NASD Regulation Board Approves New Organizational Structure

NASD Regulation, Inc., President Mary Schapiro recently announced that the NASD Regulation Board unanimously approved an organizational structure for NASD Regulation to regulate the more than 5,400 firms in the industry today as well as The Nasdaq Stock Market™ (Nasdaq®), and to enforce the rules and regulations governing both. These changes represent the most fundamental restructuring of the industry's largest self-regulatory operation since the National Association of Securities Dealers, Inc. (NASD®) was founded more than 50 years ago.

The organizational structure also follows the strategic direction of the NASD Select Committee on Structure and Governance (the Select Committee), headed by former U.S. Senator Warren Rudman of New Hampshire, and addresses many of the key recommendations of the Committee's landmark Report (see box on page 3).

The new organizational structure consists of the following departments and offices:

Elisse Walter, former General Counsel of the Commodity Futures Trading Commission and Deputy Director of the Securities and Exchange Commission's (SEC) Division of Corporation Finance, will serve as Chief Operating Officer for NASD Regulation and Executive Vice President for Legal and Regulatory Policy.

(Continued on page 2)

Nasdaq's New President Named, Extensive Experience In Technology And Knowledge Of Financial Markets

In June, Alfred R. Berkeley, III, became President of The Nasdaq Stock Market, Inc. (Nasdaq). The appointment of Berkeley, who was Managing Director and Senior Banker of the Corporate Finance Department of Alex. Brown & Sons Incorporated in Baltimore, Maryland, was confirmed on May 9 by the 15-member Nasdaq Board of Directors.

"Al Berkeley was the unanimous choice of the search team and our Board," said Richard M. DeMartini, Chairman of the Nasdaq Board of Directors, and President and Chief Operating Officer of Dean Witter Capital. "Our key constituents—investors, Nasdaq-listed companies, and member firms—will benefit by having someone at the helm of Nasdaq who truly understands the needs of marketplace participants and the vital role Nasdaq plays as an economic force in facilitating job creation and capital formation."

(Continued on page 3)
She will have direct responsibility for General Counsel, Disclosure and Investor Protection, and Technology Services, as well as indirect responsibility for the remaining NASD Regulation departments and offices.

**Member Regulation Department**—headed by Executive Vice President John Pinto, Member Regulation will continue to perform broad-based cause and routine examinations of member firms. Member Regulation will also take over qualifications testing and the rapidly expanding areas of preventive compliance and continuing education. The department will house the Office of District Office Oversight and Coordination, headed by newly appointed Vice President Daniel M. Sibears, and focus heavily on the critically important District oversight function, ensure that national standards are being followed by all District Offices, and that customer complaints and examinations are current.

**Enforcement Department**—will act under the policy and case management direction of Barry Goldsmith who, as SEC Chief Litigation Counsel, prosecuted many of the SEC’s most significant cases, including Michael Milken, Drexel Burnham Lambert, Victor Posner, Mark Belzberg and First City Financial Corp., and Paul Bilzerian. The decision to separate regulation and enforcement recognizes that the complexity and size of the NASD disciplinary process requires a dedicated, distinct enforcement operation. The existing enforcement team of attorneys and examiners who have served very successfully as a strike force on complex and multi-District cases will be part of the larger department.

**Market Regulation Department**—which is headed by Senior Vice President James Cangiato, will continue to perform surveillance of Nasdaq market trading. It also will provide a liaison function with Nasdaq, which, like NASD Regulation, is today an independent subsidiary of the NASD.

**Office Of Dispute Resolution**—will consist of the former Arbitration Department and a new Office of Hearing Officers, which was a key recommendation of the Select Committee. The hearing officers will oversee the disciplinary hearing process, which includes administering the disciplinary pre-hearing and motion process and overseeing discovery and the procedural aspects of disciplinary proceedings.

Linda D. Fienberg, a former partner in the law firm of Covington & Burling in
Washington, recently joined NASD Regulation as Executive Vice President in charge of the Office of Dispute Resolution. Fienberg will also serve as Chief Hearing Officer.

Technology Services Office—headed by Senior Vice President Wendell Jones, will consolidate the considerable technology activity today in NASD Regulation and will ensure appropriate application of technology to regulation and surveillance activities.

Disclosure And Investor Protection Office—headed by newly appointed Senior Vice President Clark Hooper, will be responsible for the myriad ways the NASD and its member firms intersect with the investing public, including the Central Registration Depository (CRD)™ and its public disclosure program. This office will work closely with Technology Services on the CRD redesign project. The existing Corporate Financing and Advertising/Investment Companies Regulation Departments, which each have strong investor-driven disclosure components to their regulatory responsibilities, also will be included in this office. Efforts already underway to coordinate NASD’s Internet-related activities will continue to be managed from this office, including surveillance of advertising on the Internet, creating an NASD Regulation Web site, and exploring alternatives for making CRD available to investors and other regulators online.

General Counsel Office—headed by Vice President Alden Adkins, the newly appointed General Counsel, will consolidate rulemaking and legal interpretation functions of NASD Regulation, as well as the appellate disciplinary program.

Disciplinary Policy Office—headed by Vice President Steve Luparello, who served Mary Schapiro as Chief of Staff when she chaired the CFTC and as Counsel when she was an SEC Commissioner. His office will be responsible for case review and serve as NASD Regulation’s liaison with the District committees on disciplinary policy. The office will also serve as liaison to coordinate and oversee the development and implementation of a national regulatory plan.

In addition to approving the structure of the New Corporation, the NASD Regulation Board also approved an increase of 131 new positions, including 78 new positions for the examination program within Member Regulation. According to Schapiro, these additional resources are crucial to our ability to carry out the primary regulatory mandate assigned the NASD by Congress. Schapiro said, “The Board and I believe that this new structure puts to work for investors and for member firms, a unique combination of organizational focus, enhanced resources, and a heightened commitment to effective regulation and strong enforcement.”

NASD Amends By-Laws To Correlate With Restructuring

In late-June, via the ballot enclosed with Special Notice to Members 96-35, members approved amendments to the NASD By-Laws to make them consistent with the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" (Delegation Plan, see related box). The amendments permit the NASD to continue the restructuring necessary to implement the principles articulated in the Select Committee’s report.

In January 1996, the NASD Board created the new NASD Regulation subsidiary to provide regulation and member and constituent services, with the NASD retaining general oversight responsibility for the effectiveness of the self-regulatory and business operations of the NASD and its subsidiaries and final policymaking authority. In mid-December 1995, via the ballot in Notice to Members 95-101, members approved By-Law changes to implement the Select Committee proposals to restructure and reduce the size of the NASD Board to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards. The SEC granted a temporary approval of the proposed restructuring and a new NASD rule that allows NASD Regulation and Nasdaq to act on behalf of the NASD as stated in the Delegation Plan.

More than 130 executives were identified as potential candidates by the search firm employed by the Nasdaq Board. This produced a pool of 14 candidates that, after extensive review, was narrowed to five finalists, each of whom was interviewed in depth by the search committee of the Board.

NASD Regulatory & Compliance Alert

July 1996
“Al Berkeley brings a rare combination of technology, corporate, and investment banking experience to the leadership of the world’s fastest growing major stock market,” said Joseph R. Hardiman, President and Chief Executive Officer of Nasdaq’s parent, the NASD*. “His qualifications and experience will serve all market participants well as he carries out his responsibilities to see that Nasdaq anticipates and meets the challenges presented by the continuing evolution of electronic commerce; that Nasdaq’s technology continues to be state-of-the-art and sufficient to handle its increasing volume; and that Nasdaq continues to be the market of choice for the world’s leading growth companies.”

In the 1970s, Berkeley, while at Alex. Brown, was one of the first securities analysts in the nation to recognize the importance of the emerging software industry. His research on this industry won him a coveted Institutional Investor All-American award.

“Nasdaq’s growth will continue as the market employs new technology,” said Berkeley, a charter member of an industry advisory group formed in 1991 to advise Nasdaq on technology issues. “Harnessing emerging technologies will make markets even more accessible to a broad range of investors, help innovative companies raise the money they need, and ensure a fair market for all participants.”

Berkeley’s appointment is part of an ongoing reorganization of the NASD as it implements the recommendations of an NASD-created Select Committee on Structure and Governance chaired by former U.S. Senator Warren Rudman of New Hampshire. The recommendations, adopted by the NASD Board of Governors last fall, called for separating the operation of the Nasdaq market from the NASD’s regulatory functions. As a result, Nasdaq will be an operating subsidiary of the NASD, as will the newly created subsidiary NASD Regulation, Inc., headed by Mary L. Schapiro, former Chairman of the Commodity Futures Trading Commission (CFTC) and former Commissioner and Acting Chairman of the SEC.

“I can’t think of better leaders to take the NASD into the next century than Mary Schapiro, Al Berkeley, and Rick Ketchum, Executive Vice President and Chief Operating Officer of the NASD parent. With these key positions now in very capable hands, coupled with the sweeping changes we have made at the NASD over the last six months, this is an appropriate time for succession planning for my position to begin,” said Hardiman. “Since the maximum 10-year commitment I publicly made to the NASD will draw to a close in 1997, I intend to ask the NASD Board to begin that process this summer.”

“Al Berkeley’s appointment represents an important milestone in implementing the Rudman Committee recommendations for the NASD and The Nasdaq Stock Market,” said Michael W. Brown, Microsoft’s Chief Financial Officer and a member of the Nasdaq Board of Directors. “His strong technology background will be a real asset for Nasdaq operations.”

Another Nasdaq Board member, James F. Rothenberg, President and Director of Capital Research and Management Company, said “Al Berkeley’s superb understanding and knowledge of technology will be invaluable to Nasdaq and to all it serves as it continues on its evolutionary path into the next century.”

“Al Berkeley is good for Nasdaq because he is a strategic and visionary thinker with leadership qualities that will further strengthen investor confidence in the efficiency and integrity of The Nasdaq Stock Market,” said Edward L. Goldberg, also a member of the Nasdaq Board and Executive Vice President, Operations, Systems, and Telecommunications at Merrill Lynch & Co. “In addition, he will play a vital role in attracting dynamic, high-growth companies to Nasdaq, companies that are the hallmark of this market.”

For the last five years, Berkeley has been Managing Director and Senior Banker in the Corporate Finance Department of Alex. Brown & Sons, where his primary expertise involved large computer software and electronic commerce companies.

From January 1989 to July 1991, Berkeley took a leave of absence from Alex. Brown and joined Safeguard Sciences where he served on its Executive Committee and as Chairman of a number of its subsidiaries including Rabbit Software and Micro Decision Ware. He also served on the boards of Compucom and Tangram Systems.

As a Managing Director in Alex. Brown’s merger and acquisition department from 1987 to 1989, Berkeley helped develop the firm’s technology practice. From 1985 to 1987, Berkeley served as head of Information Services for the firm. In that capacity, he was responsible for all corporate information services, including the firm’s back office and front office technology. Berkeley began his career at Alex. Brown in 1972 as a research analyst. He became a general partner of the firm in 1983.

Berkeley has also served on the boards of three Nasdaq National Market companies: Computer Language Research, Inc., Cognos Incorporated, and IMNET Systems Inc.

Berkeley served as a captain in the United States Air Force from 1968 to 1972. He is a graduate of The Wharton School at the University of Pennsylvania (MBA, 1968) and the University of Virginia (BA, 1966).
Regulation

Mary Schapiro Asks States To Help Avoid Regulatory Overlap And Address Major NASD Regulation Initiatives

One way to build on the success of capital markets is to strengthen the regulatory partnership among self-regulatory organizations, the SEC, and the states, according to NASD Regulation President Mary Schapiro.

"The industry, like the markets themselves, runs on investor trust and confidence. Where we can extend a helping hand to our members in the form of compliance tools, improved communication and disclosure, better service—instead of just holding up a stop sign or taking an enforcement action—we should do so."

Schapiro, speaking before the North American Securities Administrators Association (NASAA) spring conference in Washington, DC, urged regulators to make a concerted and continuous effort to coordinate examinations and to avoid regulatory duplication. "Regulators, as much as securities firms, benefit from coordinated exam planning. All of us have far too much on our plates to waste resources layering on redundant examinations."

She believes that regulators can be effective without limiting the creativity or competitiveness of their members. "In virtually all instances, creativity and competition provide greater services and benefits to investors. In this regard, we must avoid the tendency to view regulation in zero sum terms—whatever is good for the public must be bad for the industry. That's simply not the case."

Lending A Hand

Schapiro asked state regulators to provide ongoing assistance to NASD Regulation in three areas:

1. Generating state and local interest in cases that warrant criminal prosecution. "I think we're all in agreement that monetary and other sanctions are no substitute for criminal prosecution," she said. "The courts can be the most effective vehicle for dealing with fraud and other egregious violations of customer trust. The threat of jail time for misappropriation of customer funds needs to be real. The simple reality is that the threat of criminal conviction fosters compliance."

2. Cooperating in joint enforcement efforts. "A precedent for successful joint efforts has been established with the Piper Jaffray case—an extremely complex and labor-intensive investigation involving mortgage-backed derivatives.... It took staff and resources from both the NASD and NASAA to deliver the monetary sanction totaling almost $2 million—and more important-ly, the $67 million restitution fund for investors."

3. Disclosing information about members to the public. The NASD will begin increased public disclosure of CRD information in 1997, including pending arbitrations, arbitrations settled for $10,000 or more, customer complaints settled for $10,000 or more, and pending customer complaints of $5,000 or more.

Schapiro endorsed deleting from a broker's record after two years those customer complaints that go nowhere or that are settled for less than $10,000. "When you clean off the jaywalking violations and dormant complaints, you shed more light on the information that can really help the public make effective choices with respect to researching a broker's credentials."

Members Have Specific Obligations In Locked And Crossed Markets

The NASD believes it is important that all members fully understand their obligations under SEC and NASD Rules when executing orders in a particular Nasdaq security, when the market in that security is locked or crossed. In particular, the question has arisen about a member's responsibility to trade at its quotation when it "passively" locks or crosses the market. The term passively locking or crossing means that the member did not initiate the quotation change that results in a locked or crossed market. NASD Rule 4613 [formerly NASD By-Laws, Schedule D, Part V, Section 2(e)] prohibits a market maker in most circumstances from entering:

NASDAQ Regulatory & Compliance Alert

July 1996
• a bid that equals or is greater than the asked quote of another market maker; or

• an asked quote that is equal to or less than a bid of another market maker. Before a market maker can enter a locking or crossing quote, the market maker must make reasonable efforts to avoid the situation by executing transactions with all market makers whose quotations would be locked or crossed.

Members have asked whether this obligation to execute is limited only to the market maker that “actively” locks the market, or whether it applies equally to the “passive” market maker. Under the NASD’s firm-quote obligation, “a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations.” Thus, both firms must trade at their stated quotations.

NASD and SEC Rules do not recognize a passively locking market maker as an exception to the firm-quote rule. It is a misinterpretation of the phrase “a market maker whose quotations are causing a locked or crossed market” to conclude that the firm that initiated a locking or crossing quotation change is the only firm responsible for transacting at its quotation. The word “causing” is not limited to the market maker that moved the quotation; “causing” a locked market involves two quotes, the bid and the asked. When a locked or crossed market occurs, the bid side and the asked side “cause” the locked or crossed market.

For example, suppose that Market Makers A and B are quoting 20 – 20 1/8 in security ABCD. Market Maker B believes that the market will decline and wants to change its quote to 19 3/4 – 20. If Market Maker B changes its quote while Market Maker A remains at 20 – 20 1/8, the inside market for ABCD will be 20 bid – 20 asked, a locked market. During the time that the market is locked, if a seller directs a sell market order to “passive” Market Maker A, the member must execute the trade at its quoted price of 20 bid. Likewise, if a buyer directs a buy order to “active” Market Maker B at its asked quote of 20, Market Maker B is obligated under the NASD and SEC firm-quote rules to trade at that price.

As in all locked or crossed market situations, the NASD will determine whether the firm that initiated the locked or crossed market complied with NASD Rule 4613 requirements to take reasonable steps to avoid the situation by executing a transaction with the market maker whose quote is being locked. For the purpose of determining which party violated the locked or crossed market rule, the NASD will examine all of the facts and circumstances involved in the situation, and determine which member is culpable. The NASD also will enforce strictly members’ firm quote obligations in the context of locked or crossed markets.

If you have any questions concerning this issue, please contact Market Regulation at (800) 925-8156.

NASD Proposal Requires Members To Respond To SRO Requests

When a self-regulatory organization asks for information as part of an investigation, market surveillance, or enforcement action, the NASD wants to ensure that its members provide it. That’s the premise behind a rule change recently proposed by the NASD. It was published for comment in the May 6 Federal Register.

The amendment would allow the NASD Board of Governors, any District Business Conduct Committee, and the Market Surveillance Committee to require members to report to other SROs on the record or informally. These groups could also investigate the books, records, and accounts of members or associated individuals in connection with the information requests.

The change specifically applies to regulatory requests from SROs with which the NASD has information-sharing agreements through the Intermarket Surveillance Group. Other SROs already have similar regulations.

Regulation M Will Streamline Trading Practices Rules

The SEC recently published for comment a proposed regulation that would create a simpler, more flexible framework to govern trading practices by issuers in derivatives and other persons participating in a distribution. “The proposals are designed to reduce regulatory burdens on issuers, underwriters, and other offering participants by focusing restrictions on potentially manipulative conduct in...
connection with the pricing of an offering, while retaining core investor safeguards,” according to the SEC release. The SEC comment period was initially set to end on June 17.

Proposed new Regulation M would replace SEC Rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21. Regulation M, which consists of six rules, would simplify trading practices rules by, among other things:

- Eliminating restrictions on actively traded securities.
- Reducing the period of trading restrictions for many other securities and focusing that period on the pricing of the offering.
- Expanding the scope of Nasdaq passive market making.
- Eliminating trading restrictions on derivative securities during a distribution of an underlying security.
- Narrowing substantially the restrictions on debt securities.
- Deregulating rights offerings.
- Allowing routine dissemination of research reports, transactions in baskets of securities, exercises of call options, and transactions complying with Rule 144A under the Securities Act.

- Creating a de minimis exception for transactions that are unlikely to have market impact.
- Allowing greater flexibility for issuer plans and odd-lot programs.
- Creating a more flexible framework for stabilizing transactions.
- Shortening the regulated period for short sales in connection with a public offering.

Inquiries regarding this proposal should be directed to the SEC.

Member Firms Have Obligations Under SEC Rule 17a-3 When Granting “Stops”

Member firms are encouraged to review their compliance and supervisory procedures with respect to the documentation of “stops” granted upon the acceptance of customer orders as required by SEC Rule 17a-3. A stop is a term and condition of an order whereby a member firm grants price protection on a portion of the order, as negotiated by the member firm and the customer, while the member firm works to fill the remainder of that order. Accordingly, stops given by member firms are required to be documented pursuant to SEC Rule 17a-3, which requires that broker/dealers maintain a memorandum of each order and any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted, and that such memorandum shows, among other things, the terms and conditions of that order. The Market Surveillance Committee recently imposed sanctions on a member firm for violating SEC Rule 17a-3 where the member firm failed to document stops granted in connection with the acceptance of customer orders. Failure to document stops undermines NASD Regulation’s regulatory ability to evaluate and verify a firm’s order execution practices in connection with customer orders.

The Committee wishes to advise members of their obligations to document stops and all other terms and conditions or instructions associated with the acceptance of customer orders, as required by SEC Rule 17a-3, and strongly recommends that they review their compliance and supervisory procedures in this area.

For more information on this matter contact Michael J. King, Chief Counsel, Market Regulation, at (301) 590-6445, or Market Regulation Market Services at (800) 925-8156.

Compliance Questions & Answers

Q. Which date should be used in arriving at the percentage haircut category on prerefunded municipal bonds?

A. The prerefunded date should be used, as opposed to the maturity date, when haircutting prerefunded municipal bonds. “Prerefunding” is a procedure in which a bond issuer floats a second bond to pay off the first bond at the first call date. The proceeds from the sale of the second bond are invested in securities (usually Treasuries) that will mature at the first call date of the first bond issue.

Q. What is the haircut on municipal securities that are traded flat or in default as to principal or interest?

A. Pursuant to SEC Rule 15c3-1 (c)(2)(v)(B), municipal securities are normally haircut anywhere from 0 to 7 percent, based on the length of time to

NASD Regulatory & Compliance Alert July 1996
maturity. Bonds traded flat or in default as to principal or interest may not, however, use this standard haircut schedule. A broker/dealer that can demonstrate a ready market for the bonds in default may haircut those bonds (after marking to the market) pursuant to SEC Rule 15c3-1(c)(2)(vi)(J). A broker/dealer that cannot provide evidence of the marketability of such securities must treat them as nonmarketable and deduct 100 percent of the carrying value.

Q. Does commercial paper fall within the definition of “debt security” for the reporting purposes of SEC Rule 10b-10?

A. Section 3(a)(10) of the Exchange Act of 1934 defines “security.” Generally, securities are notes, bonds, debentures, stock, or options. Excluded from the definition is “any note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof of the maturity of which is likewise limited.”

If the commercial paper has a maturity less than 270 days, it does not qualify under the Exchange Act as a security. Therefore, it does not qualify under SEC Rule 10b-10 as a “debt security” and therefore SEC Rule 10b-10 does not apply.

Q. What are “SEC fees” and how are they calculated?

A. The Securities Exchange Act of 1934, Section 31 requires all national securities exchanges to pay the SEC a fee equal to 1/300th of one percent of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted by the broker or dealer otherwise than on such an exchange. No payment is required for any calendar year in which such payment is less than $100. The SEC may exempt any sale of securities or any class of sales of securities. NASD members are billed annually by the SEC, based on information filed on Form X-17A-5 Schedule 1.

Q. Several rules and interpretations refer to “national exchange” or “national securities exchange.” How is this defined? Are foreign exchanges, like the Vancouver Stock Exchange, included in this definition?

A. The term national exchange or national securities exchange is defined as those entities registered with the SEC pursuant to Section 6 of the Exchange Act. Foreign exchanges do not qualify as national exchanges. Securities traded exclusively on these exchanges are considered foreign securities.

Q. Can a broker/dealer give or lend the proceeds of a subloan to an affiliate and still comply with the provisions of Appendix D of SEC Rule 15c3-1?

A. Appendix D requires that the cash proceeds received from a subordinated loan be used by the broker or dealer as “part of its capital and shall be subject to the risks of the business.” The regulation intends that the proceeds of a subloan be used in the broker/dealers business, not that they be passed on to an affiliate. The use of the term “part of its [the broker/dealers] capital” is referring to net capital. Therefore, passing on the proceeds to an affiliate violates the intent of this regulation.

Q. Can a party that is not a financial institution enter into a revolving subloan agreement (Form SL-7) with a broker/dealer?

A. Pursuant to the sub-loan instructions, “Any lender entering into a revolving subordination agreement with a member must be a financial institution which in the ordinary course of business engages in the lending of funds to broker/dealers.” A financial institution is generally defined as any entity that as a normal course of business issues their own commercial paper (such as a bank, a foreign bank, or a savings association).

Q. Can securities originally issued pursuant to Rule 144 be used to collateralize a Secured Demand Note?

A. Yes, under certain conditions. Appendix D of SEC Rule 15c3-1 states that securities “which are fully paid for and which may be publicly offered or sold, without registration under the Securities Act of 1933, and the offer, sale and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note.” Once Rule 144 securities have been held for the requisite number of years, and per an opinion of counsel, can be registered without restriction, they are considered freely tradable. Therefore, these securities can be used as collateral for a Secured Demand Note. Securities collateralizing a Secured Demand Note must be registered in the name of the broker/dealer or the name of its nominee or custodian.

Q. Can an unregistered broker (representative) handle “call backs”?

A. Yes. Unregistered brokers (representatives) may confirm trades but may not accept initial customer orders or any changes to existing customer orders.

Questions regarding this referenced subject may be directed to the Member Regulation Compliance Department at (202) 728-8221.
Correction of Prior Q & A

The April 1996 edition of this publication contained a Q & A on customer confirmation requirements, but incorrectly included a sentence at the end of the first paragraph stating, “If there is no difference between the reported trade price and the price to the customer then indicate ‘0’ or ‘none’.” SEC Rule 10b-10 only requires reporting the difference, if any, between the reported price and the price to the customer, and does not require a “0” or “none” indication. The relevant part of the Q & A should have been as follows:

Q. What information is required on the customer confirmation when a broker/dealer acts in a principal capacity in a reported security?

A. Securities and Exchange Commission (SEC) Rule 10b-10, the confirmation rule, requires broker/dealers acting in a principal capacity in transactions in reported securities to disclose on the customer confirmation the reported trade price, the net price to the customer, and the difference, if any, between the reported trade price and the price to the customer (i.e., the amount of any markup, markdown, or similar remuneration).

Rule Would Permit Quotation Of DPPs In OTC Bulletin Board

The NASD recently filed a rule change with the SEC to permit the quotation of direct participation programs (DPPs) in the OTC Bulletin Board (OTCBB) and to require the reporting of DPP transactions through the Automated Confirmation Transaction (ACT™) Service. Under the proposal, nonfirm prices and unpriced indicators of interest would be displayed on the OTCBB and reports of secondary market transactions in DPPs would be submitted between 8 a.m. and 1:30 p.m. on the next business day (T+1) after the date of execution, although they can be reported within 90 seconds of the trade.

“It is hoped that this change will centralize a fragmented market and provide it with greater transparency,” says Richard Fortwengler, Associate Director of Corporate Financing, NASD Regulation.

The proposal appeared in the April 25 Federal Register. Questions may be directed to Richard Fortwengler, Associate Director, NASD Regulation Corporate Financing at (301) 208-2744.

Treasury Reduces Reporting Burden On Banks

To reduce the burden imposed on financial institutions by the Bank Secrecy Act and increase the cost effectiveness of its counter-money laundering policies, the U.S. Department of Treasury recently adopted an interim rule that eliminates the requirement to report transactions in currency in excess of $10,000 between depository institutions and certain classes of “exempt persons.” The interim rule, which applies to currency transactions that occurred after April 30, took effect May 1.

One category of person subject to mandatory exemption is “any business or category of business the reports on which have little or no value for law enforcement purposes.” Treasury is using that provision to treat as an exempt person any corporation whose common stock is listed on The Nasdaq Stock Market as a Nasdaq National Market security, the New York Stock Exchange, or the American Stock Exchange. If such an exchange-listed company has a corporate charter, it is deemed a corporation for purposes of the interim rule.

Also exempt is a transaction between a depository institution and another depository institution.

Written comments on the interim rule, which must be received by August 1, should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182-2536, Attention: Interim CTR Exemption Rule.
Members Must Report Large Option Positions

The Market Regulation Department again reminds members of their obligations to comply with NASD conduct rules governing options position reporting requirements. The Market Surveillance Committee recently instituted disciplinary actions against member firms for failing to report large option positions in violation of the rules.

Options Position Reporting
Rule 2860 (5) of the NASD conduct rules (formerly Article III, Section 33 (5)(A) of the NASD Rules of Fair Practice) is applicable to all "standardized" option positions (a standardized option is a call or put option that is traded on a national securities exchange) established by "access" firms or their customers and all "conventional" option positions (a conventional option is any call or put option that is traded over the counter as opposed to a standardized or listed stock option) established by members or their customers (access firms are NASD members that conduct a business in exchange-listed options but which are not members of any of the options exchanges upon which the options are listed or traded). Specifically, the Rule requires members to submit a report to the NASD Regulation if a member's account, a customer's account, or an associated person's account establishes an aggregate options position of 200 or more option contracts of the put class and the call class on the same side of the market covering the same underlying security or index. (The term "class" means all option contracts of the same type of option covering the same underlying security or index.)

In aggregating options on the "same side of the market," long calls in any class of options should be combined with short puts of the same class and short calls should be combined with long puts to determine whether a reportable position exists. Long and short positions for the same class should not be netted or combined (e.g., 200 contracts long in WXYZ and 200 contracts short in WXYZ in the same account should both be reported since each is 200 contracts. However, 100 contracts long in WXYZ and 100 contracts short in WXYZ in the same account should not be reported since the contracts should not be combined and each are less than 200 contracts). All conventional standardized options of 200 or more contracts in the same class should be aggregated for reporting option positions.

A position report form should be filed in each of the following situations:
- A long and/or short position of 200 or more contracts of the put class and the call class on the same side of the market is established in the account.
- There is an increase in a previously reported position (e.g., from 250 contracts to 275 contracts).
- There is a decrease in a previously reported position to a position of less than 200 contracts (e.g., from 250 contracts to 199 contracts). Once a position has been reduced to less than 200 contracts, no subsequent position reports would have to be filed until the account once again established a long and/or short position of 200 or more contracts of the put class and the call class on the same side of the market.

Questions concerning this Rule, or requests for a copy of the position report form and instructions, may be directed to Joseph Alotto, Market Regulation, at (301) 590-6845. Additional information concerning option position reporting can be found in NASD Notice to Members 94-46.

Members Review Your Supervisory Procedures

Member Firms are encouraged strongly to review compliance and supervisory procedures with respect to the reporting of option positions. The Market Surveillance Committee recently imposed sanctions on several member firms for violations of NASD Rule 2860 (5) in that the members failed to file a report with respect to customer and firm accounts that held 200 or more conventional and/or standardized options. The Committee determined that failure to report large option positions undermines the NASD Regulation's regulatory ability to pursue possible violative activity.

Members are reminded of their obligations to report large option positions of 200 contracts or more to NASD Regulation Market Regulation. Questions concerning this matter should be directed to Joseph Alotto, Market Regulation, at (301) 590-6845. Additional information concerning option position reporting can be found in NASD Notice to Members 94-46.

National Association of Securities Dealers, Inc. July 1996
Violations

Recent Cases Provide Compliance Guidance

What you don’t know could hurt you... That’s why Regulatory and Compliance Alert is publishing the following summaries of recent cases involving securities violations:

Court OKs Payment For Order Flow
The Minnesota Supreme Court recently ruled in favor of Charles Schwab & Co. in three class-action cases alleging that the broker’s acceptance of payments for order flow breached its fiduciary duties. The case hinged on whether the potential consent requirements of Minnesota law could end order-flow payments, which are allowed under federal law. Federal law pre-empts state regulation, the recent ruling indicated, when a conflict exists.

In its decision, the court noted that order-flow payments are a useful, competitive tool.

SEC Upholds NASD Sanctions
The SEC recently sustained NASD sanctions against Mayer Amsel, the principal trader and salesman for A.T. Brod & Co. Inc., an NASD member firm. The NASD censured Amsel, barred him in all capacities, and fined him $100,000 for parking stock from his firm’s trading account in fictitious and inactive accounts. Although he admitted to the NASD charges, Amsel had argued that the NASD’s decision should be set aside because a member of the NASD District Business Conduct Committee was biased against him and because the sanctions were excessive.

Prudential Wins $2.5 Million Award
A three-member NYSE arbitration panel recently awarded Prudential Securities Inc. more than $2.5 million in compensatory and punitive damages. The suit alleged that PaineWebber Inc. raided Prudential’s Gainesville, Florida, office by recruiting seven key employees, including four account executives. PaineWebber noted that none of the four brokers had employment contracts with Prudential, giving them “every right to choose their new place of employment.”

PaineWebber is contemplating an appeal.

Gruntal Gets $200,000 Fine
The NASD in April censured and fined Gruntal & Co., Inc. $200,000 for trading ahead of its customers’ limit orders, late reporting of trades, and failing to adequately supervise in these areas. “The NASD will not tolerate instances where a member places its own interests ahead of those of its customers,” said John Pinto, Executive Vice President, NASD Department of Member Regulation.

Gruntal also agreed to reimburse the customers who may have been disadvantaged by these practices.

Stratton Fined For Fraud
In April, Stratton Oakmont, Inc., of Lake Success, New York, received a $325,000 NASD fine for fraud and other violations in its capacity as lead underwriter in the initial public offering of IPS Health Care. The NASD also suspended and fined $50,000 the firm’s head trader and manager of its trading department, Steven P. Sanders.

“By violating the integrity of the capital-raising process, Stratton abused underwriting procedures and benefited at its customers’ expense,” said Mary L. Schapiro, President, NASD Regulation, Inc.

Broker Should Have Disclosed Information
The NASD in May censured and fined Reynolds Kendrick Stratton, Inc., and eight of its brokers $415,000 for failing to disclose “crucial, negative information” about Worldwide Collections Fund, Inc., to investors. In 1992, RKS’s San Francisco office sold more than 1 million shares of Worldwide in 500 separate transactions without disclosing material negative news. “Every broker’s first responsibility is to his or her clients and to give them the information they need to make a sound investment,” says Mary L. Schapiro, NASD Regulation, Inc.

The NASD also suspended the eight brokers for up to four months.

Customers To Receive Restitution For Excessive Markups
In May, the NASD fined Josephthal, Lyon & Ross, Inc. nearly $350,000 and ordered it to pay more than $225,000 in restitution to customers who were victimized by excessive markups. In connection with these violations, Josephthal’s Chairman and Chief Executive Office, Dan David Purjes, was censured, and its head trader, Frank Garriton, was suspended for 15 business days and fined $10,000.

In July and August of 1991, Josephthal charged its customers markups of between 5.26 percent and 41.7 percent over the firm’s contemporaneous cost in 387 separate transactions of the common stock of ACTV, Inc.

Court Says Dean Witter “Shut Its Eyes”
The U.S. Court of Appeals for the Seventh Circuit recently concluded that Dean Witter was liable for a fraudulent scheme effected by two former employees in its Boca Raton, Florida office. The two employees—John Kenning and John Carpenter—pleaded guilty in federal district court in 1986 to defrauding investors, “admitting the fraud which constituted the basis for this civil suit,” the court said. The Kenning-Carpenter Ponzi scheme lasted more than 30 months without detection by Dean Witter.

The court found evidence for a reasonable jury “to determine that had Dean Witter not shut its eyes to the various
SEC Dismisses Appeal By Rosario Ruggiero

The SEC concluded that the NASD acted properly in barring Rosario Ruggiero from association with a member firm.

In 1990, the SEC charged Ruggiero with antifraud and other securities law violations after he allegedly manipulated the market price of various securities. Ruggiero contested the allegations, but in a 1995 trial, the District Court concluded that he must be enjoined from future securities law violations. Although the injunctive order was entered February 28, 1995, Ruggiero failed to file an amended Form U-4.

The NASD notified Ruggiero’s current employer, Tripp & Co. Inc., of the injunction on March 23 and asked that an amended Form U-4 be filed. On May 31, after commencement of these proceeding, Tripp filed an amended form disclosing the injunction. When the NASD denied Tripp’s application to retain its membership if it continued to employ him, Ruggiero appealed to the SEC.

NASD Doesn’t Have To Verify Validity Of Information

The U.S. District Court for the Eastern District of Michigan recently dismissed claims by former Prudential Securities brokers “as an unsuccessful attempt to create a private cause of action for the violation of NASD rules where none exists.” The NASD does not have to verify the accuracy of the written statements that appear on Forms U-4 or U-5, the court concluded.

The brokers contended that the NASD did not comply with its own regulations by failing to review and investigate the accuracy of information on U-4 and U-5 forms. They alleged that, “Prudential purposefully amended the U-4 and U-5 forms to reflect broker violations, when, in fact, this information should have been reported as company violations.”

NASD Revises Sanction Guidelines

The NASD announced revisions to the NASD Sanction Guidelines (Guidelines). The Guidelines were first published in May 1993 so that members could become familiar with typical securities industry violations that occur and the disciplinary sanctions that may result. The recently revised Guidelines were printed in the April 1996 Regulatory & Compliance Alert.

As originally published, the Guidelines addressed more than 40 types of violations, and were disseminated by the NASD Regulation National Business Conduct Committee (NBCC) for use by the NASD Regulation District Business Conduct Committees and the NASD.

National Association of Securities Dealers, Inc. July 1996
Regulation Market Surveillance Committee. The Guidelines have helped the Committees decide on appropriate remedial sanctions in NASD disciplinary proceedings.

The NBCC recently reviewed the Guidelines to revise the current publication and add additional guidelines where appropriate. The Guidelines now address more than 50 types of violations and reflect recent developments in the disciplinary process.

The Guidelines do not provide predetermined, fixed sanctions for particular violations. Instead, they serve as a guide for Committees to achieve greater consistency, uniformity, and fairness when imposing sanctions. Committees may, however, impose sanctions that are above or below the range recommended in the Guidelines, depending on the aggravating and mitigating factors of each case. The Guidelines were developed for the most frequent violations, and include factors for determining sanctions and a discussion of the range of appropriate sanctions.

A respondent’s history of similar misconduct is a key factor in determining appropriate sanctions for each type of violation listed in the Guidelines. It is the NBCC’s belief that a primary objective of the NASD disciplinary process is to deter future violations by imposing increased sanctions on repeat violators.

The revised Guidelines supersede Guidelines previously published by the NASD and apply to disciplinary matters in which complaints are filed on or subsequent to April 15, 1996. The Guidelines previously published by the NASD shall apply to all disciplinary proceedings in which complaints were filed before April 15, 1996.

Additional copies of the Guidelines are available for purchase at $35 each ($10 each for employees of NASD member firms) by contacting NASD MediaSource at (301) 590-6578 for credit card orders or by writing to: NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403. Please make checks payable to the National Association of Securities Dealers, Inc.
broadcast or published in the media. However, the Rules require that sales literature set forth the date on which it is first published, circulated, or distributed. Sales literature includes, but is not limited to, form letters, telemarketing scripts, research reports, performance reports, video tapes, seminar scripts, or any other marketing material distributed by a member firm to more than one person. If a member cannot determine the precise date of first use for an item of sales literature, the month and year only may be used.

Q. Can a registered representative show or reference an “internal use only” piece in presentations to the public, assuming the piece has been filed with NASD Regulation and found consistent with standards? Assume also that the representative would not actually give the piece to the public, but merely use it as part of a presentation.

A. The answer to this question depends on how the material was first submitted to NASD Regulation for review. If a member firm is aware that information in a particular internal-use-only communication will be shown or presented to the public, this fact must be disclosed to NASD Regulation when the material is submitted. For example, the member firm’s cover letter should disclose that the presentation is directed primarily to registered representatives, but it may also be shown to, or discussed with, the public.

According to the Rules, NASD Regulation reviews internal-use-only material taking into consideration the intended audience of the communication (i.e., registered individuals) and the context in which the communication will be used. A change of audience or context would constitute a material change to a previously reviewed communication. Material changes to a communication that has already been reviewed and found consistent with standards by NASD Regulation may necessitate resubmission. For example, a member may choose to voluntarily submit to NASD Regulation an internal-use-only piece regarding mutual funds; however, if the firm then decides to use the same piece with members of the public, resubmission would be necessary for compliance with the filing requirements. For more information, see NASD Rule 2210 (formerly Article III, Section 35(c) of the Rules of Fair Practice) and “Ask the Analyst,” Regulatory & Compliance Alert, January 1996, page 12.

Q. Must a registered principal review research reports?

A. Research reports are a type of sales literature and, as such, must be approved before use, and in writing, by a registered principal.

Securities Business In Financial Institutions

Q. Suppose a member firm conducts a securities business in a bank and intends to prepare a joint communication with the bank. Assuming the member firm can assure that its part of the communication complies with the Rules, what responsibility, if any, does the member firm have for the bank’s portion of the piece? For example, would the member be responsible for a discussion of mutual funds and government securities offered by the bank trust department to its trust clients?

A. The member firm bears responsibility for those portions of the communication that promote its securities business. In the example, the member firm would not be responsible for the bank trust department’s discussion of securities in the joint communication. However, the Rules obligate the member firm to assure that the communication clearly distinguishes those securities products and services the member firm offers from those offered by the bank trust department.

Electronic Media

Q. Can Advertising Regulation review a World Wide Web (WWW) site on an expedited basis (i.e., within three business days or other negotiated turnaround time)?

A. Advertising Regulation has discretion to accept any submission for review on an expedited basis. However, depending on the length, complexity, and level of compliance of the proposed site, an expedited review may be impractical. The Advertising Regulation staff invites members to contact them regarding the review of on-line sites as soon as the need for such a review becomes apparent.

Q. If a full-service broker/dealer uses a WWW site describing the services it provides, including references to mutual funds from its fund family, is this considered mutual fund advertising and must it be filed within 10 days of first use?

A. If the site merely mentions the fact that the member firm offers mutual funds, it would not have to be submitted for review to NASD Regulation. However, if the site goes on to describe the funds and/or discuss them by name, then the material would require filing as a mutual fund advertisement. As discussed in the April 1996 Regulatory & Compliance Alert, communications made generally available on the WWW or commercial on-line services constitute advertisements.

Investment Companies

Q. Would a press release intended to generate publicity about a merger of two member firms have to be filed with NASD Regulation if it contained a brief discussion of the mutual funds and variable annuities offered by the companies?

A. Although the primary purpose of the press release is to generate publicity about the merger, the discussion of investment company securities would subject the material to filing with NASD Regulation within 10 days of first use. However, if the member firms limited the press release to discussions of the merger, with only a passing reference to the fact that the firms offer mutual funds and variable annuities, the press release would not have to be submitted.
Find out how to comply with NASD advertising regulations.

Join us this fall in Washington, D.C. for a practical, hands-on advertising regulation seminar. Throughout this seminar, you will learn the do's and don'ts of financial services advertising. The seminars are led by advertising regulation experts—the people who work with advertising compliance everyday.

Topics covered will include:
- Internet and Electronic Communications
- Mutual Funds
- Variable Annuity and Life Insurance Products
- Filing Requirements
- Disciplinary Actions

To accommodate increased demand for this program, we are holding a condensed version of the Washington, D.C. seminar in San Diego on October 30. It will be held in conjunction with the NASD Regulation Fall Securities Conference October 31 to November 1, 1996.

Please note, attendance will be limited for both seminars, so watch your mail for our registration brochures. For more information on the Advertising Regulation seminar, call Joyce Gregory at (202) 728-8330. For more information regarding the Fall Securities Conference, call Rosemarie Kennedy at (202) 728-8383. Advertising Regulation seminar fees: Washington, D.C., $250; San Diego, $175.

Get your advertising regulation questions answered!

October 17-18, 1996
Renaissance Mayflower Hotel
Washington, DC
For D.C. hotel reservations, call (202) 347-3000.

October 30, 1996
Hyatt Regency La Jolla
San Diego, CA
For San Diego hotel reservations, call (800) 233-1234.

When calling for reservations, please refer to “NASD Regulation Conference.”
Legislation

Securities Reform Bills Moving Through Congress

The House and Senate recently passed legislation on securities reform. The House Commerce Committee on June 19, 1996, approved the Fields' bill, HR 3005, 407-8. Along with provisions on margin and mutual fund regulation, the bill contains a requirement for coordinated broker/dealer examinations by regulators.

The House bill also preempts state registration requirements for mutual funds, companies that are listed on the Nasdaq National Market, New York Stock Exchange, or American Stock Exchange, or that have $10 million in assets and two years of audited financials. Also, it would require an SEC study of how to attain uniform state broker/dealer registration.

The "Securities Investment Promotion Act of 1996" was introduced in the Senate on May 23, 1996, and passed the Senate on June 27, 1996 by unanimous consent. Among other provisions, the Senate bill:

- shifts registration of small investment advisers to the states;
- incorporates a variety of proposals to modernize mutual fund regulation, which were originally proposed in the House bill;
- includes the "Small Business Incentive Act" of the last Congress to ease capital raising for small businesses; and
- contains a variety of other provisions from the House bill, including state preemption of Nasdaq National Market, New York Stock Exchange and American Stock Exchange and mutual funds, and a requirement for coordinated examinations by regulators.

If you have questions about either the House or Senate bill, call John Komoroske, NASD Congressional/State Liaison, at (202) 728-8475.

Rules

NASD RULE FILING STATUS

Following is a list of rule filings by the NASD regarding broker/dealer regulation that are pending at the SEC or recently approved. The information below is as of June 21, 1996. Copies of rule filings (and any amendments), the SEC release publishing the rule proposal for comment, and the SEC release approving the rule change are available from the SEC Public Reference Room at (202) 942-8090 or Kristine Gwillium, NASD Office of General Counsel, at (202) 728-8821 (in certain cases a fee may be required). NASD rule changes are not effective until the date approved by the SEC.

Rule Filings That Have Not Been Published For Comment

96-21—Amend the By-Laws for mandatory electronic filing of registration-related filings.

96-19—Adopt amendments to Forms U-4 and U-5.

Rule Filings That Have Been Published For Comment But Have Not Been Approved By The SEC

96-20—Amend the By-Laws to make them consistent with the Delegation Plan. Published for comment by the SEC in Rel. No. 34-37282 (06/06/96); 61 FR 29777 (06/12/96).

96-17—Amend Rule 2720 of the NASD Conduct Rules to define "Bona fide independent market" and "Bona fide independent market maker." Published for comment by the SEC in Rel. No. 34-37223 (05/17/96); 61 FR 26239 (05/24/96).

96-15—Amend Schedule A to the By-Laws to modify the exception for interest and dividend income from gross revenue for assessment purposes. Published for comment by the SEC in Rel. No. 34-37169 (05/06/96); 61 FR 21517 (05/10/96).

96-14—Amend Article IV, Section 5 of the Rules of Fair Practice (Rule 8210) to require members to provide information in response to requests by other regulators for regulatory information. Published for comment by the SEC in Rel. No. 34-37150 (04/29/96); 61 FR 20299 (05/06/96).

95-61—Amend Article III, Sections 26 and 29 of the Rules of Fair Practice (Rules 2830 and 2820) to regulate the receipt by members and their associated persons of cash and non-cash compensation for the sale of investment company and variable contract securities.

95-63—Amend the Rules of Fair Practice to adopt a new section to regulate the conduct of a broker/dealer on the premises of a financial institution. Published for comment in Rel. No. 34-369890 (03/15/96); 61 FR 11913 (03/22/96).
95-40—Amend The PORTAL Rules, Schedule I to the NASD By-Laws (Rule 5300) to adopt a pilot program for reporting transactions in PORTAL securities. Published for comment by the SEC in Rel. No. 34-37317 (06/17/96).

95-39—Amend Rules of Fair Practice to apply the Rules of Fair Practice to exempted securities (except municipal securities), including government securities, and amend Article III, Section 2 of the Rules of Fair Practice to adopt a new Interpretation of the Board of Governors—Suitability Obligations to Institutional Customers. Published for comment in Rel. No. 34-36383 (10/17/95); 60 FR 54530 (10/24/95). Republished for comment in Rel. No. 34-36973 (03/14/96); 61 FR 11655 (03/21/96).

Rule Filings Recently Approved By The SEC

96-18—Amend Code of Arbitration Procedure to extend the effectiveness of Large and Complex Cases (Rule 10334). Accelerated approval granted the SEC in Rel. No. 34-37154 (04/30/96); 61 FR 20301 (05/06/96).

96-16—Plan of Allocation and Delegation setting forth the purpose, function, governance, procedures, and responsibilities of the NASD, NASD Regulation, and Nasdaq. Temporary accelerated approval granted by the SEC in Rel. No. 34-37107 (04/11/96); 61 FR 16948 (04/18/96).

96-09—Amend Schedule D, Part II (Rules 4310 and 4320) to recommend that issuers distribute interim reports and consider technological methods to communicate other information to registered and beneficial shareholders. Published for comment by the SEC in Rel. No. 34-37010 (03/21/96); 61 FR 13909 (03/28/96). Approved by the SEC in Rel. No. 34-37163 (05/02/96); 61 FR 21216 (05/09/96).

How NASD Rules Are Adopted

Have you ever wondered how an NASD rule change is implemented? Here's a description developed by the Office of General Counsel for NASD Regulation.

1. A rule proposal is developed by the NASD staff as part of a regulatory initiative, at the direction of one of the NASD Committees, or in response to a particular regulatory issue. Rule proposals are usually developed in consultation with an NASD Committee. These Committees are composed of securities industry representatives and other individuals with expertise in a particular subject (e.g., Corporate Finance, Investment Companies, or Bank Broker/ Dealers).

2. The Committee may decide to publish the proposed rule for member comment in a Notice to Members, which requires the approval of the NASD Regulation, Inc., Board of Directors. All comment letters are analyzed by NASD Regulation staff. The analysis by the staff, any recommendations on addressing the comments, and a copy of all comment letters are submitted to the Committee for review. The Committee may decide to:
   - forward the proposal to the NASD Regulation Board for approval with or without modification;
   - amend the proposal and recommend to the NASD Regulation Board that it be published again for member comment; or
   - report to the Board that the Committee decided not to take further action.

3. When recommending approval of a rule proposal, the Committee provides the NASD Regulation Board with an Action Item that includes the background, intent, and reasons for particular provisions of the proposed rule. The Committee's deliberations and rule language provide the basis for the Action Item. If the NASD Regulation Board does not agree with a rule proposal, it can refuse to approve it or return the proposal to the Committee for further consideration.

4. The NASD Regulation Board adopts a resolution approving the proposed rule with an instruction to make a filing with the SEC. The NASD Regulation Board has the authority to modify the proposed rule without consulting with the originating Committee.

5. If the rule proposal raises significant policy issues, the rule proposal must be reviewed and approved by the NASD Board of Governors (the parent company of NASD Regulation) before filing it with the SEC.

6. NASD Regulation staff prepares and submits a rule filing to the SEC that includes the rule language, description of the provisions of the rule language, and a discussion of any comment letters.
7. The SEC reviews the rule filing to determine if the language is clear and understandable, the description and rule language are consistent, the rule is consistent with the requirements of the Securities Exchange Act of 1934, and the rule is consistent with other NASD and SEC rules, as well as other federal and state statutes. The SEC may ask the NASD to clarify definitions or descriptions, as well as explain how a rule will be enforced.

8. The NASD Regulation staff responds to SEC comments and questions by providing additional information, refining or adding to arguments, or amending the rule language. If there are significant issues involved, the response is developed by consulting with the Committee liaison and, if appropriate, the Committee chairperson. If the response involves a substantive change to the intent or language of the rule, it must be approved by the Committee and the NASD Regulation Board.

9. The SEC publishes the proposed rule change for public comment in the Federal Register once all SEC staff issues are resolved. The NASD responds to any public comment letters following the same hierarchy described in Step 8. If SEC staff issues are not satisfied, the process described in Step 11 governs.

10. The SEC approves the proposed rule change if it believes the proposal meets statutory requirements and no new issues require a response. The approval order reflects comments and responses exchanged during the process.

11. If issues raised by the SEC cannot be resolved regarding the terms or intent of a proposed rule, several scenarios can occur:

- If the SEC is not satisfied with the rule proposal and believes that the proposal does not meet statutory standards, the SEC (before or after publication for comment) will request that the NASD modify or withdraw the proposal and will explain its reasons for opposing the rule change. If the NASD refuses to modify or withdraw the proposed rule change, the SEC must initiate formal disapproval proceedings by publishing a notice in the Federal Register seeking comment on why the proposed rule change should not be disapproved, which can be initiated simultaneously with a request for public comment on the proposal.

- If the SEC is not satisfied with the rule proposal but the proposal meets statutory standards, the SEC will publish the proposed rule for comment in the Federal Register. To resolve outstanding issues, the SEC can make specific requests for public comment in the Federal Register. If substantial public opposition is not received and no substantive objection remains, the SEC will subsequently approve the proposed rule.

12. Upon SEC approval, NASD takes steps to implement the rule by publishing a Notice to Members describing the rule and its effective date. To ensure members comply with the rule, NASD Regulation incorporates compliance reviews into its routine and cause examination programs, and may develop specific surveillance techniques.

Any questions about the NASD rulemaking process can be directed to the NASD Regulation OGC at (202) 728-8294.

---

**NASD Disciplinary Actions**

In February, March, April, and May 1996, the NASD announced the following disciplinary actions against 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**

February Actions

Rick Randall Blair (Registered Representative, Nevada City, California) 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, Blair consented to the described sanctions and to the entry of findings that Blair exercised discretion in the account of a public customer without obtaining written authority from the customer and approval of his member firm. The NASD also found that Blair failed to respond to NASD requests for information.

Steven T. Okamoto (Registered Principal, Foster City, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, barred from association with any NASD member as a registered securities principal, and required to requalify as a registered representative. Okamoto also was suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Okamoto consented to the described sanctions and to the entry of findings that he created 10 fictitious branch office audit reports when a corresponding supervisory branch exam had not been conducted.


March Actions

Leonard John Ialeggio (Registered Representative, Danville, California) was fined $15,000 and ordered to requalify by exam as a general securities representative. The NBBB affirmed the sanctions following the appeal of a San Francisco DBBC decision. The sanctions were based on findings that Ialeggio submitted expense vouchers to his member firm’s parent company and received payment for travel expenses totaling $9,688.50 to which he was not entitled. Ialeggio also induced the company to pay $35,000 for his country club dues, a payment to which he was not entitled.

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

April Actions

Darren J. Upchurch (Registered Representative, Wilmington, North Carolina) 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, Upchurch consented to the described sanctions and to the entry of findings that he converted $51,185 in funds from a public customer.

Gale Kathleen Vaillancourt (Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she

---

National Association of Securities Dealers, Inc.

July 1996
promulgated thereunder, in that it used a sales script that failed to disclose the risks associated with the investment. The findings also stated that the firm, acting through Hazzard, pressured registered persons to discuss investment products with prospective customers and to prequalify customers.

March Actions

Matthew L. Carragher (Registered Representative, San Diego, California) was fined $72,500, barred from association with any NASD member in any capacity, and ordered to reimburse his member firm $9,500. The sanctions were based on findings that Carragher received from public customers $14,000 for investment purposes. Carragher also failed to respond to NASD requests for information.

Rosemary Eskridge (Associated Person, South Pasadena, California) was fined $41,312.20, barred from association with any NASD member in any capacity, and ordered to reimburse a public customer $4,262.50. The sanctions were based on findings that Eskridge solicited a customer to purchase shares of stock and instructed the customer to mail her a $4,262.50 check to purchase the stock. The customer agreed and mailed the check to Eskridge. Eskridge admitted that she had not received the check, instructed the customer to deliver $4,262.50 cash to her to consummate the purchase transaction, and told the customer that she would return the check to him as soon as she had received it. Eskridge converted the cash for her use and subsequently received the check but did not return it to the customer. Eskridge also failed to respond to NASD requests for information.

May Actions

None

February Actions

Daniel Jon Benjamin (Registered Representative, Diamond Bar, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Benjamin conspired to the entry of findings that he recommended and effected securities in the account of a public customer that were unsuitable and unsuitable based upon the information disclosed by her as to her other security holdings, financial situation, and needs, and in light of the size and frequency of the transactions.

April Actions

Stephen Cutrone, Sr. (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $23,811.35 and suspended from recommending any penny stock transactions as defined by SEC Rule 3a3-1, for one year. Without admitting or denying the allegations, Cutrone consented to the described sanctions and to the entry of findings that he performed a public customer in the connection with such transactions, failed to provide to each customer a document containing the information in the required penny stock risk disclosure document. The findings stated that Cutrone failed to disclose to each customer the inside bid and offers to buy, the number of shares to which the bid and offer applied, to disclose to each customer the aggregate amount of compensation he received in connection with certain penny stock transactions, and failed to deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15g-9.

Todd Michael Ficeto (Registered Representative, Marina Del Rey, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $9,541 and suspended from recommending any penny stock transactions for two years. Without admitting or denying the allegations, Ficeto consented to the described sanctions and to the entry of findings that he effected penny stock transactions, and, in connection with such transactions, failed to provide to each customer a document containing the required information set forth in the penny stock risk disclosure document. The findings also stated that Ficeto failed to disclose to each customer the inside bid and offers to buy, the number of shares to which the bid and offer applied, and the aggregate amount of compensation he received in connection with certain penny stock transactions, and failed to deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15g-9.

Paul Douglas King (Registered Principal, Totin, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $17,000. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that he participated in private securities transactions without having provided prior written notification to his member firm.

Lawrence R. Klein (Registered Representative, Westlake Village, California) was fined from association with any NASD member in any capacity with the right to reapply for association with an NASD member after five years. The SFC affirmed the sanction following appeal of a June 1995 NASB decision. The sanction was based on findings that Klein caused $17,000 to be wired from his joint account of public customers into the fund of another public customer and failed to deliver to such customer the inside bid and offers to buy, the number of shares to which the bid and offer applied, and the aggregate amount of compensation he received in connection with such penny stock transactions, and failed to deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15g-9.

NASD Regulatory & Compliance Alert
an authorization to transfer federal funds and directed his member firm’s clearing firm to effect the unauthorized transfer of funds.

Michael A. Niebuhr (Representative, Registered, La Costa, California) was fined $15,000, which can be effect upon demonstration that he had paid $4,414 in restitution to the person injured. Niebuhr was also suspended from associating with any NASD member in any capacity for 90 days and thereafter until restitution has been paid in full. The SEC also issued a cease and desist order following an appeal of a June 1994 NBCC decision. The sanctions were based on findings that Niebuhr violated Section 5 of the Securities Act of 1933 by offering and selling unauthorized stock to public customers. Niebuhr also received shares of stock at no cost, purportedly as a bonus, and recommended and sold shares to a customer without obtaining his consent. Niebuhr failed to disclose that he was selling his own stock at the same time he was recommending it. In the matter, the SEC ordered Niebuhr to return to each NASD member a general securities principal for 18 months. Without admitting or denying the allegations, Pollard and Brown consented to the described sanctions and to the entry of findings that the described sanctions and fees imposed on them. The SEC also found that, in connection with such transactions, the customers provided to each customer a document containing the information set forth in the penny stock risk disclosure document, disclosing to each customer the inside bid and offer quotations and the number of shares to which the bids and offers applied, disclosed to each customer the aggregate amount of compensation he received in connection with such transactions, and delivered to each customer a written statement in accordance with SEC Rule 15g-9.

May Actions

Albert T. Carazofo (Representative, Registered, San Diego, California) was fined $5,000. Carazofo was also suspended from association with any NASD member as a general securities representative for 20 business days and ordered to pay $5,411.76 in restitution to public customers. Morris was suspended from association with any NASD member as a general securities principal for 13 business days and required to requalify by exam as a general securities principal should he seek to become associated with any NASD member. The sanctions were based on findings that Carazofo recommended transactions to the accounts of public customers without having reasonable grounds for believing that such recommendations were in the best interests of the customers. Morris failed to follow his member firm’s written supervisory procedures or to respond adequately to red flags to ensure compliance with applicable NASD rules by Carazofo.

L.P. Charles & Company, Inc. (Los Angeles, California) was fined $20,000. The sanctions were based on findings that the firm engaged in securities transactions while failing to maintain its minimum required net capital.

Daniel Mills Waltz (Representative, Registered, Covina, California), Todd Michael Arzalado (Representative, Registered, Covina, California), and Mary Elizabeth Jackson (Representative, Registered, Beverly Hills, California) each were fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Waltz, engaged in securities transactions while failing to maintain sufficient net capital. The firm and Waltz also failed to respond to NASD requests for information in connection with the investigation. The sanctions were based on findings that the firm, acting through Arzalado, engaged in securities transactions while failing to maintain sufficient net capital. The firm and Arzalado also failed to respond to NASD requests for information in connection with the investigation. The sanctions were based on findings that the firm, acting through Jackson, engaged in securities transactions while failing to maintain sufficient net capital. The firm and Jackson also failed to respond to NASD requests for information in connection with the investigation.

Westmark Securities Corporation (Santa Monica, California) and Ronald D. Catto (Representative, Registered, Los Angeles, California) were fined $25,500, jointly and severally, and Catto was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Catto, engaged in securities transactions while failing to maintain sufficient net capital. The firm and Catto also failed to respond to NASD requests for information in connection with the investigation.

District 7—Arizona, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming

February Actions

Russell B. Anderson (Representative, Registered, Orem, Utah) was fined $20,000 and required to requalify by exam as a general securities representative. The sanctions were based on findings that Anderson engaged in seven transactions. The firm was fined $5,000, without obtaining authorization from these customers prior to each of these transactions.

Dean Kay Brown (Registered, Representative, Phoenix, Arizona) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown exercised control over another person’s securities accounts and received $10,000 in margin payments and $5,000 in fees from associate with any NASD member in any capacity. The sanctions were based on findings that Novo祖先 failed to respond to NASD requests for information regarding his termination from a member firm. Michael I. Pinsler (Representative, Registered, Chicago, Illinois) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pinsler failed to disclose his Uniform Application for Securities Industry Registration. The firm was fined $15,000 and charged to defraud a customer of $4,736, both jointly and severally. The firm was required to reimburse the customer for the remaining balance of the account and to comply with the provisions of Securities and Exchange Commission (SEC) Rule 10b-5(a)(1) and effected transactions at prices that were unfair and excessive in that the total charges to the customer ranged from 6.74 to 9.09 percent above the firm’s contemporaneous cost for these securities. The firm, acting through Pinsler, engaged in securities transactions without complying with the requirements of SEC Rule 15g-9. The firm, acting through Pinsler, also failed to maintain adequate written supervisory procedures and failed to respond to NASD requests for information in connection with the investigation. The sanctions were based on findings that the firm, acting through Pinsler, engaged in securities transactions while failing to maintain sufficient net capital. The firm and Pinsler also failed to respond to NASD requests for information in connection with the investigation.

Steven W. Taylor (Representative, Registered, Howard, West Virginia) was fined $20,000 and required to requalify by excise as a general securities representative with the Board of Governors of the NASD. The sanctions were based on findings that Taylor caused purchases of securities to be effected in the accounts of public customers for the sole benefit of another customer who paid for the securities and was the sole beneficial owner of these securities when the customer’s account had been restricted by Taylor’s member firm in accordance with Regulation T of the Federal Reserve Board. Taylor failed to notify his member firm or otherwise cause his member firm’s records to reflect that the customer was the beneficial owner of the securities purchased in the account of the customer. Taylor also failed to cause his leadership to be reflected on the firm’s books and records.

April Actions

Richard L. Bourke (Representative, Registered, San Diego, California) was fined $20,000 and required to requalify by exam as a general securities representative with the Board of Governors of the NASD. The sanctions were based on findings that Bourke engaged in seven transactions. The firm was fined $20,000 and required to requalify by exam as a general securities representative. The sanctions were based on findings that Anderson engaged in seven transactions. The firm was fined $5,000, without obtaining authorization from these customers prior to each of these transactions.
and to the entry of findings that he failed to pay an $11,872.75 arbitration award.

Patrick Allen Chestnut (Registered Representative, Mercer Island, Washington) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity for failing to notify or deny the allegations. Chestnut consented to the described sanctions and to the entry of findings that he willfully gained entrance to a shared occupancy of a public customer and removed the premises without the knowledge or permission of the customer, stock certificates, bonds, and jewelry belonging to the customer that was worth more than $85,000. The NASD determined that Chestnut opened an account using a fictitious name and admitted three bonds belonging to the customer that had a value of $25,890 for redemption.

Paramount Investments International, Inc. (Denver, Colorado) and Terrence A. Butler (Registered Principal, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $20,000, jointly and severally. The firm was also fined $62,500, suspended from NASD membership for 10 days with the proviso that the firm may effect unsolicited liquidating transactions, suspended from participating in any offering of securities subject to SEC Rules 10-9 and 15c2-4 for six months, and required for 12 months to file all advertisements and sales literature with the NASD Advertising Department before use. Butler was suspended from association with any NASD member in any principal capacity for three days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm used sales literature to conform to NASD standards and breached its restriction agreement with respect to inventory levels, making markets in over-the-counter securities listed on Nasdaq, and operating a branch office without approval.

The findings also stated that the firm conducted a securities business while failing to maintain required net capital and filed FOCUS Part I reports that contained inaccurate net capital calculations. The NASD determined that the firm failed to demonstrate supervisory review of transactions in which the firm’s customers purchased stock, and failed to maintain accurate and complete books and records. The NASD also found that the firm, acting through Butler, participated in an offering of securities that was subject to a minimum investment amount contingency in which an impermissible escrow arrangement was employed, modified the share price and the firm’s share and dollar amount contingencies after the offering began and after investor funds had been received without a reconfirmation offer or a new offering document, and released investor funds before receipt of the minimum contingency amount.

The suspensions began May 20, 1996.

May Actions

D.E. Frey & Company, Inc. (Denver, Colorado), Stanley Baker (Registered Principal, Aurora, Colorado), and Brian O’Toole (Registered Representative, Litchfield, Colorado) submitted an Offer of Settlement pursuant to which the firm was fined $10,000. O’Toole was fined $12,500, required to pay $9,921.79 in restitution to customers, suspended from association with any NASD member in any capacity for 15 days, and required to timely pay as a general securities sales representative. Baker was fined $5,000, suspended from association with any NASD member as a general securities principal for five business days, and required to notify by exam as a general securities principal. In addition, Baker is required to hire a management consultant familiar with the securities industry to review the supervisory and operations procedures in place in the branch office in which he is the branch office manager to determine their adequacy and ability to detect possible violations of securities rules and regulations. The consultant will perform an examination and prepare a report to submit to the NASD. Based on the findings of this report, Baker will begin to implement any recommended changes to the supervisory and operations procedures in this branch office.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that O’Toole received compensation in the discretionary account of public customers that were excessive in size or frequency in view of the financial resources and character of these customers’ securities account. The findings also stated that O’Toole effected transactions on margin in the customers’ account and incurred margin debts that were excessive. According to the findings, these transactions were improperly recommended to the customers by O’Toole without having reasonable grounds for believing that the recommendations were suitable for these customers. Furthermore, the NASD found that O’Toole exercised discretion in the customers’ account without having this account accepted by his member firm in writing. If a discretionary account.

Franklin-Lord, Inc. (Scottsdale, Arizona) and John E. Cathcart (Registered Principal, Scottsdale, Arizona). The firm was fined $10,000 and suspended from NASD membership for five days. Cathcart was fined $10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to be required by exam as a general securities representative and a general securities principal. The Securities and Exchange Commission (SEC) imposed the sanctions following a appeal of a July 1994 National Securities Compliance Division Order for Broker-Dealer (Form BD) with the NASD and failed to comply with the terms of its restriction agreement with the NASD. In addition, the firm, acting through Cathcart, effected more than $7 million in securities transactions before paying the required registration fee to the Municipal Securities Rulemaking Board (MSRB) and without having a qualified municipal securities principal.

Gilbert Marshall & Company (Greeley, Colorado) and Michael A. Usher (Registered Principal, Greeley, Colorado) submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally. In addition, the firm was suspended from recommending any penny stock transactions, as defined by Securities Exchange Act Rule 5a5-1, for two years and required to establish and maintain written supervisory procedures adequate to ensure compliance with the penny stock rules. Furthermore, the firm must employ a compliance assistant to assist the firm’s Compliance Officer, and Usher is required to timely pay as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the sale of a penny stock, the firm, acting through Usher, failed to complete, or cause to be completed, written suitability statements for the purchasing customer and failed to obtain manually signed and dated copies of the written suitability statements from the purchasing customer.

The findings also stated that the firm, acting through Usher, failed to obtain, or require associated persons to obtain, from customers written customer agreements specifying the specific quantities of stock before effecting the subject transactions, failed to provide to customers a copy of the Penny Stock Rule Disclosure Document, and failed to obtain manually signed and dated written acknowledgement of receipt of the document. In addition, the NASD determined that the firm, acting through Usher, failed to disclose and confirm in writing the current inside bid and offer quotations of the penny stock and failed to disclose and confirm the aggregate amount of compensation received by the firm and its associated persons. Furthermore, the findings stated that the firm, acting through Usher, failed to provide monthly statements with market and price information, without the required price determination, and a conspicuous legend and failed to establish, maintain, and enforce adequate written supervisory procedures to ensure compliance with penny stock rules.

Lester H. Lane (Registered Principal, Englewood, Colorado) was fined $25,000. The sanction was based on findings that Lane received compensation from a third-party for services provided pursuant to a consulting agreement without providing his member firm with prompt written notice of such outside business activity.
February Actions

David Lee Heinmeyer (Registered Representative, Bismarck, North Dakota) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Heinmeyer failed to respond to NASD requests for information regarding a transaction from a member firm.

Scott A. Weldon (Registered Representative, Chanhassen, Minnesota) 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, Weldon consented to the described sanctions and to the entry of findings that he received from a public customer $10,000 to purchase an annuity. Weldon did not apply the funds as instructed and, instead, without the knowledge and consent of the custodian, deposited the funds into his personal bank account and converted the funds to his own use and benefit.

March Actions

Robert Dean White (Registered Principal, Excelsior, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $3,663.57 and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he engaged in a pattern of failed communications to his customers, including failing to forward written communications to other custodians, sending communications to customers directly, and failing to forward communications to other custodians.

April Actions

John Jay Coleman (Registered Representative, Overland Park, Kansas) submitted an Offer of Settlement pursuant to which he was fined $81,371.85, barred from association with any NASD member in any capacity, and required to pay $3,663.57 in restitution. Without admitting or denying the allegations, Coleman consented to the described sanctions and to the entry of findings that, without the knowledge and consent of the custodian, he initiated, deposited, and converted the funds to his own use and benefit.

Terri Jo Neff (Registered Representative, Brooklyn Park, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neff consented to the described sanctions and to the entry of findings that she failed to forward written communications to other custodians, including failing to forward written communications to customers.

Linda Marie Oberg (Registered Representative, Fridley, Minnesota) submitted an Offer of Settlement pursuant to which she was fined $2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Oberg consented to the described sanctions and to the entry of findings that she failed to forward written communications to other custodians, including failing to forward written communications to customers.

May Actions

Timothy Lee Morrison (Registered Representative, St. Louis, Missouri) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that he failed to respond to NASD requests for information about his termination from a member firm.

Brian Edward Reipke (Registered Representative, Minneapolis, Minnesota) was fined $100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Reipke, without the knowledge or consent of public customers, sold insurance policies in the names of customers and converted the proceeds therefrom.

Thomas Warner Graham (Registered Representative, Sioux City, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he failed to forward written communications to other custodians, including failing to forward written communications to customers.

February Actions

Gary P. Goodner (Registered Representative, Oklahoma City, Oklahoma) 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, Goodner consented to the described sanctions and to the entry of findings that he engaged in inside business activities without prior written notice to his member firm.

Leon Hawkins (Registered Representative, Huntsville, Alabama) 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, and ordered to pay $35,498.69 in restitution to public customers. Without admitting or denying the allegations, Hawkins consented to the described sanctions and to the entry of findings that he received from public customers $35,498.69 in premium payments for insurance policies.

David P. Jones (Registered Representative, Nashville, Tennessee) was fined $70,000, barred from association with any NASD member in any capacity, and ordered to pay $1,120,389.88 in restitution to the appropriate parties.

Do You Need To Register With The NASD?

To avoid violating federal regulations, firms and/or individuals not registered with the NASD that engage in a narrow range of activities, e.g., mergers and acquisitions, private placements to institutional investors, may need to register with the SEC as a broker/dealer and become an NASD member. If you are engaged in these activities, check with your firm's legal counsel to determine whether broker/dealer registration and NASD membership is necessary.
The NASD also found that the firm, McIntyre, and Saltier used other individuals as conduits between McIntyre and the firm. The transactions were not conducted on behalf of the firm, and McIntyre, recouped losses incurred in these transactions by selling other U.S. government agency securities at prices in excess of the then-current market price. The NASD also determined that McIntyre, the firm, and Saltier failed to reflect on the books and records of the firm that these transactions were not effected at the then-current market price. The adjusted purchase price on the first leg of each adjusted trade was conditioned upon a subsequent sail at a further inflated or adjusted price. McIntyre, the firm, and Saltier also caused false and misleading confirmations to be mailed to a customer. The NASD also found that McIntyre caused the falsification of the books and records of the firm in that revealed losses on sales by the customer were concealed and the new securities purchased were recorded at inflated prices, and, in doing so, McIntyre caused third parties with an interest in these accounts to be misled regarding the performance of the investments under the control of the customers. The findings also stated that McIntyre falsified a trade ticket for a purchase by incorrectly indicating on the trade ticket that the transaction was a $100,000 purchase of bonds and falsified the trade blotter of the members.

March Actions

Jody M. Feltenman (Registered Representative, Patterson, Louisiana) 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 sixty days, and suspended from association with any NASD member in a principal capacity for six months. Feltenman was also required by exam as a general securities representative. Without admitting or denying the allegations, Feltenman consented to the described sanctions and to the entry of findings that he engaged in a series of purchase and sale transactions for U.S. government agency securities and agreed to execute, and caused to be executed, such transactions at prices that were not reasonably related to the then-current market price for the securities. The NASD also found that Wetenmore was negligent in failing to make a reasonable effort to determine the market prices for the securities and engaged in a practice commonly identified as adjusted trading. The findings stated that Wetenmore failed to reflect on the books and records of his member firm that the transactions were not effected at the then-current market prices and that the adjusted sale prices on the first leg of each adjusted trade were conditioned upon the subsequent purchase at a further inflated or adjusted price. The NASD also determined that Wetenmore failed to reflect on the books and records of his member firm that the transactions were not effected at the then-current market prices and that the adjusted sale prices on the first leg of each adjusted trade were conditioned upon the subsequent purchase at a further inflated or adjusted price.

Westcap Securities, L.P. (Houston, Texas), Alan F. McKinley (Registered Principal, Germantown, Tennessee), and Mark M. Saltier (Registered Principal, Houston, Texas) submitted Offers of Settlement pursuant to which the firm was fined $75,000, McKinley was fined $50,000, barred from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. Saltier was fined $20,000, suspended from association with any NASD member in any capacity for one year, and suspended from association with any NASD member in any principal capacity for three months, and required to requalify as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they charged commissions on sales and purchases on a series of purchase and sale transactions, without the consent of the customer, and engaged in a practice commonly known as "comps" or "add-ons." The firm was fined $100,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Wetenmore consented to the described sanctions and to the entry of findings that he engaged in a series of purchase and sale transactions for U.S. government agency securities at prices that were not reasonably related to the then-current market price for the securities.
capacity for two years. The NBCC affirmed the sanctions following appeal to the Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that McDaniell paid a representative of another member firm a $32,560 bribe in commission for mutual fund sales and reinvestments without the prior oral or written authorization of their member firms.

Robert O. Mullins (Representative, Nashville, Tennessee) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity, and required to pay $167,690.77 in restitution. Without admitting or denying the allegations, Mullins consented to the described sanctions and to the entry of findings that he received from public customers checks totaling $206,491 for investment purposes, failed and neglected to subtract the full amount of the funds on behalf of the customers, and instead, converted $167,690.77 of the funds for his own use and benefit without the customers’ knowledge or consent. The findings also stated that Mullins prepared fictitious account statements to reflect purchases of municipal bonds for a public customer that were, in fact, not purchased.

Aubrey D. O’Connor (Representative, Richmond, Texas) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD mem-
ber in any capacity for two years. Without admitting or denying the allegations, O’Connor consented to the described sanctions and to the entry of findings that he knowingly or recklessly failed to determine independently the market price for a purchase and sale transaction for certain government agency securities between an individual and a firm. The NASD determined that, in so doing, O’Connor participated in, and furthered, the fraudulent transaction. Furthermore, the findings stated that O’Connor failed to effect a record on his member firm’s books and records that this transaction was not effected at the then-current market price.

District 6—Texas

February Actions

Daniel Joseph Avant (Representative, Spring, Texas) was fined $2,500 and suspended from association with any NASD member for ten days. The SEC affirmed the sanctions following appeal of a March 1995 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Avant failed to pay a $28,000 NASD arbitration award timely.

March Actions

Paul McColough Byatt (Representative, Irving, Texas) was fined $1,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay prejudgment interest. The sanctions were based on findings that Byatt failed to respond timely to NASD requests for information about his financial transactions.

Robert Neal McWilliams (Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on an offer that McWilliams, during the Series 7 exam, failed to adhere to PROCOD® Certification and Training center instructions in that he made use of handwritten notes relating to the exam’s subject matter.

Melissa Ann Myers (Representative, Houston, Texas) was fined $42,630 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Myers instructed her former firm to issue a $4,526 check to her from her account. After requesting the check, Myers requested that the funds be wired to her bank account. Subsequently to the wire transfer, Myers received a $4,526 check from her former firm, cashed it, and converted the funds for her own use and benefit. Myers also failed to respond to NASD requests for information.

April Actions

Steve Dewitt Walker (Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The NICC imposed the sanction following review of a Dallas DBCC decision. The sanction was based on findings that Walker received assistance while taking the Series 7 exam by having his possession notes and form pertaining to securities matters.

May Actions

Danny Ray Bannister (Representative, Lewisville, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bannister failed to respond to NASD requests for information about a customer complaint. In addition, Bannister effectuated unauthorized trades in a principal’s account.

Rogier Philip Holland (Representative, Tyler, Texas) submitted an Offer of Settlement pursuant to which he was fined $25,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Holland consented to the described sanctions and to the entry of findings that he failed to effect a record on his member firm’s books and records that this transaction was not effected at the then-current market price.

Petroleum, Commodities & Realty, Inc. (Plano, Texas) and John Raymond Hodge (Representative, Fairview, Texas) were fined $20,000, jointly, and severally, and Hodge was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Hodge, filed with the NASD a false annual audit report.

George Erwin Sledge, Jr. (Representative, Houston, Texas) was fined $5,000 and suspended from association with any NASD member in any capacity. The NASD affirmed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that a former member firm, acting through Sledge, effectuated transactions in nonexempt securities while failing to maintain its required minimum net capital. The firm, acting through Sledge, also made improper use of customer securities by borrowing approximately 1,000 shares of common stock from a public customer, selling such shares, and converting the proceeds to the firm’s bank account.

Jeffery Steven Stone (Representative, Dallas, Texas) was fined $8,830 and suspended from association with any NASD member in any capacity for 15 business days. The sanctions were based on findings that Stone effectuated private securities transactions without giving prior written notification to, and receiving prior written approval from, an NASD member in any capacity.

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

February Actions

Barrett Grey & Co., Inc. (Atlanta, Georgia) and Linda M. King (Representative, Marietta, Georgia) were fined $20,000 and expelled from association with any NASD member. A separate Offer of Settlement was submitted by King pursuant to which she was fined $5,000, suspended from association with any NASD member in any capacity for six months, and barred from association with any NASD member in any proprietary supervisory capacity, or managerial capacity, with the right to reapply to become associated with a member firm within five years. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that the firm, acting through King, conducted a fiduciary relationship with a customer, failed to maintain sufficient net capital. The findings also stated that the firm, acting through King, failed to accurately make certain bookkeeping records and filed materially inaccurate FOCUS Part I and IIA reports.

John R. Dankovich (Representative, Sunrise, Florida) was fined $40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dankovich opened a securities account with his member firm under the name of his infant daughter and listed false information on the new account. Dankovich also failed to respond to NASD requests for information about his termination from a member firm.

Hove Solomon & Hall, Inc. (Miami, Florida) and Christopher John Hall (Representative, Miami, Florida) were fined $30,000, jointly and severally. The firm was ordered to disgorge excess profits totaling $67,936.40 in public customer accounts. The sanctions were based on findings that the firm, acting through Hall, effectuated principal sales of municipal bonds to public customers at prices in excess of fair market value. The firm and Hall also failed to establish or maintain an adequate written supervisory procedure pertaining to the pricing of municipal securities.

Barbara J. Owens (Representative, Dundee, Florida) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Owens failed to respond to NASD requests for information.

George R. Peak (Representative, Lauderdale, Florida) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Peak effectuated six unauthorized purchases in the accounts of public customers and failed to respond to NASD requests for information.

Charles O. Phillips, Jr. (Representative, Decatur, Georgia) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Phillips obtained a $1,000 loan against the margin policy of a public customer without the knowledge or authorization of the customer.

Mohammed N. Wasif (Representative, Boca Raton, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wasif failed to respond to an NASD request for information regarding his termina-

David H. Werner (Representative, Aventura, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Werner failed to respond to NASD requests for information.

Allen G. Whitmore (Associated Person, Elgin, South Carolina) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Whitmore failed to respond to an NASD request for information regarding his termina-

March Actions

Andrew P. Cianman (Representative, Atlanta, Georgia) was fined $50,000 and barred from association with any NASD member in any capacity with the right to reapply in a supervisory or nonproprietary capacity after three years. The SEC affirmed the sanctions following appeal of a May 1995 NBCC decision. The sanctions were based on findings that Cianman effectuated transactions in his personal securities account at his member firm that were beyond his financial means, resulting in violations of the margin requirements set forth in Regulation T of the Federal Reserve Board and the NASD Rules of Fair Practice.

Kirk Moore Rogers (Representative, Elon College, North Carolina) submitted an Offer of

National Association of Securities Dealers, Inc. July 1996
Settlement pursuant to which he was fined $14,551.80 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he solicited for compensation investors who purchased $191,036 in promissory notes outside the scope of his employment. Without member fined without giving prior written notice to or receiving written approval from his member firm.

Soberin Equity Management Corp. (Boca Raton, Florida) and Glen T. Vitter (Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $13,926, which includes disgorgement of commissions totaling $85,602.47. Vitter was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that the firm, acting through Vitter, sold shares of stock that traded at a premium to the NASD's minimum market price.

David L. Weintraub (Registered Principal, Tampa, Florida) submitted an Offer of Settlement pursuant to which he was fined $15,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Weintraub consented to the described sanctions and to the entry of findings that he recommended the purchase of a common stock of a company without having a reasonable basis for believing that said transaction was suitable for the customer. The NASD also found that Weintraub sold shares of stock to public customers at undervalued market prices with markups of 20.6 percent over his firm's contemporaneous costs. The findings also stated that Weintraub filed false and inaccurate Form U-4 with the NASD.

April Actions

Jerome H. Daniels (Registered Principal, Clearwater, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five days, and required to retraining by exam as a financial and operations principal. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he filed inaccurate Form U-4 and U-5 reports and prepared inaccurate net capital computations. The findings also stated that Daniels failed to supervise an associated person adequately.

Richard J. Keighn (Registered Representative, Elizabeth City, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,333.50 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Keighn consented to the described sanctions and to the entry of findings that he recommended the purchase of a common stock of a company without having a reasonable basis for believing that such securities transaction was suitable for the customer. Keighn also failed to provide prompt written notice of the retraining by exam as a financial and operations principal.

Kashmir Davidsec Securities Corp. (Sarasota, Florida) and Victor L. Kashou (Registered Principal, Sarasota, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $40,000, jointly and severally, and required to pay $11,863 in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kashou, solicited principal sales of common stock with public customers at unfair prices. According to the findings, these markups ranged from 5.6 to 18.2 percent above the prevailing market price.

Litwin Securities, Inc. (Miami Beach, Florida) and Harold A. Litwin (Registered Principal, Miami Beach, Florida) were fined $10,000, jointly and severally. The firm, acting through Litwin consented to the described sanctions and to the entry of findings that Litwin solicited principal sales of common stock with public customers at unfair prices. According to the findings, these markups ranged from 5.6 to 18.2 percent above the prevailing market price.

July 1996

NASD Regulatory & Compliance Alert

25
while failing to maintain sufficient net capital and failed to compute its net capital accurately. The firm, acting through William J. DeMarco, improperly loaned funds to clients in violation of NASD Rule 2007. The firm also failed to maintain a record of its capital deficiency. In addition, William permitted the firm to conduct securities business without a registered financial and operations principal and failed to have a FOCUS Part 4 Report in a timely manner.

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

February Actions

Erica Hilda Bauer (Registered Representative, Rochester, Michigan) was suspended from association with any NASD member in any capacity for 90 days and required to resign by exam. The NRBCC imposed the sanctions following a review of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bauer sold a variable life insurance product to a customer without the customer’s knowledge or consent by signing the customer’s name to a form that allowed for automated withdrawal of monthly premium payments from the customer's bank account.

Rodger E. Ericson (Registered Representative, Zionsville, Indiana) 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 $64,673.85 in a remedial action. The sanctions were based on findings that Ericson consented to the described sanctions and to the entry of findings that he obtained $61,250 in checks from one firm member by requesting advances against future insurance commissions of insurance agents of his member firm. After obtaining the checks, Ericson endorsed them into an account in which he had a beneficial interest and used the funds for some purpose other than for the benefit of the agents, without their knowledge or consent. Furthermore, the NASD found that Ericson received from a public customer a $23,283.85 check with instructions that he use the funds to purchase an annuity. Ericson failed to follow said instructions in that he endorsed the check, deposited it or caused it to be deposited in an account which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customer. The findings also stated that Ericson failed to respond to NASD requests for information.

Ray Arvil Forrester (Registered Representative, Chicago, Illinois) was fined $1,000, suspended from association with any NASD member in any capacity for 30 days, and required to resign by exam. The NASD imposed the sanctions following a appeal of a Chicago DBCC decision. The DBCC found that Forrester telephoned his member firm, identified himself as a customer, directed the liquidation of stock held in the customer’s account, and removed the proceeds to be due to the customer in care of Forrester at his address. Without the customer’s or the member firm’s knowledge or consent, Forrester received a check totaling $1,986.45, deposited the check in an account, and the proceeds were used by someone other than the customer. Forrester also failed to respond timely to NASD requests for information.

Joseph Roberts & Co., Inc. (Chicago, Illinois), Robert B. DiMarco, Jr. (Registered Principal, Chicago, Illinois), and Joseph F. DeSanto (Registered Principal, Chicago, Illinois) submitted an Offer of Settlement pursuant to which DiMarco and DeSanto were fined $50,000, jointly and severally. The firm was prohibited for one year from participating in the purchase or sale of any restricted or control security in transactions requiring compliance with Rule 144 of the Securities Act of 1933, as amended. DeSanto was suspended from association with any NASD member in any capacity for 15 business days and required to pay restitution. Without admitting or denying the allegations, DiMarco consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to a public customer on a private basis and failed to give prior written notice to, or obtain prior written approval from, his member firm to engage in such activities.

William D. Roberts (Registered Representative, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roberts consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to a public customer on a private basis and failed to give prior written notice to, or obtain prior written approval from, his member firm to engage in such activities.

Arthur K. Taylor (Registered Representative, Royal Oak, Michigan) submitted an Offer of Settlement pursuant to which he was fined $8,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to a public customer on a private basis and failed to give prior written notice to, or obtain prior written approval from, his member firm to engage in such activities.

March Actions

David A. Andricco (Registered Representative, Loveland, Ohio) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Andricco consented to the described sanctions and to the entry of findings that he performed financial planning services, sold insurance, and provided investment advice for a nonmember of the NASD and failed to give prompt written notice of this outside employment to his member firm. The findings also stated that Andricco engaged in securities transactions as a customer, but prior written notice to and approval from his member firm was required.

Jon R. Butzen (Registered Representative, Lakemoor, Ill.) was fined $1,500 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a March 1995 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Butzen failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U4) that he was the subject of a pending NASD complaint. Butzen also executed unauthorized transactions in the account of a public customer without the customer’s knowledge, consent, or authorization to exercise discretion in the account. Butzen also failed to respond timely to NASD requests for information.

David R. Clark (Registered Representative, St. Clairsville, Ohio) submitted an Offer of Settlement pursuant to which he was fined $35,000, barred from association with any NASD member in any capacity, and ordered to pay $7,992.51 in restitution. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he received from public customers totalizing $8,992.51 in a life insurance premium. According to the findings, Clark did not use these funds for their intended purpose, but for some purpose other than for the benefit of the customers. The NASD also determined that Clark failed to respond to NASD requests for information.

Domestic Capital, Inc. (Buffalo, New York), Michael A. Wiesvinger (Registered Principal, Buffalo, New York), and Michael J. Clark (Registered Principal, Orchard Park, New York), William G. Suchocki (Registered Principal, Springfield, N.J.) and Timothy T. Krakauer (Registered Representative, N. Tonsawana, New York) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership, was fined $5,000, and barred from association with any NASD member in any capacity with a right to reapply after three years. Clark and Suchocki were each fined $4,000, and ordered to pay restitution. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, Wise, Clark, Suchocki, and Krakauer, made fraudulent representations and pre-paid deductions, failed to disclose material facts, and made unsuitable recommendations of securities to public customers. The NASD also found that Clark and Suchocki fabricated and inflated financial information in questionnaires of customers who purchased stock in private offerings to make it appear that the investments were secure. In fact, they were unsuitable. By doing so, Clark and Suchocki caused the firm’s books and records to be false and inaccurate. The findings also stated that the firm, acting through Clark and Clark, failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the sales practice, record keeping, and financial affairs.

Anthony V. Finkel (Registered Representative, Cincinnati, Ohio) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Finkel failed to respond to NASD requests for information regarding a customer complaint.

Peter M. Harrington (Registered Representative, Clarence, New York) was fined $150,000, barred from association with any NASD member in any capacity, and ordered to pay $125,412.01 in restitution to customers. The sanctions were based on findings that Harrington failed to deliver liquidation proceeds totaling $75,412.01 to public customers, but, instead, endorsed the customers’ names on the checks and used the funds for some purpose other than for the benefit of the customers. Harrington also obtained $50,000 from a public customer to purchase a certificate of deposit, and, without the knowledge of the customer of funds for his own use and benefit. Harrington engaged in the aforementioned transactions in the absence of written or oral discretionary authority in the customers’ accounts and without their knowledge.
Robert L. Miller (Registered Representative, Chicago, Illinois) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were imposed because Miller received from a public customer $164.99 in cash with instructions to use $64.99 towards an insurance premium payment and $100.00 towards the purchase price of a security. Miller failed to follow the customer's instruction and used the funds for some purpose other than for the benefit of the customer. Miller also failed to respond to NASD requests for information.

James Geoffrey Osborne (Registered Principal, Oshkosh, Wisconsin) was fined $20,000 and suspended from association with any NASD member in any capacity for two months. The NBCC imposed the sanctions following receipt of a complaint by the Wisconsin Department Business Conduct Committee (DDBC). The sanctions were based on findings that Osborne obtained from a public customer a $50,000 check to purchase a limited partnership interest. Instead of using the funds as instructed by the customer and without the customer's knowledge or consent, Osborne deposited the check in the account of a business entity in which he had an interest or controlled and retained the funds for the use and benefit of the entity until a later date. Osborne also suspended the purchase of securities to a public customer without having reasonable grounds for believing that such recommendations were suitable for the client. Osborne's suspension became effective on November 3, 1993 and resulted in the revocation of his NASD registrant status.

April Actions

Jack F. Armbruster (Registered Representative, Wheaton, Illinois) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Armbruster consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to neglect to give written notice to and receive written approval from the firm before engaging in such activities.

Janell R. Cardinal (Registered Representative, Columbus, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $5,000, suspended from association with any NASD member in any capacity for 20 days, and required to remit to the firm an amount equal to the difference between the fee paid to her and the amount that she should have received from her member firm. Without admitting or denying the allegations, Cardinal consented to the described sanctions and to the entry of findings which stated that she participated in private securities transactions and failed to neglect to give written notice to and receive written approval from the firm before engaging in such activities.

Gerard Colon (Registered Representative, Buffalo, 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, and required to pay restitution to a member firm. Without admitting or denying the allegations, Colon consented to the described sanctions and to the entry of findings that he obtained from his member firm a $650 check payable to a customer from a loan on the customer's life insurance policy. Without admitting or denying the allegations, Colon failed to remit the check to the customer and used the funds for some purpose other than for the benefit of the customer.

Donald Robert Dunn (Registered Representative, Highland Park, Illinois) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Interpretation on Free-Riding and Withholding, Dunn purchased for his account shares of new-issue stocks that traded at a premium in the immediate aftermarket. The findings also stated that Dunn opened a securities account in the member firm and began purchasing and selling securities in the account without giving prior written notice to his member firm and without giving written notice to the member firm of his status as an associated person of a member firm.

Jeffrey Lynn Dunn (Registered Representative, Crestwood, Illinois) 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 20 days, and required to pay restitution to a member firm. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he obtained from his member firm a $650 check payable to a customer from a loan on the customer's life insurance policy. Without admitting or denying the allegations, Dunn failed to remit the check to the customer and used the funds for some purpose other than for the benefit of the customer.

March 1993, and concluded May 1, 1993.

John H. Frazer, Jr. (Registered Representative, Cincinnati, Ohio) submitted an Offer of Settlement pursuant to which he was fined $1,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Frazer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice of and obtain prior written authorization from his member firm to engage in such activities.

Jame F. Fredal (Registered Representative, Shelby Township, Michigan) submitted an Offer of Settlement pursuant to which he was fined $1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fredal consented to the described sanctions and to the entry of findings that he signed public customers' names to a variable life insurance product application form and bank authorization forms that purported to authorize the customers' bank to pay to his member firm the required monthly premium payments for the variable life insurance product. The NASD also found that Fredal signed the customers' names to the above-referenced documents without their knowledge or consent.

Michael S. Keller (Registered Representative, Getzville, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity, and required to pay restitution to member firms. Without admitting or denying the allegations, Keller consented to the described sanctions and to the entry of findings that he received from public customers checks totaling $31,162.98 that were to be applied to certain variable life insurance policies or mutual fund investments in these policies. Keller failed to apply $27,442.94 of the funds in question as directed, and used the funds for some purpose other than for the benefit of the customer.

Thomas J. Lewis, III (Registered Representative, Newark, 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 60 days, and required to pay restitution to a member firm. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he failed to meet his client's purchase of a variable life insurance policy and failed to purchase the annuity without obtaining the customer's prior permission.

Keith E. Lorick (Registered Representative, Chicago, Illinois) 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 $350 in restitution to a member firm. Without admitting or denying the allegations, Lorick consented to the described sanctions and to the entry of findings that he received from a public customer $350 with instructions to use the funds in the initial annuity premium or an insurance policy. The NASD found that Lorick failed to follow said instructions and used the funds for some purpose other than for the benefit of the customer. Lorick also failed to respond to NASD requests for information.

William M. Mehalco, Jr. (Registered Representative, Columbus, Ohio) submitted an Offer of Settlement. Waiver and Consent pursuant to which he was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $15,660 to a member firm. Without admitting or denying the allegations, Mehalco consented to the described sanctions and to the entry of findings that he obtained from his member firm $116,000 to purchase additional units of stock and retained the funds for purposes not authorized or known to the customer without the customer's prior consent of the customer. The NASD also determined that Dunn failed to respond to NASD requests for information.

Martin Patrick Flanagan, III (Registered Representative, Winfield, Illinois) was suspended from association with any NASD member in any capacity for six months and required to resign by exam. The NBCC imposed the sanctions following review of a Chicago DBCC decision. The sanctions were based on findings that Flanagan failed to respond timely to NASD requests for information.


Jerry Lee Neal (Registered Principal, Indianapolis, Indiana) submitted an Offer of Settlement pursuant to which he was fined $15,900 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neal consented to the described sanctions and to the entry of findings that he obtained from his member firm $31,779.30 paid payable to public customers representing withdrawals and loan proceeds from the respective customers' variable life insurance policies. The NASD found that Neal failed to remit these checks to the customers and used the funds for some purpose other than for the benefit of the customers.

The findings also stated that Neal distributed offering materials for the partnership units to customers that contained misstatements of fact and/or omissions of fact and made unvarnished recommendations to customers without having a reasonable basis for believing that the recommendations were suitable for the customers in light of their objectives, financial situation, and needs.

Kenneth B. Priebe (Registered Principal, Warren, New Jersey) 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, Priebe consented to the described sanctions and to the entry of findings that he obtained from his member firm $5,000 in cash with instructions to use the proceeds to purchase memorandums to customers private placement memorandums, subscription agreements, and suitability questionnaires relating to the purchases of stock in private offerings and withheld the offering memorandums from the customers until the NASD Regulatory & Compliance Alert

July 1996
customers gave him payment for their purchases. The NASD also found that Priebe had the customers sign blank suitability questionnaires that were later completed by registered representatives at his firm containing inaccurate and fictitious information. The findings also stated that Priebe refused to participate in an NASD investigative interview.

Michael J. Tomasino (Registered Principal, Lake Zurich, Illinois) maintained 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 $400,000 in restitution to 10 customers. Without admitting or denying the allegations, Tomasino consented to the described sanctions and to the entry of findings that he obtained from a public customer a $90,000 check with instructions that the funds be used to purchase interests in a municipal bond fund. The findings stated that Tomasino failed to follow the customer’s instructions and used the funds for some purpose other than for the benefit of the customer.

Robert Dean Tomlinson (Representative, Hoffman Estates, Illinois) submitted an Offer of Settlement pursuant to which he was fined $99,999, suspended from association with any NASD member in any capacity for one year, and required to notify and rebuff by email. Without admitting or denying the allegations, Tomlinson consented to the described sanctions and to the entry of findings that he participated in private securities transactions by failing to give prior written notice of or obtain prior written authorization from his member firm to engage in such activities.

Seval Pravin Trivedi (Registered Representative, Naperville, Illinois) submitted an Offer of Settlement pursuant to which he was fined $25,200 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trivedi consented to the described sanctions and to the entry of findings that he submitted applications to purchase securities products in the form of variable life insurance policies in the names of individuals who did not exist.

May Actions

Donald Eugene Bine (Registered Representative, Brazil, Indiana) was fined $35,750, barred from association with any NASD member in any capacity, and required to pay $50,900 in restitution to 50 customers. The sanctions were based on findings that Bine received from a public customer $1,310 with instructions to deposit the funds in three policies with his member firm. Bine failed to follow the instructions and used the funds for some purpose other than for the benefit of the customer. Bine also failed to respond to NASD requests for information.

Robert Bodeck (Registered Principal, Farmington Hills, Michigan) was fined $910,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bodeck participated in private securities transactions while failing to give prior written notice of, or obtain prior written authorization from, his member firm to engage in such activities.

David Craig Henry (Registered Representative, Ronnulis, Michigan) was fined $6,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Henry participated in private securities transactions and failed to give prior written notice, or obtain prior written authorization from, his member firm to engage in such activities.

Andre D. Johnson (Registered Representative, Chicago, Illinois) and Charlie R. Allen, Jr. (Registered Representative, Chicago, Illinois) were each fined $42,929 and barred from association with any NASD member in any capacity and Allen was fined $40,490 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson and Allen purchased securities for the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the customers’ accounts. Johnson and Allen also failed to respond to NASD requests for information.

Ajay R. Joshi (Registered Principal, Winnetka, Illinois) 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 five business days. Without admitting or denying the allegations, Joshi consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice of, or receive prior written approval from, his member firm to engage in such activities.

Thomas G. Kirkconnell (Registered Principal, Lansing, Michigan) was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $155,000 in restitution to customers. The sanctions were based on findings that Kirkconnell obtained from public customers checks totaling $155,000 for investment purposes, failed to follow the customer’s instructions, and used the funds for some purpose other than for the benefit of the customers. Kirkconnell also failed to respond to NASD requests for information.

Edward David Marande, Jr. (Registered Representative, Grosse Pointe, Michigan) submitted an Offer of Settlement pursuant to which he was fined $70,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marande consented to the described sanctions and to the entry of findings that he participated in private securities transactions and without giving written notice of his intention to engage in such activities and, to receiving written permission from, his member firm. The findings also stated that Marande failed to respond to NASD requests for information.

Breck A. Willbond (Registered Representative, Elvira, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Willbond consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice of, or obtain prior written authorization from, his member firm to engage in such activities.

February Actions

Alex V. Folgen (Registered Representative, Brooklyn, New York) was fined $70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Folgen arranged to have an imposter take the Series 24 exam for him. Folgen also failed to respond to NASD requests for information.

Michael K. Hart (Registered Principal, Point Pleasant Beach, New Jersey) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hart failed to appear for an on-the-record appearance.

Alton Ray Jewell, Jr. (Registered Representative, Batture Park, Virginia) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jewell failed to respond to NASD requests for information.

Harry R. Lankena (Registered Principal, Richmond, Virginia) and Nicholas G. Costas (Registered Principal, Richmond, Virginia) were each fined $5,000. The NBCC imposed the sanctions following review of a Washington UCRC decision. The sanctions were based on findings that Costas and Lankena engaged in a scheme to deceive their member firm. Costas and Lankena effected sales of municipal securities from their firm’s inventory account to an institutional customer pursuant to an understanding that after a bona fide buyer for the bonds could be located, Costas would repurchase the bonds from the customer at a price that would assure the customer a profit. Lankena also effected discretionary securities transactions for the customer’s account without the customer’s knowledge.

The suspensions began April 12, 1993, and concluded April 26, 1993.

Paul A. Muro (Registered Representative, Old Bethpage, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Muro failed to respond to NASD requests for information regarding allegations that he took the Series 7 examination under the name of another individual who was seeking to become registered with the NASD.

U.S. Securities Corporation of Washington, DC (Chevy Chase, Maryland), Anthony D. Robberson (Principal, Burlingtonville, Maryland), and L. Gay Hagerty (Registered Representative, Fairfax, Virginia) were fined.

The firm was fined from NASD membership and Hagerty was barred from association with any NASD member in any capacity, and the firm and Robberson were fined $80,000, jointly and severally. The firm and Hagerty were fined $2,400, and Hagerty was fined $18,993.60 in restitution. The sanctions were based on findings that the firm, acting through Roberts, conducted a securities business while failing to maintain sufficient net capital, failed to maintain accurate books and records, and failed inadequate FOCUS Part I and IRA reports. The firm, acting through Roberts, also sent letters to prospective clients that contained false and misleading information, failed to file the correct number of prospective client documents, and failed to establish and maintain written supervisory procedures.

Further, the firm, acting through Roberts, failed to notify the NASD and receive prior approval to effect changes to its restriction agreement and effect retail principal securities transactions, and failed to be in compliance with Securities and Exchange Commission (SEC) Rule 10-10 in that it did not disclose to the customers in the confirmation statements of each transaction, the amounts of the orders, or markups or markdowns the firm realized. The firm, acting through Roberts, also sent letters to prospective clients that contained false and misleading information, failed to file the correct number of prospective client documents, and failed to establish and maintain written supervisory procedures.

The firm, acting through Roberts, also failed to return securities or money to the subscriber and reconstitute the purchase when the offering had been extended past the termination date and the terms of the offering had not been met, and failed to conduct any annual compliance meetings with its registered representatives. Roberts also failed to respond to NASD requests for information.

The firm, acting through Hagerty, also effected transactions as principal with retail customers at unfair prices and sold shares of a new issue that traded at a premium in the secondary market to a restricted account in contravention of NASD Board of Governors Free-Riding and Withholding Interpretation.

March Actions

John J. Balkovec (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $70,000, barred from association with any NASD member in any capacity, and required to pay $54,000 plus interest in restitution to 12 customers. Without admitting or denying the allegations, Balkovec consented to the described sanctions and to the entry of findings that he received from a public customer $50,000 for investment purposes. The NASD found that, without the customer’s authorization, Balkovec established an account in the customer’s name and withdrew and used funds for his personal purposes. The findings also stated that Balkovec falsified a document purporting to be a confirmation by his member firm of the purchase of the stock. Falsified documents purporting to be statements of account issued by his member firm to the customer, and submitted such documents to the customer.

Francis W. Giampa (Registered Representative, Ambler, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Giampa was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Giampa failed to respond to NASD requests for information.

Robert T. Stout (Associated Person, Easton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Stout consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice of, or receive prior written approval from, his member firm to engage in such activities.

National Association of Securities Dealers, Inc. 28

July 1996
with any NASD member in any capacity. Without admitting or denying the allegations, Stoist consented to the described sanctions and to the entry of findings that he received from insurance customers premium payments totaling $5,012.72 that he failed to remit to his member firm. The NASD found that Stoist reimbursed the funds for his own use and benefit.

April Actions

Gary L. Artis (Registered Representative, Landover Hills, Maryland) submitted an Offer of Settlement pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Artis consented to the described sanctions and to the entry of findings that he failed to file the required reports, failed to file the required reports for verification of deposit form and indicated that an individual had an account at his member firm at a time when the individual did not have such account. The findings also stated that Artis failed to conduct a branch manager’s signature on this form, and during the NASD’s investigation, Woods provided false information to the NASD.

May Actions

John C. Byars, Sr. (Registered Representative, Pittsburgh, Pennsylvania) was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Byars consented to the described sanctions and to the entry of findings that he negligently assumed the power of attorney for an individual and failed to file the required reports.

Raymond E. Cleary (Registered Representative, Abbeottstown, Pennsylvania) was fined $25,000, barred from association with any NASD member in any capacity, and required to pay $79,000 plus interest in restitution to customers. The sanctions were based on findings that Cleary received a $50,000 check intended for a distribution of an annuity. At the time he received the checks, the “pay to” section of it was blank. Cleary wrote in a name and an entity under the control of his customer and ownership and control, deposited the check into this entity’s bank account, and failed to apply the funds to the purchase of securities for the customer. Cleary also deposited the checks to the account of the aforementioned entity and used the funds to purchase securities in his own name or that of the entity rather than that of the customers. Cleary also failed to respond to an NASD request for information.

Franklin C. Clement (Registered Representative, Williamsburg, New Jersey) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Clement, acting without the authorization or consent of policyholders, obtained checks totaling $96,248, forged the endorsements on the checks, negotiated the checks, and retained the proceeds thereof for his own use and benefit. Clement also failed to respond to NASD requests for information.

Rayfield J. James, Jr. (Registered Representative, Ashbury Park, New Jersey) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that James failed to respond to NASD requests for information about his financial dealings with a public customer.

Steven J. Motosick (Registered Representative, Apollo, Pennsylvania) was fined $40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Motosick forged or caused to be forged the purported signatures of public customers on policy documents requested from him and thereunder submitted such documents to his member firm. Motosick also forged the purported endorsements of the payees on checks issued by his member firm, negotiated such checks, and converted the proceeds totaling $6,271 to his own use and benefit.

Gordon D. Smith (Registered Principal, Johnstown, Pennsylvania) was fined $7,500, jointly and severally, with a member firm in which he was associated with any NASD member as a financial and operations principal for 45 days, and required to requalify by exam as a financial and operations principal. The sanctions were based on findings that a firm, acting through Smith, conducted a securities business while failing to maintain its minimum required net capital and failed to maintain accurate books and records. The firm, acting through Smith, also prepared an inaccurate month-end net capital computation and filed an inaccurate Form 51-F. In addition, the firm, acting through Smith, failed to file prompt telegraphic notice with the SFC and NASD reporting its net capital deficiencies.

Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity, and required to file the required reports for verification of deposit form and indicated that an individual had an account at his member firm at a time when the individual did not have such account.

February Actions

None

Match Actions

John DePal (Registered Representative, Pleasantville, New York) was fined $8,750 and barred from association with any NASD member in any capacity, and ordered to pay $3,750 in restitution to customers. The sanctions were based on findings that DePal received from public customers $3,750 in checks from public customers to purchase a common stock, failed to deliver the stock to the customers, and retained the payments received for the purchases. DePal also engaged in private transactions, and failed to provide written notice to his member firm of the described transactions, his proposed role in the transactions, and whether he was receiving compensation in connection with the transactions.

Alexander Godelman (Registered Representative, Paramus, New Jersey) was fined $40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Godelman received from public customers for mutual fund purchases a $5,000 check payable to a company he had previously told. Instead, Godelman deposited these funds into the company’s bank account and communicated them with other funds without providing any notification or response to an NASD request for information.

Investors Associates, Inc. (Hackensack, New Jersey), Donna M. Silverman (Registered Principal, New York City, New York), and Alexander N. Cherepakhov (Registered Principal, New York, New York) submitted Letters of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally, and ordered to disgorge $35,000 in commissions to the NASD. Silverman was suspended from association with any NASD member in any capacity for 30 days and ordered to requalify by exam as a general securities principal. Cherepakhov was suspended from association with any NASD member in any principal capacity for 90 days and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Silverman and Cherepakhov, permitted and facilitated two individuals to function as registered representatives at the branch office of the firm without being registered with the NASD.

Spencer Trade Securities, Inc. (New York, New York), Robert P. DiViene (Registered Representative, West Greenwich, Connecticut), and Robert J. Humo, III (Registered Principal, Ossining, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally, and ordered to pay $3,948 in restitution. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through DiViene and Humo, failed to comply with the Penny-Stock Rules (Rule 15g) in that the firm failed to turn over to customers the requisite disclosure notices on these transactions as well as the requisite account statements.

The Wellington Group, Inc. (New York, New York) and Kevin Henry Kading (Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $40,000, jointly and severally. Kading was required to requalify by exam as a general securities principal, suspended from association with any NASD member in any principal capacity for two years, suspended from recommending transactions in designated securities for two years.
years, and repudiated from serving as an officer or director of or maintaining ownership (including partial ownership) or control of a brokerage firm whose business involves retailing securities for customers or its authorized agents (as defined by SEC Rule 15a-6(b)(7)). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inadmissible blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the inspections of the firm's books and records. The firm's books and records were found to be inaccurate, incomplete, and misleading. The respondents consented to the described sanctions and to the entry of findings that, in the case of any violation, the firm, or the individual in the case of any violation by the individual, is subject to the provisions of the Uniform Securities Act.
and misappropriated to his own use and benefit funds totaling $500 that were intended for the purchase of financial investments. Freeman also failed to respond to NASD requests for information.

May Actions
Commonwealth Equity Services, Inc. (Waltham, Massachusetts) and David L. Kelly (Registered Principal, Waltham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000, jointly and severally. The firm also agreed to implement certain improvements in its supervisory, compliance, and management structure and was ordered to pay $5,235 in restitution to customers. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that the firm, acting through Kelly, failed to enforce its written supervisory procedures to achieve compliance with applicable securities laws and regulations and with applicable NASD rules.

Peter M. Wokoun (Registered Representative, Sutton, Massachusetts) was fined $20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following a hearing held in Boston. The sanctions were based on findings that Wokoun failed to respond to NASD requests for information about his termination from a member firm. Wokoun has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Market Surveillance Committee
February Actions
Richard P. Brown (Registered Principal, Holmdel, New Jersey) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity, barred directly or indirectly from owning more than one percent of any interest in any Nasdaq company, or serving as an officer, director, or control person of any Nasdaq company. Brown also agreed to pay $300,000 into an interest-bearing escrow account for the benefit of securities claimants. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in a manipulative, fraudulent, and deceptive scheme in connection with transactions in a common stock. The NASD also found that Brown sold common stock to customers at prices that were not fair and reasonable and that were not related to the prevailing market price for the securities with markups in excess of 10 percent above the prevailing market price. The findings also stated that Brown failed to supervise.

Kevin G. Malone (Registered Principal, East Rockaway, New York) and Michael P. Galiero (Registered Principal, Westfield, New York) submittedOffers of Settlement pursuant to which Malone was fined $40,000, suspended from association with any NASD member in any capacity for three months, and required to pay $7,000 in restitution to public customers. Galiero was fined $15,000, suspended from association with any NASD member in any capacity for 10 days, and barred from association with any NASD member in any principal or supervisory capacity. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that Malone caused his member firm to sell common stock to retail customers at an arbitrary and inflated price, knowing there was little or no demand for the stock and no favorable news or developments concerning the stock. The NASD also found that Malone used manipulative, deceptive, and other fraudulent devices to create actual or apparent active trading in the stock, and to arbitrarily and artificially establish, maintain, and raise the price of the stock to induce its purchase and sale by others. The findings also stated that Galiero failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the firm's retail customers from being charged manipulated prices and unfair and fraudulently excessive markups in a common stock.

Malone's suspension began on March 18, 1996, and concluded June 18, 1996.

March Actions

April Actions

Adams, Harkens & Hill, Inc. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $20,000 and ordered to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with applicable securities laws and regulations and with applicable NASD trade-reporting rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported, or caused to be reported, Nasdaq transactions through the Automated Confirmation Transaction Service (ACT), contrary to provisions of Schedule D to the NASD By-Laws. The NASD also determined that the firm failed to establish, maintain, and enforce written procedures for late trade reporting.

Brooklyn Capital & Securities Trading, Inc. (Brooklyn, New York) and David Rystein (Registered Principal, Brooklyn, New York) were fined $50,000, jointly and severally. The firm was fined from NASD membership for one year and ordered to employ a new management. Rystein was suspended from association with any NASD member in any capacity for one year and thereafter until he relinquishes in all capacities in which he seeks to function. The NBCC imposed the sanctions following a hearing held in New York. The sanctions were based on findings that the firm and Rystein employed manipulative and deceptive devices in the trading of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The firm and Rystein have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Paul Eisenberg (Registered Principal, Rodyn Estates, 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 45 days. Without admitting or denying the allegations, Eisenberg consented to the described sanctions and to the entry of findings that he fraudulently used a prospectus known to contain materially false and misleading information in connection with an initial public offering. The NASD also found that Eisenberg made misrepresentations and omissions of material facts to customers during the underwriting and aftermarket trading period of this offering.

Thomas C. Kocherthns (Registered Representative, Orem, Utah) was fined $20,000, suspended from association with any NASD member in any capacity for one year, and ordered to resign as a member representative. The SEC affirmed the sanctions following appeal of a January 1995 NBCC decision. The sanctions were based on findings that Kocherthns knowingly and willfully engaged in a manipulative, deceptive, and fraudulent scheme to increase the reported closing price of a common stock. Specifically, Kocherthns effected a series of purchases of shares in the manner that caused the purchases to be executed at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade, thereby reducing or avoiding margin calls on an account held in his wife's name, and to avoid higher maintenance margin requirements for the account. Kocherthns also failed to inform his member firm in writing that he maintained brokerage accounts at two other member firms.

Jeffrey Weiman (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined $200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Weiman consented to the described sanctions and to the entry of findings that he sold 20 percent of his interest to individuals associated with the holding company for his member firm and began after-market trading of units and components before completion of the initial public offering distribution of the securities. The NASD determined that Weiman dominated and controlled the stock to the extent that there was no independent, active market for such securities, and charged excessive markups that ranged from 102.4 to 473.3 percent above the firm's contemporaneous costs and resulted in customer overcharges of $718,384.

May Actions
James W. Bullard, Jr. (Registered Representative, Miami Beach, Florida) was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Bullard was also suspended from association with any NASD member in any principal capacity for two years and ordered to appear and give on-the-record testi mony to the NASD. However, if Bullard fails to appear, the suspensions will automatically convert to a bar from association with any NASD member in any capacity. The sanctions were based on findings that Bullard failed to respond completely to NASD requests for information.

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $75,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to grant a "stop" in connection with the execution of certain orders. The firm's policy was not documented and the staff was not able to fully verify that its procedures for granting a stop were followed in all instances. The firm also executed orders that were inconsistent with its internal procedures and its obligation to provide best execution.

Trimark Securities Inc. (White Plains, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000 and must undertake to implement its supervisory procedures to prevent the pattern or practice of late trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported, or caused to be reported, transactions through the Automated Confirmation Transaction Service (ACT). The SEC, contrary to provisions of Section 2(a)(1) and 2(a)(9) of Schedule G to the NASD By-Laws and the Interpretation of the Board of Governors concerning the obligation of members of NASD members to report transactions within 90 seconds of execution.
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 Jean Robinson Curtiss, Senior Writer/Editor, NASD Regulatory & Compliance Alert, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8388.

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

Regarding Subscription Questions, Problems, or Changes

Member Firms
Please note that the compliance director at each NASD member firm receives a complimentary copy of the RCA, as does each branch office manager. To change your mailing address for receiving either of these complimentary copies of RCA, members need to file an amended Page 1 of Form BD for a main office change or Schedule E of Form BD for branch offices. Please be aware, however, that every NASD mailing will be sent to the new address. To receive a blank Form BD or additional information on address changes, call NASD Member Services at (301) 590-6500. For additional copies ($25 per issue, $80 per year), please contact NASD MediaSource™ at (301) 590-6578.

Subscribers
To subscribe to RCA, please send a check or money order, payable to the National Association of Securities Dealers, Inc., to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403 or, for credit card orders, call NASD MediaSource at (301) 590-6578. The cost is $25 per issue or $80 per year. RCA subscribers with subscription problems or changes may contact NASD at (202) 728-8169.

Other Recipients
Other recipients of RCA who wish to make an address change can send in writing your correct address with a label (or copy of a label) from our mailing that shows the current name, address, and label code. Send your request to: NASD, 1735 K Street, NW, Washington, DC 20006-1500.

©1996, NASD is a registered service mark of the National Association of Securities Dealers, Inc. All rights reserved. NAQcass, Nasdaq, Nasdaq National Market, OTC Bulletin Board, and Nasdaq Workstation are registered service marks of The Nasdaq Stock Market, Inc. PORTAL, SOES, FIPS, SelectNet, The Nasdaq Stock Market, The Nasdaq SmallCap Market, and Nasdaq Workstation II are service marks of The Nasdaq Stock Market, Inc.

No portion of this publication may be photocopied or duplicated in any form or by any means except as described below without prior written consent from the NASD. Members of the NASD are authorized to photocopy or otherwise duplicate any part of this publication without charge only for internal use by the member and its associated persons. Nonmembers of the NASD may obtain permission to photocopy for internal use only through the Copyright Clearance Center (CCC) for a $5-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923.