NASD Preventive Compliance Program Offers New Computerized Support For Continuing Education

As part of an aggressive and significant effort to provide education and preventive compliance initiatives, the NASD recently furnished members, free of charge, Release I of its new Member Compliance Support System. Release I, a multifaceted, user-friendly software application, focuses on the Firm Element portion of the new Continuing Education Program rules.

The Firm Element covers any registered person who has direct contact with customers while conducting a member's securities sales, trading, and investment banking activities. Also covered is the immediate supervisor of such person. The new rules require members to complete a training needs analysis and to develop a written training plan by July 1, 1995, with implementation of their plan by no later than January 1, 1996. Release I was designed with extensive industry input specifically to help members conduct a needs analysis and developing a written training plan. Release I helps members identify individual or group training needs based on job functions, specific products, and services. As firms identify training needs and seek to achieve educational goals, Release I allows them to record their work while developing formal training programs.

This fall, the NASD intends to issue Release II that will allow members to prepare training schedules and track training progress for covered persons. Additionally, Release II will help members identify available courses that match their unique training needs through an indexed list of training resources available from vendors. The NASD will charge a reasonable fee for members that subscribe to this enhanced service.

If you have general questions about the Continuing Education Program, call (301) 590-6500, or your Quality & Service Team.

Memorandum Sent To Members

Advertising Regulation Clarifies Use Of Bank/Financial Institution Logos And Names

The NASD Advertising Regulation Department included a notification in the November 1994 account statement sent to each member currently filing material with the Department that, among other things, addressed the use of bank logos on advertisements and sales literature for member

(Continued on page 2)
firms. The purpose of this memorandum is to clarify the NASD’s position on the use of logos of banks and other financial institutions under the current rules and regulations of the NASD and the federal securities laws generally.

The NASD views a logo as representative of the name of an entity. Thus, in communications containing the name of an NASD member, the use of any logo of a non-member (including banks and other financial institutions) is subject to the same rules and regulations that are applicable to the use of the name of a non-member. Article III, Sections 35(d)(1)(D)(i) and (ii) of the NASD Rules of Fair Practice require that, in judging whether the communication, in whole or in part, is misleading, the overall context in which a statement is made and the audience to which a communication is directed must be considered.

Article III, Section 35(d)(2) requires that, in communications where a non-member is named, the relationship between the member and the non-member shall be clear, no confusion shall be created as to which entity is offering which products and services, and securities products and services must clearly be offered by the member. The existing rules also recognize that the position of any disclosure can create confusion, even if the disclosure is accurate. If, in fact, such confusion occurs, it would violate NASD rules.

The current NASD rules under Article III, Section 35 of the Rules of Fair Practice on the use of non-members’ names have been supplemented by the terms and conditions set forth in the Securities and Exchange Commission’s (SEC) no-action letter issued to Chubb Securities Corporation in November 1993 (Chubb letter) which was distributed in Notice to Members 94-47, dated June 1994. The Chubb letter sets forth the SEC’s Division of Market Regulation policy regarding third-party networking broker/dealers operating on the premises of financial institutions. The Chubb letter says that references to the financial institution “will be for identifying the location where brokerage services are available only, and will not appear prominently in such materials.”

The NASD believes that, consistent with Chubb’s and the Association’s view that NASD rules have equal applicability to the logos and actual name of the non-member, the misuse of a logo of a financial institution may raise the same question of prominence as the actual name of the institution.

The logo of a non-member which is representative only of the non-member entity (e.g., a bank logo that is recognized solely as representative of the bank and not of the bank’s holding company, affiliates, or other related entities), may be used in a communication on behalf of an NASD member, provided that it is used only for the purpose of identifying the non-member entity, in accordance with the provisions of the Chubb letter and the applicable NASD Rules of Fair Practice. Additionally, the logo may not be used in a way that is misleading or confusing, such as appearing in a disproportionate size so that it is unclear as to which entity is offering broker/dealer services. This application is consistent with the general
requirement that the context and audience to which the communication is directed be considered.

The logo of a financial conglomerate, such as a bank holding company, may be used in a communication on behalf of an NASD member, provided, once again, that the logo is not used in a way that is misleading or confusing, consistent with the general requirement set forth above.

While this memorandum specifically addresses the clarification of the use of bank and/or financial institution logos and names, please note that the position set forth would apply to the use of logos and names for any non-member entity. Any questions regarding the NASD’s position on logos should be directed to the Advertising Regulation Department at (202) 728-8330.

Rule Now Before SEC

NASD Moves To Prohibit Trading Ahead Of Research Reports

In a move to prohibit trading ahead of research reports, the NASD Board of Governors approved a new Interpretation under Article III, Section 1 of its Rules of Fair Practice that will make it a violation to purposefully increase or liquidate a position in a Nasdaq®-listed stock in anticipation of a research report on the security. The rule, now before the SEC for approval and out for public comment, also covers exchange-listed stocks traded in the third market and derivative securities related to these underlying securities.

“Trading ahead of research reports creates an appearance of impropriety that harms the perception of the marketplace and could undermine investor confidence,” said John E. Pinto, NASD Executive Vice President, Regulation.

Broker/dealer research departments often prepare reports that recommend customers buy or sell certain stocks. Before publishing such a research report, some firms establish positions in the security to meet expected customer demand. Firms then fill orders from that inventory.

Specific Prohibitions

If the proposed rule is approved, an NASD member firm will be prohibited from “purposefully” increasing its inventory in a stock in advance of a bullish research report, or decreasing or liquidating its position because it was about to issue a bearish report. In the rule, the NASD strongly suggests that member firms set up strict internal procedures to prevent the flow of research information across departmental lines. With these “Chinese Walls” in place, normal trading activity should not be affected. If, on the other hand, there are no such procedures implemented and the trading desk is aware of an upcoming research report on a specific security, the trading desk is allowed to continue to trade with its customers or with other broker/dealers only if the trading arises from unsolicited order flow.

Questions about this subject may be directed to Halley Milligan, NASD Market Surveillance, at (301) 590-6464, or Eugene A. Lopez, Assistant General Counsel, Office of General Counsel, at (202) 728-6998.

Pilot Plan To Start In Early 1996

CRD Redesign Gets Underway With Two National Conferences

After more than two years of development, the new Central Registration Depository (CRD)—the registration system that will take the securities industry into the 21st century—is nearly complete. The pilot program is scheduled to begin in early 1996, with industry-wide implementation due soon thereafter. Two June conferences, in Los Angeles and New York City, gave member firms and others an opportunity to learn more about the new system.

In redesigning CRD, the NASD selected a rigorous, structured approach based on state-of-the-art systems development principles. CRD is being revamped to stay viable as an operating system and to improve customer service. Started in 1981, CRD was structured as a registration tool. But today’s user communities—member firms, state securities commissions, self-regulatory organizations (SROs), the SEC, and the investing public—expect more from CRD than it can now provide.

Consequently, change is on the way for all CRD users.

New System Aspects

The CRD Redesign will be a fully electronic filing environment using client/server-based technology. A reengineered process will eliminate repetitive filings. CRD data will serve as the basis of all registered representative (agent) and firm filings. Therefore, instead of the need to resubmit form information, filing after filing, users will
Correction: The April 1995 Regulatory & Compliance Alert article on page 4 about accurate and timely trade reporting erroneously referred readers to the NASD Services Operation Section for audit trail information. The correct number for audit trail information is (202) 728-8477 for members, and (202) 728-8015 for others. The cost to all callers for this information is $25 per day for each stock.

simply download existing information from the CRD, make changes or updates, and transmit the filing back into the system. The new environment eliminates mailing and processing delays, and shifts data capture to the user for better control.

Technology process updates will facilitate access to data submitted by firms and regulators. The new CRD will feature a reports library that users can generate independently.

Agent re-licensing will be expedited for persons who want to transfer from one firm to another in that the CRD Redesign is built with a less restrictive set of re-licensing rules. Agent jurisdiction license approvals transferred from one firm to another will occur automatically, unless the agent has one or more reportable disclosure events added to his or her record since the last license approval in the jurisdiction. Even in that case, the agent may still elect to apply for a temporary registration while regulators review reportable events. The new Form U-4 is revised to include the “Temporary Registration Acknowledgment.”

Later in its implementation, the new CRD will provide a centralized registration of investment advisers (IAs) and individual IA representatives and non-members (i.e., agents of the issuer and intrastate agents). States and member firms will have the option to use CRD as the filing mechanism.

Phased Implementation
During Phase I, NASD member firms and Membership Department personnel will begin using the new CRD to capture individual filings, organization filings, and disclosure information. The current process of microfilming documentation received in Membership will be replaced by an imaging and indexing system used for optical storage. Phase II will bring all state and federal regulators, as well as other SROs into the new system. In Phase III, special system functionality, such as mass transfer and renewal, will migrate to the new CRD. Finally, Phase IV will demonstrate the new system capability to handle IA and non-member filing and processing.

More detail about the CRD Redesign is available from Morris Williams, NASD Membership, at (301) 590-6848.

Compliance Questions & Answers

The Compliance Department receives many inquiries from members on a variety of topics. To inform members effectively on matters of common interest, the Compliance Department will periodically provide a question-and-answer feature through the Regulatory & Compliance Alert.

Q. What are the permissible activities of an introducing broker/dealer with a $5,000 minimum net capital requirement?

A. A fully disclosed broker/dealer that has a $5,000 minimum net capital requirement and receives and promptly transmits all customer and broker/dealer checks made payable to a third party, and does not receive or hold securities is permitted to: (1) effectuate riskless principal customer transactions in accounts held by the clearing broker; (2) act as an underwriter in best efforts or all-or-none underwritings, provided an independent bank escrow account is used in accordance with SEC Rule 15c2-4; (3) transact fund business on a subscription way basis; and (4) engage in Direct Participation Programs, Insurance Products, or in Merger and Acquisitions as a non-dealer.

Q. When must a member file a clearing agreement with the NASD?

A. Article III, Section 47, of the NASD Rules of Fair Practice, requires members entering into clearing agreements to specify the obligations and supervisory responsibilities of both the introducing and clearing firms. Subsection (a) lists nine items that must, at a minimum, be specified in the agreements.

Clearing Member Obligations
Subsection (b) requires that any clearing member designated to the NASD for compliance oversight file the following with the Compliance Department for review and approval:

(1) Any new clearing agreement entered into with an introducing member.
(Standard clearing agreements require approval only once, provided the language in the agreement does not change.)

(2) Any amended clearing agreement where information about any of nine items in Subsection (a) is revised.
Introducing Member Obligations

Subsection (c) requires any introducing member designated to the NASD for compliance oversight to file for review only the following with its local NASD District Office:

(1) Any new clearing agreement entered into with a clearing member.

(2) Any amended clearing agreement entered into with a clearing member designated to another self-regulatory organization for oversight where information about any of nine items listed in Subsection (a) is revised. (See NASD Rules of Fair Practice, Article III, Section 47.)

Q. Are all broker/dealers required to be registered with the SEC’s Lost and Stolen Securities Program?

A. Yes, unless a broker/dealer is eligible for an exemption. SEC Rule 17f-1 lists three exemptions from the registration requirement:

(1) The broker/dealer, as a member of a national securities exchange, effects securities transactions through the trading facilities of the exchange, and has not received or held customer securities within the last six months.

(2) The broker/dealer is a reporting institution that, within the last six months, limited its securities activities exclusively to uncertificated securities, global securities issues, or any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificate.

(3) The broker/dealer is a reporting institution whose business activities in the last six months did not involve handling of securities certificates. The phrase “the handling of securities” includes any involvement in sale, purchase, pledge, transfer, or safekeeping of certificated securities. This exemption is not available to members that introduce business on a fully disclosed basis. Examples of firms that currently may claim the exemption are broker/dealers that handle only limited partnership interests, mutual funds that do not permit investors to obtain negotiable certificates, and self-styled mergers and acquisition specialists whose business is limited to bringing together potential buyers and sellers of businesses.

The available exemptions include the requirement that a broker/dealer’s business did not involve handling securities certificates in the past six months. Consequently, these exemptions are not available to new broker/dealers. After six months, if the business of a new broker/dealer meets one of the exemptions, it may take advantage of that exemption. If an exempt broker/dealer accepts even one securities certificate for processing on an accommodation basis, it will be required to register and otherwise participate in the program for at least six months. (See SEC Rule 17f-1(b).)

Q. How does a broker/dealer register with the SEC’s Lost and Stolen Securities Program?

A. A broker/dealer must obtain a registration form from the Securities Information Center (SIC), the SEC’s designee for operating the Lost and Stolen Securities Program. The mailing address for SIC is P.O. Box 9151, Boston, MA 02205. The general information number is (617) 345-4910. A broker/dealer must obtain a Financial Industry Numbering Standard (FIN) number before registration in the Lost and Stolen Securities Program.

Q. How does a broker/dealer obtain a FINS number?

A. A broker/dealer must write to The Depository Trust Company, 7 Hanover Square, 27th Floor, New York, NY 10004, Attn: FINS Publication. The letter must be written on company letterhead that includes the broker/dealer’s full name and address; type of institution or organization such as a broker/dealer, bank, or transfer agent; and indicates the reason why a FINS number is needed. There is no charge for obtaining a number; however, it may not be requested by telephone.

Q. Even though exempt from the requirements of the Federal Reserve Board’s Regulation T, are U.S. government obligations and municipal obligations subject to the requirements of the NASD margin rule—Article III, Section 30 of the Rules of Fair Practice?

A. Yes. Government and municipal securities are subject to the margin maintenance requirements rules of self-regulatory organizations. These securities are addressed in Article III, Section 30, Section 3(e)(2)(A) and (B) of the NASD Rules of Fair Practice.

Q. Are dealer concessions and other receivables from the sale of variable life insurance policies, variable annuities, and 12b-1 fees treated as allowable or non-allowable assets in the computation of a broker/dealer’s net capital?

A. These receivables are not specifically identified within SEC Rule 15c3-1, and are treated by definition as non-allowable assets. However, if the firm has a related payable to sales representatives or selling group members, the receivable may be treated as an allowable asset if it meets these conditions:

(1) A written contract exists between the broker/dealer and sales representatives or selling group members, whereby these individuals waive their payment of the commission until the broker/dealer receives the concession.

(2) The broker/dealer’s liability for the commission payable is limited solely to the proceeds of the concession receivable.

(3) The entire amount of the...
commission payable is included in aggregate indebtedness at the time of the accrual. (See Notices to Members 81-12, 84-48, and 85-5 and NASD Guide to Rule Interpretations.)

Q. Can you sell short a security that is not margin eligible?

A. Yes. A security that is not margin eligible can be sold short providing the transaction occurs in a margin account. Short sales are subject to the Federal Reserve’s Regulation T, including NASD margin maintenance rules. Therefore, current initial federal margin requirements apply to short-sale transactions. All short positions must be marked to the market and margin maintenance rules apply to all short positions. If the short sale is effected using a security that is not margin eligible, an amount equal to 100 percent of the sale proceeds must be deposited in the account by the customer. If the short sale is effected using a security that is margin eligible, an amount equal to 50 percent of the sale proceeds must be deposited in the account by the customer.

Expanded Limit-Order Protection Rule Gets SEC Nod

On May 19, the SEC approved an expansion of the NASD limit-order protection rule to include member-to-member trades in Nasdaq securities. Beginning June 21, members must protect limit orders sent to them from other members (a member-to-member trade) in the same way that they protect limit orders from their own customers. Limit orders are orders with prices or “limits” at which investors will buy or sell stocks.

For example, if the inside market is 20-20 1/4, and a market maker accepts a limit order to buy at 20 1/8 placed by a customer at another firm, the firm may not buy stock for its own account at a price equal to or less than 20 1/8 without first executing the limit order to buy at 20 1/8.

However, until September 1, a market maker holding a member-to-member limit order greater than 1,000 shares may trade at the same price as, but not at a superior price to that limit order without protecting it. Special Notice to Members 93-43 (June 8, 1995) describes the rule in detail, including questions and answers.

As with the current limit-order protection rule, the expanded rule does not require a member firm to accept limit orders from its own customers or the customers of another firm. However, in a clarification of the rule, member firms may attach terms and conditions to the execution of limit orders for institutional accounts, or if they are for 10,000 shares or more, regardless of whether for institutional accounts, provided that the order is for $100,000 or more.

Institutional accounts include banks, savings and loan associations, insurance companies, or registered investment companies; investment advisers registered under the Investment Advisers Act of 1940; and any other entity with assets of at least $50 million.

If you have questions about the new limit-order protection rule, call NASD Market Surveillance at (800) 925-8156, or Eugene Lopez, Assistant General Counsel, Office of General Counsel, at (202) 728-6998.

"ASK THE ANALYST"

"Ask the Analyst" provides member firms a forum to pose questions to the NASD Advertising/Investment Companies Regulation Department on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication. However, we will respond to all questions either here or by contacting you directly. If you have any suggestions or comments, please do not hesitate to contact us. We look forward to hearing from you.

Q. Is bringing disclosure into the text instead of putting information in a footnote a “rule,” or just a strong suggestion?

A. Under the current rules, members may not rely on footnotes to ensure that a presentation is fair and not misleading. Disclosure that is material to an investor’s decision to invest, such as risks factors, must be included in the relevant portion of the text. However, footnotes may still be used for non-material information such as sources of charts or tables. Please see the section titled, “The Overall Clarity of the Communication” in Article III, Section 35(d)(1)(D)(iii) of the Rules of Fair Practice that lists important factors in determining whether a communication is misleading. The rule specifically states that “…material disclosure relegated to legends or footnotes realistically may not enhance the reader’s understanding
of the communication."

Q. Since Article III, Section 35 of the Rules of Fair Practice is titled "Communications with the Public," does an information summary on behalf of a private placement security have to comply with this standard?

A. The information summary for a private placement security meets the definition of sales literature in Article III, Section 35(a)(2) of the Rules of Fair Practice. Consequently, the information summary must adhere to the content standards in the rule. In particular, you must be sure to explain fairly the risks associated with the offering.

Q. I thought the pre-filing requirement for sales material applied only to new NASD members. Recently, I spoke to my Advertising Analyst and was told that my firm is still subject to this requirement even though we joined the NASD in 1992.

A. All member firms that have not filed advertising or sales literature with the NASD Advertising Regulation Department are subject to the filing requirement described in Article III, Section 35(c)(3)(A) of the Rules of Fair Practice. Under the rule, members must submit all advertisements 10 days before first use for one full year. This one-year period begins the date material is first received by the Advertising Regulation Department, not the date your firm became effectively registered with the NASD. If your firm has never sent anything to Advertising Regulation for review, your one-year period has not yet begun.

Although the rule states that only advertisements must be filed 10 days prior to first use, a member firm can start its one-year period by submitting an item of sales literature. The rule defines advertisements as material appearing in media such as television or radio, magazines, newspapers, or billboards. Sales literature consists of material that is directly distributed by a member firm to members of the public, such as form letters, research reports, newspaper article reprints, seminar handouts, or any type of mass mailing.

For more information on other product-related filing requirements, you should review Article III, Section 35(c)(1) of the Rules of Fair Practice, or call the Department and speak with your Advertising Analyst.

Q. Section 1 of the Guidelines for the Use of Rankings in Investment Company Advertisements and Sales Literature indicates that procured rankings are prohibited. What is meant by "procured"?

A. Generally, the NASD considers a ranking to have been procured if the NASD member has approached a Ranking Entity, has specifically requested that the ranking be computed, and has paid the Ranking Entity for this service. If you are unsure whether a specific ranking would be considered an impermissible or procured ranking, please contact your Advertising Analyst.

Q. I recently saw a favorable article in a major magazine on a mutual fund my company sells. I would like to mail copies of this article to a couple of clients, but my branch manager says I have to use a prospectus with it. Since anyone could have read the article in the magazine, why do I have to use it with a prospectus?

A. Unlike the original, printed magazine article, your distribution of this information may constitute an offer of the mutual fund by you and your firm for purposes of the NASD Rules of Fair Practice and the federal securities laws. In addition, you and your firm will be responsible for the content of the article.

You will need to obtain advance, written approval by a registered principal of your firm according to your firm's procedures and Article III, Section 35(b)(1) of the Rules of Fair Practice. In addition, since the article concerns a mutual fund, it must be filed with the Advertising Regulation Department within 10 days of first use as specified by Article III, Section 35(c)(1) of the Rules of Fair Practice.

The news article also must comply with the content standards in Article III, Section 35 of the Rules of Fair Practice. For example, the article must include your firm's name, must present a balanced discussion of risk and reward, and must avoid exaggerated or misleading statements or claims.

Whether the article must be accompanied by a prospectus depends on its content. The federal securities laws permit only very limited types of communications about mutual funds before prospectus delivery. If the article contains information beyond SEC rule specifications, you may use the piece only with the prospectus for the fund.

Finally, you may need to obtain appropriate permission to use the reprint in accordance with the federal copyright laws.

NASD Allows Payment For Filings By Credit Card

The Advertising Regulation Department now offers members the option to pay for review of their advertising and sales literature by credit card, using American Express, VISA, or MasterCard. For more information about this service, call Shirley Dorsey, at (202) 728-8330.
Rule Interpretations

Members Cautioned About Solicitation For CD Sales

Recently, the NASD learned that unregistered, unlicensed individuals and entities are attempting to induce registered representatives to offer and sell certificates of deposit (CDs). As part of the inducement, misstatements may be occurring about securities registration and licensing requirements for these products.

Potential misrepresentations also appear to have been made regarding state securities regulators’ familiarity with the arrangements to offer and sell the CDs and determinations concerning the applicability of state securities laws. Apparently, representatives have also been offered referral fees based on CD sales. In other instances, it appears that registered representatives are being offered participation in multi-level marketing systems that provide profit to the representative for bringing individuals into the sales program with additional compensation based on sales made by anyone in the chain initiated by the representative.

Available information suggests several registration and compliance issues and potential problems with respect to these CD arrangements. For example, some states define a security to include a CD. Additionally, in some instances individuals and entities involved in securities transactions may meet the broker/dealer definition by effecting transactions in securities for the account of others. Another concern is that the conduct of offering and selling CDs may require appropriate individual registration or licensing pursuant to a qualifications examination, and may require specific state licensing. Other obvious issues relate to sales literature, promotional materials or other correspondence that may be created and used by the registered representative in contravention of Article III, Section 35 of the NASD Rules of Fair Practice.

Firms should caution their registered representatives to be alert to any solicitations to broker CDs (or any other product). Representatives should also be reminded of their obligations under Article III, Sections 40 and 43 of the NASD Rules of Fair Practice requiring specific notifications by a registered representative to his or her employer firm when outside securities activities or other employment is or may take place. Finally, members should caution their representatives that multi-level marketing programs need to be carefully investigated to guard against any improper conduct or investor harm. Inquiries regarding the applicability of the federal securities laws or the Rules of Fair Practice to specific arrangements or registered representative activities should be directed to your local NASD office.

NASD Requests Comments On Proposed Suitability Obligations To Institutional Customers

The NASD asked members to comment on a proposed Interpretation of its Board of Governors to Article III, Section 2 of the NASD Rules of Fair Practice (RFP). The proposed Interpretation would guide members in fulfilling their suitability obligations under Article III, Section 2(a) of the RFP when making recommendations to institutional customers in all equity and debt transactions, except municipals.

On August 15, 1994, the NASD published Notice to Members 94-62 requesting member comment on the Fixed Income Committee’s proposal that the NASD adopt a Board Interpretation regarding members’ suitability obligations to institutional investors in all equity and debt transactions, except municipals. The suitability proposal provides that a member’s obligation to an institutional customer will be fulfilled if, at the time of the transaction, the member had reasonable grounds to believe that the customer:

- Developed resources and procedures to make its own investment decisions.
- Was not relying on the member’s recommendation on the specific transaction.
- Was capable of understanding the product and its risks, or of making an independent investment decision.

Based on member comments, the Committee redrafted the suitability proposal and the Board, on March 17, 1995, approved issuance of Notice to Members 95-21 (April 1995) to request member comment on the revised proposal.

Amended Proposal

The amended proposal clarifies the Interpretation to provide guidelines for members to determine whether they have fulfilled suitability obligations to institutional customers regarding transactions in equity or debt securities, except municipals. The proposal is not intended to create a safe harbor from suitability obligations. Previous examples of methods for determining the member’s suitability obligation were
eliminated with the amended version stating that the manner in which a member fulfills its suitability obligations in making a recommendation to a customer varies depending on the nature of the customer and the specific transaction.

The amended proposal states that the Board has identified certain factors that will be considered when the NASD reviews it for compliance with Article III, Section 2(a) of the RFP. These factors are neither requirements nor the only ones for consideration, but merely provide guidance to the member.

The amended proposal first states that a member must determine, based on the information available, the customer's capability to evaluate investment risk. In discussing this obligation, the proposal contrasts situations where a member concludes the customer is not capable, in general or with respect to a particular type of instrument, of making an independent investment decision with situations where the customer ultimately can make an independent investment decision without reliance on the member.

In addition, the proposal states that the primary consideration in a suitability determination is whether the customer is relying on the member's recommendation rather than the customer making an investment decision based on its own independent assessment of investment considerations. This guidance encourages the member to consider the member/customer relationship and to consider the customer's ability to make investment decisions.

The amended suitability proposal provides four non-inclusive factors to help members examine the member/institutional customer relationship. These factors suggest that the member:

- Consider whether there exists any written or oral agreement between the member and the customer regarding the customer's reliance on the member for recommendations.
- Consider the presence or absence of a pattern of acceptance of the member's recommendations by the institutional customer.
- Contemplate the customer's use of ideas, suggestions, market views, and information received from other members or market professionals, particularly those related to the same types of securities.
- Evaluate the extent to which the customer provides the member with current comprehensive portfolio information in connection with discussing recommended transactions or does not provide important information about its portfolio or investment objectives.

The amended proposal provides these non-inclusive factors to help the member consider the customer's capability to make independent investment decisions, including the resources available to the customer to make informed decisions. These factors suggest that the member:

- Consider whether the customer has the use of one or more investment advisers or bank trust departments.
- Consider the general level of the institutional customer's staff experience in financial markets and specific background with the type of securities under consideration.
- Consider the customer's ability to independently evaluate how market developments would affect the security and the complexity of the security or securities involved.

For more information on the amended suitability proposal, see Notice to Members 95-21 (April 1995) or call Walter J. Robertson, Director, NASD Compliance, at (202) 728-8236.

NASD Wants Members To Report Address And Contact Changes Promptly

The NASD Membership Department wants members to keep current the names of their executive representatives, including mailing addresses for branch offices. It's important that the Central Registration Depository (CRD) is kept up-to-date about changes in address and contact persons to ensure that regular notices and special mailings are directed correctly. This is especially important as we approach fall elections.

Article III, Section 3 of the NASD By-Laws requires each member to appoint and certify one "executive representative." Your firm's executive representative must be a registered principal and a senior manager. The designated person will represent, vote, and act on behalf of the member firm in all NASD affairs, and receive mailings that include Notices to Members, Regulatory & Compliance Alert, and updates to the NASD Manual.

You must send to CRD a properly executed Schedule E of Form BD to change the address for mailings sent to branch offices or to update the contact name. Notifications sent on U.S. Post Office address change cards cannot be processed.

To change the executive representative of your firm, you must submit written notification to Joan Conley, Corporate Secretary, National Association of Securities Dealers, Inc., c/o Membership Department, 9513 Key West Avenue Rockville, MD 20850-3389. The correct form for this submission is in Notice to Members 95-39 (May 1995).
Members Strongly Urged To Avoid Settlement Agreements That Hinder NASD Investigations

NASD District Offices continue to report that some member firms settle customer complaints using agreements that impede or obstruct NASD examinations and investigations of potential violations. In these circumstances, NASD Regulation staff may encounter difficulties in collecting necessary information because customers are reluctant (or even refuse) to cooperate after executing settlement agreements with members that condition settlement on an arrangement not to cooperate in self-regulatory organization (SRO) inquiries.

An example of improper settlement language includes statements requiring the customer to keep the amount or terms of the settlement and claims non-public and confidential with respect to an SRO.

Members using agreements that could impede or obstruct an NASD investigation may violate Article III, Section 1 of the NASD Rules of Fair Practice, and be ongoing in conduct incompatible with the principles in Notice to Members 86-35 (May 14, 1986). Additionally, agreements, whether direct or indirect, that preclude customers or any party from cooperating with an NASD investigation could violate Article IV, Section 5 of its Rules of Fair Practice, as a failure to make information available in an investigation.

Members are cautioned not to execute agreements that could prevent a customer from furnishing information, documents, testimony, or otherwise cooperating in NASD investigations. Furthermore, members should not place any conditions on a customer’s cooperation, or request them to withdraw complaints filed with regulatory bodies as a condition of negotiating and completing a claim settlement.

Arbitration

To Resolve Securities Disputes

After Receiving Public Comments, NASD Files Proposed Mediation Rules With SEC

Following approval by the Board of Governors, the NASD filed with the SEC its proposed Mediation Rules after considering extensive public comments. The NASD National Arbitration Committee developed the program provisions and procedures.

“The NASD wants to offer public customers, members firms, and associated persons another effective process for resolving disputes as an alternative to arbitration,” said Ken Andrichik, Director of Mediation. “Mediation can help parties arrive at a more satisfactory resolution at an earlier point in the process, before they spend substantial funds to defend or prosecute a case.”

Planned Rules

In response to the rapidly growing use and success of mediation in commercial and insurance disputes, the NASD conducted two pilots between 1989 and 1993 and the proposed Mediation Rules are based on customer feedback from these previous events. In addition, the Rules preserve the procedural and structural elements published in Notice to Members 95-1 (January 1995).

The Mediation Rules are expected to be incorporated into the Code of Arbitration Procedure as a new Part IV, thus permitting reference to the subject matter jurisdiction of the Code and the arbitrator disclosure provisions that apply to mediators.

In the NASD Mediation Program, a mediator will facilitate negotiations but will not impose a settlement on the parties. The parties will retain control over the entire process and its outcome. Because the process is non-binding, mediation will run concurrently with the arbitration process so that the parties will not lose time if mediation proves unsuccessful. The Mediation Program plans to employ experienced mediators.

Growing Customer Options

The National Arbitration Committee found in its research that in the last decade mediation has proven to be an effective, faster, less costly, and less adversarial method of dispute resolution than arbitration or litigation. “Our commitment to customer service makes us want to furnish the same mediation option to our members and customers that is provided by outside dispute-resolution organizations.” said Andrichik.
Violations

NASD Fines Government Securities Corporation $400,000; Suspends It From Selling Derivatives

The NASD imposed $400,000 in fines against Government Securities Corporation of Houston, Texas (GSC), GSC Chairman and President Christopher Lee LaPorte, and Gregory Lee Putman, a GSC Vice President, for failure to adequately supervise personnel who sold mortgage-backed derivative products to public fund customers. In addition, GSC is suspended from selling certain derivative products to public fund customers for two years, and Putman is suspended from acting as a principal for 90 calendar days. Public fund customers, as defined in the settlement, include entities whose primary funding source comes from tax revenues or public funds.

Under the NASD’s disciplinary action, GSC, LaPorte, and Putman, who did not admit or deny the allegations, consented to findings that from January 1989 through July 1994, in the sale of these mortgage-backed derivative products, certain GSC representatives called public fund customers and solicited purchases by informing them that the instruments could provide an increased yield while failing to adequately disclose material facts relative to the nature and risks of these instruments. During this period, GSC sold mortgage-backed derivative securities to approximately 30 cities, counties, and other public fund customers.

The instruments included stripped mortgage-backed securities and certain tranches of collateralized mortgage obligations (CMOs) such as interest only (IOs), inverse interest only (inverse IOs and inverse IOettes) and inverse floaters, all of which are market-sensitive securities subject to liquidity, prepayment, and interest rate risks. Certain instruments may also carry the risk of potential loss of the initial investment. For example, purchasers of IOs, inverse IOs, and inverse IOettes are entitled only to the interest stream generated by the underlying mortgage pool, and not the principal payments. As interest rates fall and prepayments accelerate, the value and return on these derivative securities may decrease significantly. Public fund customers purchasing these derivative securities, including counties and cities in Ohio and Texas, were not adequately informed about these risks and have experienced significant losses.

John E. Pinto, NASD Executive Vice President, Regulation, said, “This is an important enforcement action by the NASD, and the sanctions are certainly significant to properly reflect the seriousness of the respondents’ misconduct. They are mitigated somewhat by the more than $11 million that the firm has paid back to public fund customers to compensate for their losses, as well as the firm’s cooperation with the NASD throughout the investigative and enforcement process.”

GSC, LaPorte, and Putman consented to findings that they failed to establish adequate written supervisory procedures, failed to adequately supervise GSC registered representatives when recommending the sale of the mortgage-backed derivative products to customers, and failed to adequately review and oversee sales activities to ensure that material facts were disclosed to the public fund customers. The firm was fined $400,000, $25,000 of which is joint and several with LaPorte, and $25,000 joint and several with Putman. In addition, GSC was suspended from selling certain mortgage-backed derivative products to public fund customers for two years, and Putman was suspended from acting in a principal capacity for 90 calendar days. The respondents were required to pay $100,000 of the fines within 10 days of the NASD decision accepting the offer of settlement. The remainder is due within nine months, including accrued interest.

“Our enforcement efforts in this area clearly demonstrate the NASD’s commitment to regulate member activities in the sale of derivatives of mortgage-backed securities, to ensure proper supervision by member firms that sell these securities, and to take swift enforcement action where misconduct occurs,” said John Pinto. “The derivatives market is a significant area, and firms that sell such securities must understand the nature and risks involved in these securities and ensure that clients receive proper disclosure.”

Mark Your Calendar☆

Microstructure Conference on Competition for Order Flow

The University of Memphis
Memphis, Tennessee
October 26-27, 1995

Practitioners, academics, and regulators will address:
☆ Buy side trader perspectives.
☆ Trading cost measurement.
☆ Market structure and market quality.
☆ Competition for order flow in Europe.
☆ Perspectives on competition in Europe.
☆ International market mechanisms.
☆ Effectiveness of alternate market mechanisms.

For further information, contact Ann Brock at (901) 678-2800.
NASD Imposes Sanctions Against Greenway Capital, Two Principals, And An Associated Person

The NASD announced that it took disciplinary action against Greenway Capital Corporation (GWAY) of New York, its President Joseph M. Guccione, its Executive Vice President Fred R. Luthy, and an associated person, Robert A. Neff.

Pursuant to an Offer of Settlement in which the respondents neither admitted nor denied the allegations, GWAY, Guccione, and Luthy were jointly and severally required to pay up to $500,000 in restitution to the customers who were charged excessive prices due to the manipulation of Pacific Animated Imaging Corporation (PCIM) securities. Neff is also jointly and severally responsible for $166,500 of the restitution. Each month, respondents are required to make deposits into an interest-bearing escrow account under the control of an independent escrow agent to be paid out over two years to customers identified by the NASD as harmed by the respondents’ misconduct.

Guccione is suspended from association with any member in any capacity for three months and cannot associate with any member in a principal capacity for two years. Luthy and Neff are suspended from association with any member in any capacity for two months and three months, respectively.

GWAY has also undertaken, in consultation with counsel and other advisers, to adopt and implement written supervisory and compliance procedures in connection with all aspects of the NASD rules, regulations, and interpretations regarding market making, best execution of customers’ orders, trading, domination and control, and markups and markdowns. Further, every six months for two years from the date of the decision, the counsel and/or other adviser must conduct a review and prepare a report of any recommendations considered appropriate regarding GWAY’s policies, practices, and procedures related to trading, sales, compliance, and supervision. Thereafter, GWAY must implement all such recommendations.

Sections 1, 4, and 18 of the NASD Rules of Fair Practice.

Furthermore, the respondents consented to findings that Luthy had reason to know, or acted in reckless disregard of the fact, that the prices charged to customers were unfair because the compensation received by him and GWAY represented a large percentage of the total purchase price paid by the customers in these transactions, in violation of Article III, Sections 1 and 4 of the NASD Rules of Fair Practice.

The respondents also consented to findings that GWAY, acting through Luthy and Guccione, failed to preserve copies of all communications sent by GWAY (including interoffice memoranda and communications) relating to its business in violation of Article III, Section 1 of the NASD Rules of Fair Practice, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4). In addition, GWAY, Guccione, and Luthy failed to establish and maintain an effective supervisory system. They also failed to enforce supervisory procedures that would have enabled them to assure compliance with federal securities laws and NASD rules, and to detect and detect the conduct described above, in violation of Article III, Sections 1 and 27 of the NASD Rules of Fair Practice.

“This enforcement action is another example of the NASD’s commitment to investor protection by addressing manipulative activity and abusive sales practices in the securities industry,” said John E. Pinto, Executive Vice President, Regulation. “I am also pleased that money will be made available to pay investors amounts that they were overcharged because of fraudulent activity.”

The annual NASD Advertising Regulation Seminar is scheduled for October 12-13 at the Mayflower Hotel in Washington, DC.

Registration materials will be mailed soon.

National Association of Securities Dealers, Inc.

July 1995
The SEC approved NASD amendments to Sections 5, 6, 12, 46, and 64 of the Uniform Practice Code (UPC) and Sections 1 and 26 of the Rules of Fair Practice (RFP) to conform NASD rules to the three-day settlement cycle (T+3) mandated in SEC Rule 15c6-1, effective June 7, 1995.

Following the SEC’s adoption of Rule 15c6-1 requiring settlement of securities transactions no later than three days after trade date (T+3), the NASD adopted amendments to the UPC and the RFP. The complete amendments are described in Notice to Members 95-36 (May 1995).

If you have questions about T+3, call Nasdaq Market Operations at (203) 373-9609. The effect of this change on investment company shares follows.

SEC Rule 15c6-1, effective June 7, 1995, established three business days as the standard time period for settling transactions, including securities issued by investment companies. Broker/dealer contracts for the purchase and sale of investment companies, including mutual fund shares, are subject to the three-business-day settlement requirement. Under Rule 15c6-1(b), the exemption for new issues in a firm-commitment underwriting covers underwritings of closed-end funds and unit investment trusts, but not open-end funds.

Effective concurrently with SEC Rule 15c6-1 is an amendment to NASD Rules of Fair Practice Article III, Section 26(m)(1). This section now requires members to transmit payments received from customers for the purchase of investment company shares to the payees (i.e., underwriters, investment companies, or their designated agents) by the fifth business day after receipt of a customer’s purchase order or one business day following receipt of a customer’s payment, whichever is later. The five-business-day transmittal requirement is shortened to three business days and the one-day alternative is unchanged.

In response to the recently passed Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 designed to protect the public from repeated, unwanted telephone solicitations, the NASD proposed a rule that requires members to make and maintain a do-not-call list. Recently approved by the SEC and effective June 9, the new rule adds Subsection (g) to Article III, Section 21 of the Rules of Fair Practice requiring that each member engaging in telephone solicitation to market its products and services keep a centralized do-not-call list of persons who do not want to receive telephone solicitations. For more information about this subject, see Regulatory & Compliance Alert, October 1994, page 13, or call Daniel M. Sibears, Director, NASD Regulatory Policy, at (202) 728-6911.

On November 10, 1994, the SEC adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 that prohibit broker/dealers from underwriting and recommending municipal securities when adequate information is not available. SEC Rule 15c2-12 was originally adopted in 1989, and requires an underwriter of municipal securities:

- To obtain and review an issuer’s official statement before making a purchase, offer, or sale.
- In negotiated sales, to provide the most recent preliminary official statement to potential customers.

The new rule focuses on disclosure and recordkeeping requirements by the U.S. broker/dealer in permitting members the opportunity to enhance their competitive position in foreign countries where new accounts are opened on a referral basis with ongoing compensation to the foreign finder. Under the amended rule, member firms and their associated persons may pay transaction-related compensation to non-registered foreign persons based on the business of customers those persons direct to member firms. The applicable conditions for this "foreign-finder" exemption appear in Notice to Members 95-37 (May 1995).

The amendments also change the requirements regarding foreign associates. Under Part X of Schedule C of the NASD By-Laws those persons now are subject to Form U-4 registration, but still do not need to pass a qualification examination. Questions about this subject may be directed to Craig Landauer, NASD Office of General Counsel, at (202) 728-8291, or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911.

On February 13, 1995, in SEC Release No. 34-35361, File No. SR-NASD-94-51, the SEC approved amendments to Parts VI and X of Schedule C of the NASD By-Laws relating to foreign finders and foreign associates. Under specified criteria, these amendments permit the payment of transaction-related compensation to non-registered foreign finders not subject to the jurisdiction of U.S. securities laws.

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To deliver to customers, upon request, copies of the final official statement for a specified period of time.

To contract to receive sufficient copies of the final official statement to comply with the rule's delivery requirements and any Municipal Securities Rulemaking Board (MSRB) rules.

The most recent amendments improve disclosure in the primary and secondary markets and, with certain exceptions, became effective July 3, 1995. The exceptions relate to Paragraph 15c2-12(c), effective January 1, 1996; Subparagraphs 15c2-12(b)(5)(i)(A) and 15c2-12(b)(5)(ii)(B) that will not apply with respect to fiscal years ending before January 1, 1996; and Subparagraphs 15c2-12(d)(2)(ii) and 15c2-12(d)(2)(iii) that do not apply to an offering of municipal securities commencing before January 1, 1996.

Information about an SEC interpretative statement focusing on disclosure obligations of municipal securities dealers, underwriting requirements, and exemptions are in Notice to Members 95-23 (April 1995). Additional information may be obtained from Erin Gilligan, District Coordinator, NASD Compliance Department, at (202) 728-8946.

The U.S. Treasury Department is granting to broker/dealers an exemption from the haircut treatment for written mortgage-backed options under Section 402.2a of its regulations implementing the Government Securities Act of 1986. The SEC concurred in the Treasury action.

The exemption, available to registered government securities broker/dealers subject to the capital requirements of Section 402.2, is applicable to written over-the-counter options on mortgage-backed securities, provided the underlying fixed-rate security is a Treasury Market Risk Instrument (TMRI), defined in Section 402.2(e). The current Treasury haircut for a position in a 30-year pass-through, fixed-rate mortgage-backed security, that is a TMRI, is 3.3 percent. This haircut percentage recognizes the shorter effective maturity of a 30-year pass-through security, because of the repayment of principal during the security's life.

Since the risk of holding a position in mortgage-backed securities options derives from the risk inherent in a position in the underlying security, Treasury determined to apply the same haircut factor to both types of instruments. (See Notice to Members 95-28, April 1995.) For additional information call Janet Marsh, District Coordinator, NASD Compliance Department, at (202) 728-8228.

The Treasury approved amendments to the financial responsibility requirements established under the Government Securities Act of 1986. The amendments raise the minimum capital requirements for government securities broker/dealers subject to Section 402.2 provisions and require written notification for certain capital withdrawals. Treasury also approved a conforming change to its recordkeeping requirements.

These amendments only affect sole government securities broker/dealers registered under Section 15C of the Securities Exchange Act of 1934. The amendments became effective March 31, 1995, with the capital increases phased-in over 18 months.

Details of the four minimum capital categories are in Notice to Members 95-29 (April 1995) and members should review the Treasury's release in the March 1, 1995, Federal Register.

Call Janet Marsh, District Coordinator, NASD Compliance Department, at (202) 728-8228, with questions concerning this subject.

Effective February 6, 1995, the SEC adopted amendments to Rules 138 and 139 under the Securities Act of 1933. The amendments clarify the availability of the safe-harbor provisions of Rule 138 regarding broker/dealer research reports on domestic and foreign companies, and the same provisions of Rule 139 for broker/dealer industry research reports that include sizeable, first-time foreign registrants.

The SEC approved an amendment to Article III, Section 46 of the Rules of Fair Practice clarifying the meaning of the terms “Do Not Reduce” (DNR) and “Do Not Increase” (DNI) used in connection with open orders. Section 46 requires members holding open orders to adjust the price and size of the order in proportion to the dividend or other distribution on the day the security is quoted “ex.”

The amendment to Section 46 clarifies that DNR instructions only apply to cash dividends, while DNI instructions apply to stock dividends. The amendment to Subsection 46(e) appears in Notice to Members—For Your Information (May 1995) page 260.

Following SEC approval, the NASD amended Section 32(c) of its Code of Arbitration Procedure to increase the amount of time from 10 to 20 days before a hearing where parties are required to exchange documents. The change was made in response to numerous requests for additional but late discovery that arise from the exchange of...
documents used by parties at a hearing. The rule change should ease the burden on arbitrators who respond to last minute discovery requests by increasing the time for exchanging pre-hearing memoranda and requiring an affirmative obligation by the parties to supplement and correct discovery.

Section 32(c) of the Code now says that at least 20 calendar days before the first scheduled hearing date, all parties must serve on each other copies of documents in their possession they intend to present at the hearing and must identify witnesses they plan to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses that parties may use for cross-examination or rebuttal.

NASD Disciplinary Actions

In February, March, and April 1995, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

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

February Actions

Donnell Howard Hughes (Registered Representative, Menlo Park, California) submitted an Offer of Settlement pursuant to which he was fined $5,750 and suspended from association with any NASD member in any capacity for 5 business days. Without admitting or denying the allegations, Hughes consented to the described sanctions and to the entry of findings that, in connection with the sale of shares of securities to a public customer, he made material misrepresentations of fact to the customer. According to the findings, DiSanto made statements that he had inside information that the stock would be purchased by another company, that his boss controlled the stock, and that its price would climb.

April Actions

Robert Lester Gardner (Registered Representative, Castaic, California) was fined $50,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to refund by examination as a general securities representative. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Gardner effected the purchase of stock in the account of a public customer without the customer's knowledge or consent. Gardner has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Gregory Allen Soares (Registered Representative, Santa Rosa, California) was suspended from association with any NASD member in any capacity for 15 business days. The sanction was based on findings that Soares recommended and effected the purchase of securities in the account of a public customer without having a reasonable basis for believing that such transactions were suitable for the customer considering the securities involved, the frequency of the recommended transactions, and the customer's financial situation, objectives, circumstances, and needs. In connection with one of the recommendations, the NASD found that Soares falsely represented to the customer that the customer had purchased $50,000 in stock, when, in fact, the customer only purchased $47,000.94 worth of shares. This false representation was made to conceal the fact that the shares of stock Soares sold the customer were done so at a loss.

February Actions

Thomas R. Alton (Associated Person, Alameda, California) was fined $50,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following an appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Alton submitted to his member firm a Uniform Application for Securities Industry Registration or Transfer (Form U-4) wherein he gave false responses to questions about his disciplinary history. This action has been appealed to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

March Actions

Kevin S. Allen (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that he engaged in an illegal unregistered distribution of a control stock. In addition, the NASD found that Allen failed to keep accurate firm books and records in that he knew that a member firm was using nominee accounts as de facto trading accounts. The findings also stated that Allen failed to supervise adequately with respect to the aforementioned unregistered sales of stock.

Stanley E. Cameron (Registered Representative, Westlake Village, California) submitted an Offer of Settlement pursuant to which he was fined $45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cameron consented to the described sanctions and to the entry of findings that he recommended purchase and sales transactions in a public customer's account without having reasonable grounds for believing that such transactions were suitable for the customer considering the securities involved, the frequency of the recommended transactions, and the customer's financial situation, objectives, circumstances, and needs. In connection with one of the recommendations, the NASD found that Cameron falsely represented to the customer that the customer had purchased $50,000 in stock, when, in fact, the customer only purchased $47,000.94 worth of shares. This false representation was made to conceal the fact that the shares of stock Cameron sold the customer were done so at a loss.

Furthermore, the NASD determined that Cameron participated in private securities transactions in that he sold to public customers shares of a stock totaling $135,000, but failed to provide prompt, written notification to his member firm before participating in such transactions. In addition, the findings stated that Cameron opened an account at another member firm without notifying his member firm in writing that he intended to open the account and without notifying the other firm of his association with his member firm. The NASD also found that Cameron failed to respond to NASD requests for information.

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Howard M. Fromson (Registered Representative, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Fromson consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he received compensation while failing to provide prompt written notice to his member firm.

Abdollah H. Jervand (Registered Representative, Anaheim, California) 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, Jervand consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he received compensation while failing to provide prompt written notice to his member firm.

Mark Allen Pap (Registered Representative, Riverside, California) was fined $70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pap submitted a Request for Insurance Disbursement Form that contained false information and a forged signature of the intended beneficiary of a life insurance policy in an attempt to obtain the policy proceeds. The benefits underlying the life insurance policy had become due and payable because the insured had died. Pap caused the requested form to be processed under the guise that it had been submitted by the intended beneficiary and obtained $35,956.85 from the policy proceeds. Pap attempted to cash this check by forging the beneficiary’s signature on the check but was unsuccessful and the bank returned the check to accept the check. In addition, Pap failed to respond to NASD requests for information.

Behzad D. Shirapour (Registered Representative, Northridge, California) was fined $30,000, barred from association with any NASD member in any capacity, and must reimburse a member firm $1,980 (the amount it repaid a customer). The sanctions were based on findings that Shirapour converted from a public customer $1,980 by forging, or causing to be forged, the customer’s signature on three checks issued to the customer. These checks had constituted a refund to the customer. Shirapour also failed to respond to an NASD request for information.

K&Y Securities Corp. (Los Angeles, California) and Gary S. Kading (Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $22,500, jointly and severally. In addition, Kading was ordered to be disqualified by examination as a direct participation programs principal within 90 days or be suspended until disqualified by examination. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Kading act as a limited partnership interests and failed to return investor funds to the program. In addition, Kading received investor funds for the purchase of limited partnership interests and failed to transmit the funds to the escrow account. Instead, the NASD determined that the funds were transmitted directly to a bank checking account in each of the issuer’s names and under the control of the firm’s accountant.

Jerry W. McClintic (Registered Representative, Irvine, California) was fined $100,000, barred from association with any NASD member in any capacity, and ordered to offer rescission of $54,000 to all investors not otherwise reimbursed by him. The sanctions were based on findings that McClintic offered and sold limited partnership interests to investors and failed to return the investors’ funds when the terms of the contingency were not met, but rather used the funds to conduct partnership operations. In addition, McClintic participated in private securities transactions while failing to provide prompt written notification of his participation to his member firm.

Wyoming submitted Offers of Settlement pursuant to which Brown was fined $7,500 and barred from association with any NASD member in any capacity. Foreman was fined $7,500, suspended from acting as a general securities sales supervisor for 10 business days. In addition, the NASD determined that Foreman failed to comply with registration by examination as a general securities sales supervisor within 45 days or cease acting in such capacity until he be requalified. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brown made two unsuitable recommendations to a customer and failed to have a reasonable basis for believing that this customer could meet the payment obligations set forth in Regulation T of the Federal Reserve Board. The findings also stated that Foreman failed to enforce his member firm’s written supervisory procedures adequately with regard to the review of large orders and the determination of the suitability of customer transactions.

William J. Cole (Registered Representative, Belen, New Mexico) 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, Cole consented to the described sanctions and to the entry of findings that he received a $38,000 check issued by his member firm payable to a public customer, which represents payment of life insurance benefits. According to the findings, Cole forged the customer’s endorsement on the check, signed his own name, and deposited the proceeds into his personal bank account. The findings also stated that Cole caused to be issued a $9,256.92 cashier’s check in payment of the first year’s premium for a variable life insurance policy for the same customer and retained the remaining $28,743 in his personal bank account. In addition, the NASD determined that Cole failed to respond to a customer’s $13,476.22 check that was intended for investment purposes, and Cole kept the check in his desk until its discovery by his supervisor, thus failing to follow his customer’s instructions. The NASD also found that Cole failed to respond to NASD requests for information.

Joseph Louis DeLeauchamps (Registered Representative, Bainbridge Island, Washington) submitted an Offer of Settlement pursuant to which he was fined $7,000 and barred from association with any NASD member in any capacity for 10 days, and required to pay $7,531 in restitution to a customer. Without admitting or denying the allegations, DeLeauchamps consented to the described sanctions and to the entry of findings that he intended the purchase and sale of securities and the use of margin to a public customer without having reasonable grounds to believe that the recommendations were suitable for the customer considering his investment objectives, financial situation, and needs.

Gerald Michael Hagan (Registered Representative, Portland, Oregon) was fined $200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hagan engaged in improper use of customer funds by transferring $11,413 from a customer’s account to another account at his member firm without the customer’s knowledge and used the funds for his own benefit. Hagan also received $2,800,000 from another customer’s account for intended investment purposes. Hagan also failed to respond to NASD requests for information.

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Robert Theodore Nelson (Registered Principal, Seattle, Washington) was fined $73,000 and barred from association with any NASD member in any capacity. However, five years after the bar was originally imposed, Nelson may apply for association in a non-proprietary, non-supervisory capacity, upon a satisfactory statement and adequate supervision. The SEC modified the sanctions following appeal of an April 1994 NBCC decision. The sanctions were based on findings that Nelson falsified his former member firm’s records by entering on a customer account form two suitability questionnaires, information that was actually false and misleading. In addition, Sylvester effected purchase transactions in the same customer’s account without the customer’s prior written consent or an offer and failed to respond to NASD requests for information.

April Actions
Norman D. Autry (Registered Representative, Tijeras, New Mexico) was fined $25,000 and suspended from association with any NASD member in any capacity for two years. The NBCC affirmed the sanctions following appeal of a Denver BBCC decision. The sanctions were based on findings that Autry participated in and received compensation for private securities transactions and outside business activities without providing prior written notice to his member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his member firm’s branch office and failed to discharge those responsibilities properly and adequately.

Francis Linden Sanem, Jr. (Registered Representative, Bozeman, Montana) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Sanem consented to the described sanctions and to the entry of findings that he participated in and reported the sale of common stock to public investors for which no proper registration statement was filed with the SEC or for which no exemption from registration existed. Nelson also engaged in private securities transactions without providing prior written notice to his member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his member firm’s branch office and failed to discharge those responsibilities properly and adequately.

Howard Mattes Crosby (Registered Principal, Spokane, Washington) was fined $12,000. The NBCC affirmed the sanction following appeal of a Seattle BBCC decision. The sanctions were based on findings that Crosby effected private securities transactions with individuals or issuers without providing prior written notice to his member firm. In addition, Crosby received the proceeds of his member firm without being registered as a principal.

Brion Allen Galley (Registered Representative, Boise, Idaho) 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, Galley consented to the described sanctions and to the entry of findings that he solicited and enlisted investors (at least 123,903 intended for investment in various insurance-related products and neither invested in the funds as intended, nor returned them to the investors. The findings also stated that Joseph and Michael Shaw engaged as outside business activities while failing to provide prompt written notice to their member firm. In addition, the funds were used for the benefit of the Defra Star Dealer or Agent forms to his member firm and signed the investors’ names, all without their prior knowledge or consent.

Clinton Hugh Holland, Jr. (Registered Principal, Salem, Oregon) was fined $5,000, suspended from association with any NASD member in any capacity for five business days, and required to regularly by examination as a registered principal. The NBCC affirmed the sanctions following appeal of a Seattle BBCC decision. The sanctions were based on findings that Holland recommended to a public customer the purchase of high-risk securities without having reasonable grounds for believing that such recommendations were suitable for the customer considering the size and nature of the transactions, the concentration of speculative securities in the account, and the customer’s financial situation, circumstances, needs, and objectives. This action has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Strategic Resource Management, Inc. (Englewood, Colorado) and William A. Moler (Registered Principal, Aurora, Colorado) were fined $10,000, jointly and severally. The NBCC imposed the sanction following appeal of a Denver District Business Conduct Committee (BBCC) decision. The sanction was based on findings that the firm, acting through Moler, effected securities transactions with retail customers at prices that were unfair in that the respondents failed to state the retail price on the basis of the firm’s contemporaneous cost for the securities, resulting in excessive markups. This action has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

U.S. Securities Clearing Corporation (San Diego, California) and Anthony James Mirante (Registered Principal, San Diego, California) were fined $55,000, jointly and severally, and required to pay $396,446 in restitution to public customers. The firm also was suspended from effecting any principal transactions for 90 days, Mirante was suspended from association with any NASD member in any capacity for 90 days. The SEC affirmed the sanctions following appeal of a September 1993 BBCC decision. The sanctions were based on findings that the firm, acting through Mirante, executed 301 principal retail sales to public customers at retail prices that were unreasonable taking into consideration all relevant circumstances. The firm was not a market maker in the relevant securities at the time these trades were effected, and the markups on these retail sales ranged from 5.1 to 150 percent over the prevailing market price for the securities. In addition, the firm, acting through Mirante, failed to report its price and volume activity for its principal transactions in non-Nasdaq securities.

Mirante has appealed this action to a U.S. Court of Appeals, and the sanctions as to him are not in effect pending consideration of the appeal.

Gregory D. Weinstein (Registered Representative, Englewood, Colorado) 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, Weinstein consented to the described sanctions and to the entry of findings that he maintained a securities account at a member firm other than his member firm and failed to notify either firm of his association with the other firm. In addition, the NASD found that Weinstein provided false and misleading information to NASD staff when responding to NASD staff inquiries. Weinstein consented to the described sanctions and to the entry of findings that he maintained a securities account at a member firm other than his member firm. The findings also stated that Weinstein disseminated unapproved and misleading sales literature.

Kenneth Mitchell Wiggins, Jr. (Registered Principal, Kent, Washington) submitted an Offer of Settlement pursuant to which he was fined $55,000, barred from association with any NASD member in any capacity, and required to pay $12,000 in restitution to public customers. Without admitting or denying the allegations, Wiggins consented to the described sanctions and to the entry of findings that he received from a public customer two checks totaling $2,000 intended for investment purposes and failed to remit the funds for their intended purpose, but instead, caused these monies to be deposited into the operating account of his member firm where the funds were used for the benefit of the customer. In addition, the findings also stated that Wiggins solicited and raised $250,000 from six investors to purchase security interests in a project that was not recorded on the books and records of his member firm, thereby precluding the review of these securities transactions by the NASD and other regulatory authorities. In addition, the NASD determined that Wiggins made misrepresentations and omissions to a customer regarding an investment.

February Actions
Dickinson & Co. (Des Moines, Iowa) and Glenn Scott Cushman (Registered Principal, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $80,000, jointly and severally. Cushman was also suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cushman, sold securities that were not registered or exempt from registration pursuant to the Securities Act of

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1993. The NASD also found that the firm, acting through Andrews, Hentges, and Tipton, failed to record the purchase and sale of the 11 Certificates of Origination Fees on the firm's books and records. In addition, the firm, acting through Hentges, Jones, and Tipton, prepared incorrect net capital computations and submitted inaccurate FOCUS Part I and Part II reports. Furthermore, the firm, acting through Jones, engaged in a securities business while failing to maintain its minimum required net capital.

According to the findings, Tipton misrepresented to certain directors and officers of the firm that certain liabilities of the firm were being paid when in fact they were not, and failed to respond to NASD requests for information. The NASD also found that Hentges failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U-4) that he had filed for bankruptcy under the U.S. Bankruptcy laws; and Andrews failed to disclose on his Form U-4 that he had been served with a notice of levy issued by the U.S. Internal Revenue Service.

In addition, the findings stated that the firm, acting through Andrews and Hentges, allowed Jones to actively manage the firm's investment and negotiation with the NASD in any capacity, and failed to adequately supervise the activities of Tipton in preparing the books and records of the firm and its parent company.

David B. Bancroft (Registered Representative, Meridian, Mississippi) submitted an Offer of Settlement pursuant to which he paid $9,475, $6,500, and $3,0220 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bancroft consented to the described sanctions and to the entry of findings that he failed and neglected to comply with instructions given to him by the customers by failing to enter purchase and/or sale transactions in the customers' accounts. The findings also stated that Bancroft shared in the losses of public customers when he deposited a check and a money order totaling $605 into the customers' accounts to cover losses sustained by the customers. The NASD also determined that Bancroft made misrepresentations to a public customer that a U.S. Treasury bond had been purchased. In addition, the NASD found that Bancroft caused three checks totaling $8,008.59 to be issued to a public customer from the customer's account and misrepresented to him that the checks were interest payments from a U.S. Treasury bond that he had failed to purchase for the customer's account.

Mark A. Brewer (Registered Representative, Sapulpa, Oklahoma) 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 two years. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he failed to enter purchase and/or sale transactions in the accounts of public customers without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers based on their financial situations, investment objectives, and needs. The NASD also found that Brewer selected complex and non-account dokumentation for the aforementioned customers. In addition, the findings stated that Brewer engaged in private securities transactions without prior written notice to and approval from his member firm.

Darryl T. Cristwell (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $65,000, barred from association with any NASD member in any capacity, and required to pay $15,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Cristwell...
consented to the described sanctions and to the entry of findings that he received, in error, a $14,529.14 check, deposited it into his growth fund account, and redeemed $13,000 of the funds. According to the findings, Cristwell knew, or should have known, that the funds had been deposited into his account in error, and thereby misused funds.

John C. Cummings, III (Registered Representative, Birmingham, Alabama) was fined $25,000, barred from association with any NASD member in any capacity, and required to pay $19,600 in restitution to a customer. The sanctions were based on findings that Cummings induced a public customer to hedge certain securities from her account and to loan a portion of the proceeds totaling $19,600 to him. In doing so, Cummings executed two promissory notes to the customer that promised an interest rate of 20 percent. Cummings engaged in this activity without having reasonable grounds for believing that the aforementioned recommendations and the resultant transactions were suitable for the customer on the basis of the customer’s financial situation, investment objectives, and needs. The NASD also found that Cummings forged the name of an office manager to a memorandum that he used to misrepresent the terms of his compensation, and his ability to repay certain loans to a mentioned customer.

David D. deBerardinis (Registered Representative, Shreveport, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, deBerardinis consented to the described sanctions and to the entry of findings that he participated in distributions of promissory notes through a memorandumin which he had an ownership interest. In addition, the findings stated that deBerardinis sent to public customers correspondence with information misleading, in that a misrepresented certain safety features of the aforementioned notes, and failed to adequately disclose the risks of the offerings.

Robert L. Hutton (Registered Representative, Kingsport, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $12,000, barred from association with any NASD member in any capacity, and required to pay $85,221.57 in restitution to the appropriate parties. Without admitting or denying the allegations, Hutton consented to the described sanctions and to the entry of findings that he fraudulently induced at least nine public customers to invest a total of $51,622 in various securities he neglected to invest these funds. The NASD found that Eaton converted the funds to his own use and benefited without the customers’ knowledge or consent. The findings also stated that Eaton altered a customer’s account statement to reflect fictitious investments in the customer’s account. In addition, the NASD found that Eaton failed to respond to NASD requests for information.

Ivan J. Fisher (Registered Representative, Moore, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000, barred from association with any NASD member in any capacity, and required to pay $26,500 in restitution to the appropriate parties. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he solicited and received checks totaling $26,500 from customers for investment purposes. In addition, the NASD found that Fisher failed to respond to full consent to an NASD request for information.

Donald R. Gates (Registered Representative, Cabot, Arkansas) was fined $50,967.70, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The NASB imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Gates accepted payments based on commissions or other compensation in a customer account when he knew, or should have known, that at the time the transactions occurred he was not properly registered with the NASD or approved as an agent in the state where the customer was domiciled. Gates appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Kenneth E. Hudson (Registered Representative, Gadsden, Alabama) was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $5,663.44 in restitution to the appropriate parties. The sanctions were based on findings that Hudson received from insurance customers $9,663.44 to purchase insurance products, but failed to execute the purchase or issue refund checks and, instead, converted the funds for his own use and benefit without the customers’ knowledge or consent. In addition, Hudson failed to properly register as an insurance agent to a customer and $1,602.22 refund check, cashed the check, and converted the funds for his own use and benefit without the customer’s knowledge or consent. Also, Hudson failed to respond to NASD requests for information.

Kenneth L. Lucas (Registered Principal, Englewood, Colorado) and Gregory E. Modeatti, Sr. (Registered Principal, Littleton, Colorado) were fined $15,000, jointly and severally with other respondents, and each suspended from association with any NASD member in any principal capacity for one month. Modeatti also submitted an Offer of Settlement pursuant to which he was ordered to disgorge $6,003 to the NASD. The SEC imposed the sanctions following appeal of an October 1991 NBCC decision. The sanctions were based on findings that Lucas and Modeatti failed to establish, maintain, and enforce written procedures governing the imposition of markups and mark-downs on principal transactions. The suspensions began August 15, 1994 and ended September 15, 1994.

Alexander Marks, Jr. (Registered Representative, Hooeytoni, Nevada) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Marks received a $95.76 insurance commission check that was issued to a fellow agent of his member firm, failed to remit the agent, forged the agent’s name on the check, and cashed the funds for his own use and benefit without the agent’s knowledge or consent. In addition, Marks second-enclosed a $2,764.03 check made payable to a public customer and converted the funds for his own use and benefit without the knowledge or consent of the customer. Marks also failed to respond to NASD requests for information.

William E. Powdrill, III (Registered Representative, Shreveport, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $190,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powdrill consented to the described sanctions and to the entry of findings that he sold promissory notes to profit-sharing accounts and public customers, without having a reasonable basis for determining that these purchases were suitable for the customers considering their financial situations, investment objectives, and needs. The findings also stated that Powdrill falsified information submitted with public customers’ subscription agreements, and made oral misrepresentations to at least one public customer concerning the safety of their principal and the risks associated with promissory notes. The NASD also found that Powdrill participated in the sale of interests in a limited partnership at least eight investors without providing prior written authorization from the customers and without receiving approval from his member firm. In addition, the NASD determined that Powdrill recommended and executed purchase and sale transactions in the account of a public customer without having a reasonable basis for determining that these investments were suitable for the customer considering her financial situation, investment objectives, and needs.

Rod M. Solow (Associated Person, New Orleans, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Solow consented to the described sanctions and to the entry of findings that he recommended and executed purchase and sale transactions in the account of a public customer without having a reasonable basis for determining that these investments were suitable for the customer considering her financial situation, investment objectives, and needs.

Don M. Warren (Registered Representative, Montgomery, Alabama) was fined $16,000 and barred from association with any NASD member in any capacity. The NASD imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Warren converted customer funds totaling $2,982.68 for his own use and benefit without the customers’ knowledge or consent.

March Actions

Nazmi C. Hassaniell (Registered Representative, Memphis, Tennessee) was fined $50,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanction following appeal of an August 1993 NBCC decision. The sanctions were based on findings that Hassaniell failed to respond to NASD requests for information.

Karen G. Hayes (Registered Representative, Rogersville, Tennessee) submitted an Offer of Settlement pursuant to which she was fined $30,000, barred from association with any NASD member in any capacity, and required to pay $361 in restitution to her member firm. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that she received from public customers $5.61 to purchase automobile insurance and she failed to submit it to her member firm. Instead, the NASD found that Hayes converted the funds to her own use and benefit without the customers’ knowledge or consent. The findings also stated that Hayes failed to respond to NASD requests for information.

Donald M. Hogan, Jr. (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Hogan 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. The findings also stated that Hogan executed transactions in a public customer’s account that created a margin balance without having reasonable grounds for believing that the recognition of such margin balances and related transactions were suitable for the customer based on the customer’s financial situation, investment objectives, and needs.
NASD found that Hogan completed a new account form on behalf of a public customer, with reasonable basis for believing that the information regarding income and net worth, among other items, was correct.

April Actions

William H. Kautter (Registered Principal, Kansas City, Missouri) and Janet K. Gatz-Bennett (Registered Principal, Silwell, Kansas), and Brian G. Augustyn (Registered Principal, Kansas City, Missouri) submitted an Offer of Settlement pursuant to which Kautter was fined $12,500 and suspended from association with any NASD member in any principal capacity for six months, and Augustyn and Gatz-Bennett were each fined $7,500 and suspended from association with any NASD member in any capacity for one year and Augustyn was fined $5,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the promotion and sale of shares of a mortgage-backed securities offering, Augustyn misrepresented, or failed to state to participating broker/dealers, certain material facts concerning the offering of an underwritten extension of an initial public offering of the fund. The findings also stated that Kautter, Gatz-Bennett, and Augustyn distributed materials that contained material misrepresentations about the past performance of the fund. In addition, the NASD found that Kautter and Gatz-Bennett failed and neglected to supervise properly the activities of Augustyn. Augustyn’s suspension began March 20, 1995, and concluded April 2, 1995.

Bruce L. Sage (Representative, Rogers, Arkansas) submitted an Offer of Settlement pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sage consented to the described sanctions and to the entry of findings that he signed a public customer’s name to 155 account documents, including letters of authorization, without having obtained prior written approval from the customer. The findings also stated that he received fees in excess of the custodian’s $29,516.30 and converted those funds to his own use and benefit.

February Actions

Kenneth James Adams (Registered Representative, League City, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams circumvented the registration requirements of Schedule C of the NASD By-Laws and failed to respond to NASD requests for information.

Terry William Funk (Registered Representative, El Paso, Texas) 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 one year. Without admitting or denying the allegations, Funk consented to the described sanctions and to the entry of findings that he functioned as a financial and operations principal for his member firm without qualifying by examination in that capacity. The findings also stated that the same firm, acting through Funk, failed to maintain a blanket fidelity bond and conducted a securities business while failing to maintain its required minimum net capital. Furthermore, the NASD determined that the firm, acting through Funk, conducted a securities business while failing to maintain and keep current books and records. In addition, the NASD found that the firm, acting through Funk, took possession of customers’ funds and securities while purporting to operate under exemptive provisions of SEC Rule 15c3-3.

David Scott Kendrick (Registered Representative, Irving, Texas) was fined $25,000, suspended from association with any NASD member in any principal capacity for six months, and required to requalify by examination. The sanctions were based on findings that, by means of manipulative, deceptive, or other fraudulent devices or contrivances, Kendrick effected unauthorized transactions in options in the accounts of public customers. In addition, Kendrick failed to respond to NASD requests for information.

March Actions

Bluebonnet Securities, Inc. (Austin, Texas) and Susan L. Henry (Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $21,422, and without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Henry, permitted up to five salesmen to be associated with it and to solicit customers or potential customers for the purchase or sale of securities of investment companies, without having been registered with the NASD. Furthermore, the findings stated that the firm, acting through Henry, failed to establish and maintain written supervisory procedures to permit them to supervise adequately the securities activities in which the firm engaged.

Paul McCulloch Byatt (Registered Principal, Irving, Texas) was suspended from association with any NASD member in any capacity for 60 days and must requalify by examination in all capacities. The sanctions were based on findings that Byatt effected transactions in a public customer’s account by means of manipulative, deceptive, or fraudulent devices or contrivances, thereby causing over $30,000 in losses to the customer.

John Wayne Ezell (Registered Representative, Arlington, Texas) submitted an Offer of Settlement pursuant to which he was fined $27,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Ezell consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities to public customers and effected unauthorized, excessive, and unauthorized transactions in the accounts of public customers. The findings also stated that Ezell did this by means of manipulative, deceptive, or other fraudulent devices or contrivances, without having reasonable grounds for believing that such recommendations and transactions were suitable for the customers based on their other security holdings and financial situations and needs, and fraudulently induced the purchase and/or sale of securities by such public customers.

Jeremy Joseph Hansmann (Registered Representative, San Antonio, Texas) submitted an Offer of Settlement pursuant to which he was fined $20,000, barred from association with any NASD member in any capacity, and required to pay $440,000 in restitution to a customer. Without admitting or denying the allegations, Hansmann consented to the described sanctions and to the entry of findings that he induced the purchase and sale of securities by means of manipulative, deceptive, or fraudulent devices and contrivances, by selling units of securities to a public customer. Thereafter, the NASD found that Hansmann, in addition to false and misleading statements, obtained from the same customer, without payment of just compensation, the transfer to himself of the same securities, which he converted to his own use and benefit. In addition, the NASD determined that, in connection with these activities, Hansmann engaged in private securities transactions.

InterAmerican Securities Corporation (Houston, Texas) and Catherine Kinsel Collins (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $11,756, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Collins, permitted the firm to pay commissions to persons or entities, that were not registered with the NASD. The findings also stated that the firm, acting through Collins, used instrumentality of interstate commerce to effect transactions in nonexempt securities while failing to maintain its minimum requirement.

Shane Thomas Philip (Registered Representative, Sugarland, Texas) submitted an Offer of Settlement pursuant to which he was fined $60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Philip consented to the described sanctions and to the entry of findings that he made improper use of customer funds by forging their endorsements on refund checks made payable to the customers and by submitting a public customer’s check accompanied by a forged application in the customer’s name to his member firm to have an insurance policy issued.

Texas Capital Securities, Inc. (Houston, Texas), Patrick Joseph Smetek (Registered Principal, Houston, Texas), and Thomas Francis Buckley (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $32,000, jointly and severally. Buckley was suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Smetek, failed to buy securities from and/or sell securities to public customers of the firm at prices that were fair. The findings also stated that the firm, acting through Smetek, failed to disclose accurately the commission and/or markup/markupduction in at least 56 transactions required by Rule 10b-10 under the Securities Exchange Act of 1934, as amended, and Schedule D of the NASD By-Laws. Furthermore, the NASD found that the firm, acting through Smetek, sold shares of common stock to four investment partnerships in an initial public offering without obtaining the three required investment partnerships and corporation that is required by the Interpretation of the Board of Governors concerning Free-Riding and Withholding. In addition, the NASD determined that Buckley failed to respond to an NASD request for information.

Andrew Ross Zodin (Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $60,000 and barred from association with any NASD member in any capacity for five business days, and ordered to disgorge $1,539 in net commissions without admitting or denying the allegations, Zodin consented to the described sanctions and to the entry of findings that he executed and caused to be executed in the account of a public customer unauthorized transactions in a common stock resulting in a $7,452 loss to the customer.

April Actions

National Association of Securities Dealers, Inc.

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Enex Securities Corporation (Kingwood, Texas;看了看 D. Clyde Campbell (Registered Principal, Spring, Texas) submitted an Offer of Settlement pursuant to which they were fined $12,200 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings, acting through Campbell, effected transactions in nonexistent securities while maintaining its minimum required net capital. The sanctions were based on the findings that Leech engaged in excessive trading in the account of a public customer, resulting in a loss of $43,000 without having reasonable grounds for believing such transactions were suitable for the customer. In addition, Leech exercised discretion in executing transactions in the same customer's account without having written authority from the customer.

Katherine Sholes Parker (Registered Principal, Heaters, West Virginia) submitted an Offer of Settlement pursuant to which she was fined $5,000 and suspended from association with any NASD member as a limited financial principal or in a similar principal capacity for one year, provided, however, the suspension shall not preclude Parker, on behalf of or on behalf of any NASD who is required to have associated with it a financial principal, and acting under the supervision of such principal, or who is exempted by the NASD from maintaining a financial principal, from preparing financial statements and FOCUS reports and filing FOCUS reports with the SEC and the NASD. Without admitting or denying the allegations, Parker consented to the described sanctions and to the entry of findings that a member firm, acting through Parker, failed to file its annual certified audit within the time required, and failed to maintain its minimum required net capital. The findings also stated that Parker, acting on behalf of the firm, failed to record properly bank deposits on the firm's books and records.

Ronald Kevin Shinkus (Registered Representative, Houston, Texas) was fined $10,000 and suspended from association with any NASD member in any capacity, and ordered to pay $4,972.87 in restitution to his member firm. The sanctions were based on findings that Shinkus caused the transfer of shares from the securities account of a public customer to his personal account without the customer's knowledge or authorization. Shinkus also liquidated the aforementioned securities account and converted its proceeds for his own use and benefit without the customer's knowledge or authorization. In addition, Shinkus failed to respond to NASD requests for information.

David W. Fritz (Registered Representative, Martinez, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $33,224.35 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that a public customer $6,644.87 check representing the cash value from a life insurance policy that the customer had purchased. According to the findings, the customer directed Fritz to use the funds to pay the premiums on a new insurance policy but, instead, he converted the funds for his own use and benefit.

Michael K. Hall (Registered Representative, Sebring, Florida) 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, Hall consented to the described sanctions and to the entry of findings that he converted his own use and benefit funds that he received from a public customer $1,000 check for a reverse of shares of a municipal bond mutual fund.

William L. Joiner, Jr. (Registered Representative, Powder Springs, Georgia) was fined $13,000 and suspended from association with any NASD member in any capacity, and required to pay $23,099.53 in restitution to his member firm. The NBCC imposed these sanctions following the appeal of an Atlanta DBCC decision. The sanctions were based on findings that Joiner withdrew $23,099.53 from the health insurance policies of 50 public customers and converted the funds for his own use and benefit without the knowledge or authorization of the customers. In addition, Joiner failed to respond to NASD requests for information.

Keith E. Martin (Registered Representative, Spartanburg, South Carolina) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martin obtained from public customers $2,930.89 check intended to be used to purchase investment company securities and without the knowledge or authorization of the customers, converted the funds to his own use and benefit. In addition, Martin failed to respond to NASD requests for information.

Algie L. McCormick (Registered Representative, St. Petersburg, Florida) was fined $1,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that during the course of a Series 6 examination, McCormick had in her possession notes relating to the subject matter of the examination.

Keith S. Norris (Registered Representative, Hinton Head, South Carolina) was fined $10,000, suspended from association with any NASD member in any capacity for one year, required to disgorge commissions totaling $28,285.41, and ordered to pay to his customers of the principal amounts which they had invested. In addition, Norris was ordered to respond to SEC examination requests.

Larry James Oliver (Registered Representative, Port St. Lucie, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Oliver failed to respond to NASD requests for information concerning his termination from a member firm and a customer complaint.

Walter L. Swafford (Associated Person, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that in that course of a Series 7 examination, Swafford had in his possession notes relating to the subject matter of the examination.

Edward W. Tanner (Registered Representative, St. Petersburg, Florida) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tanner opened securities accounts for two public customers and submitted to his member firm inaccurate information on the new account cards. In addition, Tanner failed to respond to an NASD request for information.

Joseph F. Taylor (Registered Representative, Casselberry, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Taylor failed to respond to an NASD request for information about his termination from a member firm.

Robert J. Thomas (Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $21,392.39 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he effected 21 transactions in the accounts of 10 public customers without the knowledge or authorization of the customers. In addition, the NASD found that Thomas prepared customer statements with falsified confirmations and account statements intended to hide the unauthorized transactions.

Douglas M. Warner, Jr. (Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he effected 31 transactions in the account of a public customer without the customer's knowledge or consent. In addition, the NASD found that Warner signed customers' names to a client agreement and transfer documents.

John R. White (Registered Representative, Grantsville, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $49,360 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he received from 12 public customers checks totaling $9,873 intended for the purchase of insurance products but, instead, misused and/or converted the funds for his own use and benefit.

Oliver J. Williams, Jr. (Registered Principal, Miami, Florida) was fined $7,500, jointly and severally with another respondent, and suspended from association with any NASD member as a financial and operations principal for 30 days and thereafter until he responds by examination. The sanctions were based on findings that a member firm, acting through Williams, conducted a securities business while failing to maintain its required minimum net capital. The NASD also found that the firm, acting through Williams, failed to accurately maintain capital accounts and records; failed to adequately maintain its FOCUS Part
I report with the NASD; and failed to file Focus Part II report and its annual audited report in a timely manner. In addition, the firm, acting through Williams, failed to send timely telegraphic notice of its capital deficiencies.

Bruce Martin Zipper (Registered Principal, Miami, Florida) was fined $5,000 and suspended from association with any NASD member in any capacity for two years. Zipper had consented to the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Zipper failed to file a $418,000 arbitration award. Zipper has appealed this action to the SEC, and the sanctions are stayed pending consideration of the appeal.

March Actions

Bernard D. Gorniak (Registered Representative, Cape Coral, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Gorniak received a public customer $1,000 in cash for the purchase of shares of an investment company and instead of investing these funds on the customer’s behalf, he kept the funds in an indeterminate period before returning them without making the investments as requested by the customer. Gorniak has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Robert R. Houck (Registered Representative, Bradenton, Florida) was fined $1,121.97 and suspended from association with any NASD member in any capacity for five business days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Houck prepared and provided a public customer periodic security portfolio valuations that contained overstated values for certain positions held by the customer in at least two separate accounts without having a factual basis for making such representations.

Richard J. Lanigan (Registered Representative, Laurel, Florida) was fined $5,250 and suspended from association with any NASD member in any capacity for five days. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Lanigan failed to pay a $4,500 arbitration award in a timely manner. Furthermore, Lanigan failed to amend his U-4 to reflect that the award included a finding of liability against him and that he had an unsatisfied judgment. Lanigan has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Manoochee Noratisalambo (Registered Representative, Key Harbour, Florida) was fined $26,735 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Noratisalambo caused $13,000 to be wired from his personal bank account into the securities account of a public customer, thereby sharing in losses sustained by the customer. Noratisalambo also effected, or caused to be effected, a series of transactions for the same customer’s account without the knowledge or consent of the customer. In addition, Noratisalambo stated to NASD staff that he had no knowledge of the origin of these wire transfers and that he did not deposit funds in a customer’s securities account when in fact they came from his personal bank account.

Palm State Equities, Inc. (Largo, Florida), James R. Tuberous (Registered Principal, Largo, Florida) and Holly Ann Schuck, f/k/a Holly Ann Tuberous (Registered Principal, Sarasota, Florida) were fined $20,000, jointly and severally. The firm was also fined $7,500 and Schuck was fined $10,000. The NBCC affirmed the sanctions following appeal and review of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Tuberous, failed to comply with its restrictive agreement with the NASD by participating in a firm compensation plan. In addition, the firm, acting through Schuck, filed its annual audit report with the NASD 35 days late. Furthermore, the firm failed to reconcile its bank checking account statements and its clearing commission account and post necessary adjustments to its general ledger. The firm and Tuberous have appealed this action to the SEC, and their sanctions are not in effect pending consideration of the appeal.

Schembra Securities, Inc. (Hilton Head, South Carolina) and Philip A. Schembra (Registered Representative, Hilton Head, South Carolina) were fined $10,000, jointly and severally. Schembra was barred from association with any NASD member in any principal or supervisory capacity. The sanctions were based on findings that the firm, acting through Schembra, failed to file its annual audited financial reports in the prescribed time periods. The firm, acting through Schembra, also failed to file notice with the NASD when it engaged a new accountant to perform its audit and failed to have its annual financial reports approved by an independent public accountant. In addition, the firm, acting through Schembra, failed to promptly and keep current its Form BD and maintained a principal registration with the NASD for an individual when he was no longer active in the firm’s investment banking or securities business, and was not functioning as a principal. Furthermore, Schembra functioned in a principal capacity without being so registered with the NASD. Also, the firm, acting through Schembra, failed to have a qualified registered principal and failed to amend its written supervisory procedures in a timely manner to reflect the replacement of its supervisory officer for compliance and to correct violations found in a previous Letter of Acceptance, Waiver and Consent.

April Actions

David L. Gray, Jr. (Registered Representative, Tampa, Florida) was fined $40,000, barred from association with any NASD member in any capacity, and required to pay $11,424.25 in restitution to a public customer. The sanctions were based on findings that Gray misrepresented to a public customer that he was aware of certain nonpublic information that indicated the price of a stock would increase, thus causing the customer to purchase the stock. In addition, Gray failed to respond to an NASD request for information.

Cristina J. Marti (Registered Representative, Miami, Florida) submitted an Offer of Settlement pursuant to which she was fined $10,000 and barred from association with any NASD member in any capacity with the right to realign to become an associate with a member after two years. Without admitting or denying the allegations, Marti consented to the described sanctions and to the entry of findings that she materially distorted the earnings per share and related earnings per share data for three calendar periods. In addition, Marti consented to the entry of findings that she did not disclose to her employer that she was in receipt of and had entered into an agreement pursuant to which she would receive a percentage of the gross proceeds from the sale of shares of a company that were distributed to the customers of the firm. Marti consented to the entry of findings that she materially distorted the earnings per share and related earnings per share data for the second and third quarters of 2003 and the fourth quarter of 2002. Marti also consented to the entry of findings that she materially distorted the earnings per share and related earnings per share data for the first quarter of 2003. Marti also consented to the entry of findings that she made unauthorized trades for her own account. Marti also consented to the entry of findings that she made unauthorized trades for her own account. Marti also consented to the entry of findings that she made unauthorized trades for her own account.

March Actions

James V. Anzalone (Registered Representative, Tonawanda, New York) 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, Anzalone consented to the described sanctions and to the entry of findings that he obtained two checks totaling $12,493.99 from his member firm payable to insurance customers, which represented a dividend withdrawal and the cash surrender value from the customers’ insurance policies. According to the findings, the customer did not authorize the withdrawal of the funds and Anzalone used the moneys for some purpose other than the benefit of the customers. The findings also stated that Anzalone failed to apply the funds as directed and used them for some purpose other than for the benefit of the customer.

Kevin Lee Butts (Registered Representative, South Holland, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was convicted of a felony and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Butts consented to the described sanctions and to the entry of findings that he executed margin account agreements and the purchase of securities on margin in the accounts of two public customers without their knowledge or consent.

Dominic G. Celli (Registered Representative, Chicago, Illinois) 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 six months. Without admitting or denying the allegations, Celli consented to the described sanctions and to the entry of findings that he entered into margin account agreements and the purchase of securities on margin in the accounts of two public customers without their knowledge or consent.

John K. Coyne (Registered Representative, Westlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Coyne consented to the described sanctions and to the entry of findings that he obtained from a public customer a $3,000 check that was to be applied to the common stock option of the customer’s variable life insurance policy. According to the findings, DiGiacomo failed to apply the funds as requested and used the moneys for some purpose other than for the benefit of the customer.

Victor F. DiGiacomo (Registered Representative, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiGiacomo consented to the described sanctions and to the entry of findings that he obtained from a public customer a $3,000 check that was to be applied to the common stock option of the customer’s variable life insurance policy. According to the findings, DiGiacomo failed to apply the funds as requested and used the moneys for some purpose other than for the benefit of the customer.

February Actions

None
Louis Feldman (Registered Principal, Coral Springs, Florida) was fined $10,000, suspended from association with any NASD member in any capacity for 10 business days, and required to reimburse by examination in any registered capacity that he might function within 90 days or he may not act in a registered capacity until he passes the NASD examination. The SEC modified the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Feldman, using a letterhead for his company's firm's letterhead but with his home address to six mutual fund companies, Feldman engaged in this activity for the purpose of changing the broker/dealer of record for customer accounts without having authority to approve bulk transfers of accounts and without obtaining prior authorization from the firm or from the customers.

Geneva Securities, Inc. (Schaumburg, Illinois) and Richard M. Eisenmenger (Registered Principal, Schaumburg, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. In addition, the firm was required for one year to submit all advertising and sales literature to the NASD Advertising Department for approval. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they violated NASD rules. The sanctions were based on findings that the respondents, through Eisenmenger, permitted the distribution of advertisements and sales literature to the public without submitting them to the Advertising Department for approval before use. The findings also stated that the firm, acting through Eisenmenger, failed to file prompt complaints of advertisements and sales literature with the NASD Advertising Department within 10 days of their first use or publication by the firm. Furthermore, the NASD determined that the firm, acting through Eisenmenger, permitted the distribution of the advertisements and sales literature that included exaggerated, unsupported, or misleading statements or claims that appear promissory and failed to reflect the risks of fluctuating prices and the uncertainty of yield.

David E. Lobel (Registered Representative, Ann Arbor, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lobel consented to the described sanctions and to the entry of findings that he purchased life insurance for public customers and signed their names to life insurance applications without their knowledge, consent, or authorization. The findings also stated that Lobel purchased life insurance for fictitious customers.

Norman B. March, Jr. (Registered Representative, Oceanside, New York) was fined $50,000, barred from association with any NASD member in any capacity, and ordered to pay $5,000 in restitution to his member firm. The sanctions were based on findings that March, acting through a company's firm's letterhead, solicited and obtained funds on the promise that he would purchase life insurance for public clients and sign the names of customers to insurance applications without their knowledge, consent, or authorization. The findings also stated that March failed to follow the customer's instructions and used the funds for some purpose other than for the benefit of the customer. March also failed to respond to NASD requests for information.

Orion Securities, Inc. (Englewood, Colorado) and Douglas Nutt (Registered Principal, Greenwood Village, Colorado) were fined $400,000, jointly and severally. Their firm was fined $500,000, barred from association with any NASD member in any capacity, and ordered to pay $5,000 in restitution to its member firm. The sanctions were based on findings that March received from a public customer $6,000 in check instructions to invest the funds in the custo-mer's Individual Retirement Account. March failed to follow the customer's instructions and used the funds for some purpose other than for the benefit of the customer. March also failed to respond to NASD requests for information.

Louis Adams (Registered Representative, Pittsburgh, Pennsylvania) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adams failed to respond to NASD requests for information.

Frank A. Azalina (Registered Representative, Easton, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Azalina failed to make a written recommendation in his report to a customer to sign an application form and premium payments to his member firm or its affiliated insurance companies.

Dale E. Barlage (Registered Representative, Jackson, Wyoming) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barlage consented to the described sanctions and to the entry of findings that he recommended and sold shares of stock directly from his personal account to a public customer without disclosing his material adverse interest in the security. In addition, the NASD found that Barlage sold shares of the same stock to two additional customers based on false and misleading representations he made about the performance of the stock.

Jerry A. Blackwell, Sr. (Registered Representative, Galithersburg, Maryland) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blackwell failed to respond to NASD requests for information and failed to send a letter to a customer to endorse another check issued by his member firm, which he then cashed.

Mark Steven Warner (Registered Representative, Wilbraughly, Ohio) submitted an Offer of Settlement pursuant to which he was fined $80,000, required to submit proof of restitu- tion of $15,522.90 to a member firm, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he obtained $15,522.90 from 31 insurance customers with instructions to apply the funds to insurance polici-es they owned. The NASD found that, contrary to the customers' instructions and without their knowledge or consent, Warner deposited the funds in a bank account in which he had an interest or which he controlled, and retained the funds for his own use and benefit.

James Mitchell Vale (Registered Representative, Clarence, New York) was fined $5,000 and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member after one year. In addition, Warner must requalify by exami-nation in the appropriate capacity before acting as a registered representative or member firm. The sanctions were based on findings that Warner changed, or caused to be changed, the address for a public customer to his own home address with-out the knowledge or consent of the customer. In addition, Warner, altered the same customer's policy statements to conceal an $896.57 redemp tion charge that had been incurred and to reflect higher ending account values.

April Actions

None.

February Actions

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

Frank A. Azalina (Registered Representative, Easton, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Azalina failed to make a written recommendation in his report to a customer to sign an application form and premium payments to his member firm or its affiliated insurance companies.

Dale E. Barlage (Registered Representative, Jackson, Wyoming) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barlage consented to the described sanctions and to the entry of findings that he recommended and sold shares of stock directly from his personal account to a public customer without disclosing his material adverse interest in the security. In addition, the NASD found that Barlage sold shares of the same stock to two additional customers based on false and misleading representations he made about the performance of the stock.

Jerry A. Blackwell, Sr. (Registered Representative, Galithersburg, Maryland) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blackwell failed to respond to NASD requests for information and failed to send a letter to a customer to endorse another check issued by his member firm, which he then cashed.

Mark Steven Warner (Registered Representative, Wilbraughly, Ohio) submitted an Offer of Settlement pursuant to which he was fined $80,000, required to submit proof of restitution of $15,522.90 to 31 insurance customers with instructions to apply the funds to insurance policies they owned. The NASD found that, contrary to the customers' instructions and without their knowledge or consent, Warner deposited the funds in a bank account in which he had an interest or which he controlled, and retained the funds for his own use and benefit.

James Mitchell Vale (Registered Representative, Clarence, New York) was fined $5,000 and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member after one year. In addition, Warner must requalify by examination in the appropriate capacity before acting as a registered representative or member firm. The sanctions were based on findings that Warner changed, or caused to be changed, the address for a public customer to his own home address without the knowledge or consent of the customer. In addition, Warner, altered the same customer's policy statements to conceal an $896.57 redemption charge that had been incurred and to reflect higher ending account values.

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in any capacity for 30 business days. Without admitting or denying the allegations, Dr. Keshelis consented to the described sanctions and to the entry of findings that he engaged in conduct resulting in a NASD member's inability to engage in any capacity for 30 days. Without admitting or denying the allegations, Dr. Keshelis consented to the described sanctions and to the entry of findings that he engaged in conduct resulting in a NASD member's inability to engage in any capacity for 30 days. Without admitting or denying the allegations, Dr. Keshelis consented to the described sanctions and to the entry of findings that he engaged in conduct resulting in a NASD member's inability to engage in any capacity for 30 days. Without admitting or denying the allegations, Dr. Keshelis consented to the described sanctions and to the entry of findings that he engaged in conduct resulting in a NASD member's inability to engage in any capacity for 30 days. 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from association with any NASD member as a fin-
ancial operations principal for 60 days. Donahue
was fined $100,000, barred from associa-
tion with any NASD member as a general secur-
ities principal and suspended from association with
any NASD member as a general securities represen-
tative for 60 days. Yaman was fined $45,000 and
barred from association with any NASD member in any
capacity. Schwartz was fined $20,000, barred from
association with any NASD member as a general
securities principal and suspended from association with
any NASD member as a general securities representative
for 60 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 Donahue, Schwartz,
and Billings, arranged for and allowed Yaman to
become associated with the firm and to engage in
a securities business at the firm when he was sub-
ject to statutory disqualification and not properly
registered as required by Schedule C of the NASD
By-Laws. The findings also stated that
Yaman acted as an associated person of the firm
and engaged in a securities business when he was
subject to a statutory disqualification and not
properly registered as required by Schedule C of the
NASD By-Laws. The NASD also found that the
firm, acting through Donahue, Schwartz, and
Billings, engaged in a scheme to conceal the fact
that certain registered persons were associated
with and/or engaged in securities business at the
firm and failed to maintain accurate financial,
management and enforcement written procedures
that would have enabled them to supervise properly the
activities of the firm’s associated persons, including
Yaman.

Chatmon Capital Group, Inc. (West Orange,
New Jersey), Warren Peter Chatmon
(Registered Principal, South Orange, New Jersey)
and Darryl Lloyd Johnson (Registered
Principal, Lawrenceville, New Jersey) submit-
ted an Offer of Settlement pursuant to which the
firm was fined $10,000 and suspended from con-
ducting any securities business for 30 business
days. Chatmon and Johnson were each fined
$10,000 and must repay by satisfied in all
capacities requiring qualification within 90 days or
they will be suspended until the requisite quali-
fications are complete. Without admitting or
denying the allegations, the respondents consen-
ted to the described sanctions and to the entry of
findings that the firm, acting through Chatmon
and Johnson, failed to maintain the NASD’s
requirements for maintaining the net capital.

Steven Paul Hologonnis (Associated Person,
State Island, New York) was fined $25,000 and
barred from association with any NASD member in any
capacity. The sanctions were based on find-
ings that Hologonnis, without having obtained
permission to do so, removed from his member firm’s
offices sheets of microfiche that were the firm’s
property and sold them to two employees of
another member firm.

Robert S. Lehen (Registered Represen-
tative, Plainview, New York) submitted a Letter of
Acceptance, Waiver and Consent pursuant to which he
was fined $25,000 and barred from association with any
NASD member in any capacity. The sanctions were
based on findings that Lehen, without obtaining
permission to do so, wrote in his member firm’s
office a letter to the NASD that was not authorized
by his member firm.

Rita H. Malin (Registered Principal, Jupiter,
Florida) and Charles A. Hofer (Registrar,
Representative, New York, New York) Malin
was fined $10,000 and suspended from associa-
tion with any NASD member in any capacity for 10
days. Hofer was fined $20,412.50, suspended from
association with any NASD member in any capacity for three
months, and required to repay by examination as a regis-
tered representative before associating with any
NASD member. The SEC affirmed the sanc-
tions following appeal of a March 1992 NBCBC
decision. The sanctions were based on findings
that Berg refused and failed to execute orders for
six public customers and executed transactions
in customer accounts without the authorization or
consent of the customers. The NASD found that
Malin failed to establish and implement supervisi-
sory procedures to detect and prevent violations
relating to fail to execute customer orders.

Joel Silverstein (Registered Representative,
City Island, New York) submitted a Letter of
Acceptance, Waiver and Consent pursuant to
which he was fined $35,500, barred from associa-
tion with any NASD member in any capacity, and
required to pay $10,500 in restitution to his mem-
ber firm. Without admitting or denying the allega-
tions, Silverstein consented to the described sanc-
tions and to the entry of findings that, without
the knowledge or permission of a public customer,
he requested and received loan checks totaling $10,500
from a customer’s life insurance policy, signed the customer’s name to the checks, nego-
tiated the checks, and converted the funds to his own use and personal benefit. The findings
also stated that Silverstein caused the same cus-
tomer’s address to be that of his without the
knowledge or permission of the customer.

Mark A. Sennino (Registered Principal,
New York, New York) submitted a Letter of
Acceptance, Waiver and Consent pursuant to
which he was fined $2,900 and suspended from
association with any NASD member in any capacity.
Without admitting or denying the allega-
tions, Sennino consented to the described sanc-
tions and to the entry of findings that he withdrew
funds exceeding $10,000 from a customer’s
account. The findings also stated that Sennino
causd his member firm to issue altered account
statements to a public customer that did not accu-
rately reflect the value of the account. Fur-
thermore, the NASD determined that Sennino
failed to submit to an on-the-record interview at
the NASD’s request. The sanctions were based on
findings that Sennino failed to pay a $2,203 NASD arbitration award.

April Actions

Richard Stanley Chancis (Associated Person,
New York, New York) was fined $780 and
barred from association with any NASD member
in any capacity. The sanctions were based on
findings that Chancis acted as an associated per-
son of his member firm and engaged in a securities
business when he was subject to statutory dis-
qualification and not properly registered as
required by Schedule C of the NASD By-Laws.
In addition, Chancis failed to appear at the NASD
for an on-the-record interview.

South Richmond Securities, Inc. (New York,
New York), Herman Rafael Garcia, Jr.
(Registered Representative, Staten Island,
New York), and Barbara Hojman (Registered
Principal, Deer Park, New York) submitted an
Offer of Settlement pursuant to which they were
fined $75,000, jointly and severally, and ordered
to pay $109,994 in restitution to public customers.
In addition, the firm was suspended from
executing principal retail transactions for 10 business
days and suspended from participating in any
underwritings for three months. Hojman was
barred from association with any NASD member
as a general securities principal, and Garcia was
fined $20,000 and barred from association with
any NASD member in any capacity. Without
admitting or denying the allegations, the respon-
dents consented to the described sanctions and
the entry of findings that the firm, acting through
Garcia, dominated and controlled the market for a
common stock to the extent that there was no
independent, competitive market in the stock.
The findings also stated that the firm, acting through
Garcia, engaged in a course of conduct that oper-
ated as a fraud upon purchasers of the stock in that the prices at which the firm sold the
stock to public customers from inventory were
unfair, and the prices charged contained fraudulent and/or excessive markups ranging from 5 to 30 percent over the prevailing market price, thus violating the NASD Mark-Up Policy. The NASD also determined that the firm, acting
through Hojman, failed to establish, main-
tain, and enforce written procedures that would
have enabled them to supervise properly the
activities of the firm’s associated persons, includ-
ing Garcia. In addition, the NASD determined
that Garcia failed to provide testimony in an on-the-
record interview with the NASD.

February Actions

Joseph B. Bailey (Registered Representative,
Binghamton, New York) was fined $100,000
and barred from association with any NASD member in any capacity. The sanctions were
based on findings that Bailey deposited customer
checks totaling $1,063,68 to his personal mutual
funds account, without the authorization or consent of the customers, and missappropriated
the funds for his own use and benefit.

Betty C. Cantelmo (Registered Representative,
Hollywood, Florida) submitted a Letter of
Acceptance, Waiver and Consent pursuant to
which she was fined $25,000. Without admitting or
denying the allegation, Cantelmo consented to the
described sanctions and to the entry of findings
that she engaged in private securities transactions outside the regular scope of her association
with her member firm without giving prior written
notice to the firm.

James E. Cruise (Registered Representative,
West Barnstable, Massachusetts) submitted an
Offer of Settlement pursuant to which he was
fined $20,000 and barred from association with
any NASD member in any capacity. Without
admitting or denying the allegations, Cruise con-
sented to the described sanctions and to the entry of
findings that he failed to respond to NASD
requests for information about his alleged participa-
tion in private securities transactions.

Stephen J. Kende (Registered Representative,
Burkeville, Texas) submitted a Letter of
Acceptance, Waiver and Consent pursuant to
which he was fined $5,000 and barred from associa-
tion with any NASD member in any capacity.
Without admitting or denying the allegations, Kende
consented to the described sanctions and to the
entry of findings that he failed to respond to NASD
requests for information about his alleged participa-
tion in private securities transactions.

Michael T. Mahoney (Registered
Representative, Bridford, Connecticut) was
fined $1,000 and barred from association with any
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NASD member in any capacity. The sanctions were based on findings that Shane misappropriated funds totaling $260 that were intended as the initial premium payment for an automobile insurance policy. Shane failed to respond to NASD requests for information.

Harold R. Shafer (Registered Representative, Waterbury, Connecticut) was fined $300,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shafer misrepresented his own use of approximately $50,000 intended for investment on behalf of a public customer, without the knowledge or consent of a public customer or his member firm.

Edward S. Skane (Registered Representative, Framingham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skane consented to the described sanctions and to the entry of findings that he submitted fraudulent insurance applications and dishonored request forms on behalf of insurance policyholders. In addition, the NASD found that Skane forged customers' signatures on insurance applications and dividend check endorsements.

March Actions

Daniel K. Cooper (Registered Representative, Belgrade Lakes, Maine) 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, Cooper consented to the described sanctions and to the entry of findings that he received a $1,578.86 refund for repayment of an insurance policy loan, and without customer knowledge or consent he misspent the funds for his own use and benefit.

Robert F. Jackson (Registered Representative, Quincy, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he received a $9,500 check that was issued in error by his member firm and upon receipt of the check, converted the funds to his own use and benefit.

Steven D. Lamell (Registered Representative, Hampstead, New York) 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, Lamell consented to the described sanctions and to the entry of findings that he submitted a notice of findings that he withheld a $3,092.14 check to be issued for the account of a public customer, forged the customer's endorsement, and converted the funds to his own use without the prior knowledge, authorization, or consent of the customer.

William F. Giles (Registered Representative, Omaha, Nebraska) was fined $25,000, suspended from association with any NASD member in any capacity for six months, and required to refund by examination as a general securities representative. The NASD imposed the sanctions following review of a Market Surveillance Committee decision. The sanctions were based on findings that Giles knowingly and willingly engaged in a manipulative scheme to increase the reported closing price of a common stock. Specifically, Giles effectuated a series of purchases in the common stock at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade and to reduce or eliminate margin calls. Giles appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

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transactions in question. In addition, the NASD found that Barlow effected retail sales of a designated security in contravention of SEC Rule 15c2-6, in that suitability forms required to be completed before the execution were not completed or were completed incorrectly.

Kenneth M. Wong (Registered Principal, San Rafael, California) submitted an Offer of Settlement pursuant to which he was fined $45,000 and suspended from association with any NASD member in any capacity for 22 months. Without admitting or denying the allegations, Wong consented to the described sanctions and to the entry of findings that he knowingly communicated, for his direct or indirect personal benefit or as a trading gift, material, nonpublic, confidential, and proprietary information pertaining to pending merger discussions to his son-in-law and a longtime friend.

March Actions
None

April Actions
Thomas C. Kocherhans (Registered Representative, Orem, Utah) was fined $50,500, suspended from association with any NASD member in any capacity for one year, and ordered to reimburse by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that Kocherhans knowingly and willfully engaged in a manipulative, deceptive, and fraudulent scheme to increase the reported closing price of a common stock. Specifically, Kocherhans effected a series of purchases in a manner that caused the purchases to be executed at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade, thereby reducing or avoiding margin calls on an account held in his wife's name, and to deter higher maintenance requirements on the stock. In addition, Kocherhans failed to inform his member firm in writing that he maintained brokerage accounts at two other member firms. Kocherhans has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

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