NASD Regulatory & Compliance

ALERT

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NASD Emphasizes Evolution To Greater Disciplinary And Enforcement Role

On November 17, 1995, acting on the recommendations of an NASD-created Select Committee headed by former U.S. Senator Warren Rudman, the NASD Board of Governors approved a series of standard-setting changes in structure and governance that have broad implications for the securities industry and the investing public.

The NASD expects to set new standards for self-regulation by creating a fresh organizational structure, enabling it to more effectively meet its rapidly expanding regulatory responsibilities. Key among these changes will be an upgrading and expansion of major professional and technology resources that add a new focus to NASD® enforcement procedures and disciplinary operations.

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Mary Schapiro, President, NASDR

CFTC Chairman Schapiro To Head New NASD Regulatory Subsidiary

The NASD chose Mary L. Schapiro, Chairman of the Commodity Futures Trading Commission (CFTC), to become the President of NASD Regulation, Inc.℠, a soon-to-be-created independent NASD operating subsidiary responsible for regulating broker/dealers. Schapiro's appointment begins in January 1996.

Creation of the new subsidiary is one of several major recommendations made by an NASD Select Committee on Structure and Governance headed by former Senator Warren Rudman of New Hampshire. This recommendation and others were approved by the NASD Board of Governors at its November meeting. The NASD Regulation and The Nasdaq Stock Market℠ subsidiaries will be led by full-time presidents elected by the subsidiary boards, subject to ratification by the NASD Board.

"Mary Schapiro is one of the nation's most respected and experienced regulatory officials," said Joseph R. Hardiman, NASD President and CEO. "For more than a decade she has been a leading architect of increased oversight and regulation of the growing American and international securities markets, enabling growth and protection to go hand-in-hand for every investor."

"I am looking forward to leading an organization that plays such a vital role in protecting securities investors and the public interest," said Schapiro. "Changes now underway at the NASD and the commitment of added resources will place the NASD at the forefront of effective self-regulation."

"Under Schapiro's leadership, NASD Regulation will continue the NASD mandate to regulate fairly America's broker/dealers and the securities markets

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operated by the NASD. We expect she will build on our existing regulatory team, which we have committed to expand with more staff and financial resources in the coming year," Hardiman said.

Schapiro became Chairman of the CFTC in October 1994, following her appointment by President Clinton. The CFTC is the federal agency responsible for regulating U.S. futures markets. Before joining the CFTC, Schapiro served for six years as a commissioner of the SEC, including a period as acting chairman in 1993. She was appointed an SEC Commissioner by President Reagan in 1988 and re-appointed to a five-year term by President Bush in 1989.

Throughout the 1980s, Schapiro was involved in a wide array of regulatory reviews of the securities industry. As Chairman of the Securities and Exchange Commission (SEC) Task Force on Administrative Process, she directed the development of the task force report, "Fair and Efficient Administrative Proceedings," which was released in February 1993. The report focused on reviewing and revising the agency's rules for administrative proceedings and implementation of its new enforcement powers. In addition, Schapiro acted as the SEC liaison to the U.S. Working Group of the Group of Thirty on clearance and settlement matters.

Before joining the SEC, Schapiro was general counsel and senior vice president for the Futures Industry Association (FIA), an organization of brokerage firms, domestic and international futures exchanges, banks, law and accounting firms, and market users. Schapiro joined the FIA in 1984 and focused on regulatory, tax, legislative, and international issues.

Schapiro began her career at the CFTC in 1980 as a trial attorney in the Manipulation and Trade Practice Investigations Unit of the Enforcement Division, and later served as counsel and executive assistant to the agency's chairman. ❑

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Disciplinary and Enforcement Procedures Overview

The NASD oversees the activities of over 5,400 securities firms, more than 60,000 member branch offices, and 510,000 registered securities professionals. In addition, it conducts examinations of member firms; investigates possible violations of NASD rules, SEC regulations, and federal securities laws; and conducts disciplinary proceedings that involve member firms and their associated persons.

In its review, the Select Committee examined NASD enforcement and disciplinary procedures, conducted surveys, held discussions with federal and state regulators, and reviewed extensive documentation on NASD regulatory operations. While the Committee found that the overall NASD disciplinary process is effective and fair, it determined that disciplinary proceedings have become more contentious and complex than the existing system was designed to accommodate. The Committee also found that certain areas of the regulatory operation do not have the mandate, resources, or prominence necessary for effective oversight, including the critical internal review function.

To heighten investor confidence in the fairness of the markets and self-regulatory system and to broaden public acceptance of NASD policies, the Committee recommended that the NASD governing board be reconfigured to have a majority of non-industry public representatives. This would set a new standard for public participation in the governance of securities markets. The NASD Board of Governors agreed to the plan.

Restructuring To Regulate Broker/Dealers

The plan calls for the parent organization, NASD, Inc., and its non-industry public-majority Board to set policy for and oversee the effectiveness of two subsidiaries as they carry out their respective responsibilities. One of these independent operating unit subsidiaries will be a reconstituted Nasdaq®; the other will be a newly created NASD Regulation, Inc. (NASDR), with a full-time president and its own board, in place as early as the first quarter of 1996.

Because the present NASD organization is structured primarily to conduct the NASD's regulatory and member service operations, present board members will be transferred during 1996 to the Board of the new NASDR subsidiary. By January 1997, the NASDR Board will shift from one composed of a majority of industry representatives to one with balanced representation of industry and non-industry public directors. At that time, it is expected to have no more than 25 directors with a goal of downsizing to 21—10 non-industry, 10 industry, and the president of NASDR.

NASDR will have primary authority to regulate the broker/dealer profession and provide member and constituent services. The subsidiary will develop and administer NASD Rules of Fair Practice, membership rules, and operational requirements for NASD, Inc., members. NASDR will examine and investigate member firms and their associated persons; enforce securities laws, NASD, Inc., NASDR, and Nasdaq rules and ethical standards; and administer the disciplinary process. NASDR will also be responsible for all disciplinary actions for violations of market-related rules. The actions may be based on initial investigations by the Nasdaq subsidiary or independent investigations by NASDR.

NASDR Gets Mandate And Resources

In keeping with the Committee's recommendation that certain areas of the regulatory operation be given the mandate, resources, and prominence necessary for effective oversight, the implementation plan includes changes to NASD disciplinary and enforcement procedures. Other elements of the plan call for the addition of new offices, and refocusing of responsibilities or priorities within existing offices.

Today, the NASD disciplinary process addresses issues that increasingly involve more complicated questions of law and sanctions imposed in disciplinary proceedings have increased substantially. Consequently, NASDR will be augmenting its volunteer system with professional hearing officers on all panels adjudicating contested disciplinary cases. This should make the process more efficient, particularly in complex or contentious cases. Member volunteers will continue to bring their business experience and judgment to bear in evaluating the facts and assessing sanctions.

Two additional aspects of the implementation plan are noteworthy: the expansion of the NASD Office of Internal Review and the creation of an Office of Investor Services.

To broaden the scope and focus of its operational reviews, the NASD will increase its Office of Internal Review staff to include the addition of an Ombudsman who will address concerns and issues from industry, internal, and public sources. The department will report to the CEO of NASD, Inc., as well as to the NASD Audit Committee.

The new Office of Investor Services will centralize NASD activities focused on investors, including education, inquiries, outreach programs, liaison with investor organizations, and utilization of technology to provide additional information services to investors.

These changes in structure will enhance the NASD's ability to meet its regulatory responsibilities in the future, and significant member participation in governance will continue to be a hallmark of self-regulation. ❑

Regulation

Compliance Support System/Training Analysis And Planning Tool Release 2.0 Now Available

As part of an ongoing effort to provide education and preventive compliance programs to its members, the NASD Regulation Business Line has completed Release 2.0 of the Training Analysis and Planning Tool. This software program will assist member firms in complying with the Continuing Education Firm Element requirement. This NASD effort represents a significant advancement in its ongoing initiatives to give members superior resources through state-of-the-art technology.

The Training Analysis and Planning Tool is the first component of the NASD Member Compliance Support System that will consist of a series of integrated software aids designed to help members access, understand, and comply with NASD rules and regulations.

Developed in partnership with industry representatives, Release 2.0 first became available at the November 1995 Fall Securities Conference in San Francisco. Team member and industry representative Ron Buesinger launched the product with demonstrations to more than 300 conference participants. Attendees welcomed the stepped-up functionality and key enhancements from Release 1.0, including the NASD commitment to respond quickly to member compliance needs.

As demonstrated during the conference, Release 2.0 is fully compatible with, and builds significantly on, Release 1.0 capabilities and functionalities. Major enhancements include: new features to aid members in preparing and tracking progress of covered persons; an on-line course database of over 50 vendors and 500 training courses; greater plan management capabilities; and increased reporting functions that include exception reporting.

Release 2.0 is priced modestly at $225.00 per copy. Members can order the software through NASD MediaSource℠ at (301) 590-6578.

If you have specific questions about the Continuing Education Program, or would like to receive a Release 2.0 order form, call your Quality & Service Team at (301) 590-6500, or your local NASD District Office. ❑

Memorandum Of Understanding Heightens Securities Industry Regulatory Cooperation

The NASD, New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), North American Securities Administrators Association (NASAA), and the SEC agreed to enter into a Memorandum of Understanding (MOU) to further their intent to undertake regulatory responsibilities in the most efficient and effective manner.

"The MOU represents a major next step in the evolution of cooperation and coordination between securities regulators and self-regulators," said John E. Pinto, NASD Executive Vice President, Regulation. Pinto explained that, "the MOU builds upon and expands the existing agreements that the self regulatory organizations (SROs) for the securities industry already have to further the purpose of coordination and allocation of examination responsibilities and resources."

According to the MOU, federal and state securities regulators, and the SROs formally commit to sharing information, coordinating examinations, and identifying regulatory priorities. Key themes of the MOU are investor protection, and the elimination of any unnecessary overlap and duplication in the examination process. Together, these themes will make the most effective use of examiner resources and minimize to the extent possible the disruption to broker/dealers attributable to examinations, while at the same time maintaining the highest level of examination quality for the benefit and protection of investors.

To help achieve the MOU goals, an annual national summit among the regulators and SROs is planned to coordinate examination schedules, discuss regulatory priorities, and review broker/dealer examination histories. The summit will be supplemented by regional coordination and information sharing meetings that will focus on unique local and regional regulatory priorities.

To further coordination and information sharing, the SEC home office staff agrees, as described in the MOU, to collect national examination information in an electronic format in an effort to assist parties to the MOU in coordinating and tracking examinations.

Dan Sibears, Director, Regulatory Policy, who is in charge of inter-agency

cooperation for NASD Regulation, sees the signing of the MOU as a significant development in support of a key recommendation in the recently released report of the NASD Select Committee on Structure and Governance (Select Committee). Sibears points out that the report calls for the NASD staff to coordinate national regulatory and enforcement policy with federal and state securities regulators and SROs through a central unit. "For some time, NASD Regulation has engaged in a number of national, regional, and local initiatives designed to further the coordination of regulatory and enforcement matters with state regulators, the SEC, other federal regulators, and the SROs," said Sibears. As examples, he points to the annual SEC/NASAA 19c Conference, multi-agency examination sweeps, national training programs involving various regulators and states, and "zone" meetings where NASD District Offices, SEC regional offices, and state regulators within the same jurisdiction pull together to identify and address areas of regulatory concern.

The MOU, however, ratchets up the cooperative and coordination efforts by formalizing them in a written document calling for a national summit, and by focusing on the key issue of eliminating unnecessary regulatory duplication. In Sibears view, the MOU, combined with the Select Committee recommendation, will enhance the allocation of aggregate regulatory resources to those areas that are related first and foremost to investor protection, while minimizing to the extent possible, any unnecessary disruption that may be encountered by broker/dealers and SRO members caused by the examination and investigative process. ❑

Favorable IRS Ruling On Limited Partnerships' Tax Status Permits Quotation On OTC Bulletin Board

Just issued Internal Revenue Service (IRS) regulations clarify the circumstances under which partnership interests can be quoted publicly and transferred without an unfavorable impact on their tax status. The new regulations ensure that the quotation of partnerships on the OTC Bulletin Board® service (OTCBB) would not, by itself, have negative tax status consequences for partnerships.

The new IRS regulations state that partnership interests will not be considered publicly traded for IRS purposes if the quotations for new partnerships are non-firm and the sum percentage of interest in partnership capital or profits transferred during a taxable year of the partnership does not exceed 2 percent of the total interest in capital or profits. Existing partnerships that have not issued additional securities or changed the nature of their business may transfer up to 5 percent of their interest in capital or profits. Therefore, no firm prices for partnerships securities will be displayed on the OTCBB and members may insert only unpriced indications of interest ("bid wanted" or "offer wanted" and "name only" entries) or non-firm prices. These non-firm indications provide a basis for negotiation that takes place in order to complete a partnership trade.

NASD Acts With IRS

In late 1990, the NASD undertook a study of the nature and functioning of the secondary market for public partnerships securities. At that time the NASD found that, despite the fact that these securities were not intended to be liquid and tradeable when structured and issued, an informal but fragmented secondary market had developed to facilitate the transfer of public partnership securities. In order to ensure that transfers of partnership securities occur in a way that protects public investors, the NASD decided that the quotation of partnership securities on the OTC Bulletin Board would enhance protection of investors and provide benefits to members and their customers that want or need to transfer partnership interests.

Before seeking to include partnership securities on the OTCBB, the NASD asked the IRS to clarify provisions in the Internal Revenue Code that limit the transfer of partnership interests. Of concern to the NASD was that facilitation of a more centralized means for the quotation of partnership securities could make these publicly traded partnerships under IRS rules. This would lead to the unintended result of partnerships being treated as corporations for federal tax purposes.

Only NASD members will be permitted to apply to place unpriced entries or indicative quotes on the OTCBB. In addition, the requirements of the Securities Exchange Act Rule 15c2-11 will apply, and firms will be required to submit Form 211 before initiating a quotation of a partnership on the OTCBB, unless an exemption applies.

In order to provide last-sale, volume, and other information to the partnership secondary market, transactions in limited partnerships will be required to be reported to the NASD pursuant to new Schedule K to the By-Laws through the Automated Confirmation Transaction (ACT℠) service. The NASD expects to publish a symbol directory for partnerships to facilitate quotation and trade reporting of such securities.

SEC Approval Sought

The NASD believes that the ability to display non-firm priced or unpriced indications of interest for partnership securities

on the OTCBB will establish a more centralized and transparent system for quoting and trading partnerships, while maintaining certainty with respect to the tax status of these securities. Necessary changes to the OTCBB service rules and new Schedule K to the NASD By-Laws requiring the reporting of transactions in partnership securities will be filed with the SEC for approval. Following SEC approval, the NASD plans to open the OTCBB as an information forum for interest in partnership securities.

For information on subscribing to the OTCBB service, call Peter Salmon at (202) 728-8455. Information on how to obtain an NASD Workstation II™ for automated trade reporting through ACT is available from Market Data Services, at (800) 777-5606. ❑

Expanded Limit-Order Protection Rule Gets Further Clarification By NASD

On September 6, 1995, the expanded Limit-Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice that prohibits member firms from trading ahead of customer limit orders (commonly known as Manning II) became fully effective. The expanded Interpretation extends the scope of limit-order protection in The Nasdaq Stock Market℠ to ensure that all customer limit orders are afforded the same protection throughout Nasdaq®.

From June 21, 1995, to September 6, 1995, the Interpretation allowed a temporary phase-in period that permitted a market maker holding customer limit orders greater than 1,000 shares sent to it by another member firm (member-to-member orders) to trade at the same price as such limit order without protecting the limit order. On September 6, 1995, the temporary phase-in period expired. Since that date, all customer limit orders, whether they come from the firm's own customers or from another member firm's customers, must be handled in the same way by the firm accepting the limit order. That is, the member firm must not trade ahead of any customer limit order it holds without protecting that order.

Since the SEC approved the rule change in June 1995, the NASD has issued *Special Notice to Members 95-43* (June 5, 1995) and *Notice to Members 95-67* (August 1995) to provide guidance regarding a member's obligations under the Limit-Order Protection Interpretation. Since the Notices were issued, the NASD has continued to receive questions regarding the protection and reporting of limit orders handled on a net basis, defined as transactions where the customer wants the total transaction cost, inclusive of fees or commissions, to be set at a single price.

More Guidance Offered

Members have raised questions about the NASD's Question and Answer 2 in *Notice to Members 95-67*. In that discussion, the NASD addressed issues related to limit orders placed with a firm at a net price, and discussed the actual price at which the limit order must be protected. To reiterate the NASD's policy regarding a member firm's obligation regarding a net-price limit order, the NASD provides this guidance.

Assume that the inside market is 10 bid-10 1/2 offered. A customer places a 500-share order to buy with the firm, and states that he or she wants to trade net, with total transaction costs not to exceed 10 3/4. As stated in *Notice to Members 95-67*, Q. & A. 2, the firm must inform the customer of the specific price at which it will protect that order.

In this example, assume that the firm charges a markup of 1/2. The firm must inform the customer at the time of order entry that the limit order will be held and protected at 10 1/4. Under such circumstances, the Limit-Order Protection Interpretation requires that the firm must not buy for its own account at 10 1/4 or

Members Must Observe Confidentiality When Using FAQS To Screen New Hires

Members must keep confidential inquiries they make to the Firm Access Query System (FAQS) when reviewing current registration data for registered representatives they may employ. The NASD designed FAQS to aid member firm registration and accounting procedures by providing quick and easy access to Central Registration Depository (CRD) records, and members' FAQS contracts provide for such confidentiality.

Potential new hires must sign a consent form, using either page 4 of the Form U-4 or an in-house authorization, to permit a prospective employer to search the CRD for their employment record. Members are obliged to keep confidential the CRD material that they retrieve. (Such inquiries should be made early in the pre-employment process.) Under no circumstances can any other member firm access the CRD to determine if a current staff member is seeking employment elsewhere.

For more information on this subject, call Member Services, at (301) 590-6231. ❑

below, without filling the customer's order at the protected price, up to the number of shares that the firm has traded. For example, assume that while holding the 500-share limit order to buy at 10 1/4, the firm receives a market order to sell 500 shares in that security that the firm purchases at its bid of 10.

Because it has bought 500 shares at a price inferior to the 500-share limit order at 10 1/4, the firm must sell 500 shares to the customer with the limit at 10 1/4, i.e., the limit-order price agreed to between the customer and the market maker. The firm must report the trade through the Automated Confirmation Transaction (ACT℠) service at 10 1/4, with the price exclusive of any markup or other remuneration. On the confirmation sent to the customer, the firm must disclose the reported trade price, 10 1/4, the price to the customer, 10 3/4, and the difference between them, 1/2, as the firm's remuneration for the transaction. This reporting is in compliance with the NASD trade reporting rules under Schedule D, the SEC's confirmation disclosure requirements under Rule 10b-10, and is consistent with the original disclosure made to the customer at the time the order was entered.

Member firms are not permitted to report trade prices in such net transactions in a manner inconsistent with the stated agreement between the customer and the firm. Thus, in net transactions, after the customer and the firm have agreed to the actual limit price at which a limit order is protected, it is not permissible for a firm to report a trade with the customer at a price higher (lower) than the agreed-upon price in the context of a buy (sell) limit order and report a smaller markup (or markdown) on the confirm.

Another Example

Using the same example, assume the facts as above: the inside market is 10-10 1/2 and a customer places an order to buy 500 shares at a net price of 10 3/4; the firm then informs the customer that it will protect that order at 10 1/4 with a markup of 1/2. Assume again that the market maker holding such order buys for its own account at 10. At this point, the firm immediately fills the limit order because of its Manning obligation. It is **not** permissible to report the sale to the customer pursuant to the limit order at 10 1/2 (or at any other price higher than 10 1/4) and report only a markup of 1/4, or less, because such report improperly reflects an inaccurate markup and the reported trade price is incorrect because it includes a markup. Transaction reports through ACT must exclude markups, markdowns, and other such remuneration, and under Rule 10b-10, the confirmation must disclose the full markup, markdown, or other remuneration to the customer. Any practices to the contrary would be inconsistent with these requirements.

Nothing in this discussion is intended to keep a firm from providing the customer an execution at a more favorable price. Thus, if in the above examples the firm had an opportunity to provide the customer with an execution at a price better than 10 1/4, e.g., 10 1/8, the firm is permitted to execute and report the trade at the improved price.

Questions regarding this subject should be directed to Market Surveillance at (800) 925-8156. ❑

Market Surveillance Cautions Firms To Answer Calls Promptly

The NASD Market Surveillance Department emphasizes market makers' obligation to have adequate personnel and technical resources available to respond promptly to telephone inquiries during normal market hours. It is important that member firms maintain a standard procedure to monitor periodically the ability of trading personnel to answer incoming calls. In that regard, it may be necessary for firms to have contingency plans ready to implement in response to increased market activity. Firms that do not respond to telephone inquiries made in anticipation of consummating a trade may be in violation of the NASD Rules of Fair Practice, Sections 1, 6, and 27.

Section 1 requires members to observe high standards of commercial honor and just and equitable principles of trade. Section 6 states that members making offers to buy or sell stand ready to do so at the stated price. In connection with Section 6, there is a Board policy that in part requires members furnishing quotes to be adequately staffed to respond to inquires during normal business hours. Lastly, Section 27 requires members to enforce written supervisory procedures to achieve compliance with securities laws and regulations.

Firms that are experiencing problems making contact via telephone should consider using SelectNet℠ to direct an order or message to another firm. Immediately thereafter, the firm initiating the call should telephone Market Surveillance at (800) 925-8126, and transmit all relevant information about the attempted contact. ❑

NASD Proposes Rules Limiting Broker/Dealer Incentives For Selling Mutual Funds, Annuities

The NASD has asked the SEC to approve amendments to the Rules of Fair Practice that would limit the use of cash and non-cash compensation received by broker/dealers that sell mutual funds and variable contract securities. The proposed amendments will be published for comment in the *Federal Register* and will not become effective until approved by the SEC.

The proposed changes are in response to the increased use of non-cash compensation and certain types of incentive-based cash compensation for the sale of investment company and variable contract securities. The NASD believes such practices may heighten the potential for a member's loss of supervisory control over sales practices, and raise the possibility for the perception of impropriety that could result in a loss of investor confidence.

According to John E. Pinto, NASD Executive Vice President, Regulation, the proposed rule changes would expand the non-cash incentive rules to also cover certain cash incentives. Generally, the changes would:

- prohibit, except under certain circumstances, broker/dealers from receiving any cash or non-cash compensation from anyone other than the NASD member with which the person is associated;
- require that NASD members maintain compensation records received from an investment company, an adviser to an investment company, a fund administrator, an underwriter, and any affiliated person;
- prohibit receipt by a broker of cash compensation in connection with the sale of investment company securities, unless the arrangement is described in the current prospectus;
- retain the prohibition, only with respect to the Investment Company Rule, against a broker receiving compensation in the form of securities;
- prohibit, with some exceptions, NASD members and persons associated with NASD members from accepting, directly or indirectly, any non-cash compensation in connection with the sale of investment company and variable contract securities;
- prohibit, with certain exceptions, an associated person from accepting any cash sales incentive for the sale of investment company or variable contract securities.

Notable Exceptions

Exceptions to the non-cash compensation and cash incentive prohibitions would permit in-house sales incentive programs for a broker/dealer's associated persons and sales incentive programs of mutual funds and insurance companies for the associated persons of a broker/dealer subsidiary. Further exceptions to the non-cash incentive prohibition would allow payment or reimbursement for training and educational meetings held by a broker/dealer or a mutual fund or insurance company for associated persons of broker/dealers; permit gifts of up to $100 per associated person annually; sanction an occasional meal, ticket to a sporting event, or theater or entertainment for associated persons and their guests.

For more information about this matter, call R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325, or Lawrence Kosciulek, Assistant Director, Advertising/Investment Companies Regulation, at (202) 728-8329. ❑

Action Designed To Eliminate Customer Confusion

NASD Proposes Rules Governing Broker/Dealer Conduct On Financial Institution Premises

The NASD proposed new rules to the SEC designed to eliminate potential confusion by investors purchasing securities on the premises of financial institutions, including banks, savings and loans, and credit unions.

The rules were developed with extensive industry input by a 12-person NASD committee formed in March 1995. The NASD Board approved the rules in September. They will be published for comment in the *Federal Register* and will not be effective until approved by the SEC.

The proposed rules would require NASD member firms to conduct business in a location distinct from the area where retail deposits are taken, whenever possible; provide customers with a written disclosure document outlining differences in insurance coverage and risks for securities and institution

deposits; and prohibit member firms from making any payments, including referral fees, to financial institution employees who are not registered with a member firm.

"The growing number of broker/dealers doing business within financial institutions has created some confusion among customers of those institutions," said John E. Pinto, Executive Vice President, Regulation. "These rules are intended to eliminate any confusion between uninsured securities products of broker/dealers and insured deposit products of financial institutions. There is always a degree of risk in securities, and investors—whether novice or sophisticated—need to know what they're getting into."

The rules would require registered broker/dealers and each financial institution to enter into written "Brokerage Affiliate and Networking Agreements" that establish the parties' responsibilities and require that:

- supervisory personnel of the member and representatives of the SEC and the NASD will be permitted access to the financial institution's premises where the member conducts broker/dealer services in order to inspect the books, records, and other relevant information maintained by the member with respect to its broker/dealer services;
- unregistered employees of the financial institution will not receive any compensation, cash or non-cash, that is conditioned on whether a referral of a financial institution customer to the member results in a transaction; and
- the member will notify the financial institution if any associated person of the member who is employed by the financial institution is terminated for cause by the member.

Additionally, confidential financial information may not be disclosed to brokers by a financial institution unless the customer grants prior written approval. All communications with customers must clearly indicate that the brokerage services are provided by the NASD member, not the financial institution.

NASD members have been advised to institute procedures to ensure that investors understand the distinctions between financial institutional products and securities products offered and sold by broker/dealers, and to ensure that full disclosure is made regarding the risks associated with non-deposit investment products.

For more information about this subject, contact R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325; or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911. ❑

Implementation Of The Redesigned CRD Is Underway

The initial implementation of the Central Registration Depository (CRD℠) Redesign is here. The new CRD contains many improvements that upgrade the efficiency of the registration process and its usefulness to all participants—member firms, regulators, and investors.

Phase I of the new CRD implementation process will convert member firms from the old CRD system filing method to the new CRD. Phase I will begin in early 1996 and conclude by August. Member firms must make important decisions during this transition to make the conversion as advantageous as possible.

The new and old CRD systems will run simultaneously until all participants are brought on to the CRD Redesign. When member firms begin using the new system, CRD will automatically bridge information between the old and new systems to keep data synchronized.

In Phase II of the execution process, scheduled for the first half of 1997, all participating federal, state, and self-regulatory organizations will join in the new CRD. Phase II also will provide the capability for members to submit investment adviser representative filings pursuant to state requirements.

Phase III of the implementation, set for the third quarter of 1997, will provide for Form ADV and other nonmember filings, mass transactions related to mergers and acquisitions, and a new annual registration renewal process.

Following are major features of the redesigned CRD:

- the ease and immediacy of electronic filing;
- a new highly structured and accessible database;
- disk-operated "Branch Software" to capture new applicant information electronically at the point of origin (branch, department, etc.) in the firm;
- home-office software capable of managing filing data and interfacing with the new CRD; and
- E-mail capability for receiving CRD reports and eventually communicating with all regulatory participants in the system.

Member Firms' Part

Member firms must undertake several

actions in connection with transition to the new CRD:

- Sign the subscriber agreement that specifies member firms' regulatory restrictions and commits firms to honor licensing restrictions in the software.
- Follow and implement the CRD Redesign readiness checklist with assistance from an assigned Quality & Service Team.
- Ensure that the appropriate equipment is in place, especially if the member firm chooses to conduct its own electronic filings.
- Install software.
- Designate a CRD Administrator who will be responsible for the firm's compliance with the requirements of the electronic filing environment.
- Identify persons entitled to handle functions in the system.
- Review training options—online system and/or workshops in a classroom setting—and decide how to train staff in the new CRD functionality.

Getting Facts On Redesigned CRD

As the industry moves toward an electronic registration process, NASD has underway a campaign to provide information on key program dates and milestones to member firms through its *Membership On Your Side*℠ newsletter and other direct communications. In January 1996, members will receive a special binder that organizes all CRD-related materials, including subscriber agreements, a firm readiness checklist, and other important documents and memos concerning registration.

Direct Filing Or Using A Service Bureau

Member firms can conduct their own CRD filings or delegate this task to a service bureau. If a firm elects the latter, it may avoid the need to upgrade or purchase equipment to handle CRD filings. Here are some factors to consider when making this decision:

- How frequently does the member firm file?
- Is the firm on a growth curve that could dramatically increase the level of filings in coming months?
- Can the member efficiently retain expertise in CRD filing requirements?
- Does the member firm have the necessary equipment to do electronic filing on its own? The redesigned CRD requires a minimum amount of computer memory, hard disk space, and a CD-ROM drive. This information was furnished to members in *Membership On Your Side*, December 1995.
- How much will a service bureau cost?

The NASD maintains an updated list of service bureaus that is available to members, although the NASD does not endorse these services nor does it certify their capabilities. If a firm uses a service bureau, the firm is responsible for timely, complete filings and must execute a subscriber agreement (with a service bureau addendum) and identify a CRD Administrator. ❑

Compliance Questions & Answers

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

Q. What are the current subordination loan filing procedures?

A. On April 1, 1994, the NASD transferred the responsibility for processing and approving new subordinated loan-agreement filings and existing agreement renewals, covered under SEC Rule 15c3-1(d), to its local District Offices. Therefore, it is no longer necessary to make these filings with the NASD Compliance Department in Washington, DC.

Q. Is it permissible to extend an SL-7 Revolving Subordination Loan?

A. Yes. Although no standard form exists, a revolving subordination loan may be extended. As always, a change or renegotiation of terms requires a new agreement.

Q. Can a subordinated loan that was previously extended be extended again?

A. Yes. A loan may be extended any number of times before maturity. You can use the SL-A amendment form to extend the maturity of an existing subordinated loan. However, you may not extend a loan that has reached maturity, or in the case of a loan where the lender and/or the amount has changed. A member that wants to retain equity status for a subordinated loan must file for an extension 12 months before the existing maturity.

Q. Must a separate collateral account be maintained for each secured demand note?

A. Yes. A separate collateral account is required to allow the broker/dealer to fulfill its responsibilities. The secured demand note agreement requires that if at any time the sum of the amount of any cash, plus the collateral value of any securities then pledged as collateral to secure the secured demand note is less than the unpaid principal amount of such note, the broker/dealer must immediately transmit written notice to the lender to that effect and to its designated examining authority.

Q. If an associated person trades securities solely on behalf of the firm, without public customer contact, must he/she be registered?

A. Yes. Schedule C, Part III of the NASD By-Laws requires registration of associated persons engaged in investment banking or securities business for the member, including supervisory functions, solicitation or conduct of business in securities, or training other associated persons for these activities.

Q. May a registered representative engage in limited selling of securities in a state in which he/she is not registered, as long as that person is properly registered with the NASD and in another state?

A. Each state sets its own requirements for registration of individuals and firms. While some states may have *de minimis* activity provisions, a registered representative or firm should not assume that the *de minimis* activity permitted in one state is also allowed in other states. Such questions should be presented to the relevant state securities administration office.

Q. When is an "undue concentration" haircut taken on a municipal security that trades in the secondary market?

A. Application of undue concentration on a municipal security is taken immediately on a secondary market position. In the case of a new issue, the deduction is applied when the securities are held in position 20 business days from the date the securities are received by the syndicate manager from the issuer.

Q. If a broker/dealer has a significant inventory position in an equity security, is it required to take an additional net capital charge in addition to the normal haircut charge?

A. The broker/dealer is required to take an undue concentration charge in addition to the required haircut charge under SEC Rule 15c3-1(c)(2)(ii) if the market value of the position is greater than: 10 percent of the broker/dealer's tentative net capital (net capital before haircuts); the market value of such securities exceeds $10,000 ($25,000 for a debt security); or the market value of 500 shares. The undue concentration charge is 50 percent of the required haircut charge on that greater portion. In the case of securities described in paragraph (c)(2)(vi)(J), the additional undue concentration deduction shall be 15 percent.

However, if the position is significant in relation to the liquidity of the security in the marketplace, the broker/dealer may have to take a marketplace blockage charge. When it is established that the marketplace can absorb only a limited number of a security's shares for which a ready market seems to exist, the non-marketable portion of that position is subject to a 100 percent deduction. The number of shares exceeding the aggregate of the most recent four-week inter-dealer trading volume should be considered non-marketable and subject to a 100 percent deduction, unless the broker/dealer can demonstrate that a ready market exists for these shares. Those securities purchased by the computing broker/dealer during the most recent four-week period shall be excluded from the determination of trading volume. (See SEC Rule 15c3-1(c)(2)(vii) and the 1994 *NASD Guide to Rule Interpretations*, pages 40 and 41.)

Q. Does the undue concentration haircut ever apply to equity securities that have been held by the firm for fewer than 11 business days?

A. Yes. The 11-business-day waiting period referred to in SEC Rule 15c3-1(c)(2)(vi)(M)(1) applies only to securities being underwritten. There is no waiting period for computing the charge for other equity securities not being underwritten.

Q. What is the required haircut percentage a broker/dealer must apply to a money market fund that always trades at $1 per share and is registered under the Investment Company Act of 1940?

A. According to SEC Rule 15c3-1(c)(2)(vi)(D)(1), the broker/dealer must deduct a two percent haircut on the market value of the greater of the fund's long or short position.

Q. What haircut percentages apply to a government security that has a variable rate of interest?

A. Under SEC Rule 15c3-1(c)(2)(vi)(A), the haircut percentage depends on the time to maturity. However, if a government security has a variable rate, it is permissible to base the haircut percentage on the time to the next rate adjustment, rather than on the time to maturity. If the variable rate has a cap and the rate has reached the cap, then the rate no longer is variable and you must use the maturity date.

Q. Is a government securities representative that is associated with a government securities broker/dealer considered a "restricted person" for purposes of the Free-Riding and Withholding Interpretation of the NASD Board of Governors, or could such a person purchase securities in a "hot issue" from another member broker/dealer?

A. The Interpretation prohibits participation in a hot issue by any associated

person, except that it does not restrict persons associated with NASD members engaged solely in the purchase or sale of either investment company/variable contract securities or direct participation program securities. Since government securities broker/dealers are not listed in the exception, an individual associated with such a firm is a restricted person and may not purchase a hot issue from another firm.

Q. Does employment as a floor clerk for a securities exchange make an individual a restricted person for purposes of the Free-Riding and Withholding Interpretation of the NASD Board?

A. No. The Interpretation does not include, as a restricted person, a floor clerk on a securities exchange.

Q. Did the de minimis *amount change with amendments to Regulation T from the requirement to cancel or liquidate customer purchases in a cash account for which the firm had not received payment within the required time period, if the amount owed was more than $500?*

A. Yes. Effective November 25, 1994, Regulation T was amended to increase the *de minimis* amount to $1,000.

Q. Can a security purchased through an initial public offering be purchased on margin?

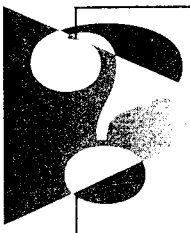
A. No. Section 11(d)(1) of the Securities Exchange Act of 1934 prohibits a broker/dealer from extending credit to a customer on any security that is part of a new issue. In addition to prohibiting extension of credit in connection with the original sale of the security, Section 11(d) prohibits use of the security as collateral in connection with other transactions between the customer and broker/dealer. These prohibitions are in effect for 30 days beginning as follows:

Selling Group Participants—from the date the selling group participant completes its distribution.

Underwriters—from the date the distribution is completed and the underwriting agreement is terminated.

Broker/dealers that do not participate as selling group members or underwriters can extend credit for customer purchases during all secondary market trading of the issue. ❑

Advertising



ASK THE ANALYST"

This month, "Ask The Analyst" features comprehensive answers to questions of general interest raised during the NASD Advertising Regulation Seminar held in October 1995. Seminar features included general sessions on recent rule changes, use of electronic communications, use and disclosure of NASD members' names, and mutual fund issues and developments. Break-out sessions covered advertising issues relating to bank broker/dealers, variable insurance products, fixed income securities, and associated disciplinary actions. Complete audio tapes of the seminar are available for $99, plus shipping charges. To order, please call A.V.E.R. Associates at (410) 796-8940, or fax your request to (410) 796-8962.

General Issues

Q. When filing material for review, how can a member communicate to the NASD who the audience will be for a specific advertisement? Does the NASD treat advertisements differently depending on the audience? As an example, consider an advertisement in People *magazine, compared to an ad in a publication for financial professionals.*

A. When the advertisement is submitted for review, a member can use the cover letter to inform the NASD about the targeted audience, and the NASD will give this information full consideration. However, in the example above, the NASD would view both advertisements as communications with the general public, because there can be no assurance that everyone who reads a magazine designed for financial professionals will be a registered person. In contrast, when a member truly can target a more knowledgeable audience such as financial planners or experienced institutional investors through a mailer or other directed sales literature, the NASD review would consider this, and any comments would reflect the audience's sophistication level.

Q. Are article reprints considered sales literature? If so, how long can they be used?

A. Yes. Article reprints are considered sales literature when they are reproduced and used with the public to promote a member's securities business. There is no specific limitation on how long a member can use article reprints. However, the most important issue is whether the information in the reprint is accurate at the time of use. Members must remember that article reprints are **not** written as sales literature. They often contain

information not permissible in communications with the public. Consequently, they require internal review by a registered principal, if necessary, and must be filed with the NASD. In addition, members always must receive permission from publishers of the original article to reprint or change it.

Q. Must all seminar invitations be filed with the NASD? Do seminar invitations require a prospectus offer?

A. NASD filing requirements depend on the invitation's contents and the intention of the seminar. If the invitation itself provides information about certain types of securities, then the member must file it. Specifically, members must file invitations that discuss mutual funds, variable annuities, variable life insurance, unit investment trusts, direct participation programs, collateralized mortgage obligations (CMOs), and government securities. Similarly, if these securities will be offered at the seminar, then the invitation must be filed with the NASD.

Seminar invitations with information about specific mutual funds or variable annuities, or that name a specific new-issue security, must include a prospectus offer as required by Securities and Exchange Commission (SEC) rules.

Q. What format is preferred by the NASD Advertising Regulation Department when I send a disk to review?

A. We prefer a Windows-type format on disk, along with a hard-copy printout of the submission.

Mutual Fund Matters

Q. Which company name must be shown in mutual fund sales communications—the dealer, distributor, or underwriter?

A. The communication must identify the name of the NASD member that will sell the product to the investor or investing public. If there is more than one entity named, then the material must indicate clearly which will sell the security to the investor.

Q. Must sales literature sent to mutual fund shareholders be filed with the NASD?

A. The NASD does not distinguish between prospective investors and existing shareholders when determining whether sales communications must be filed and whether they comply with applicable rules. Prospective and existing shareholders are considered members of the public. In addition, existing shareholders may choose to purchase additional fund shares, based in whole or in part on sales literature they receive after an initial investment. Consequently, all sales literature sent to shareholders must be submitted to the NASD within 10 days of first use.

Q. Do press releases announcing the availability of new mutual funds have to be filed with the NASD, and if so, must they be accompanied by a prospectus?

A. Yes. Since press releases announcing the availability of new mutual funds are mass distributed to non-registered persons, they must be filed with the NASD. Similar to other communications with the public, press release contents determine the need for an accompanying prospectus. If the contents of such a release exceed the provisions of certain SEC rules, it must be accompanied by a prospectus for the security under discussion.

Q. Can a member leave copies of mutual fund research reports at a counter for customers to pick up without filing the reports as advertising?

A. Many members have "reference corners" or libraries where research information is available for investors to read at their leisure. Generally, these reference materials would not have to be filed. However, if a member leaves multiple copies of a specific mutual fund research report on a counter or otherwise makes the report available to customers, such material would be considered fund sales literature and be subject to a member firm's internal review and filing with the NASD within 10 days of first use. The research report may also require additional disclosures. See "Ask The Analyst," *Regulatory & Compliance Alert*, January 1995, page 8.

Q. Suppose a mutual fund research report that includes a ranking is published twice a year. For how long can it be used as sales literature if it is verified that the ranking has not changed?

Generally, a member may use a mutual fund research report as sales literature as long as the information remains accurate, even if the report is published just twice a year. However, you may not use any research report that has been superseded by a more recent one. In addition, any ranking set forth in a report must be current to the most recent calendar quarter ended before its use. At the end of the calendar quarter, the ranking can be updated, using a "buckslip" or similar means, so that the reader has the most recent available rankings.

Issues Raised About Variable Annuities

Q. When advertising on behalf of a variable annuity, is it acceptable to use a mutual fund company logo if the adviser to that company is actually managing the variable annuity accounts or sub-accounts?

A. As stated in the *Guidelines for Communications With the Public*

About Variable Life Insurance and Variable Annuities, the NASD objects to promoting variable products as mutual funds. To avoid confusion about which type of product is offered, a mutual fund family logo should not be used in a variable annuity advertisement. Nevertheless, it is acceptable to use the logo of the investment adviser that is managing the variable annuity accounts or sub-accounts, provided the adviser's relationship to the variable product is clear and the logo is not overemphasized.

Q. What disclosures must accompany a taxable versus tax-deferred illustration in variable annuity sales literature?

A. The NASD follows the current position of the SEC staff made in its 1995 Industry Comment Letter from the Division of Investment Management, Office of Insurance Products. In sum, the letter requires that members accurately depict the effect of all fees, charges, and tax implications of withdrawals and surrenders. To satisfy this requirement, members may show these items in the chart itself or prominently disclose them in a narrative.

With a narrative, the disclosure should appear directly beneath the chart and divulge mortality and expense charges in percentage form, any sales charges in percentage form, and any administrative fees in dollar amounts. If the chart appears in sales material for multiple variable annuities with different levels of fees and charges, a general reference to these costs placed directly beneath the chart would be sufficient. In both instances, the narrative also must state that the costs are not reflected in the illustration and that if they were, they would reduce the performance shown for the tax-deferred investment.

All illustrations must use a realistic rate of return and prominently disclose that there may be a 10 percent tax penalty on withdrawals by contract owners under age 59-and-a-half.

Fixed Income Matters

Q. Are members required to disclose the rating of a corporate or municipal bond in sales communications?

A. No. It is not a requirement to disclose ratings. However, a bond rating or the fact that it is unrated is one way to disclose the risk level associated with the investment.

Q. When in the sales process should CMO educational material be offered?

A. The offer of educational material can be made in advertising, sales literature, correspondence, or verbally, but must occur before, or at the time of, any offer or sale of the security. To assure that customers are adequately informed about basic investment features and risks associated with CMOs, the *Guidelines Regarding Communications With The Public About Collateralized Mortgage Obligations* require members to offer this educational material. (For more information see *Notice to Members 93-85*, December 1993.)

Reminder: NASD Allows Payment For Filings By Credit Card

The Advertising Regulation Department 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 Kevin Ray, at (202) 728-8330. ❑

Arbitration/Mediation

NASD Mediation Program Meets Early Success

The NASD Mediation Program is off to a fast start, with 28 settlements in the 33 cases mediated since the program's official introduction last August. In addition, parties in some 40 additional cases have agreed to use this voluntary, non-binding process, and the number grows every day.

Interest in mediation as an option for resolving securities investment claims grew from the rising number of arbitration cases filed with the NASD in recent years. In 1994, more than 5,500 arbitration cases were submitted to the NASD, representing over 80 percent of all securities-related arbitrations filed in any forum that year.

The new Mediation Rules, which were approved by the SEC, enabled the NASD to launch a program that offers parties a process to settle their disputes *themselves*, as an alternative to arbitration and litigation. Additionally, approval of these new rules enables the NASD to offer its members and investors a more comprehensive and varied dispute resolution program. Kenneth Andrichik, former Deputy Director of Arbitration, heads this NASD program as Director of Mediation.

Advantages Of Mediation

Mediation offers a number of advantages to all parties—whether individual investors or securities industry professionals. It gives those involved a

chance for early resolution of their disputes, and the resulting settlement is likely to save the parties substantial time and expense.

In contrast to the average arbitration hearing, which takes almost three days, a mediation session typically is concluded in a single day, so it can be scheduled very quickly. In several cases, the session can be set up within five to seven days of the parties' request for mediation, and the speedy nature of these sessions provides a significant potential for cost savings. Further, since mediation is usually successful, i.e., about 85 percent of the first 27 cases have settled, the process is a relatively low-risk venture.

Mediation Caseload

Most of the mediation cases come directly from the NASD arbitration docket. More than 6,000 new arbitration cases were brought in 1995; another 6,500 are expected in 1996.

NASD staff will contact parties involved in arbitration cases and introduce them to the mediation program, which involves describing mediation and its potential benefits to the parties. Participants may also agree to bring their cases directly into mediation without filing an arbitration case. Those cases are acceptable as long as the subject matter is appropriate for the arbitration forum.

Recruiting Mediators

As in any dispute resolution forum, the quality of the mediators (neutrals) will be the key factor in the program's success. More than 100 mediators are qualified nationwide, and recruiting continues in cities around the country. The mediator's skills are different from those of the arbitrator, so a separate qualification process is in place. A subcommittee of the National Arbitration and Mediation Committee reviews the background and experience of each potential mediator. Formal mediator training and case experience are important factors considered. In addition, a candidate must supply the NASD with four letters of reference from parties who have observed the applicant's mediation technique. Therefore, parties in mediation can be sure that each potential mediator presented to them has a thorough knowledge of the mediation process and has demonstrated the skills necessary to help them resolve their dispute.

A Cohesive And Compatible Effort

The NASD envisions the development of the mediation program as part of its goal to offer a full spectrum of dispute resolution services. It plans to develop more choices for investors and member firms to fairly and expeditiously resolve their disputes. While most business is conducted without problems, an efficient method of settling issues that do arise is critical to investors and to the broker/dealer community. Providing effective forums for arbitration, mediation, and other means gives all parties more confidence in the marketplace.

For more details about the Mediation Program, call Conrad Shih, Mediation Administrator, at (212) 858-4359. To request applications if you are interested in becoming a mediator, call (212) 858-3992. ❑

Amendment Is Effective January 3 For One Year

Rules Allowing Arbitration Participants To Seek Injunctive Relief From Arbitrators Gets SEC Nod

In August, the SEC approved amendments to the Code of Arbitration Procedure (Code) clarifying the authority of arbitrators to issue injunctions. The amendments include a new section that provides procedures in arbitration for parties in intra-industry disputes to seek emergency relief, known as "immediate injunctions," or non-emergency relief, called "regular injunctions." (The new section is limited to intra-industry claims eligible for arbitration under Section 8 of the Code, e.g., member to member or employee to member.) However, the parties will remain free to obtain interim injunctive relief from the courts even though the merits of the case, and any claims for permanent injunctive relief, must be submitted to arbitration.

If a party chooses to seek interim injunctive relief in court, its filing must contain an acknowledgment that the underlying dispute is required to be settled in arbitration, and that it will proceed to arbitration on an expedited basis, pursuant to the arbitration rules.

The new section codifies the arbitrators' authority to grant interim injunctive relief; requires parties seeking injunctions, in court or from the arbitrators, to submit a claim to arbitration for permanent relief; sets forth a procedure in arbitration for expedited resolution of the underlying dispute; and provides that parties failing to comply with injunctive orders issued under Section 45 may be subject to disciplinary action for violating Article III, Section 1 of the Rules of Fair Practice. The amendments also require the party requesting interim injunctive relief to pay a $2,500 nonrefundable surcharge for expedited pro-

ceedings. The new section became effective January 3, 1996, **for a one-year trial.**

The Code's new section provides that temporary and permanent injunctive relief is available from the arbitrators. However, because parties may prefer to vest jurisdiction over interim relief in the courts, the NASD has decided not to interfere with such preferences by barring resort to the courts. Therefore, parties to an arbitration proceeding may still obtain temporary injunctive relief from a court of competent jurisdiction, but they must submit the dispute to arbitration for final resolution. The new provision limits the scope of the relief that the parties may obtain in court to temporary relief, and clarifies that arbitrators have the authority to make final resolutions of such issues, including enjoining any party.

The NASD's goal in adopting these changes to the Code is to force eligible intra-industry disputes that include injunctive actions into arbitration, even if the initial temporary relief is obtained in court. The NASD will evaluate the new injunctive relief process toward the end of its first year of operation to determine whether the process is providing the procedural efficiency and protection for the parties that would justify mandating that the parties obtain injunctive relief exclusively in arbitration, and whether the process should be adopted as a permanent addition to the Code.

More information about procedures for seeking interim injunctive relief; use of peremptory challenges; how to expedite hearings; and details on failure to comply with injunctive orders is in *Notice to Members 95-83* (October 1995). Questions about this subject may be directed to the NASD Arbitration and Mediation Department at (212) 858-4400. ❑

Rule Interpretations

SEC Approves Amendments To Corporate Financing Rule About Rights Of First Refusal

SEC-approved amendments to the Corporate Financing Rule at Article III, Section 44 of the NASD Rules of Fair Practice relating to rights of first refusal took effect January 1, 1996. Offerings filed with the NASD Corporate Financing Department that did not become effective with the SEC before that date must comply with the rule change, regardless of whether the Department previously issued an opinion that it had no objections to the underwriting terms and arrangements.

Rights of first refusal are typically negotiated in connection with an issuer's initial public offering (IPO) and grant the underwriter a right to underwrite or participate in any future public offerings, private placements, or other financings by the issuer for a certain period of years. The NASD values rights of first refusal as a noncash item of compensation at one percent of the offering proceeds and currently limits the duration of the right to five years. To the extent that an underwriting agreement includes a provision specifying a dollar amount for the waiver or termination of a right of first refusal, the Corporate Financing Rule also requires that the right of first refusal be valued at the dollar amount contractually agreed to for waiver of the right in place of the one percent valuation.

The rule change continues to permit the use of rights of first refusal, but prohibits an underwriter from receiving a right of first refusal to underwrite or participate in the issuer's future offerings that:

- has a duration of longer than three years;
- provides more than one opportunity to waive or terminate the right in consideration of any payment of fee; and
- is paid other than in cash.

The amended rule continues to ascribe a right of first refusal with a compensation value of one percent of the offering proceeds or the dollar amount contractually agreed to between the issuer and the underwriter to waive or terminate the right. However, the amendment will permit payments to waive or terminate a right of first refusal in an amount up to the greater of one percent of the original offering (or an amount in excess of one percent if additional compensation is available under the original offering's compensation guideline) or five percent of the underwriting discount or commission paid in connection with future offering.

More detail on this subject is in *Notice to Members 95-95* (November 1995). If you have questions, call the Corporate Financing Department, at (301) 208-2700. ❑

Initial Customer Complaint Reports From Members Were Due January 15

Under a recently approved Article III, Section 50 of the Rules of Fair Practice, members must report the occurrence of 10 specified events, as well as quarterly summary statistics concerning customer complaints to the NASD. Filings for any of the 10 specified events that occurred beginning October 1, or later, must be reported within 10 business days after a member knows of, or should have known of, the existence of the event. **The first electronic submission of quarterly statistical data was due January 15, 1996.**

The new rule provides important new regulatory information to help the NASD promptly identify potential problems at member and branch offices, and with registered representatives in order to more aggressively investigate sales-practice and other possible violations. (Details are in *Special Notice to Members 95-81*, September 26, 1995.) The rule eliminates regulatory duplication by exempting members now subject to similar reporting requirements of another self-regulatory organization.

During the last quarter of 1995, the NASD distributed to members its Customer Complaint System Software (CCSS), with applicable communications software (NASDnet℠). CCSS permits members to file all of the required information through an electronic mechanism similar to PC FOCUS℠.

Questions about the reporting requirements under Article III, Section 50, may be directed to Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911; David A. Spotts, Senior Attorney, at (202) 728-8014; or to NASD District Offices. Questions regarding CCSS, NASDnet, or system implementation should be directed to Regulatory Systems, at (800) 321-6273, or (301) 208-2818. ❑

Legislation

Congress Overrides Clinton Veto Of Securities Litigation Reform Bill

A bill that will restrain frivolous class-action lawsuits was vetoed by President Clinton on December 19, 1995. The veto was overridden by the House, and by the Senate two days later. A central part of the new law is a safe-harbor provision that provides legal protection for corporations when making projections about earnings or other matters if those statements include cautionary notices by the issuer identifying important factors that could cause actual results to differ materially from the company's projection. The safe harbor also applies if investors fail to prove that the company had actual knowledge that its statement was misleading.

The bill had passed the Senate and House by wide margins. The NASD backed litigation reform several years ago when it was proposed. President Joseph Hardiman testified before the SEC in February 1995, supporting a safe-harbor provision.

The enacted version of the bill, in addition to the safe harbor, also eliminates the "loser pays" provision of the House proposal; requires specific pleadings; prohibits professional plaintiffs; presumes lead plaintiffs are those with the largest financial stake; prohibits payment of attorneys fees from funds disgorged by SEC action; and sets up a two-tiered liability system providing proportionate liability in lawsuits based on reckless behavior, and joint and several liability in cases based on knowing behavior.

The House bill was introduced by 135 co-sponsors on the first day of the new Congress to fulfill the Contract with America provision on litigation reform, and included a Title II on securities litigation reform.

If you have any questions about this subject, call John Komoroske, NASD Congressional/State Liaison, at (202) 728-8475. ❑

Education

Firm Element Implementation Began January 1

Implementation of written training plans under the Firm Element portion of the two-part Continuing Education Program began January 1, 1996. By the first of the year, firms must have started to roll out their training programs for registered personnel (and their immediate supervisors) who deal with the public.

In December 1995, the securities self-regulatory organizations (SROs) with responsibility for examining firms for compliance with the continuing education rules preliminarily determined that nearly all firms examined had made conscientious efforts to prepare thorough needs analyses and appropriate written training plans as required under the Firm Element rules that took effect July 1, 1995.

Regulatory Compliance

The Regulatory Element that became effective July 1, 1995, requires that all registered personnel complete a computer-based training program within 120 days of the second, fifth, and tenth registration anniversary dates of their initial registration. As of November 11, 1995, 335 individuals had their registrations become inactive for failing to complete the Regulatory Element training program within 120 days of their anniversary dates. Members are reminded that any person whose registration is inactive must cease conducting a securities business until completing the computer-based training. Individuals cannot be compensated for activities that require registration if their registration is inactive.

An analysis of **inactive** individuals indicates that a majority of these persons are associated with large firms that sell mutual funds and insurance products. Their failure to complete the program is due in some measure to the part-time nature of their employment with members. Controls were in place at most firms to terminate either the individual's association with the firm or to withhold compensation to a person with inactive registration.

NYSE Information Memo

In an information memorandum to its members in December 1995, the New York Stock Exchange indicated that the Regulatory Element does not apply to any person who has been approved by the Exchange solely as an officer of a member, and who is not registered or required to be registered in another capacity. Similarly, anyone with the sole status of an approved person who is not otherwise registered, or required to be registered, is not subject to the Regulatory Element.

Rosters Available To Member Firms

NASD member firms may order rosters of their registered persons subject to the Regulatory Element. (*See Special Notice to Members 95-13*, March 8, 1995). Firm rosters are prepared from a data base extracted from the Central Registration Depository (CRD). The CRD rosters identify those persons recognized as covered by the Regulatory Element because their Continuing Education base date is on or after July 1, 1985. The Continuing Education base date is the more recent of a person's initial registration date or the date on which a significant disciplinary action (as defined by the rules) was posted to the CRD. The CRD measures an individual's second, fifth, and tenth anniversaries from the Continuing Education base date.

A roster is available as a printed report or a data file in ASCII text format and will have each employee's name, CRD number, Continuing Education base date, and employment status. Member firms can use the roster information to forecast how many of their employees must complete a Regulatory Element computer-based training session at an NASD PROCTOR® Certification Testing Center. The roster information also helps firms budget Regulatory Element training expenses and learn what the CRD displays as the Continuing Education base date for each employee.

Firms may order Continuing Education rosters for $200 from their Quality & Service Teams. Rosters on a floppy disk in ASCII text format are $300. Firms will be charged with a debit to their CRD account. Rosters will be prepared and charged by BD number, with no discounts for affiliated groups of firms.

To order a Continuing Education roster from the latest CRD extract, please call your NASD Quality & Service Team at:

Team 1 (301) 921-9499

Team 2 (301) 921-9444

Team 3 (301) 921-9445

Team 4 (301) 921-6664

Team 5 (301) 921-6665

If you have questions about this subject, direct them to your Quality & Service Team, or to John Linnehan, Director of Continuing Education, at (301) 208-2932. ❑

Violations

Worthen Investments, Inc., Others, To Pay $258,400 In Fines For Selling Mutual Funds On Bank Premises

The NASD imposed disciplinary action against Worthen Investments, Inc., Little Rock, Arkansas; Patrick D. Miller, former president; Frank M. McGibbony, executive vice president and former compliance officer; and seven registered representatives, in connection with marketing and selling mutual fund products.

The NASD disciplinary action was taken by its New Orleans District Business Conduct Committee (DBCC). Worthen and all of the named respondents consented to findings, without admitting or denying the allegations, that they made misleading statements to their customers about the characteristics and safety features of certain mutual fund investments.

Many of the mutual fund sales activities involved in the NASD disciplinary action occurred through Worthen operating on a bank's premises. Additionally, Worthen failed to perform adequate due diligence in connection with the promotion and sale of these mutual fund products. Worthen also failed to keep copies of customer correspondence, and did not establish and maintain an adequate supervisory system.

Worthen was censured and fined $100,000 by the NASD and agreed to a number of additional sanctions, including a complete audit of its internal policies and procedures and the adequacy of its supervisory procedures. The settlement also requires Worthen to form an investment committee that meets regularly to review sales of securities by its personnel, especially regarding the suitability and use of sales literature to promote securities' sales. Results of the independent audit and investment committee reviews are subject to NASD inspection.

Patrick D. Miller consented to findings that he made, or caused to have made, misleading and inaccurate statements to public customers. Through written solicitations approved by Miller, at least seven of Worthen's registered representatives sent misleading sales correspondence to public customers regarding the characteristics and safety features of certain mutual fund investments. Miller also failed to supervise employees using the correspondence. Without admitting or denying the charges, Miller agreed to sanctions of a censure, a $10,000 fine, a five-year suspension as a principal, and a requirement to requalify by examination in all capacities.

Frank M. McGibbony consented to findings that he approved misleading sales correspondence regarding the characteristics and safety features of certain mutual fund investments. In addition, McGibbony failed to ensure that copies of customer correspondence were properly maintained in the firm's files, and failed to establish an adequate supervisory system. Without admitting or denying the allegations, McGibbony agreed to sanctions of a censure, a $5,000 fine, a 30-day suspension as a principal, and a requirement to requalify by examination as a principal.

Seven of Worthen's registered representatives consented to findings that they used misleading sales correspondence regarding the characteristics and safety features of certain mutual fund investments. Jamai W. Weber was censured, fined $70,300, suspended in all capacities for three months, and required to requalify by examination in all capacities. Also, Michael C. McKinney was censured and fined $17,900; Jimmy D. Harvey was fined $15,100; and Mark H. Mathisen was fined $10,400. Three other Worthen registered representatives were found to have used misleading sales correspondence to promote mutual fund sales and were censured and assessed fines ranging from $4,200 to $7,600.

Finally, Worthen and five of its associated persons employed by Worthen's parent, Worthen Bank & Trust company, N.A., were charged with violating NASD By-Laws maintaining their securities licenses at Worthen without being actively involved in the securities industry. Each person was censured and fined $2,500. Boatmen's Bancshares, Inc., which recently acquired Worthen, cooperated with the NASD investigation and promptly instituted new policies and procedures at Worthen to assure compliance and to prevent future violations.

"This enforcement action by the NASD is a further demonstration of our abilities and commitment to address troublesome practices in the securities industry to protect individual investors," said John E. Pinto, Executive Vice President, Regulation. "It also underscores the importance and relevance of a rule proposal recently filed by the NASD with the SEC that governs the conduct of NASD members that operate on the premises of a bank or other financial institution. The rules focus on investor protection and risk disclosure issues, ensuring there is a clear distinction between the broker/dealer and banking functions, and addressing investor confusion involving the purchase of securities as opposed to insured bank products." ❑

NASD Takes Disciplinary Action; Assesses $110,000 Fine Against Johnston Kent Securities, Inc. And Others

The NASD accepted an Offer of Settlement to resolve two formal actions taken against former member Johnston Kent Securities, Inc., and its principals, George Johnston and Franklyn Frye. The firm agreed to withdraw its broker/dealer registration or face expulsion. Johnston agreed to be barred from association with a broker/dealer in any capacity, and Frye consented to a bar in any capacity requiring registration as a principal. In addition, the firm and Johnston were fined $100,000 jointly and severally, and the firm and Frye were fined $10,000 jointly and severally.

The respondents consented to findings that the firm, acting through Johnston, engaged in misrepresentations and deceptive acts, including the preparation and delivery of documents purporting to confirm large transactions in U.S. Government securities that never occurred in accounts at Johnston Kent that never existed, and sending letters to independent auditors verifying that the positions represented the confirmations.

"Based on our investigation, we believe that these activities were in furtherance of a broader scheme, involving others not subject to our jurisdiction, to defraud and possibly steal money from several employer self-insurance funds," said NASD District 3 Director Frank J. Birgfeld. "Fortunately, we were able to move quickly against the member involved and take definitive actions." During its investigation the District staff were in contact with federal officials.

The findings also included a failure by Frye to supervise Johnston in a manner designed to prevent the violations described above, including a net capital and related violations by the firm and Johnston. The bars took effect November 22, 1995. ❑

COMPLIANCE SHORT TAKES

On December 22, 1995, the NASD Board submitted to the SEC a rule filing that would amend the Prompt Receipt and Delivery of Securities Interpretation (Interpretation) to provide that members may rely on "blanket" or standing assurances that, under certain circumstances, securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under the Interpretation.

Specifically, under the proposal, a member could rely on a "blanket" or standing assurance that securities will be available for borrowing on settlement date, provided that the information used to generate the blanket or standing assurance is less than 24 hours old, and that the member delivers the security on settlement date. The proposal also provides that, should a member relying on a blanket or standing assurance fail to deliver the security on settlement date, the NASD will consider such conduct as inconsistent with the terms of the Interpretation, absent mitigating circumstances adequately documented by the member. Direct your questions to Thomas Gira, Office of General Counsel, at (202) 728-8957.

❑

Member firms are encouraged to review compliance with short-sales rules in view of several disciplinary actions taken by the Market Surveillance Committee (MSC), which imposed sanctions on firms for violations of NASD short-sale rules. The short-sale rules include Article III, Section 48 of the NASD Rules of Fair Practice (Bid Test); Article III, Section 1 of the Rules of Fair Practice (Board of Governor's Interpretation of Prompt Receipt and Delivery of Securities); Uniform Practice Code, Section 71 (Close-Out Provisions); Article III, Section 21(b) of the Rules of Fair Practice (Marking Tickets); Article III, Section 41 of the Rules of Fair Practice (Filing of Form NS-1); and ACT Rule Section d (Trade Input).

The MSC strongly recommends that member firms review their procedures for adequacy and compliance regarding all short-sale rules. The NASD will continue to present potential violations of such rules to the MSC for its review and disposition. Questions about the short-sale rules should be directed to Gary N. Distell, Market Surveillance, at (301) 590-6486.

❑

The NASD reminds members that the Prompt Receipt and Delivery Interpretation and the NASD short-sale rule applies to short sales effected through prime broker arrangements,

just as they do to any other customer short sale. (Prime brokerage is a system developed by full-service firms to facilitate their clearance and settlement of securities trades for substantial retail and institutional investors who are active market participants.) Accordingly, executing brokers are responsible for ensuring that short sales executed pursuant to prime broker arrangements are made in compliance with the NASD short-sale rule.

Similarly, executing brokers are responsible for complying with the Interpretation, which provides that no member or person associated with a member shall accept a short-sale order from any customer in any security unless the member or person associated with the member makes an affirmative determination that the member will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. However, the executing broker may, on confirmation from the prime broker, rely on the prime broker's assurance that it has made an affirmative determination that the prime broker will receive delivery of the security from the customer or that the prime broker can borrow the security on behalf of the customer for delivery by settlement date. If you have questions about this subject, call NASD Compliance at (202) 728-8221.

❑

Firms receiving payment-for-order-flow must comply with changed rules, based on SEC amended Rule 10b-10 and new Rule 11Ac1-3. New SEC Rule 11Ac1-3 requires broker/dealers to inform customers in writing when a new account is opened, about the firm's policies on the receipt of payment-for-order-flow, including whether it is received and a detailed description of the nature of compensation received. Firms must also disclose information on order-routing decisions, including whether market orders are subject to price improvement opportunities. Rule 11Ac1-3 also requires the dissemination of an annual update of this information to all customers.

The SEC also amended Rule 10b-10 to require that a firm must indicate on the confirmation whether it receives payment-for-order-flow and the availability of further information, on request. Amended Rule 10b-10(d)(9) also contains a detailed definition of payment-for-order-flow that includes "any monetary payment, service, property, or other benefit that results in any remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, registered securities exchange, registered securities association or exchange member in return for routing customer orders to such entity." The definition provides further examples of remuneration or compensation that is considered payment-for-order-flow.

If you have questions on this subject, call Gene Lopez, Office of General Counsel, at (202) 728-6998.

❑

NASD Disciplinary Actions

In August, September, and October 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 Esmeralda and Nye and the remainder of the state north or west of such counties), and Hawaii

August Actions

Donald Marquis Bickerstaff (Registered Representative, Tiburon, California) was fined $50,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1994 NBCC decision. The sanctions were based on findings that Bickerstaff forged a customer's signature on insurance policy change and reinstatement forms. In addition, Bickerstaff prepared and provided to the customer a computer illustration that falsely represented how a single $85,000 premium would fund the customer's $400,000 variable appreciable life policy.

Steven David Kark (Registered Representative, San Francisco, California) was barred from association with any NASD member in any capacity. The NBCC affirmed the sanction following appeal of a San Francisco DBCC decision. The sanction was based on findings that Kark participated in 10 purchases of notes for $78,500 by a public customer without providing written notification to his member firm and obtained 10 personal loans totaling $78,500 from the same customer without having a reasonable basis for believing that he would be able to repay the loans. In connection with a loan application by the customer, Kark prepared and submitted to his member firm a deposit verification that falsely represented that the customer had a $100,000 investment in a partnership and had a $50,000 loan from his member firm. In addition, Kark submitted to his member firm a Form U-4 application that did not disclose that he had been employed by another member firm.

September Actions

Mark Deadrick Booth (Registered Representative, Birmingham, Alabama) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for six months and required to requalify by examination following the suspension. Without admitting or denying the allegations, Booth consented to the described sanctions and to the entry of findings that he made sales and purchase recommendations to a public customer without having reasonable grounds for believing that the transactions were suitable for the customer based on facts disclosed by the customer as to her other security holdings, financial situation, and needs.

Larry Ira Klein (Registered Representative, Oakland, California) was fined $150,000 and suspended from association with any NASD member in any capacity for six months. In addition, Klein was ordered to requalify by examination before becoming associated with any NASD member following his suspension. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Klein, in connection with the sale of stock, made material misstatements of fact and omitted material facts to the customers. Furthermore, Klein made unsuitable recommendations to customers regarding the purchase of stock without having reasonable grounds for believing that the investment was suitable for the customers in light of the customers' other security holdings, financial situation, and needs. Klein has appealed this action to the SEC, and

the sanctions are not in effect pending consideration of the appeal.

Daniel Ray Licon (Registered Representative, Brisbane, California) was fined $40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Licon failed to pay a $7,367.28 Pacific Stock Exchange arbitration award and a $137,750 NASD arbitration award. Licon also failed to respond to NASD requests for information.

Jin Hwy Shin (Registered Representative, Sunnyvale, California) was fined $5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as an investments companies and variable contracts products limited representative. The NBCC affirmed the sanctions following review of a San Francisco DBCC decision. The sanctions were based on findings that Shin received from public customers $2,926.09 for the purchase of insurance and converted the proceeds for his own use and benefit.

October 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 requalify by examination as a general securities representative. The SEC affirmed the sanctions following appeal of a January 1995 NBCC decision. The sanctions were based on findings that Gardner effected the purchase of securities in a public customer's account without the customer's knowledge or consent.

Marvin Eugene Kennedy (Registered Representative, Redding, 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 120 days. Without admitting or denying the allegations, Kennedy consented to the described sanctions and to the entry of findings that he sold high-yield mutual funds to public customers and made material misrepresentations and omissions of material facts to the customers as to the safety of the investments and their risk. The findings also stated that Kennedy recommended high-yield mutual funds to public customers without having reasonable grounds for believing that the securities were suitable for the customers based on the facts disclosed by the customers as to their other security holdings and in light of their financial situations and needs.

District 2—Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo) and southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust territories.

August Actions

William P. Hampton (Registered Representative, San Diego, California) was fined $15,000 and suspended from association with any NASD member in any capacity for 15 days. The NBCC imposed the sanctions following review of a Los Angeles DBCC decision. The sanctions were based on findings that Hampton effected the purchase of stock for the accounts of two public customers without their knowledge or prior authorization.

September Actions

Lawrence R. Klein (Registered Representative, Woodland Hills, California) was barred from association with any NASD member in any capacity with the right to apply for association with an NASD member after five years. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Klein caused $17,000 to be wired from the joint account of public customers and used the funds, among other things, to repay monies he owed to a third party. In addition, Klein forged the customers' signatures on an authorization to transfer federal funds directing his member firm's clearing firm to effect the unauthorized transfer of funds. Klein has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect.

Leonard C. Ladia (Registered Representative, Pasadena, California) 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, Ladia consented to the described sanctions and to the entry of findings that he forged a customer's signature on a change of beneficiary form and backdated a reinstatement request form to reinstate the customer's life insurance policy that had been canceled. According to the findings, Ladia stood to receive about $448 in commissions by doing so.

Barry V. Parr (Registered Representative, Laguna Niguel, California) submitted an Offer of Settlement pursuant to which he was fined $31,432.81 and barred from association with any NASD member in any capacity with the right to reapply after 10 years. Without admitting or denying the allegations, Parr consented to the described sanctions and to the entry of findings that he participated in private securities transactions in that he sold to 10 public customers an annuity and/or shares in an investment company through another broker/dealer, but failed to provide prompt written notification to his member firm before participating in such private securities transactions.

Michael W. Zimonja (Registered Principal, Salt Lake City, Utah) and **Mark R. Sansom (Associated Person, Salt Lake City, Utah)** submitted an Offer of Settlement pursuant to which Zimonja was fined $1,000 and suspended from association with any NASD member in any capacity for two years. Sansom was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Zimonja and Sansom consented to the described sanctions and to the entry of findings that Sansom acted as a registered representative without being properly qualified and registered, and Zimonja allowed Sansom to perform functions at their member firm that required him to be registered as a registered representative of the firm.

October Actions

Kevin D. Mark (Registered Representative, Torrance, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mark failed to respond to NASD requests for information concerning an investigation of the circumstances of his termination from a member firm.

Steven V. Munoz (Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination as a general securities representative within 60 days or he will be suspended until he requalifies. Without admitting or denying the allegations, Munoz consented to the described sanctions and to the entry of findings that he sent sales literature to two potential public customers that contained false, misleading, unwarranted, and exaggerated statements and failed to provide a sound basis for evaluating certain facts in regard to certain securities and services. The NASD also determined that Munoz failed to have the sales literature approved by a registered principal.

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

August Actions

Sami P. Bacon (Registered Representative, Bellevue, Washington) 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, Bacon consented to the described sanctions and to the entry of findings that he executed eight securities transactions in his and his parents' personal accounts at his member firm and caused those transactions to be canceled and rebilled into the firm's error account, resulting in the firm losing $4,400.

Peter C. Bucchieri (Registered Principal, Las Vegas, Nevada) was fined $25,000, required to provide proof of payment of an arbitration award to customers, and required to pay $50,979 in restitution to customers. If Bucchieri fails to show proof of payment of restitution and the arbitration award, he must cease association with any NASD member in any capacity. Additionally, Bucchieri was suspended from association with any NASD member in any capacity for 60 days and barred from association with any NASD member as a general securities principal. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Bucchieri effected discretionary transactions in the accounts of public customers that were excessive in size or frequency, in view of the financial resources and character of the customers' securities accounts. Bucchieri has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Dale S. Call (Registered Representative, Salt Lake City, Utah) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Call received from public customers $32,000 that were to be invested through his member firm, however, he failed to invest these funds as customers' intended. Call also failed to respond to NASD requests for information.

Joni Clarke (Registered Representative, Nogales, Arizona) was fined $21,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Clarke misappropriated public customers' funds intended for the purchase of or payment on insurance policies. Clarke also failed to respond to NASD requests for information.

Michael Lewis Grayson (Registered Representative, Boring, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $11,447. Without admitting or denying the allegations, Grayson consented to the described sanction and to the entry of findings that he exercised discretion granted pursuant to oral authority and executed transactions in the account of a public customer without obtaining prior written discretionary authorization from such customer and without written acceptance by his member firm.

Ronald H.V. Justiss (Registered Representative, Denver, Colorado) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following appeal of a Denver DBCC decision. The sanction was based on findings that, while taking the Series 65 examination, Justiss was observed reviewing unauthorized materials containing exam-related information. Justiss has appealed this action to the SEC and the sanction, other than the bar, is not in effect pending consideration of the appeal.

Russell Alan Kristek (Registered Representative, Mercer Island, Washington) submitted an Offer of Settlement pursuant to which he was fined $23,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kristek consented to the described sanctions and to the entry of findings that he deposited, or caused to be deposited, $225 into the securities account of a public customer. According to the findings, this payment was made to the customer without the knowledge of his member firm and was in lieu of a dividend payment to which the customer believed he was entitled to as a result of his earlier investment in a mutual fund through Kristek. The findings also stated that Kristek failed to respond to NASD requests for information.

Curtis Platt (Registered Representative, Englewood, Colorado) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Platt effected 11 transactions in the accounts of three public customers without obtaining prior authorization from each of the customers.

September Actions

D.M. Black & Company, Inc. (Spokane, Washington) and **David Morley Black (Registered Principal, Spokane, Washington)** were fined $15,000, jointly and severally, and required to pay $33,458 in restitution, jointly and severally, to customers. The sanctions were based on findings that the firm, acting through Black, executed municipal securities transactions at prices that were unfair and unreasonable. In addition, the firm, acting through Black, engaged in securities transactions in the same customer's account at unfair prices with markups, markdowns, and commissions charged to the customers ranging from 2.1 to 7.7 percent over the firm's contemporaneous cost in violation of the Board of Governors Interpretation concerning the NASD Mark-Up Policy. Furthermore, Black engaged in a pattern of activity and/or a course of conduct and sales efforts involving the solicitation and execution of securities in customers' accounts that violated the Board of Governors' policy regarding fair dealings with customers. Black also recommended to a customer the purchase and sale of mutual funds in the customer's account without having reasonable grounds for believing that such recommendations were suitable for the account in view of the cost and nature of the recommended securities, the objectives of the funds, and the customer's financial objectives, situation, circumstances, and needs.

Richard Dee Scott (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of findings that he permitted a statutorily disqualified and unregistered person to be associated with a member firm.

October Actions

Fores J. Beaudry (Registered Representative, Portland, Oregon) was fined $10,000, required to disgorge $386,399, and required to requalify by examination. The sanctions were based on findings that Beaudry purchased securities during an initial public offering price that traded at an immediate premium in the secondary market and failed to make a bona fide public distribution of the stock at its public offering price in contravention of the Board of Governors Free-Riding and Withholding Interpretation. In addition, Beaudry maintained personal securities accounts with member firms and effected trades in these accounts while associated with another member firm, without appropriate written disclosure.

Gregory D. Breemes (Registered Representative, Coeur d'Alene, Idaho) 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, Breemes consented to the described sanctions and to the entry of findings that he received from public customers two checks totaling $35,000 intended for investment purposes. The NASD found that Breemes invested the funds into mutual funds registered in his name where they were used for his own purposes and not as the customer intended.

Gary Alan Clayton (Registered Representative, Yakima, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $11,450 plus interest in restitution to a customer. Without admitting or denying the allegations, Clayton consented to the described sanctions and to the entry of findings that he received from a public customer two checks totaling $48,100 for investment purposes. According to the findings, Clayton failed to follow the customer's instructions, and, instead, purchased two certificates of deposit that were retained under his control.

Furthermore, the NASD found that when the customer complained to Clayton about the missing funds, he redeemed the certificates of deposit and returned her money, plus interest. In addition, the NASD determined that Clayton billed the same customer a $4,596.16 management fee that was a duplicate fee also charged by his member firm. Additionally, the findings stated that Clayton failed to inform his member firm in writing that he was conducting financial advisory services for the customer, off the books and records of the firm, for which he received compensation.

The NASD also determined that Clayton received from a public customer an $11,450 check for investment purposes and failed to deposit the funds to the customer's account. Instead, the funds were deposited to an account under Clayton's control.

Samir Kh Fataftah (Registered Representative, Seattle, Washington) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fataftah executed two securities purchases in the account of a public customer without the customer's prior knowledge or consent. Furthermore, Fataftah executed purchase and sale transactions in the account of a public customer without obtaining prior written discretionary authorization and without written acceptance of such an account by his member firm. In addition, Fataftah recommended purchase transactions to the same customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency and nature of the transactions and on the basis of facts disclosed by the customer as to her other security holdings, financial situation, objectives, and needs. Fataftah also failed to respond to NASD requests for information.

Franklin-Lord, Inc. (Scottsdale, Arizona), William Mentis (Registered Principal, Scottsdale, Arizona), and **Brett L. Bouchy (Registered Representative, Gilbert, Arizona).** The firm and Mentis submitted an Offer of Settlement pursuant to which they were fined $23,000, jointly and severally, and the firm was fined an additional $5,000. Mentis was suspended from association with any NASD member in any capacity for 60 days and required to requalify by examination as a financial and operations principal. Bouchy, in a separate decision, was fined $5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination. Without admitting or denying the allegations, the firm and Mentis consented to the described sanctions and to the entry of findings that the firm, acting through Mentis, failed to abide by its restriction agreement in that it exceeded its inventory limitations and held customer funds for about six weeks without complying with the provisions of the Securities and Exchange Commission (SEC) Customer Protection Rule 15c3-3.

The findings also stated that the firm, acting through Mentis, failed to prepare books and records indicating the exact date of receipt of customer funds and filed a materially inaccurate FOCUS report with the NASD. The NASD found that the firm, acting through Mentis and Bouchy, allowed Bouchy to act in a principal capacity without being properly qualified. In addition, the NASD determined that the firm failed to maintain records required by the NASD Free-Riding and Withholding Interpretation.

Harry H. Hynes (Registered Principal, Evergreen, Colorado) submitted an Offer of Settlement pursuant to which he was fined $25,000, suspended from association with any NASD member in any capacity for two years, and ordered to disgorge $19,257.95. Without admitting or denying the allegations, Hynes consented to the described sanctions and to the entry of findings that he participated in the unregistered distribution of securities. The findings also stated that Hynes participated in a private securities transaction without providing prior written notice of the transaction to his member firm.

Kerry Mark Jones (Registered Representative, Tigard, Oregon) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones submitted to the NASD a Form U-4 containing information that was incomplete or inaccurate so as to be misleading in that he failed to disclose criminal convictions against him.

Peter Rettman (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Rettman consented to the described sanctions and to the entry of findings that he made investments in partnership with other investors, and, in connection with such activity, failed to provide his member firm with prior written notice describing in detail the proposed transactions, his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions.

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

August Actions

Julie Kaye Bernard (Registered Representative, St. Louis, Missouri) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bernard failed to respond to NASD requests for information regarding her termination from her former member firm.

Timothy D. Brady, Sr. (Registered Representative, Florissant, Missouri) submitted an Offer of Settlement pursuant to which he was fined $3,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Brady consented to the described sanctions and to the entry of findings that he opened a securities account at a member firm without notifying his member firm of the opening of the account and failing to notify the other firm of his association with his member firm.

Deborah Jane Egan (Registered Representative, Tampa, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Egan failed to respond to NASD requests for information regarding her termination from two member firms.

Jay H. Harjula (Registered Representative, Lakeville, Minnesota) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Harjula failed to respond to NASD requests for information about his termination from a member firm.

Seong Hee Hong (Registered Representative, Olathe, Kansas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hong failed to respond to NASD requests for information about his termination from a member firm.

September Actions

None

October Actions

Donald Robert Breitenstein (Registered Representative, Chanhassen, Minnesota) 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, Breitenstein consented to the described sanction and to the entry of findings that he failed to disclose on his Form U-4 the existence of a criminal case.

David A. Grachek (Registered Representative, Omaha, Nebraska) 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, Grachek consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding his termination from a member firm.

John William Gray (Registered Representative, St. Louis Park, Minnesota) 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, Gray consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding his termination from a member firm.

James Duane Peterson (Registered Representative, Coon Rapids, Minnesota) 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, Peterson consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notification to his member firm.

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

August Actions

Charles E. French (Registered Representative, Metairie, Louisiana) was fined $15,000, barred from association with any NASD member in any capacity, and ordered to pay $50,000 plus interest in restitution to a public customer. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that French sold a promissory note for $50,000 to a public customer without prior written notice to and approval from his member firm. In addition, French induced the same customer to purchase the note by making material misrepresentations of material facts while failing to provide adequate disclosure to the customer. French has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

George H. Rather, Jr. (Registered Representative, Spring, Texas) was fined $10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify as a general securities representative. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Rather failed to timely submit five order tickets. Rather has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

September Actions

Duane K. Duclaux (Registered Representative, Metairie, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, barred from association with any NASD member in any capacity with a right to reapply for association with a member firm after three years, and required to pay restitution to his member firm. Without admitting or denying the allegations, Duclaux consented to the described sanctions and to the entry of findings that he executed stock purchase transactions on behalf of two institutional customers that were placed in his member firm's inventory account, without the knowledge or consent of his member firm. These transactions created a short position in the firm's inventory account thereby resulting in the firm incurring a $143,512 loss.

October Actions

William C. Allen (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $30,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that he received from a registered representative of a member firm $32,546.69 as his share of commissions from mutual fund sales and reinvestments, without prior oral or written authorization from his member firm. The findings also stated that Allen forged the names of public customers to account transfer request forms and transferred 50 customer accounts from his member firm to another member firm without the knowledge or consent of his member firm.

The NASD also determined that Allen forged the name of the registered representative on a new account application for public customers. The NASD found that Allen failed and neglected to keep current his Uniform Application for Securities Industry Registration (Form U-4) by failing to disclose to the NASD a settlement agreement with his member firm whereby he repaid commissions of $9,486.34 earned on customer accounts that were wrongfully transferred from the firm to another member firm.

Henderson Securities, Inc. (Little Rock, Arkansas), Joseph C. Marfoglio (Registered Principal, Little Rock, Arkansas), Edwin P. Griffin (Registered Principal, Addison, Texas) and **Frank H. Henderson, II (Registered Representative, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which the firm, Marfoglio, and Griffin were fined $7,500, jointly and severally. The firm was expelled from NASD membership and Marfoglio was suspended from association with any NASD member in any principal capacity for 30 days and suspended from association with any NASD member in any capacity for one week. Griffin was suspended from association with any NASD member in any capacity for two weeks and Henderson was suspended from association with any NASD member in any principal capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Henderson failed and neglected to become registered as a general securities principal and a municipal securities principal with the NASD.

The findings also stated that the firm, acting through Henderson and Marfoglio, violated the terms of its restriction agreement with the NASD by failing and neglecting to ensure that Henderson become registered as a general securities principal and as a municipal securities principal within 90 days of the effective date of firm's membership and by advancing funds to Henderson and Marfoglio that resulted in the firm falling below 120 percent of its minimum net capital requirement.

The NASD also found that the firm, acting through Henderson, Marfoglio, and Griffin, failed and neglected to prepare and maintain the firm's books accurately and records and engaged in a securities business when its net capital was below the required minimum. The NASD determined that the firm, acting through Henderson, Marfoglio, and Griffin, filed inaccurate FOCUS Parts I and IIA reports and failed to record securities transactions executed by the firm for its customers and employees on the firm's purchase and sales blotter. In addition, the NASD found that the firm, acting through Henderson, Marfoglio, and Griffin, failed and neglected to maintain copies of new account information for customers in connection with securities transactions and submitted an inaccurate NASD Assessment Report that failed to reflect commissions earned from those securities transactions. Also, the findings stated that the firm, acting through Henderson, Marfoglio, and Griffin, failed to submit its annual audit on time and failed to establish, maintain, and enforce written supervisory procedures to monitor the firm's financial condition.

Patrick J. Kuhse (Registered Principal, San Diego, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kuhse failed to respond to NASD requests for information.

Berwick A. Moore (Registered Representative, Jeanerette, Louisiana) was fined $120,000, barred from association with any NASD member in any capacity, and ordered to pay $49,127 in restitution to his former member firm. The sanctions were based on findings that Moore received from public customers checks totaling $46,000 for investment purposes, failed to invest the funds on behalf of the customers and, instead, converted the funds for his own use and benefit, without the customers' knowledge or consent. The findings also stated that Moore failed to respond to NASD requests for information.

District 6—Texas

August Actions

Larry Valton Davis (Registered Principal, Grand Prairie, Texas) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any principal capacity for six months. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he placed a misleading advertisement concerning securities investments in a newspaper and mailed the same advertisement to public customers. In addition, the NASD found that Davis failed to notify and submit the advertisement to his member firm for review and approval.

Harvey J. House (Registered Representative, Tomball, Texas) was fined $12,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of a Dallas DBCC decision. The sanctions were based on findings that House made improper use of customer funds and securities by inducing a public customer to give him $2,500 to purchase options. House falsely stated to the customer that he would be investing jointly with him and caused the customer's funds to be deposited into his personal bank account for his own use and benefit.

William Holt Jowell (Registered Representative, Midland, Texas) submitted an Offer of Settlement pursuant to which he was fined $25,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Jowell consented to the described sanctions and to the entry of findings that he wrote or caused to be written, two checks totaling $25,000 against the bank account of a public customer made payable to and deposited in the bank account of a company for which he was named the trustee. The NASD determined that Jowell then withdrew the funds from the account for his own personal use and benefit without the knowledge or consent of the customer.

Frederick K. Nader (Registered Representative, Houston, Texas) was suspended from association with any NASD member in any capacity for one year and required to requalify by examination. The sanctions were based on findings that during the Series 7 exam, Nader retained in his possession hand-written and typed notes relating to the examination subject matter. Nader's suspension began June 17, 1994, and concluded June 17, 1995.

Jeffrey Martin Nelson (Registered Representative, Pearland, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Nelson failed to respond to NASD requests for information about customer complaints.

Dolores Lucille Shelton (Registered Representative, Odessa, Texas) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shelton requested and received the proceeds from unauthorized loans made on the insurance policies of public customers and thereafter converted the proceeds for her own use and benefit without the customer's knowledge or consent.

September Actions

Lehman Brothers, Inc. (New York, New York) submitted an Offer of Settlement pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to supervise a registered individual so as to prevent unauthorized transactions in customers' accounts.

Shearson Lehman Brothers, Inc., (New York, New York) submitted an Offer of Settlement pursuant to which the firm was fined $10,000, which includes disgorgement of $6,610 in commissions. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to supervise adequately the activities of a registered individual.

October Actions

Arnold Mercado (Registered Representative, Houston, Texas) was fined $15,000, $2,500 of which is to be paid as restitution to his member firm, barred from association with any NASD member in any capacity, and required to requalify by examination. The sanctions were based on findings that Mercado made improper use of customer funds totaling $2,500 by converting those funds for his own use and benefit.

Burll Dean Murchison (Registered Principal, Houston, Texas) submitted a Letter of Acceptance Waiver and Consent pursuant to which he was fined $50,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to public customers. Without admitting or denying the allegations, Murchison consented to the described sanctions and to the entry of findings that a member firm, acting through him, used instrumentalities of interstate commerce to effect securities transactions while failing to maintain the required minimum net capital and effectively concealed the true financial condition of the member firm. The NASD also found that the firm, acting through Murchison, had its sales persons represent that the firm would repurchase securities and that the firm's general ledger and trial balance were not properly posted. The findings stated that the firm's order tickets for transactions did not disclose the contract interest rate and the general terms of the close-out arrangements and the firm failed to prepare a repo ledger for itself and its customers that indicated the contra parties, date of initiation, close-out terms, and contract interest rates.

The NASD also determined that Murchison, acting on behalf of the firm, failed to disclose on confirmations to customers for transactions that they were purchasing securities under an agreement to resell them to the firm at a later date.

Sara Buzze Sharpe (Registered Principal, Fort Worth, Texas) submitted an Offer of Settlement pursuant to which she was fined $25,000, barred from association with any NASD member in a principal capacity, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Sharpe consented to the described sanctions and to the entry of findings that she engaged in sales of unregistered securities to retail customers and failed to maintain copies of public customers' mutual fund account statements.

The NASD also found that Sharpe failed to supervise adequately the activities of her member firm's employees and associated persons by failing to perform a periodic review of mutual fund customer accounts, failing to review wire order mutual fund transactions, and failing to perform a periodic review of customer accounts cleared on a fully disclosed basis. The findings stated that Sharpe submitted an inaccurate Form BD amendment to the SEC, failed to employ and caused to be associated with her member firm a registered limited principal-financial and operations person or limited principal introducing broker/dealer financial and operations person. The NASD determined that Sharpe permitted an individual to act and function as the president of her member firm without being qualified as and becoming registered with the NASD as a general securities principal or in other similar principal capacity and without qualifying and registering with the state of Texas as an agent of the firm. In addition, the NASD found that Sharpe failed to respond to an NASD request for information.

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

August Actions

Hugh E. Bowman, II (Registered Representative, Atlanta, Georgia) was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $70,000 plus interest in restitution to public customers. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Bowman had solicited and received from public customers $80,000 for marketing an offering of two limited partnerships, but, instead, converted the funds for his own use and benefit. Bowman has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Scott P. Burke (Registered Representative, Orlando, Florida) was fined $70,000, barred from association with any NASD member in any capacity, ordered to disgorge commissions of $1,400, and required to pay restitution to public customers. The sanctions were based on findings that Burke induced public customers to make investments in a security outside the regular course or scope of his employment with his member firm. In addition, Burke failed to respond to an NASD request for information.

Andrew P. Cinman (Registered Representative, Atlanta, Georgia) was fined $50,000, and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Cinman effected six transactions in his personal account at his member firm that were beyond his financial means and that resulted in violation of the margin requirements in Reg. T of the Federal Reserve Board and the NASD Rules of Fair Practice. Cinman has appealed this action to the SEC, and the sanctions, other than a bar in any capacity other than in a non-supervisory and non-proprietary capacity, are not in effect pending consideration of the appeal.

CC & Q Investors Diversified, Inc. (Roswell, Georgia) was fined $50,000. The sanction was based on findings that the firm permitted an individual to function as a general securities representative and paid commissions to the individual relating to customer transactions, while she was not registered as a general securities representative with the NASD.

Carlos Roth Hodge (Registered Representative, Burlington, North Carolina) and **Carlos Timothy Hodge (Registered Representative, Charlotte, North Carolina)** submitted an Offer of Settlement pursuant to which they were fined $300,000, jointly and severally. In addition, they were each fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, outside the scope of their employment with their member firm, they solicited for compensation investors who purchased limited partnership interests and promissory notes without giving prior written notice to or receiving written approval from their member firm.

Jesse J. Hunt, Jr. (Registered Representative, Apopka, Florida) was fined $70,000, barred from association with any NASD in any capacity, ordered to disgorge commissions of $19,760.62, and required to pay $155,000 in restitution to public customers. The sanctions were based on findings that Hunt induced public customers to make investments in a security that were outside the regular course or scope of his employment with his member firm. In addition, Hunt failed to respond to an NASD request for information.

William M. Kean (Registered Principal, Hopkins, South Carolina) was suspended from association with any NASD member in any capacity for six months and must requalify by examination as a general securities representative. The sanctions were based on findings that, outside the regular course or scope of his employment with his member firm, Kean induced public customers to purchase interests in oil or gas wells and failed to provide his member firm with written notice of these private securities transactions or obtain approval from his member firm.

Northridge Capital Corporation (Atlanta, Georgia) and **Anthony John Negus (Registered Principal, Roswell, Georgia)** were fined $25,000, jointly and severally. Negus was suspended from association with any NASD member in any capacity for 30 days. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm prepared and disseminated, and Negus permitted it to prepare and disseminate, a summary memorandum containing material misrepresentations or omissions. This case has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

James E. E. Sellers, Jr. (Registered Representative, Augusta, Georgia) was fined $70,000, barred from association with any NASD member in any capacity, and ordered to pay $3,263.53 in restitution to his member firm. The sanctions were based on findings that, without the knowledge or authorization of a public customer, Sellers converted, for his own use and benefit, the proceeds of a check issued to the customer by his member firm representing the cash surrender value of an insurance policy. Sellers also failed to respond to an NASD request for information.

September Actions

None

October Actions

Charles E. Kautz (Registered Representative, Clearwater, Florida) was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Kautz caused seven registered representatives under his supervision to list their names falsely as representative of record on applications for annuities that he sold. Kautz has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Stanley E. Nygaard (Registered Representative, Valrico, Florida) was fined $25,000, ordered to disgorge $7,075 in commissions to public customers, and required to requalify as an investment company and variable contracts products representative. In addition, Nygaard was suspended from association with any NASD member in any capacity until he pays the fine and disgorgement. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Nygaard, outside the regular course or scope of his employment with his member firm, induced public customers to invest in a common stock and failed to provide prior written notice of the transaction to or obtain approval from his member firm.

R. J. Telese & Company (Tallevast, Florida) and **Robert J. Telese (Registered Principal, Sarasota, Florida)** were fined $30,000, jointly and severally. The firm was expelled from NASD membership and Telese was barred from association with any NASD member in any principal capacity. The NBCC imposed the sanctions following appeal of an DBCC decision. The sanctions were based on findings that the firm, acting through Telese, breached its restrictive agreement with the NASD by loaning money to the firm's parent company, causing the firm's excess net capital to fall below the minimum requirement. In addition, the firm, acting through Telese, failed to prepare accurately the firm's general ledger, trial balance, and computation of net capital and filed a materially inaccurate FOCUS Part I report. The firm, acting through Telese, also failed to respond to NASD requests for information.

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

August Actions

Anthony Bernard Scannell (Registered Representative, Addison, Illinois) and **Slavko Stojanovic (Registered Representative, Des Plaines, Illinois)**. Scannell was fined $5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination. Stojanovic was fined $15,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Scannell participated in the offer and sale of a security to a public customer and made material misrepresentations of fact and/or omitted material facts to the customer. Stojanovic provided statements to the customer that contained account values leading the customer to believe that the cash value of the products was substantially higher than it was. Scannell also provided the account values to or reviewed the account values provided by Stojanovic, and/or authorized Stojanovic to provide the account values to the customer, despite the fact that Scannell knew, or should have known, that the account values were not an accurate reflection of the customer's actual account values.

September Actions

James M. F. Chen (Registered Representative, Hoffman Estates, Illinois) and **Manuel A. DeMoya (Associated Person, Arlington Heights, Illinois)** submitted Offers of Settlement pursuant to which Chen was fined $5,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination. DeMoya was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $16,113 in restitution. Without admitting or denying the allegations, Chen and DeMoya consented to the described sanctions and to the entry of findings that DeMoya obtained from a public customer $45,500 for the purchase of securities. The NASD determined that DeMoya used $24,500 for the purchase of securities, and retained $21,000 for his own use and benefit until a later date, when he returned $5,000 to the customer. In addition, the NASD found that DeMoya failed to qualify or register in the appropriate capacity before engaging in the securities business of a member firm.

The findings also stated that DeMoya obtained a $113.20 check that represented a refund of insurance premiums to a public customer. According to the findings, instead of delivering the check to the customer, and without the customer's knowledge or consent, DeMoya signed the check and deposited it in a bank account in which he had a beneficial interest. Furthermore, the NASD found that Chen failed to ensure that DeMoya was properly qualified and registered in an appropriate capacity before engaging in the securities business of a member firm, and personally paid DeMoya securities commissions totaling $1,008 while he was not properly registered.

Cousins Securities Corporation (Oakbrook, Illinois), William Roy Cousins (Registered Principal, Bolinbrook, Illinois), and **Vonciel McClain Gaines (Registered Representative, Olympia Fields, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Cousins were fined $15,000, jointly and severally. Gaines was fined $28,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cousins, effected securities transactions when it failed to maintain its minimum required net capital and failed to compute its net capital accurately.

The findings also stated that the firm, acting through Cousins, allowed Gaines to be engaged in the securities business of the firm by effecting securities sales and receiving commissions when he was not effectively qualified or registered with the NASD in the appropriate capacity, and that Gaines engaged in such activities when he was not effectively qualified or registered with the NASD.

Steven Alfred Custer (Registered Representative, Oconomowoc, Wisconsin) and **Danny Lee Wayne (Registered Representative, Oconomowoc, Wisconsin)**. Wayne was fined $20,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination. Custer submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Custer and Wayne engaged in private securities transactions with public customers while failing to give or obtain from their member firm prior written authorization to engage in such activities.

The findings also stated that Custer and Wayne recommended the above securities to such customers without having reasonable grounds for believing that such recommendations were suitable for the customers based on information available to them concerning the nature of the entity issuing the securities, and/or based on the customers' investment objectives, financial situations, and needs.

James E. Davis (Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $24,200, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he obtained from public customers $4,831.11 that were to be applied to insurance policies on behalf of the customers. The NASD found that Davis failed to apply the funds as requested and used them for some purpose other than for the benefit of the customer.

Otis Harville (Registered Representative, Rochester, Michigan) was fined $120,000, barred from association with any NASD member in any capacity, and ordered to pay $107,230.58 in restitution to a member firm. The sanctions were based on findings that Harville obtained from public customers $107,230.58 to purchase shares in mutual finds and life insurance policies. Harville failed to follow the customers' instructions and used the funds for some purpose other than for the benefit of the customers. In addition, Harville failed to respond to NASD requests for information.

Lester Joseph Hoeflich (Registered Representative, Cheektowaga, New York) submitted an Offer of Settlement pursuant to which he was fined $23,000, barred from association with any NASD member in any capacity, and required to pay $1,236.13 in restitution. Without admitting or denying the allegations, Hoeflich consented to the described sanctions and to the entry of findings that he requested and received cash disbursements totaling $1,236.13 from insurance policies for public customers, and, without the customers' knowledge or consent, he used the funds for some purpose other than for the benefit of the customers. In addition, the NASD found that Hoeflich failed to respond to NASD requests for information.

Harry K. Howard (Registered Representative, Hamilton, Ohio) 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, Howard consented to the described sanctions and to the entry of findings that he obtained from his member firm checks totaling $205.89 for commissions made payable to a registered principal with the firm. The NASD found that Howard failed to remit the checks to the principal and, instead, used the proceeds for some purpose other than the benefit of the principal.

M.S.U. Inc. (East Lansing, Michigan) and **David L. Alexa (Registered Principal, Okemos, Michigan)** submitted an Offer of Settlement pursuant to which the firm was fined $17,500. Alexa was fined $7,500, barred from association with any NASD member as a financial and operations principal, and suspended from association with any NASD member in any principal capacity for one year. In addition, Alexa was required to requalify by examination in the appropriate principal capacity and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Alexa, effected transactions in securities while failing to maintain its minimum required net capital and maintained inaccurate net capital computations.

The findings also stated that the firm, acting through Alexa, filed inaccurate FOCUS reports and failed to file FOCUS reports and an annual audit report with the NASD. Furthermore, the NASD found that the firm, acting through Alexa, failed to file FOCUS reports and an annual audit report with the NASD in a timely manner. In addition, the NASD determined that the firm, acting through Alexa, participated in the sales of common stock when such shares were not properly registered or exempt from registration.

Ronald Edward Nitz (Registered Representative, Crest Hill, Illinois) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nitz failed to respond to NASD requests for information concerning customer complaints.

Michael R. Paro (Registered Representative, Wilmette, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $22,139.50 in restitution to a member firm. Without admitting or denying the allegations, Paro consented to the described sanctions and to the entry of findings that he received through loans from insurance policies owned by public customers $24,847.45 in checks and signed, or caused to be signed, the customers' names to the checks issued by his member firm without the knowledge or consent of the customers.

The findings also stated that Paro used $2,707.95 to fund a new life insurance policy for one of the customers and used the remaining $22,139.50 for some purpose other than for the benefit of the customers. In addition, the NASD found that Paro failed to respond to NASD requests for information.

Joyce A. Ritterbusch (Registered Representative, Crystal Lake, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ritterbusch consented to the described sanctions and to the entry of findings that, contrary to instructions given to her, she took notes that contained material relevant to the Series 7 exam into the exam room.

Sean E. Sammler (Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $6,325, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Sammler consented to the described sanctions and to the entry of findings that he obtained from his member firm a $1,263.14 check representing the cash surrender value on an insurance policy owned by an insurance customer. The NASD found that Sammler had previously submitted a request to his member firm to assign all benefits and interests in the policy to him, without the knowledge or consent of the customer, and subsequently used the funds for some purpose other than for the benefit of the customer.

Michael Edward Tippy (Registered Representative, Murphysboro, Illinois) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tippy consented to the described sanctions and to the entry of findings that he obtained from a public customer $25,000

intended for investment purposes. According to the findings, Tippy failed to follow the customer's instructions and deposited the funds in an account in which he had a beneficial interest until a later date, when he repaid the customer.

The NASD also found that, in connection with the above activities, Tippy issued false confirmations to a public customer to show that he had made the securities purchases when, in fact, the securities were not purchased for the customer's account or through a broker/dealer who was an NASD member. In addition, the NASD determined that Tippy failed to respond to NASD requests for information.

October Actions

William H. Hewitt (Registered Principal, Madison, Wisconsin) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hewitt consented to the described sanction and to the entry of findings that he participated in outside business activities while failing to give prompt written notice of such activities to his member firm.

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

August Actions

Mark H. Cohen (Registered Representative, Arlington, Virginia) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 90 days and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he exercised discretionary power over the account of public customers and recommended the purchase and sale of securities without having reasonable grounds for believing such recommendations were suitable for the customers considering their financial situation, needs, and investment objective. The findings also stated that Cohen accepted oral discretionary authority over the accounts of public customers and utilized such authority to effect discretionary securities transactions in the accounts without first having such discretionary power in writing and accepted by his member firm.

Richard A. DeVogel (Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeVogel consented to the described sanctions and to the entry of findings that he received from a public customer $424 in cash for payment of an insurance premium. The NASD determined that DeVogel failed to remit the money to the insurance company and fabricated documents purporting to be policy specification pages of a policy issued by the insurance company in favor of the customer and presented the documents as genuine to the customer.

George S. Estlow (Registered Representative, Strafford, Pennsylvania) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Estlow received from public customers $73,398.31 to purchase a government fund. Estlow failed to submit purchase orders totaling $42,330 for the funds until a later date and failed to remit $29,670 of the funds to his member firm, which he retained. Estlow also failed to respond to NASD requests for information.

John W. Ford (Registered Principal, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Ford consented to the described sanctions and to the entry of findings that he failed to submit to the NASD an amended Uniform Application for Securities Industry Registration (Form U-4) disclosing an SEC order and suspension.

Brett R. Horan (Registered Representative, Cranberry Township, Pennsylvania) 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, Horan consented to the described sanctions and to the entry of findings that he falsified or caused to be falsified on various insurance forms signatures purporting to be that of policyholders and submitted such firms to his member firm. The NASD also determined that Horan falsified the purported endorsement of a policyholder on three checks totaling $1,174.56, which had been issued to the policyholder by Horan's member firm.

Theodore King, III (Registered Representative, Camden, New Jersey) 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, King consented to the described sanctions and to the entry of findings that he received from two insurance customers $95 in payment of a homeowner's insurance policy and an insurance premium. According to the findings, King negotiated a $35 check from one of the customers, retained the proceeds, and failed to remit such payments to his member firm. The NASD also found that King received from an insurance customer a $402 check, remitted the check to his member firm, and caused $251.80 of such sum to be applied to the customer's policy and caused the $150.20 balance to be applied to pay premiums on other customer policies without the prior authorization or consent of the customer. In addition, the NASD determined that King failed to respond to NASD requests for information.

Thomas F. McLister (Registered Representative, Potomac, Maryland) was fined $2,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McLister failed to disclose a felony arrest and conviction to the NASD and to update his Form U-4. McLister thereafter remained associated with two member firms while subject to a statutory disqualification. In addition, McLister prepared and submitted a false Form U-4 by failing to disclose his conviction. As a result, the NASD approved his registration and McLister became associated with a member firm while subject to a disqualification.

Christine M. Michie (Registered Representative, Jeffersonville, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Michie failed to respond to an NASD request for information about an alleged failure to disclose sales charges in connection with a mutual fund sale.

Helen A. Roy (Registered Principal, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which she was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Roy consented to the described sanctions and to the entry of findings that she failed to submit to the NASD an amended Form U-4 disclosing an SEC order and suspension.

Stephen E. Thomas (Registered Representative, Scranton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $7,500, barred from association with any NASD member in any capacity, and required to demonstrate repayment of $1,500 to his member firm. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he received from two public customers $6,500 to purchase mutual fund shares. The NASD determined that Thomas remitted $5,000 to his member firm, but failed to remit the balance of $1,500 for its intended purpose.

Christopher R. Timmerman (Registered Representative, Steamboat Springs, Colorado) submitted an Offer of Settlement pursuant to which he was fined $20,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Timmerman consented to the described sanctions and to the entry of findings that he recommended and effected for the accounts of a public customer non-exempt securities transactions and failed to have reasonable grounds for believing that such transactions were suitable for the customer based on the information disclosed to him by the customer about her financial situation and needs. The findings also stated that Timmerman effected the transactions in non-exempt securities on a discretionary basis, without having written discretionary power accepted in writing by his member firm.

Terrence L. Wilcox (Registered Representative, Taylor, Pennsylvania) was fined $5,000, barred from association with any NASD member in any capacity, and required to pay $529.58 plus interest in restitution to a member firm. The sanctions were based on findings that Wilcox received from his member firm two premium refund checks totaling $529.58 to deliver the checks to policyholders. Wilcox did not deliver the checks but caused the checks to be negotiated by a third party and himself.

Joseph E. Zappia (Registered Representative, Ridgway, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zappia consented to the described sanctions and to the entry of findings that he affixed or caused to be affixed to disbursement request forms, signatures purporting to be that of insurance customers and submitted such forms to his member firm as genuine.

September Actions

John P. Galli (Registered Representative, Brooklyn, New York) was fined $10,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the sanctions following appeal of a Philadelphia District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Galli arranged to have an impersonator take the Series 7 examination for him. Galli has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Howard S. Gartenhaus (Registered Principal, Rockville, Maryland) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Gartenhaus consented to the described sanction and to the entry of findings that, in contravention of the Free-Riding and Withholding Interpretation of the Board of Governors, Gartenhaus purchased shares of securities that traded at a premium in the secondary market when he was prohibited from purchasing such securities.

John J. Jarvis (Registered Representative, Pittsburgh, Pennsylvania) was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Jarvis failed to submit to the NASD an amended Uniform Application for Securities Industry Registration (Form U-4) disclosing a Securities and Exchange Commission (SEC) order and suspension.

Stephen S. Knepp (Registered Representative, Pottstown, Pennsylvania) was fined $25,000, barred from association with any NASD member in any capacity, and required to disgorge to customers the commission earned totaling $39,465. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Knepp engaged in private securities transactions while failing to give prior written notice of such transactions to his member firm and engaged in the sale of securities while a registration statement was not in effect as to such securities. In addition,

Knepp failed to exercise due diligence to ascertain the financial status of the issuer of securities offered and sold by a firm or to verify the purported existence of insurance on the receivables in which it purported to invest as a factor. Furthermore, Knepp failed to register a firm with the SEC as a broker or dealer.

October Actions

Patricia H. Smith (Registered Representative, Hanover, Pennsylvania) was fined $7,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination before again becoming registered in any capacity. The SEC affirmed the sanctions following appeal of an October 1994 NBCC decision. The sanctions were based on findings that, on four occasions, Smith submitted to her member firms applications for the purchase of securities with her name listed on the application as the soliciting representative, when these transactions had actually been solicited by other unregistered individuals.

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

August Actions

Jeffrey Harold Supinsky (Registered Principal, Massapequa, New York) and **David Lee Stetson (Registered Principal, Glen Cove, New York)** submitted an Offer of Settlement pursuant to which they were fined $100,000, jointly and severally, barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by examination. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in a trading scheme designed to defraud their former member firm and confer certain benefits to their new member firm. Specifically, the NASD found that Supinsky and Stetson purchased stock on an agency basis, in their former member firm's customer accounts, without the customers' prior knowledge, authorization, or consent. In each transaction, the new member firm sold short at or about the inside asking price. Supinsky and Stetson then permitted their new firm to purchase stock from their former member firm at or about the inside bid in the exact amounts needed to cover its short positions. Since each trade was unauthorized, their former member firm canceled each trade and, as result, incurred $64,947.50 in losses and their new firm realized $64,947.50 in profits.

September Actions

Charles Bennett (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $38,579.39 in restitution to his member firm. Without admitting or denying the allegations, Bennett consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling $46,586.30 to be placed in an investment for the customer, and, instead, he misappropriated and converted the funds to his personal use.

Ira Berkowitz (Registered Representative, Bayside, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for 15 business days, and ordered to requalify by examination before again acting in any capacity. Without admitting or denying the allegations, Berkowitz consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm or a public customer, he signed the customer's name to a Securities Investment Acknowledgement form.

Camelot Investment Corp. (Hauppauge, New York) and **John J. Fasano (Registered Principal, Hauppauge, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $50,000, jointly and severally, and required to pay $41,089 in restitution to public customers. Fasano was also barred from association with any NASD member in any capacity and required to pay a $12,000 arbitration award. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Fasano, conducted a securities business while failing to maintain its required minimum net capital and failed to hire a financial and operations principal (FINOP) when the acting FINOP left abruptly, and continued to conduct a securities business. The findings stated that the firm, acting through Fasano, failed to file its FOCUS Part I and IIA reports and filed late FOCUS Part I reports.

The NASD also found that the firm, acting through Fasano, failed to comply with its restriction agreement in that it did not maintain its required net capital and permitted unauthorized trades of securities in seven customer accounts. In addition, the NASD determined that Fasano failed to pay a $12,000 arbitration award.

Cartwright and Walker Securities, Inc. (Los Angeles, California) and **Everett Scoville Walker, Jr. (Registered Principal, West Hollywood, California)** were fined $100,000, jointly and severally. The firm was expelled from NASD membership and Walker was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Walker failed to respond to NASD requests for information about customer complaints.

Eugene J. Filippino (Registered Representative, Del Ray Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member as a general securities representative for three weeks. Without admitting or denying the allegations, Filippino consented to the described sanctions and to the entry of findings that he executed or caused to be executed transactions in a public customer's account without the customer's prior knowledge, authorization, or consent.

Todd Levaughn Hickman (Registered Representative, Bronx, New York) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hickman consented to the described sanctions and to the entry of findings that he made misrepresentations and omissions of material fact in an effort to induce public customers to invest in a government securities fund. The NASD also found that Hickman falsified firm records by forging or causing the public customer's signature to be forged on investment product disclosure forms that each customer was required to sign before purchasing shares of the aforementioned fund. In addition, the NASD determined that Hickman made untrue statements to the NASD at an on-the-record interview concerning customer signatures.

Metropolitan Life Insurance Company (New York, New York) and **MetLife Securities, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $75,000, jointly and severally. In addition, the firms must perform the following undertakings:

- submit a copy of their supervisory procedure indicating the name or title of the individuals responsible for the accuracy and prompt submission of all Uniform Termination Notice for Securities Industry Registration (Form U-5) transmissions;
- have an audit by an independent consultant of the accuracy of their current registration records and a review including, but not limited to, all policies and procedures, including supervisory assignments relevant to the reporting of terminations and complaint information on Form U-5;
- prepare a report to senior management indicating any deficiencies with any recommended corrective action and state that the requirements in Article IV, Section 3 of the NASD By-Laws and the reporting requirements of the Form U-5 as well as all applicable rules and regulations were taken into account in conducting this audit and review;
- submit a copy of the audit report to the NASD with details of the corrective action taken as a result of the recommendations in the report; and
- provide the NASD with a summary report outlining the details of every late or incomplete Form U-5 filing, if any, made within the previous six months with an explanation of the cause of the delay or incomplete report and corrective action taken.

Without admitting or denying the allegations, the firms consented to the described sanctions and to the entry of findings that they made 351 Form U-5 filings that were incomplete or were filed more than 30 days after termination.

Junor Lissidous Morgan (Registered Representative, Queens, New York) was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $29,570 in restitution to his member firm. The sanctions were based on findings that Morgan received from public customers $21,445 for deposit into mutual fund accounts and to be applied toward the premiums on insurance policies and, instead, converted the funds for his personal use. Morgan also caused loan checks totaling $28,550 to be issued from customers' insurance policies, caused the checks to be sent to an address other than that of the customers, and converted the funds for his own personal use. In addition, Morgan failed to respond to an NASD request for information.

Richard Eugene Moyer (Registered Representative, Summit, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for 12 months. Without admitting or denying the allegations, Moyer consented to the described sanctions and to the entry of findings that, while subject to a statutory disqualification, he failed to receive the requisite regulatory approvals before, or during, his association with his member firm.

Jarred N. Parris (Registered Representative, Freeport, New York) submitted a Letter of Acceptance, Wavier 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, Parris consented to the described sanctions and to the entry of findings that he signed the name of a registered representative to a check made payable to an individual without authority, and cashed the check.

Patrick Albert Rouach (Registered Representative, Luxembourg) was fined $5,000 and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Rouach sold and purchased shares of common stocks in the account of a public customer, without the customer's prior knowledge, consent, or authorization.

Seidel & Fasano (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $3,500. The firm was further fined $12,700, jointly and severally, with other individuals. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in three direct participation program offerings, the firm received commissions in excess of the amount stated in the respective direct participation program private placement memoranda. In addition, the findings stated that the firm permitted individuals to function in the capacity of general securities representatives without being registered with the NASD.

Martin B. Sloate (Registered Representative, Greenwich, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he

was fined $15,000, ordered to disgorge income of $12,000, and suspended from association with any NASD member in any capacity for one year. In addition, Sloate is required to requalify by examination.

Without admitting or denying the allegations, Sloate consented to the described sanctions and to the entry of findings that he failed to keep current his applications with the NASD when he failed to disclose an SEC permanent injunction on his Form U-4. The findings also stated that Sloate was associated with an NASD member while being statutorily disqualified without applying to, or receiving relief from, the NASD for the ineligibility.

October Actions

Jack Lubitz (Registered Principal, Great Neck, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for seven days. Without admitting or denying the allegations, Lubitz consented to the described sanctions and to the entry of findings that, on behalf of a member firm, he prepared inaccurate net capital computations. The findings also stated that Lubitz, on behalf of the firm, conducted a securities business while failing to maintain the required minimum net capital.

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

August Actions

Germain R. Berard, Jr. (Registered Representative, Cumberland, Rhode Island) was fined $2,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that a public customer authorized Berard to surrender three of her insurance policies with cash surrender values totaling $1,696.90. The proceeds were to be applied toward the payment of an initial premium on a new insurance policy and to be invested in the customer's bond fund, but, instead, Berard withheld and misappropriated the funds for his own use and benefit.

September Actions

Network 1 (Red Bank, New Jersey), Richard A. O'Reilly, (Registered Principal, Shrewsbury, New Jersey), Kevin T. Cabell (Registered Principal, Griffin, Georgia), and **Guy G. Mockbee (Registered Representative, Rochester, New York).** The firm, O'Reilly, and Mockbee submitted Offers of Settlement pursuant to which the firm and O'Reilly were fined $16,500, jointly and severally. Also, O'Reilly must requalify by examination as a principal. Mockbee was fined $16,500, suspended from association with any NASD member in any capacity for 20 days, prohibited from becoming associated and/or employed with an NASD member in a principal capacity for one year, and required to requalify by examination as a registered representative. Cabell, in a separate decision, was fined $16,500, suspended from association with any NASD member in any capacity for 20 days, and suspended from association with any NASD member as a registered principal for one year. In addition, Cabell must requalify by examination as a principal.

Without admitting or denying the allegations, the firm, O'Reilly, and Mockbee consented to the described sanctions and to the entry of findings that the firm, acting through O'Reilly, allowed Cabell and Mockbee to engage actively in the management of a branch office of the firm without being registered with the NASD as principals. The findings stated that the firm, O'Reilly, Cabell, and Mockbee, allowed associated persons of the firm to engage in the investment banking and securities business, before being effectively registered with the NASD. The NASD also found that the firm, acting through O'Reilly, failed to supervise its registered representatives and/or associated persons and to enforce the firm's written supervisory procedures.

Kevin D. Wirth (Registered Representative, Katonah, New York) 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, Wirth consented to the described sanctions and to the entry of findings that he conducted securities transactions outside the scope of his employment and without providing prior written notification to his member firm.

October Actions

Leslie H. Brenner, III (Registered Representative, Schenectady, New York) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brenner consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information regarding a customer complaint and his termination from a member firm.

Gary William Harnum (Registered Representative, Stoneham, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Harnum consented to the described sanctions and to the entry of findings that he caused the address of a public customer to be changed in the records of his member firm to Harnum's home address and subsequently caused a $3,259.31 check made payable to the customer to be sent there. The findings also stated that Harnum obtained the customer's check, forged the customer's signature, and converted the proceeds for his own use and benefit.

Market Surveillance Committee

August Actions

Jonathan D. Lyons (Registered Representative, North Hills, New York) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Lyons consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD in connection with an ongoing NASD investigation.

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported, or caused to be reported, late Nasdaq transactions in contravention of the NASD Board of Governors interpretation concerning the obligation of members to report transactions within 90 seconds of execution.

Erik S. Nelson (Registered Representative, Smyrna, Georgia) 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, Nelson consented to the described sanctions and to the entry of findings that he knew, or was reckless in not knowing, that his participation in the sales of shares to public customers pursuant to his agreement with a non-registered individual with the understanding that he would receive monetary compensation from the unregistered individual was an integral step in a manipulative and deceptive device designed to defraud public investors.

Lawrance A. Rosenberg (Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined $1,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Rosenberg consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD in connection with an ongoing investigation.

Bernard R. Schmitt (Registered Representative, Smyrna, Georgia) 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, Schmitt consented to the described sanctions and to the entry of findings that he entered into an agreement with a non-registered individual wherein he agreed to solicit public customers at his member firm to purchase shares of common stock. According to the findings, the non-registered individual directed Schmitt to purchase shares of the stock that were to be sold to public customers. The NASD determined that Schmitt received $10,900 in compensation from the unregistered individual for shares he was able to sell to the customers. This agreement and compensation were not disclosed to his member firm or the public customers and, as a result, Schmitt knew, or was reckless in not knowing, that his participation in the sales of stock to public customers pursuant to his agreement with the non-registered individual was an integral step in a manipulative and deceptive device designed to defraud public investors.

September Actions

Andrew E. Bressman (Registered Principal, Alpine, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Bressman consented to the described sanctions and to the entry of findings that he placed orders for customers at unfair and unreasonable prices that resulted in excessive commissions.

Aaron D. Fischman (Registered Representative, Woodmere, New York), Michael C. Woloshin (Registered Representative, New York, New York), and **Avrum R. Tokayer (Registered Principal, Cedarhurst, New York).** Fischman and Woloshin submitted an Offer of Settlement pursuant to which they were each fined $50,000 and barred from association with any NASD member in any capacity. Tokayer, in a separate decision, was fined $364,937.50 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fischman and Woloshin consented to the described sanctions and to the entry of findings that Fischman, Woloshin, and Tokayer manipulated the price of a common stock and failed to appear for testimony as requested by the NASD in connection with an ongoing investigation. The NASD found that Fischman and Tokayer effected transactions in customer accounts without obtaining written agreements from customers and failed to provide risk disclosure statements to customers before effecting the customers' trades.

The findings also stated that Fischman and Tokayer failed to provide public customers with the inside bid and ask quotations before effecting transactions for the customers and, when confirming the trade for the customers, failed to disclose its compensation. In addition, the NASD entered findings that Fischman failed to disclose to customers the compensation received by associated persons in connection with transactions before effecting the customers' trades, and that Tokayer also failed to establish or enforce an effective supervisory system that would have enabled his member firm to prevent the foregoing misconduct.

Morgan Stanley & Co. Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $19,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to honor quotations it caused to be disseminated through the Nasdaq system.

October Actions

All-Tech Investment Group, Inc. (Montvale, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $13,600. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it executed 136 short-sale transactions for customer accounts through the Small Order Execution System (SOES℠) in violation of Section c)3(D) of the SOES Rules.

HMS Securities, Inc. (Montvale, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $23,200. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed 232 short-sale transactions for customer accounts through SOES in violation of Section c)3(D) of the SOES Rules.

Jennifer Lynn Moore (Registered Representative, Hurst, Texas) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that she made misstatements and omitted material facts to retail customers to induce them to purchase securities. The findings also stated that Moore induced customers to purchase the securities by using, among other things, high-pressure tactics and representations that the market price for the security would escalate towards, or in excess of, 100 percent within one year or less. The NASD also determined that Moore maintained two brokerage accounts in which the above-referenced security was purchased and sold and failed to notify the executing member, in writing, of her association or status with her member firm.

Sherwood Securities Corp. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it reported, or caused to be reported, trade reports that were more than 90 seconds after execution, thus violating an Interpretation of the NASD Board of Governors.

U.S. Securities Clearing Corp. (San Diego, California) submitted an Offer of Settlement pursuant to which the firm was fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to supervise adequately the activities of a registered representative at a branch office in regard to the purchases and sales of securities, including, among other things, failing to review timely and approve correspondence and new account forms, and failing to preserve records.

NASD Regulatory & Compliance Alert Information

Regarding Any Items in This Publication

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

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

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