to his son. The sanctions were based on findings that Nolan made improper use of customer funds by using a Letter of Acceptance, Waiver, and Consent to the NASD to obtain a loan on his customer’s life insurance policy and by making an unauthorized loan on the same policy, thereby converting the proceeds of both transactions to his personal use and benefit. In addition, Nolan failed to respond to NASD requests for information.

Sunpoint Securities, Inc. (Longview, Texas) and Van R. Lewis, III (Registered Principal, Longview, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were fined $40,000, jointly and severally. The firm was also suspended from NASD membership for five business days. Lewis was barred from association with any NASD member as a financial and operations principal and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm, acting through Lewis, was conducting a securities business while having a net capital deficiency and failed to keep current its required books and records. The findings also stated that the firm, acting through Lewis, filed materially inaccurate FOCUS reports and failed to file its FOCUS Part IIA report within the required time by SEC Rule 17a-5.

Furthermore, the NASD found that the firm, acting through Lewis, inaccurately stated its accounts receivable and accounts payable in its annual reports. In addition, the NASD stated that the firm, acting through Lewis, failed to maintain its minimum required net capital. James Harvey Thornton (Registered Principal, Houston, Texas) submitted an Offer of Settlement pursuant to which he was fined $5,000, jointly and severally, with a member firm and suspended from association with any NASD member in a principal capacity for three days. Without admitting or denying the allegations, Thornton consented to the described sanctions and to the entry of findings that while acting on behalf of a member firm, he failed to maintain its books and records and placed an advertisement offering to sell certain securities by way of a private placement and invited accredited investors to a meeting sponsored by the firm and the president of the potential issuer of such securities, thereby failing to comply with Section 5 under the Securities Act of 1933.

The findings also stated that Thornton, on behalf of the same member firm, failed to maintain a copy of one of two advertisements. In addition, the NASD determined that Thornton, on behalf of the same member firm, allowed off-site retirement investment group representatives of the firm located at branch offices not registered with the NASD to use firm letterhead that failed to meet NASD requirements. Furthermore, the NASD found that the same member firm, acting through Thornton, failed to file amended Form U-5 to disclose a state investigation and a customer complaint against two employers of the firm.

September Actions

Mark Bachik (Registered Principal, Addison, Texas) was fined $10,000 to which he was fined $12,040. Without admitting or denying the allegations, Bachik consented to the described sanctions and to the entry of findings that he recommended the purchases of securities to public customers without having reasonable grounds for believing that the transactions were suitable for the customers.

Douglas Terrell Fonteno (Registered Principal, Dallas, Texas) was fined $126,244, barred from association with any NASD member in any capacity, and ordered to pay $58,000 in restitution to a public customer. The sanctions were based on findings that Fonteno made misrepresentations and omissions of material facts in offering and selling a common stock. Fonteno also failed to give written notice to his member firm, after the acquisition of the aforementioned stock and his ownership of and employment by another member firm. Furthermore, Fonteno executed unauthorized securities transactions in the accounts of two customers and made misrepresentations of material facts concerning such transactions to the customers.

In addition, Fonteno issued two checks to his member firm’s clearing firm in payment of securities transaction and the checks were returned unpaid by his bank. Fonteno also recurred securities and options transactions to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer. Fonteno failed to respond to NASD requests for information.

October Actions

Randall Frank Franks (Registered Representative, Cypress, Texas) was fined $100,000, barred from associating with any NASD member in any capacity, and required to pay $78,045 in restitution to public customers of his member firm. The sanctions were based on findings that Franks received seven checks totaling $78,045 from public customers for investment purposes. Without the knowledge, consent, or authorization of the customers, Franks endorsed and deposited the checks in bank accounts he controlled and personally used, thereby converting said funds to his own personal use and benefit. In addition, Franks failed to respond to NASD requests for information.

Julia Gail Friino (Registered Representative, Gilmer, Texas) was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $5,291 in restitution to public customers or her member firm. The sanctions were based on findings that Friino received from public customers checks totaling $5,921 for insurance premium payments, endorsed the checks, and converted the funds to her own personal use and benefit. In addition, Friino failed to respond to NASD requests for information.

Richard Earl Scholl (Associated Person, Dallas, Texas) was fined $26,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Scholl engaged in securities transactions outside the regular course or scope of his association with his member firm and failed to provide written notice of these securities transactions or obtain approval from his member firm.

R. Anderson Cain (Registered Principal, Greensboro, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from associating with any NASD member in any capacity. Without admitting or denying the allegations, Cain consented to the described sanctions and the entry of findings that he recommended the purchases of securities to public customers while failing to comply with the customer conduct rules.

Joe A. Collazo (Registered Representative, Gayyuma, Puerto Rico) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collazo consented to the described sanctions and the entry of findings that he recommended the purchases of securities to public customers while failing to comply with the customer conduct rules.

Dori Edelman (Registered Representative, N. Miami Beach, Florida) and Alvin Baer Epstein (Registered Principal, Hollywood, Florida) submitted an Offer of Settlement pursuant to which Edelman was fined $15,000 and suspended from association with any NASD member in any capacity for 20 business days. Epstein was fined $5,000 and suspended from association with any NASD member in any principal capacity for 20 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and the entry of findings that Edelman recommended numerous transactions in eight customer accounts that were excessive in view of the nature of the securities involved and for which she did not have reasonable grounds for believing that the transactions were...
suitable for said customers. The NASD also found that Epstein failed to adequately supervise Edeleanu’s securities sales activities.

First Continental Corporation (Old San Juan, Puerto Rico) was fined $30,000. The sanction was based on findings that the firm conducted a securities business while failing to maintain its required minimum net capital. The firm also failed to maintain and keep current and accurate its books and records and filed materially inaccurate FINCUS Parts I and IIA reports. In addition, the firm failed to file its annual audited financial report in a timely manner and failed to establish and maintain written supervisory procedures.

Robert F. Franke (Registered Principal, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Franke consented to the entry of findings that he purchased and sold shares of common stock in the securities accounts of public customers without their knowledge or authorization. The NASD also found that Franke failed to maintain a checkbook register of all checkable deposits to the benefit of the customer against loss on his purchase.

Raymond J. Gibbs (Registered Representative, Ocala, Florida) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Gibbs received from a public customer $7,100 in deferred compensation for the purchase of shares of a common stock but, instead, converted the funds to his own use and benefit. In addition, the findings stated that Gibbs prepared and presented to a public customer a letter wherein he guaranteed the customer against loss on his purchase.

Luc Investors Services Corporation (Bethesda, Maryland) and John Ernest Lux (Registered Principal, Bethesda, Maryland) submitted an Offer of Settlement pursuant to which they were fined $100,000, jointly and severally, and ordered to pay $10,191 in restitution to investors. In addition, the firm was expelled from NASD membership and Lux was suspended from association with a new NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the entry of findings that, without the knowledge or authorization of officers of member firm, he drafted checks in the amount of $7,100 from the personal bank account of his member firm and converted the funds to his own use and benefit.

Juli R. Quintana (Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quintana consented to the entry of findings that, without the knowledge or authorization of officers of member firm, he drafted checks in the amount of $7,100 from the personal bank account of his member firm and converted the funds to his own use and benefit.

Ramiro Jose Sugranes (Registered Representative, Miami, Florida) was fined $16,985.88 and suspended from association with any NASD member in any capacity for three months. The NICB imposed the sanctions following an appeal of an Atlanta DBRC decision. The sanctions are based on findings that Sugranes provided an institutional customer with a letter in which he falsely stated that a certificate of deposit the customer had purchased was backed by a letter of credit from a bank. Sugranes provided the same letter to a public customer against loss regarding the sale of a stock that the customer had purchased through him.

Scott Michael Symons (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,738.29 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Symons consented to the entry of findings that he misappropriated $928.50 to public customers, and required to repay by examination before acting in the capacity of a general securities representative. The sanctions were based on findings that Thomas effected transactions in the accounts of public customers without their knowledge or consent.

September Actions

Kevin Michael Thomas (Registered Representative, Deerfield Beach, Florida) was fined $10,000, ordered to disgorge $928.50 to public customers, and required to repay by examination before acting in the capacity of a general securities representative. The sanctions were based on findings that Thomas effected transactions in the accounts of public customers without their knowledge or consent.

October Actions

District 8—Illinois, Indiana, Michigan, part of update New York (the counties of Livingston, Monroe, and Steuben, and the remainder of the state west of such counties), Ohio, and Wisconsin

August Actions

Steward Ross Moscot (Registered Representative, Rochester, New York) and David James Whittaker (Registered Principal, Rochester, New York) submitted an Offer of Settlement pursuant to which they were fined $5,000 and suspended from association with any NASD member in any capacity for five business days. Whittaker was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the entry of findings that Moscot, Whittaker, and another defendant, entered into a written unauthorized withdrawal agreement with a customer. The findings also stated that, in connection with the aforementioned action, Moscot and Whittaker submitted false or misleading documents to Whittaker and to the issuer of the securities. In addition, the NASD found that Whittaker failed to adequately supervise the activities of his branch office.

The findings stated that the firm, acting through Lux, failed to file its annual audited financial report within the time period prescribed by Rule 1a-5 under the Securities Act of 1933. The NASD additionally found that the firm, acting through Lux, employed about 28 registered persons in violation of its restriction agreement with the NASD. In addition, the firm, acting through Lux, participated in the sale of securities of a bad-egg offering, however, the offering circular did not disclose that the minimum offering amount could be satisfied through purchases by parties affiliated with the escrow agent and was not amended during the offering period to so disclose, in contravention of Exchange Act Rule 10b-5. Also, the findings stated that the firm, acting through Lux, failed to return the escrowed funds to the subscribers at the end of the offering period, but rather released the funds to the issuer. The NASD also determined that the firm, acting through Lux, engaged in a manipulative, deceptive, or fraudulent device or course of conduct in connection with the sale of securities.

McCarley and Associates, Inc. (Greenville, South Carolina) and Harold C. McCarley, Jr. (Registered Principal, Greenville, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $100,000, jointly and severally, and ordered to pay $720,224.19, jointly and severally in restitution to a member firm and 200 public customers. In addition, McCarley and Associates, Inc. was expelled from NASD membership and McCarley was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the entry of findings that, acting through McCarley and Associates, Inc., they solicited funds from investors and transferred the funds to the benefit of the firm.

Juli R. Quintana (Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quintana consented to the entry of findings that, without the knowledge or authorization of officers of member firm, he drafted checks in the amount of $7,100 from the personal bank account of his member firm and converted the funds to his own use and benefit.

Ramiro Jose Sugranes (Registered Representative, Miami, Florida) was fined $16,985.88 and suspended from association with any NASD member in any capacity for three months. The NICB imposed the sanctions following an appeal of an Atlanta DBRC decision. The sanctions are based on findings that Sugranes provided an institutional customer with a letter in which he falsely stated that a certificate of deposit the customer had purchased was backed by a letter of credit from a bank. Sugranes provided the same letter to a public customer against loss regarding the sale of a stock that the customer had purchased through him.

Scott Michael Symons (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,738.29 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Symons consented to the entry of findings that he misappropriated $928.50 to public customers, and required to repay by examination before acting in the capacity of a general securities representative. The sanctions were based on findings that Thomas effected transactions in the accounts of public customers without their knowledge or consent.

Kevin Michael Thomas (Registered Representative, Deerfield Beach, Florida) was fined $10,000, ordered to disgorge $928.50 to public customers, and required to repay by examination before acting in the capacity of a general securities representative. The sanctions were based on findings that Thomas effected transactions in the accounts of public customers without their knowledge or consent.

Steward Ross Moscot (Registered Representative, Rochester, New York) and David James Whittaker (Registered Principal, Rochester, New York) submitted an Offer of Settlement pursuant to which they were fined $5,000 and suspended from association with any NASD member in any capacity for five business days. Whittaker was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the entry of findings that Moscot, Whittaker, and another defendant, entered into a written unauthorized withdrawal agreement with a customer. The findings also stated that, in connection with the aforementioned action, Moscot and Whittaker submitted false or misleading documents to Whittaker and to the issuer of the securities. In addition, the NASD found that Whittaker failed to adequately supervise the activities of his branch office.

September Actions

David Lawrence Burgess, Jr. (Registered Representative, Warren, Michigan) was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Burgess failed to provide written notice to or obtain written approval from his member firm prior to engaging in private securities transactions with a public customer. In addition, Burgess failed to respond to NASD requests for information.

Stephen A. Corbett (Registered Principal, Hamburg, New York) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Corbett failed to provide written notice to or obtain written approval from his member firm prior to participating in private securities transactions.

Brett C. Daniels (Registered Representative, Kokomo, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000, barred from association with any NASD member in any capacity, and required to submit proof of restitution of $2,000 to a member firm with any future application for association with any member firm. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he obtained a $2,000 check made payable to a public customer with instructions to deposit the funds to the customer’s account. The findings stated that Daniels failed to follow the customer’s instructions, signed and deposited the check in a checking account for which he was the beneficial owner, and used the funds for some purpose other than the benefit of the customer. The NASD also determined that Daniels failed to respond to NASD requests for information.

Gardner Rich & Company (Chicago, Illinois) and Christopher P. Gardner (Registered Principal, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $50,000, jointly and severally. In addition, Gardner was suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gardner, failed to obtain the Form U-5 filed by the individual’s previous employer, with any amendments thereto, within 60 days following the individual’s filing of his application for registration with Gardner Rich & Company. The findings also stated that the firm, acting through Gardner, failed to comply with the terms of its restrictive agreements with the NASD by maintaining a branch office.

Michael W. Koper (Registered Representative, North Street, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for one year, and required to repay by examination before becoming associated with any NASD member firm. Without admitting or denying the allegations, Koper consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice of his intention to engage in such activities to his member firm.
October Actions

Donna J. Beatty (Registered Representative, Dayton, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $5,000, barred from association with any NASD member in any capacity, and required to provide proof that restitution was paid. Without admitting or denying the allegations, Beatty consented to the described sanctions and to the entry of findings that she misappropriated insurance customers’ funds totaling $60,000.

Roger D. Hanna (Registered Representative, Girdard, Ohio) submitted an Offer of Settlement pursuant to which he was fined $3,200, suspended from association with any NASD member in any capacity for five business days, and required to retire and pass the Series 6 examination. If Hanna does not qualify within 90 days, he will remain suspended until he passes the exam. Without admitting or denying the allegations, Hanna consented to the described sanctions and to the entry of findings that he participated in the sale of securities to four public customers without having provided written notice to or written authorization from his member firm.

William D. Harrison (Registered Representative, Delaware, Ohio) submitted an Offer of Settlement pursuant to which he was fined $2,500, suspended from association with any NASD member in any capacity for one business day, and required to retire and pass the general securities representative’s examination. Without admitting or denying the allegations, Harrison consented to the described sanctions and to the entry of findings that he mishandled customers’ funds totaling $18,987.94 when he deposited the funds in an account he controlled.

Zebede Mc Laurin, V (Registered Representative, Chicago, Illinois) was suspended from association with any NASD member in any capacity. The sanction was based on findings that Mc Laurin purchased for the accounts of public customers securities without the customers’ knowledge or consent and in the absence of written or oral authorization to exercise discretion in said accounts. In addition, Mc Laurin purchased and sold shares of stock for a fictitious account.

John P. Pala (Registered Representative, Poland, Ohio) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pala consented to the described sanctions and to the entry of findings that he received from an insurance customer payments of $125 each designated for semi-annual premiums on an auto insurance policy and, instead, he retained and converted the funds to his own use.

Carson George van Carlitiwitz (Registered Representative, Concord, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $90,000, barred from association with any NASD member in any capacity, and required to pay restitution to his member firm. Without admitting or denying the allegations, van Carlitiwitz consented to the described sanctions and to the entry of findings that he misappropriated and converted $17,891 from 10 insurance customers of his member firm.

August Actions

Bruce E. Butler (Registered Representative, Altoona, Pennsylvania) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Butler submitted to his member firm redemption requests when he knew, or reasonably should have known, that the signatures thereon purporting to be those of public customers were forged.

Marilya A. Davis (Registered Representative, Oakton, Virginia) submitted an Offer of Settlement pursuant to which she was fined $15,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prior written notification to her member firm.

Michael J. Highlands (Registered Representative, New Oxford, Pennsylvania) was fined $2,500, suspended from association with any NASD member in any capacity for 15 days, and required to pass the Series 6 examination. The sanctions were based on findings that Highlands submitted to his member firm applications for the purchase of shares of stock by public customers. Highlands was listed on the applications as the soliciting representative when such transactions were actually solicited by individuals who were not associated with the member firm or not registered at all.

Steven D. Kelly (Registered Representative, Harrodsburg, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kelly executed unauthorized trades in the accounts of public customers and made misrepresentations to one of the customers after the unauthorized purchase was made concerning the stock’s profitability.

Kenneth M. Mardock (Registered Representative, Elysburg, Pennsylvania) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mardock failed to respond to NASD (Consortium) and non-NASD (Consortium) information concerning a disposition made by him of insurance premium payments that he had received from policyholders.

David R. Parker (Registered Representative, Philadelphia, Pennsylvania) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Parker failed to respond to NASD (Consortium) and non-NASD (Consortium) information concerning the disposition made by him of insurance premium payments that he had received from policyholders.

P. David Park (Registered Representative, Philadelphia, Pennsylvania) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Park submitted statements of another registered representative that reflected year-to-date production of $196,385.43 and utilized his own name to it. At that time, his own year-to-date production had been $75,748.99. Thereafter, seeking employment with another member firm, Park submitted the altered production statement to the firm and truthfully represented it as his own. This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Robert S. Silverman (Registered Representative, New Castle, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Silverman consented to the described sanctions and to the entry of findings that he failed to pay a $50,000 arbitration award.

Mark D. Socii (Registered Representative, Monroeville, Pennsylvania) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Socii purchased from insurance customers premium payments totaling $206,55 that he retained and failed to return to his member firm. In addition, Socii failed to respond to NASD requests for information.

Ronald S. Spotts (Registered Representative, Beech Creek, Pennsylvania) was fined $70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Spotts used funds received from insurance customers for purposes other than the payment of premiums on their annuities. In addition, Spotts failed to respond to NASD requests for information.

September Actions

Jacob C. Young (Registered Principal, Indianapolis, Indiana, (President, Horizons of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monro, Ocean, and Salem), Pennsylvania, Virginia, and West Virginia) submitted an Offer of Settlement pursuant to which he was fined $15,000, suspended from association with any NASD member in any capacity for 10 days (deemed served), and required to report all transactions as an investment banking representative with a direct competitor. The NSBC imposed the sanctions on review of a Philadelphia DBRC decision. The sanctions were based on findings that Young failed to return to public customers securities that were neither registered with the SEC nor exempt from registration. Moreover, in the offers and sales of the aforementioned securities, Young failed to have an adequate and reasonable basis for believing the securities were suitable for the customers. Furthermore, Young participated in this offer and sale of securities without providing prior written notice to his member firm and after his member firm told him in writing that it disapproved of his participation.
Furthermore, the findings stated that the firm, acting through Levine, failed to adequately supervise the firm’s employees to ensure that employees acted in accordance with federal securities laws. In addition, the NASD determined that the firm, acting through Levine, failed to establish, implement, and enforce reasonable supervisory procedures to prevent ineffective due care by its retail customers from being charged fraudulently excessive markups and markups.

Timothy A. Quirk (Registered Representative, Chicago, Illinois) was also a supervisor at the firm and was responsible for supervising Levine. The NASD determined that the firm, acting through Quirk, failed to adequately supervise the firm’s employees to ensure that employees acted in accordance with federal securities laws. In addition, the NASD determined that the firm, acting through Quirk, failed to establish, implement, and enforce reasonable supervisory procedures to prevent ineffective due care by its retail customers from being charged fraudulently excessive markups and markups.

Moreover, the NASD determined that the firm, acting through Levine, failed to establish, implement, and enforce reasonable supervisory procedures to prevent ineffective due care by its retail customers from being charged fraudulently excessive markups and markups.

Furthermore, the findings stated that the firm, acting through Levine, failed to adequately supervise the firm’s employees to ensure that employees acted in accordance with federal securities laws. In addition, the NASD determined that the firm, acting through Levine, failed to establish, implement, and enforce reasonable supervisory procedures to prevent ineffective due care by its retail customers from being charged fraudulently excessive markups and markups.

The findings stated that the firm, acting through Levine, failed to adequately supervise the firm’s employees to ensure that employees acted in accordance with federal securities laws. In addition, the NASD determined that the firm, acting through Levine, failed to establish, implement, and enforce reasonable supervisory procedures to prevent ineffective due care by its retail customers from being charged fraudulently excessive markups and markups.
Emery consented to the described sanctions and to the entry of findings that the misappropriated insurance customer funds totaling $5,221,67 by forgoing the customers' signatures and depositing the moneys into her personal bank account without the customers' knowledge or consent. In addition, the NASD found that Emery failed to respond to NASD requests for information.

Dennis R. Hancock (Registered Representative, Dover, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hancock consented to the described sanctions and to the entry of findings that he was responsible for misappropriating insurance funds totaling $3,403.

Russell F. Laubinger (Registered Representative, Norwell, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $14,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Laubinger consented to the described sanctions and to the entry of findings that he had converted $13,645,000 from public customers to his own use and benefit without the customers' knowledge or consent.

David P. Martelini (Registered Representative, Torrington, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martelini consented to the described sanctions and to the entry of findings that he misappropriated insurance customer funds totaling $1,991, which he deposited into a variable life policy and mutual fund accounts, however, Martelini converted the funds to his own use and benefit.

Bruce R. Rubin (Registered Principal, West Haven, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member as a general securities principal for two years, and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Rubin consented to the described sanctions and to the entry of findings that he had converted $1,974,487 to his own use and benefit in insurance customer funds totaling $4,288 intended for insurance premium payments on seven policies.

Thomas M. Sipaye (Registered Representative, Salem, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sipaye consented to the described sanctions and to the entry of findings that he misappropriated insurance customer funds totaling $29,786. These funds represented checks generated subsequent to the submission of forged insurance loan and dividend disbursement requests made by Sipaye.

John V. Ziedins (Registered Representative, Norwood, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $3,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ziedins consented to the described sanctions and to the entry of findings that he submitted 17 fictitious life insurance policy applications to his member firm that generated approximately $3,785 in commissions.

Market Surveillance Committee

August Actions

First Interregional Equity Corp. (Short Hills, New Jersey), Lawrence J. Doherty, Registered Representative, and Anthony L. Giannotto (Registered Principal, Malverne, New York) submitted an Offer of Settlement pursuant to which the firm was fined $30,000 and Doherty was barred and enjoined from association with any NASD member in any capacity for 15 days, and required to respond by email examination as a general securities representative. Giannotto was suspended from association with any NASD member in any capacity for three days and required to respond by email examination 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, Doherty, and Giannotto engaged in the distribution of shares of a common stock when they knew, or reasonably should have known, it was materially inaccurate, and recklessly provided customer information without regard for the accuracy of material information requested by the account forms in violation of Rule 2100(g).

Gary L. Leavitt (Registered Principal, Orem, Utah) was fined $5,000, suspended from association with any NASD member in a principal or supervisory capacity for one year, and ordered to respond by examination as a general securities representative, general securities principal, and a financial and operations principal. The sanctions were based on findings that Leavitt failed to establish, maintain, and enforce an adequate system to supervise the activities of his member firm's registered representatives, which was reasonably designed to achieve compliance with NASD rules and policies. In addition, Leavitt failed to properly and adequately supervise the activities of a registered representative to detect, deter, and prevent marking-the-close violations.

Vincent A. Paulino (Registered Representative, Massapequa, New York), Richard M. Gross (Registered Principal, Seafood, New York), and Michael P. Roune (Registered Representative, Lynbrook, New York) submitted an Offer of Settlement, pursuant to which they were fined $10,000 and suspended from association with any NASD member in any capacity. Without admitting or denying the allegations, Gross was each fined $10,000 and barred from association with any NASD member in any capacity. Roune was fined $10,000, suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Roune and Paulino solicited customers and made misrepresentations and omissions of material facts in recommending the purchase of the same stock, thereby creating the appearance of actual bona fide trading in the stock and resulting in increased prices.

The findings also stated that Paulino, Gross, and Roune made recommendations to a customer to purchase the same stock without having reasonable grounds for believing that such recommendations were suitable for the customer in light of the nature and size of the customer's investment objectives, financial situation, and needs. Furthermore, the NASD found that Paulino, Gross, and Roune solicited customers and made misrepresentations and omissions of material facts in recommending the purchase of the same stock.

Maryann Ward (Associated Person, Glen Cove, New York) submitted an Offer of Settlement pursuant to which she was fined $1,000 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Ward consented to the described sanctions and to the entry of findings that she failed to appear for testimony as requested by the NASD staff.

September Actions

Edward C. Farn, III (Registered Principal, Chanhassen, Minnesota) was fined $100,000 and suspended from association with any NASD member in any capacity for 30 days. The SEC affirmed the sanction following appeal of a November 1993 NASD decision. The SEC found that Farn failed to respond to an NASD request for testimony during an investigative interview.

Kemper Securities, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to have sufficient controls in place to prevent the execution of transactions between a registered representative of Kemper and the representative's spouse at another member firm.

any other market makers to obtain a quotation for the stock and further failed to note quotations of any market makers of the common stock on any order tickets written for these sales. In addition, the NASD determined that the firm and Giannotto failed to maintain and enforce written supervisory procedures designed to enable them to properly supervise the activities of the firm and its associated persons. Giannotto's suspension began with the opening of business of the NASD on August 31, 1995.

NASC Regulatory & Compliance Alert
October Actions

William M. Binder (Registered Principal, Deerfield Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Binder consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices when he knew he would receive a large percentage of the total purchase price.

Steven J. Findlestein (Registered Principal, Fort Lee, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Findlestein consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices while knowing that he would receive compensation on a large percentage of the total purchase price.

Paul T. Fiorini (Registered Principal, Linden, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Fiorini consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices when he knew he would receive a large percentage of the total purchase price. The findings also stated that Fiorini failed to assure that his member firm established and enforced written supervisory procedures that would have enabled the firm to supervise properly the activities of its associated persons. In addition, the NASD found that Fiorini failed to supervise properly the activities of certain principals and registered representatives of his member firm.

John J. Margiotta (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Margiotta consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices while knowing that he would receive compensation on a large percentage of the total purchase price.

Howard B. Schwartz (Registered Principal, Dix Hills, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 3 days. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices while knowing that he would receive compensation on a large percentage of the total purchase price. Schwartz's suspension will commence October 24, 1994.

NASD Regulatory & Compliance Alert Information

Regarding Any Items in This Publication
If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Richard L. DeLouise, Editor, NASD Regulatory and Compliance Alert, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8474.

Regarding NASD Disciplinary Actions & Histories
If you are a member of the media, please contact NASD Media Relations at (202) 728-8884. To investigate the disciplinary history of any NASD-licensed representative or principal, call our toll-free NASD Disciplinary Hot Line at (800) 289-9999.

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