NASD Regulation Announces Internet Site

In early August, NASD Regulation launched an Internet site on the World Wide Web to provide information to NASD members, individual investors, and the media. In addition to a sophisticated searching tool, a guest book, a site map, and easy access to press releases, the NASD Regulation Internet site provides several areas where members can find important information.

**Members Check Here**
This area of the Internet site is devoted to NASD members and provides information that helps them with their daily business. Brokers can:

- read about the roles and responsibilities of a registered representative;
- look up qualification examination schedules and training locations;
- find information about the Continuing Education Program; and
- search titles and read executive summaries of the 1996 Notices to Members.

**Services Directory**
The Services Directory provides members with a listing of where to call for information regarding services as well as regulatory issues. The area is organized by topic and includes everything from advertising to venture capital restrictions.

(Continued on page 8)

Emphasizing Speculative And Low-Priced Securities

NASD Regulation Clarifies Members’ Suitability Responsibilities

In May, NASD Regulation published Notice to Members 96-32 to inform members of its concerns over unusual and increased trading in speculative or low-priced securities. The Notice, among other things, reminded members of their fair dealing and suitability responsibilities to customers under NASD Rules. In September, NASD Regulation published Notice to Members 96-60 to supplement and clarify certain issues addressed in Notice to Members 96-32.

*Notice to Members 96-32* urged members to focus particular attention on certain rules, regulations, and best practices when dealing with customers in speculative or low-priced securities. It focused on NASD Regulation’s concern for potential abusive conduct in connection with the sale of such securities, including market manipulation, misrepresentations, high pressure sales tactics, and fraudulent markups. In particular, the Notice emphasized suitability, disclosure,

(Continued on page 2)
valuations, supervision, and cold calling as areas in which members must take special care in discharging obligations to customers, especially when dealing in speculative or low-priced securities.

**Suitability Obligation**

NASD Rule 2310 (formerly Article III, Section 2 of the NASD Rules of Fair Practice) provides that in recommending to a customer the purchase, sale, or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of facts available, including other security holdings, financial situation, and needs.

The suitability rule was amended in 1990 to require that, for all accounts opened and recommendations made after January 1, 1991, members make reasonable efforts to obtain certain information from each non-institutional customer before executing a recommended transaction (excluding transactions in money market mutual funds), including the customer’s financial status, tax status, investment objectives, and other information considered to be reasonable in making recommendations to customers.

In discussing suitability determinations, *Notice to Members 96-32* included a statement that the NASD Rules of Fair Practice “requires a careful review of the appropriateness of transactions in low-priced, speculative securities, whether solicited or unsolicited.” It is the reference to unsolicited transactions that NASD Regulation wishes to clarify.

A member’s suitability obligation under Rule 2310 applies only to securities that have been recommended by the member. It would not apply, therefore, to situations in which a member acts solely as an order-taker for persons who, on their own initiative, effect transactions without a recommendation from the member (See SEC Release No. 34-27160, August 22, 1989). However, a broad range of circumstances may cause a transaction to be considered recommended, and this determination does not depend on the classification of the transaction by a particular member as “solicited” or “unsolicited.” In particular, a transaction will be considered to be recommended when the member or its associated person brings a specific security to the attention of the customer through any means, including, but not limited to, direct telephone communication, the delivery of promotional material through the mail, or the transmission of electronic messages.

Questions regarding this subject matter may be directed to Daniel M. Sibears, Member Regulation, at (202) 728-6911 or David Spotts, Office of General Counsel, at (202) 728-8953.
Ongoing Responsibilities When Customers’ Investment Objectives Or Financial Circumstances Change

Supervisors and registered representatives are reminded that they are obligated under the NASD suitability and recordkeeping rules to take appropriate action when they learn of material changes in the investment objectives or financial circumstances of their customers.

As stated in NASD Rules 2310 and 3110 (formerly Article III, Sections 2 and 21(c) of the Rules of Fair Practice, respectively), when recommending to customers the purchase, sale, or exchange of any security, a member must have reasonable grounds for believing that the recommendation is suitable for the customers, based on the facts disclosed by the customers as to their security holdings and financial situations and needs. According to the Rules, before executing a transaction that is recommended to a customer, a member must make reasonable efforts to obtain information about:

- the customer’s financial status;
- the customer’s tax status;
- the customer’s investment objectives; and
- such other information to be used in making recommendations to the customer.

These Rules do not apply to transactions with institutional customers or where investments are limited to money market mutual funds.

Further information about requirements under NASD Rules 2310 and 3110 may be directed to Thomas R. Cassella, Compliance Department, at (202) 728-8237.

NASD Sales Practice Rules Apply To Government Securities Transactions

On August 20, 1996, the Securities and Exchange Commission (SEC) approved NASD rule changes expanding the scope of its sales practice requirements to include transactions in government securities. These changes do not apply to municipal securities, which are subject to rules adopted by the Municipal Securities Rulemaking Board.

Authority to regulate sales practice activity was granted to the NASD under the Government Securities Act Amendments of 1993. Previously, NASD regulation of government securities was restricted to financial and operational activities, advertising requirements, and limited recordkeeping and supervision rules.

To implement its expanded authority, the NASD received approval to apply its Conduct Rules (formerly the NASD Rules of Fair Practice (RFP)) to transactions in government securities for the first time. Also, the NASD deleted its separate Government Securities Rules and merged any unique requirements into corresponding Conduct Rules.

With limited exceptions, members must comply now with all applicable Conduct Rules. Members are granted an extension until November 18, 1996, to comply with the requirements of Rule 3110 (formerly Article III, Section 21, RFP) regarding Books and Records; Rule 30/0 (formerly Article III, Section 27, RFP) regarding Supervision; Rule 3020 (formerly Article III, Section 32, RFP) regarding Fidelity Bonds; and Rule 2340 (formerly Article III, Section 45, RFP) regarding Customer Account Statements. The extension allows members sufficient time to change their internal procedures.

Certain interpretations that deal with activities, such as markups/markdowns and front-running, were designed specifically to apply to equity securities. These interpretations are not immediately applicable to transactions in government securities. The NASD is currently reviewing them to determine whether changes are necessary. However, members should note that, if necessary, NASD Regulation uncovers conduct in...
these areas that is inconsistent with just and equitable principles of trade, appropriate action will be taken under Conduct Rule 2110 (formerly Article III, Section 1, RFP).

Notice to Members 96-66 describing these changes in detail appeared in the October 1996 issue. Questions concerning these changes may be directed to Samuel Luque, Compliance Department at (202) 728-8472 or Thomas R. Cassella, Compliance Department at (202) 728-8237.

Concurrent with its approval of changes to NASD Rules for government securities transactions, the SEC approved an Interpretation of the NASD Board of Governors under Conduct Rule 2310 (formerly Article III, Section 2 of the Rules of Fair Practice) regarding suitability obligations to institutional customers. The Interpretation states that, in making recommendations to an institutional customer, members must consider two important issues: 1) the customer’s ability to evaluate investment risk independently and 2) the extent to which the customer is exercising independent judgment in evaluating the member’s recommendation.

The Interpretation, which is applicable to all securities transactions, except for municipal securities transactions, appears in Notice to Members 96-66, October 1996. Questions concerning the Interpretation may be directed to John Pelcher, Office of the General Counsel at (202) 728-8287.

Compliance Questions & Answers

Q. Is the lender of an equity subordinated loan required to own common or preferred stock in a member firm that is organized as a corporation?

A. The lender must own common stock. As a rule, the lender must be a direct owner of the broker/dealer to qualify as an equity lender. The lender must also be a stockholder in order to have the loan considered an equity loan, although one share of stock is sufficient to qualify someone as an equity lender.

Q. After infusing capital into a broker/dealer, how long must the capital remain in the firm for the funds to be considered permanent capital, for net capital purposes, instead of a loan?

A. An infusion of capital must remain with the broker/dealer for a period of at least 12 months to be considered permanent capital for net capital purposes. For any length of time less than 12 months, the infusion would be considered a loan unless the firm has received a “No Action” letter from the SEC authorizing the early withdrawal.

A letter from the Division of Market Regulation of the SEC to the NASD (September 8, 1980), specified that if a principal shareholder of a broker/dealer personally borrows money and contributes it to a firm as paid-in-capital shortly before some extraordinary occurrence (e.g., an underwriting or the firm’s annual audit), and withdraws the funds again shortly thereafter without further justification, the money that is contributed should be regarded as a loan and considered an unsubordinated liability on the books of the broker/dealer. Further, the SEC specified that the burden is on the broker/dealer to demonstrate that a capital contribution, rather than a loan, was made (See NASD Guide to Rule Interpretations, page 38).

Q. Under the new regulations governing FOCUS filing requirements, which firms are exempt from filing monthly FOCUS I reports, and which firms must continue to do so?

A. Commencing for the month-ending June 30, 1996, firms are no longer required to file FOCUS I reports. All firms must file either the FOCUS II report or the FOCUS IIA report. Generally, firms with a minimum net capital requirement of $100,000, or more, are required to file FOCUS II or IIA reports on a monthly basis. Firms with a minimum net capital requirement of less than $100,000 must file a FOCUS IIA report quarterly. FOCUS reports must be submitted by the 17th business day following the month-end (for monthly filings) and by the 17th business day following the end of the quarter (for quarterly filings). However, NASD Regulation retains the right to require members to submit financial and operational information more frequently as conditions or events warrant.

Q. If an adverse arbitration award is rendered against a member firm, should the interest payable on the award, in addition to the award itself, be taken as a charge in the computation of net capital?

A. Rule 10330 (formerly Section 41) of the Code of Arbitration Procedure (the Code) specifies that all monetary awards are payable within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Further, the Code states that an award shall bear interest from the date of the award: (i) if not paid within 30 days of receipt; (ii) if the award is the subject of a motion to vacate which is denied; or (iii) as specified by the arbitrator(s) in the award.

If an award bears interest, due to any of the above-described events, the firm must charge the interest and the amount of the award in the computation of net capital.

National Association of Securities Dealers, Inc.

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Q. If a customer has fully paid mutual fund shares in a margin account, and exchanges those shares for shares of another fund within the same fund complex or family, does this exchange trigger a new 30-day period in which the new shares are not marginable?

A. No. SEC Rule 11d1-2 permits margin to be extended on registered open-end investment company shares, provided the shares have been owned by the customer for more than 30 days or purchased by the customer pursuant to a plan for the automatic reinvestment of the dividends of the fund. In a No-Action Letter dated May 8, 1986, the SEC staff indicated that if the customer chooses to exchange mutual fund shares for other shares within the same mutual fund complex after the initial 30-day holding period ends, no new 30-day holding period begins. Moreover, if the exchange occurs within the initial 30-day holding period, no additional holding time is required, and the initial 30-day period would lapse on schedule. The staff also noted that the exchange of UIT shares in one series for UIT shares in another series would be treated in the same manner and would not trigger a new holding period.

Q. If a firm enters into a piggybacking clearing arrangement with a broker/dealer that clears its transactions on a fully disclosed basis, what type of clearing agreement is required between the two introducing firms? Which entity is actually carrying the customer accounts?

A. The two introducing firms are required to maintain a written clearing agreement with each other stipulating each firm’s respective responsibilities. This agreement is not required to adhere to the provisions in Rule 3230 (formerly Article III, Section 47 of the Rules of Fair Practice.) The middle firm and the ultimate clearing firm must, however, have an agreement in place that covers all of the issues specified in Rule 3230.

The clearing firm is carrying all of the customer accounts of both its introducing firm and the piggybacking firm. Accordingly, the clearing firm retains responsibility for sending account statements directly to customers of its introducing firm and the piggybacking firm with appropriate required disclosures (e.g., such as the names of all three firms).

If the middle firm were to be designated as the entity carrying its customer accounts and the accounts of the piggybacking firm, the middle firm would incur an increased minimum net capital requirement.

Q. Assume the following facts in this piggybacking clearing arrangement: Firm A introduces its customer accounts to Firm B, who in turn introduces its customer accounts to Firm C. Firm A’s trading account at Firm C is titled “Firm B for the benefit of Firm A.” Firm B’s accountant maintains that Firm B must show that account on its own books and records. Must Firm B adhere to its accountant’s advice?

A. If the account is titled “Firm B for the benefit of Firm A,” Firm B should show the account on its books and records. Firm B may avoid showing the account on its books and records if the account is retitled “Firm A,” and carried by Firm C.

Q. What duties and functions may a Registered Options Principal (ROP) perform? How do these functions differ if the ROP is qualified as a General Securities Principal (Series 24) or a General Securities Representative (Series 7)?

A. Rule 2860 (b)(18)(A) and (b)(20), (formerly Article III, Section 33(b)(18)(A) and (b)(20) of the Rules of Fair Practice), specify that an ROP, who has qualified as such via the Series 4 examination, may review and specifically approve or disapprove (in writing) new options accounts, including discretionary accounts. The ROP must maintain a record of the basis for determining that a discretionary options customer was able to understand and bear the risks of the strategies or transactions proposed. The ROP may approve each discretionary order on the day entered and ensure that each order ticket is marked as to its discretionary status.

Once an ROP is qualified as such, the ROP may conduct the above-specified options functions, regardless of additional registration as a Series 24.

A Series 24 examination qualifies the individual as a General Securities Principal, with the ability to perform supervisory functions for general securities, excluding options and municipals. If an individual was qualified as an ROP and a General Securities Principal, then the individual would have the ability to perform supervisory functions for general securities, as well as for options. This individual would not, however, be qualified to review municipal transactions.

The Series 7 qualification examination does not affect an ROP’s duties regarding options accounts, but is a prerequisite for qualification for the Series 4 and 24 examinations.

All FINOPs Are Subject To NASD Rule 1022(b)

NASD Regulation and its National Business Conduct Committee (NBCC) wish to remind NASD members that all registered financial and operations principals (FINOPs), whether they are full- or part-time, are responsible for each duty in NASD Rule 1022(b) (formerly Schedule C(b)(ii) to the NASD By-Laws). These duties include:

- final approval and responsibility for the accuracy of financial reports sub-

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mitted to any securities industry regulatory body;

• final preparation of such reports;

• supervision of and responsibility for individuals who maintain the member's books and records for which such reports are derived;

• supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Securities and Exchange Act of 1934;

• overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; and

• any other matters involving the financial and operational management of the member.

Unless the responsibilities above have been properly delegated to another appropriately registered person, the registered FINOP remains fully responsible for them.

NASDAQ Regulation has undertaken disciplinary actions in which a claim of part-time status was raised by registered FINOPs to defend their failure to fulfill their regulatory responsibilities. This contention has not been accepted as a defense. See In re: Gilad J. Gevaryahu, Securities Exchange Act Release No. 33038 (October 12, 1993) and cases cited therein. NASD Regulation reminds those FINOPs that are part-time that they remain fully responsible for all duties as listed in NASD Rule 1022(b).

Questions concerning the responsibilities of FINOPs may be directed to Thomas R. Cassella, Compliance Department, at (202) 728-8237.

COMPLIANCE SHORT TAKES

On August 13, 1996, the SEC approved amendments to NASD Rule 8210 (formerly Article IV, Section 5 of the Rules of Fair Practice) that expressly state the NASD's authority to require members to respond to requests for information in connection with investigations being conducted by other self-regulatory organizations.

Although the NASD believes that Rule 8210 contained sufficient authority to require such responses before these amendments, the Rule language now expressly states it. Specifically, the amendments allow the NASD Board of Governors, any District Business Conduct Committee, and the Market Surveillance Committee to require members and their associated persons to report to other SROs, on the record or informally, regarding investigations, market surveillance matters, or enforcement actions. The amendments also allow the SROs to investigate the books, records, and accounts of members or their associated persons in connection with these inquiries. The changes apply to regulatory requests from all SROs with whom the NASD has information-sharing agreements through the Intermarket Surveillance Group. For additional details, please see Notice to Members 96-58. Questions may be directed to Joseph Alotto, Market Surveillance, at (301) 590-6845.

NASDAQ asks for comments on proposed amendments to Rule 3010 (formerly Article III, Section 27 of the Rules of Fair Practice) that would require certain members to tape-record telephone conversations between their associated persons and customers.

According to the proposal, any member that is a "disciplined firm," as defined in the Rule, would be required to establish, maintain, and enforce special written supervisory procedures for its telemarketing activities, including tape-recording all telephone conversations between its associated persons and both existing and potential customers. A member would be required to maintain these procedures for a minimum of two years. Similarly, whenever more than 20 percent of a member's workforce is comprised of persons who have been employed previously by a "disciplined firm," the member would be required to comply with these provisions.

This proposal is one step the NASD is taking to require a heightened level of supervision by members of their sales practice activities. NASD efforts to increase supervision respond to concerns expressed in the Report of the Joint Regulatory Sales Practice Sweep, an initiative involving the NASD, the SEC, the New York Stock Exchange, and representatives of the North American Securities Administrators Association that sought to identify possible problem registered representatives and review the hiring, retention, and supervisory practices of the firms employing them. In the future, the NASD plans to propose additional changes, such as requiring members to place persons with a disciplinary history under special supervision.

A detailed discussion of the proposed amendments is found in Notice to Members 96-59. Questions may be directed to Mary Revell, Office of the General Counsel, at (202) 728-8203.
SEC Adopts Order Execution Rules

On August 28, 1996, the Securities and Exchange Commission (SEC) adopted new requirements for handling and executing equity securities transactions for individual investors. The changes include a new limit order display rule (SEC Rule 11Ac1-4) and amendments to the SEC's quote rule (Rule 11Ac1-1).

**Key Points:**
- Market makers must display immediately the price and full size of customer limit orders when they represent a better price than their disseminated quotes.
- Market makers must increase the size of their public quotes to reflect a limit order of greater size (i.e., more than 10 percent) when a limit order is priced equal to the disseminated quote and equals the national best bid or offer.
- The limit order display requirements apply to all customer limit orders for Nasdaq National Market securities and SmallCap securities and exchange-listed securities, including orders transmitted by a broker/dealer for a customer.
- Market makers that place orders through private trading systems (Electronic Communication Networks or ECNs) at better prices must change their public quotes to reflect the better price.
- Market makers that trade more than one percent of the aggregate trading volume for an exchange-listed security must publish their quotes.

**Implementation Schedule**
The *Quote Rule Amendments* are effective January 10, 1997. The *Limit Order Display Rule* is effective January 10, 1997 for the 1,000 most liquid Nasdaq® securities and all exchange-listed securities. The next 1,500 and 2,000 Nasdaq securities will be phased-in on March 28, 1997 and June 30, 1997 respectively, with the remaining Nasdaq securities to be covered on August 28, 1997, the first anniversary of the Rule's adoption.

The NASD will provide additional information to members prior to the effective date. ☐

Municipal Securities

**Regulatory Roundup**

NASD members engaged in a municipal securities business should be aware of recent developments emanating from the Municipal Securities Rulemaking Board (MSRB) that may affect the way they conduct their municipal business.

**Time-Of-Trade Reporting Requirement**
As of July 1, 1996, broker/dealers are required to report the time of trade execution for inter-dealer transactions in municipal securities when submitting other trade information required by MSRB Rule G-14. This new reporting requirement is part of the MSRB's multi-phase Transaction Reporting Program designed to increase transparency in the marketplace.

According to the MSRB, both the seller and the buyer must submit time-of-trade information for most primary and secondary market transactions. However, for transactions in which bonds are purchased by syndicate members at a special "take down" price, only the seller is required to submit the time-of-trade information. Moreover, the time-of-trade submitted for syndicate allocations of new issues must not precede the time of award for competitive issues or, for negotiated issues, the time that the bond purchase agreement is signed.

Firms must report their information to the National Securities Clearing Corporation (NSCC) as the MSRB's agent for receiving this information. Each day NSCC produces a public report of price and volume information for inter-dealer transactions that were executed the previous business day. A firm's failure to submit trade data in a timely and accurate manner may constitute a violation of Rule G-14 and, because the transaction reports are provided in the context of the automated comparison process, also may violate MSRB Rule G-12.

Future phases of the MSRB's program will include reporting requirements for institutional customer transactions, retail customer transactions, and intra-day reporting of trade data for dissemination to the public.

**Form G-37/G-38 Replaces Form G-37**
MSRB Rule G-38, which requires municipal securities broker/dealers to disclose information about their consultant arrangements, became effective March 18, 1996. With the adoption of this rule, the MSRB revised and renamed Form G-37, as Form G-37/G-38.

Members must use Form G-37/G-38 to submit summary information on their municipal securities business, report political contributions to issuer officials and payments to political parties, and describe their new or continuing consultant arrangements to the MSRB quarterly. If a member has a continuing arrangement with a consultant, it must report certain information about the consultant every quarter, whether or not...
compensation is paid to the consultant during the reporting period.

**MSRB Withdraws “On The Ballot” Interpretation Under Rule G-37**

In the July 1995 issue of MSRB Reports, the MSRB published a question-and-answer (Q&A) notice concerning Rule G-37 stating that, for purposes of making the de minimis contribution permitted under the rule, a municipal finance professional may do so if he/she is entitled to vote for an issuer official whose name is on the ballot in the locality in which the municipal finance professional may vote. This Q&A (number 2) was withdrawn by the MSRB in January 1996.

The MSRB withdrew the interpretation due to concerns that candidates may fail to meet the requirements for having his/her name actually placed on the ballot or may withdraw from an election at any point up to the day of the election and, therefore, firms cannot be assured that the candidate’s name will actually appear on the ballot until election day. The MSRB’s current position states that a municipal finance professional is entitled to vote for an issuer official if the municipal finance professional’s principal residence is in the locality in which the candidate seeks election.

**Payments To State And Local Political Parties/PACs Raise Compliance Concerns**

Members that make contributions or payments to political parties or political action committees (PACs) that primarily support state and local issuer officials may trigger Rule G-37’s two-year ban on municipal business, despite the fact that the rule does not prohibit these contributions per se.

Members should exercise extreme diligence to determine the ultimate beneficiaries of their political contributions. For instance, if contributions are made to political parties or PACs, members should find out what the party or PAC is doing with the money. If the party or PAC uses the money to support only one or two candidates who are issuer officials, firms may find themselves banned from doing business with those issuers for two years. Firms that aren’t vigilant may find themselves in that situation.

Questions concerning these issues may be directed to Sam Luque, Compliance Department, at (202) 728-8472.

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**MSRB Rule Filings**

**New Telemarketing Rules**

The MSRB has filed with the SEC a proposed new Rule G-39 on telemarketing that identifies the time period during which dealers can make telephone solicitations and the information they must disclose to the person being called. At the same time, Rule G-8 is to be amended to require recordkeeping of certain information including a “do-not-call” list of persons who do not wish to receive telephone solicitations. For full details, see SEC Release 34-37626.

**MSRB Reminder**

**Rule G-36**

MSRB Rule G-36 requires a broker/dealer acting as an underwriter (or the managing underwriter of a syndicate) in a primary offering of a municipal security to forward to the MSRB two copies of both the final official statement and the completed Form G-36 within one business day after receipt of the final official statement from the issuer, but no later than 10 business days after any final agreement to purchase, offer, or sell the securities. Members are reminded that the “final agreement date” is the date of the closing and, therefore, the 10-business-day countdown begins from that date.

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**Other Valuable Information**

The Internet site also offers general information about NASD Regulation, including a detailed corporate profile. Additionally, the Internet site has areas of interest to individual investors, including information on the public disclosure program, instructions on how to file a complaint, and NASD Regulation’s recent enforcement actions.

**Plans For The Future**

Please visit the Internet site at “www.nasd.com” and sign the guest book. Your comments and suggestions for future enhancements are appreciated.

For more information, please contact Mark Susens, Enforcement, at (301) 208-2840.

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National Association of Securities Dealers, Inc.

November 1996
“Ask The Analyst”

provides member firms a
forum to pose questions regarding
communications with the public. Not
all questions are answered in this publica-
tion. We respond to some questions
by contacting the member directly. If
members have any questions or com-
ments, please contact the Advertising
Regulation Department at (202)
728-8330.

Q. What is the minimum amount of time
that disclosure information must appear
on a screen during a television adver-
sisement or video presentation?

A. NASD Rules do not specify a time
limit or method of communicating disclo-
sure. Members must ensure their
communications present material infor-
mation (for example, risk factors, costs,
or conflicts of interest) in a clear and
easily understood manner. In the case of
a television commercial, it is unrealistic
to assume that the viewer can read an
on-screen footnote at the same time a
sales message is presented in the audio
and video portions of the advertisement.
Therefore, written disclosure may be
inadequate unless it is the sole informa-
tion displayed on screen, the type is eas-
ily read, and it appears long enough to
be reasonably read by the average
viewer. Members may need to disclose
material information as part of the audio
portion of the commercial in addition to
relying on on-screen disclosure.

Members should note that there are
three special situations to consider:

• NASD Rules require certain disclo-
sures in the audio portion of CMO
radio and television commercials.

• SEC Rule 482 specifies that the offer
of a prospectus be conspicuous in
mutual fund advertising.

• SEC Rules require that all advertise-
ments for money market mutual funds
contain prominent disclosures regard-
ing their lack of guarantees and risks.

Q. When must communications with the
public include an explanation of the spe-
cial risks associated with international
investing?

A. All communications with the public
must provide a balanced presentation of
risk and reward. Any discussion of the
merits of investing outside the United
States must be balanced by a commen-
surate discussion of the risks associated
with such an investment. The level of
detail provided about the security and
the characteristics of the security itself
determine the extent of the required risk
information.

For example, merely mentioning that a
mutual fund invests internationally may
require a brief statement that the
investor should see the risk factors sec-
tion in the prospectus for details regard-
ing this strategy. In contrast, a longer
discussion of the merits of international,
as opposed to domestic, markets
requires further and more specific disclo-
sure in the communication itself. For
example, in addition to a reference to
the prospectus for information on inter-
national risk, such a communication
must identify specific risks such as cur-
rency fluctuations, differences in
accounting practices, and political fac-
tors. Finally, a communication that
devoted several pages of text to a
description of an international fund’s
merits and the merits of investments
abroad would need to provide a more
substantial risk factors section.

The relative risk of the fund may also
change the level of risk disclosure
required. For example, an advertisement
for a fund exclusively devoted to invest-
ments in overseas emerging markets
must reflect a higher degree of risk dis-
closure than a similar advertisement for
a fund that invests in large capitalization
stocks in developed markets overseas.

Q. May I compare a growth mutual
fund to a certificate of deposit (CD) in
communications with the public? If so,
what disclosures must I include?

A. The Rules permit comparisons in
communications with the public,
provided that you clearly explain the rel-
levant differences between the products
and state the purpose of the comparison.

Any comparison between investment
securities (including mutual funds,
stocks, or bonds) and CDs must
disclose, at minimum, that, unlike CDs,
which are insured by the FDIC and offer
a fixed rate of return, the principal value
and investment return of securities will
fluctuate with changes in market condi-
tions. Depending on the emphasis given
to the comparison, you may need to
include this information in the main
body of the text rather than as a footnote.

Depending on the subjects of the compar-
ison, further material differences between
the products may need to be explained.
For example, if you compare a stock mutual fund to a six-month CD, it should be clear that a stock mutual fund is generally considered a long-term investment, whereas a six-month CD is designed for short-term savings needs. Similarly, when comparing a bond mutual fund to a CD, it is important to explain that should interest rates rise, the value of the bond mutual fund will fall, whereas the value of the CD will remain fixed until maturity. Please see Notices to Members 93-87 and 91-74 for more information regarding the offer of mutual funds to replace maturing certificates of deposit.

Q. Is it ever required to quote a mutual fund’s public offering price in advertising or sales literature? Must any additional disclosures accompany the public offering price?

A. No, you are not required to disclose a mutual fund’s public offering price. Should you choose to include the public offering price, the date of the price should be disclosed as well.

Blended Fund Family Performance Concerns NASD Regulation

At its March 1996 meeting, the NASD Regulation Investment Companies Committee confirmed an NASD Regulation staff position that blended fund family performance must not be used with members of the general public. The NASD Regulation staff has observed a recent increase in requests by members to distribute communications with the public that include the blended performance of some or all of the funds in a fund family. Some communications show the blended performance as a percentage figure, and some include rankings of various mutual fund families based on the blended performance.

The use of blended performance is prohibited except in limited situations, such as in asset allocation illustrations that include the performance of each fund used in calculating the blended performance, or with institutional clients that invest in a portfolio of funds. Such illustrations must be preceded or accompanied by prospectuses for each fund in the investor’s portfolio.

NASDAQ Regulation bases this prohibition of blended performance with the general public on the following concerns:

- Sales material containing blended performance is intended for use early in the sales process, before the registered representative has determined which fund is most suitable for the investor. There is great potential for misuse in the sales process whereby an investor could easily be directed into a poorer performing fund, after being introduced to the fund family through sales material which promotes higher, blended performance.

- Unlike individual fund performance which must comply with SEC requirements, there is no standardized method of calculation for measuring blended performance.

- The material also raises concerns with regard to selectivity. Many of these communications include blended performance, and rankings based on such performance, that have been excerpted from financial publications. The data on which the publications’ rankings are based are obtained from the various mutual fund information services (such as Lipper and Morningstar). In the course of defining the universe of fund families, the publications typically eliminate fund families for reasons such as fund size, variety of funds, or other criteria that may appear arbitrary. The reader may not be aware that the rankings are not based on the entire universe of fund families, or that fund families with higher performance may have been excluded from the reprint. This exclusion does not provide the reader with a sound basis for evaluating the offered product or products, as required by NASD Rule 2210(d)(1)(A) (formerly Article III, Section 35 of the Rules of Fair Practice).

- Presentations of blended performance rankings are imbalanced, as they omit material disclosure as to relevant differences between the ranked fund families.

If you have questions about sales literature containing blended fund family performance, please contact the Advertising Regulation Department at (202) 728-8330.

National Association of Securities Dealers, Inc. November 1996
Guide To Locating Advertising And Sales Literature Rules

In reviewing member advertising and sales literature, the Advertising Regulation Department staff generally refers to NASD, Municipal Securities Rulemaking Board (MSRB), and SEC advertising rules and guidelines. The following list of applicable rules and regulations frequently cited by the Advertising Regulation Department reflects the NASD Manual revisions published in May 1996.

### NASD Rules

**Approval, Filing Requirements And Standards For All Communications With The Public Including Proper Broker/Dealer Identification**
- Rule 2210 of the NASD Rules (formerly Article III, Section 35 of the RFP)
- NASD Manual (page 4171)

**Approval, Filing Requirements And Standards For Government Securities Advertising And Sales Literature**
- Rule 2210 of the NASD Rules (formerly Section 8, NASD Government Securities Rules)
- Refer to Notice to Members 96-66, October 1996, for information on the merging of the Government Securities Rules into the Conduct Rules and other applicable Rules

**Restrictions On Advertising Non-Branch Office Locations**
- Rule 3010(g)(2) of the NASD Rules (formerly Article III, Section 27(g)(2) of the RFP)
- NASD Manual (page 4833)

### Communications With The Public About Collateralized Mortgage Obligations (CMOs)

**Rule IM-2210-1 of the NASD Rules (formerly Guidelines under Article III, Section 35 of the RFP)**
- NASD Manual (page 4179)

**Communications With The Public About Variable Life Insurance And Variable Annuities**

**Rule IM-2210-2 of the NASD Rules (formerly Guidelines under Article III, Section 35 of the RFP)**
- NASD Manual (page 4202)

### Use Of Rankings In Investment Companies Advertisements And Sales Literature

**Rule IM-2210-3 (formerly Guidelines under Article III, Section 35 of the RFP)**
- NASD Manual (page 4204)

### SEC Rules

**Communications Not Deemed A Prospectus**

**SEC Rule 134, Securities Act of 1933**
- NASD Manual (page 8011); CFR 230.134

**Generic Advertising**

**SEC Rule 135A, Securities Act of 1933**
- NASD Manual (page 8015); CFR 230.135A

### Advertising By An Investment Company As Satisfying Requirements Of Section 10

**SEC Rule 482, Securities Act of 1933**
- NASD Manual (page 8017); CFR 230.482

### Investment Company Sales Literature

**SEC Rule 156, Securities Act of 1933**
- NASD Manual (page 8016); CFR 230.156

### Sales Literature Deemed To Be Misleading

**SEC Rule 34b-1, Investment Company Act of 1940**
- NASD Manual (page 8342); CFR 270.34b-1

### Other Rules

**Approval Requirements And Standards For Municipal Securities Sales Material**
- MSRB Rule G-21
- Paragraph 3601. MSRB Manual (page 4870)

**Requirements For Identifying Securities Investor Protection Corporation (SIPC) Membership In Advertising**
- Article 11, Section 4, SIPC By-Laws
- Available from Advertising Regulation Department Staff at (202) 728-8330.

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NASD Regulatory & Compliance Alert

November 1996
Members Reminded To Complete Firm-Commitment Underwritings

The Corporate Financing Committee recently noted an increase in the number of public offerings where members failed to complete firm-commitment underwritings after being declared effective by the SEC, executing the underwriting agreement, completing the distribution of securities to investors, and commencing aftermarket trading activity. Over the last 18 months, six firm-commitment offerings failed to close for reasons not contemplated by the terms of the underwriting agreement. As a result, the Committee thought it was important to remind members of their obligation to complete firm-commitment underwritings.

While the number of failed firm commitments is small in proportion to the number of successfully completed offerings, the Committee is concerned about the ramifications of underwriters’ failure to complete firm commitments. First and foremost, issuers are denied offering proceeds and must undertake the task of engaging a new underwriter. Second, failed underwritings erode investor trust and confidence in the capital formation process and the ability of NASD members to complete underwritings. Finally, from an operational point of view, the placement of and trading in the offered securities that has occurred during the period between the effective date and the notice of termination must be unwound and canceled. This places a burden on members and customers who have engaged in primary and secondary transactions in the offered securities.

The Committee looked at about 31 public offerings between 1983 and the present where NASD members terminated firm-commitment underwritings. A number of the canceled offerings, however, resulted from what appeared to be bona fide actions on the part of underwriters to protect the investing public where material events had occurred or defects in the offering document were discovered that called into question the integrity of the disclosures and thus the distribution. The Committee’s concerns are directed to those situations where underwriters fail to fulfill their firm-commitment obligations for reasons unrelated to the lack of disclosure of material facts or the occurrence of other adverse events or circumstances.

The Committee noted that “adverse market conditions” were often cited by underwriters as the reason for terminating offerings. However, the Committee believes that general market conditions surrounding these offerings were not materially adverse, such that the “market-out” clause of the underwriting agreement could be properly invoked. The market conditions cited by the underwriters are the conditions surrounding the newly issued security, which have usually fallen below the public offering price, rather than general market conditions.

The SEC indicated in a no-action letter to the First Boston Corporation in 1988 that a market-out provision may be exercised appropriately in the context of a firm-commitment underwriting only upon the occurrence of “a material, adverse event affecting the issuer that materially impairs the investment quality of the offered securities; and that, in any event, a market-out clause in a firm-commitment underwriting may not permit the underwriter to abrogate its obligation to purchase the offered securities from the issuer based upon an inability to market the securities.” In other words, the inability of the underwriter to redistribute the securities is not a factor and is not an appropriate reason for a member to fail to deliver the proceeds of the offering at closing.

The Committee is reminding members of the importance of fulfilling their firm-commitment underwriting obligations. If market-out termination clauses in underwriting agreements are improperly invoked or if members otherwise unjustifiably fail to complete a firm commitment, the member or members involved may be found in violation of their obligation to comply with just and equitable principles of trade under NASD Rule 2110 (formerly Article III, Section 1 of the Rules of Fair Practice), which regulates the business conduct of members.

Questions relating to members’ obligations in firm-commitment underwritings may be directed to Richard J. Fortwengler, Corporate Financing Department, at (301) 208-2744.
New NASD Chairman Heads Search Committee
To Find Successor For NASD President And CEO

Daniel P. Tully, Chairman and Chief Executive Officer of Merrill Lynch & Co., Inc., was announced in July as the new Chairman of the NASD Board of Governors. Tully’s first task was to select a Search Committee to find a successor to Joseph R. Hardiman, NASD President and Chief Executive Officer, who announced his intention to retire.

The Search Committee is composed of seven members and includes industry, non-industry, issuer, and public representatives. Each member of the Search Committee currently serves on the Board of NASD, NASD Regulation, Inc., or The Nasdaq Stock Market, Inc.

In addition to Tully, who chairs the Search Committee, the members of the Committee are:

- **John H. Biggs**, Chairman and Chief Executive Officer of the Teachers Insurance Annuity Association (TIAA) and the College Retirement Equity Fund (CREF) in New York.
- **Elaine L. Chao**, President and Chief Executive Officer of the United Way of America in Alexandria, Virginia, former Director of the Peace Corps, and former Deputy Secretary of the U.S. Department of Transportation.
- **Jon S. Corzine**, Chairman of Goldman, Sachs & Company in New York and Chairman of the firm’s Management Committee.
- **Richard M. DeMartini**, President and Chief Operating Officer of Dean Witter Capital and member of the Management Committee of Dean Witter, Discover & Co., in New York and current chairman of the Nasdaq Board of Directors.
- **James S. Riepe**, Managing Director, member of the Management Committee and Director of T. Rowe Price Associates, Inc., a Nasdaq-listed company, and a former chairman of the Investment Company Institute.

“Our Committee will conduct a thorough search in finding a successor to Joe Hardiman,” said Tully, “with consideration given to qualified candidates in- and outside the securities industry. The NASD and its subsidiary organizations play a critical role in our capital markets. We will focus specifically on individuals with proven leadership abilities and the management experience essential to overseeing these important regulatory activities and vast market operations.”

In September, Hardiman announced plans to retire by the end of 1996, earlier than previously indicated. The Committee, which has begun its work already, expects to submit its recommendations to the NASD Board of Governors in time for the Board to name a successor by November 30.

For more information, direct questions to NASD Media Relations Department at (202) 728-8884.

NASD Establishes Individual Investor Office

The NASD recently created a new department to serve as an investor outreach program to target individual investors, who are facing increasingly complex decisions and investment choices. The Office of Individual Investor Services was created to serve the needs and promote the interests of individual investors while working with existing organizations representing individual investors, as well as other regulatory and self-regulatory organizations.

The Office’s primary responsibility will be to work with NASD Regulation and The Nasdaq Stock Market to develop investor education and protection programs. The Office will also analyze trends in customer complaints and disciplinary actions, organize investor forums, and develop and distribute investor education materials. “Making information available to investors through forums, publications, and today’s communications technologies, such as the Internet, is an ever-increasing responsibility for securities industry professionals and the organizations that regulate them,” said NASD President and Chief Executive Officer Joseph R. Hardiman.

The Director for the new Office, Michael Jones, was the former Deputy Director for the SEC’s Office of Public Affairs, Policy Evaluation, and Research. Jones has a broad understanding of the issues involved and over two decades of experience in communica-
tions and securities law. "In view of the phenomenal rise in the number of individual investors over the past decade, there is a growing need to identify and address emerging issues pertaining to this important segment of the market," Jones said. "I am pleased to be a part of the NASD's continuing efforts to take a proactive approach to investor protection."

The creation of this office was one of the many changes endorsed by the NASD Select Committee on Structure and Governance headed by former Senator Warren Rudman of New Hampshire.

For more information, please contact Michael Robinson, Media Relations Department, at (202) 728-8304.

NASD Creates Ombudsman Office

In response to recommendations made by the NASD Select Committee on Structure and Governance, the NASD created an Office of Ombudsman within the NASD Department of Internal Review. The Committee recommended that an independent office be established to receive and address "concerns and complaints, whether anonymous or not, from any source (within or outside of the NASD) concerning the operations, enforcement, or other activities of the NASD, NASD Regulation, or Nasdaq, or any staff members."

Bernard Thompson is the Ombudsman for the NASD and its subsidiaries, NASD Regulation and The Nasdaq Stock Market, Inc. Thompson has been with the NASD since 1977 and was previously the Assistant Director of Market Regulation.

The Ombudsman will serve as an alternative dispute resolution practitioner by suggesting actions or policies that are intended to be equitable to all parties. One of the major functions of the Office of Ombudsman will be to provide confidential assistance to parties inside and outside the NASD regarding a complaint or a concern. The Ombudsman will help all parties identify and evaluate options for positive actions and remain neutral in doing so.

The Ombudsman's role will not displace the NASD's existing procedures for handling customer complaints, members' disciplinary grievances, arbitration matters, or issuer concerns.

Matters that may be reviewed by the Ombudsman include:

- **Inconsistent Decisions By NASD Staff**—Complaints that decisions made or actions taken by NASD staff may be inconsistent, biased, or result in disparate treatment may be directed to the Ombudsman.

- **Weak Procedures**—The Ombudsman will review complaints of weaknesses in NASD controls, practices, or procedures submitted by persons who are aware of control weaknesses but, for whatever reason, do not report them to NASD management or who wish to remain anonymous.

- **Failure To Provide Information**—Complaints that the NASD staff has not provided information to which complainants believe they are entitled are situations that may be reviewed by the Ombudsman.

Matters that will not be reviewed by the Ombudsman include:

- Complaints, where established procedures currently exist regarding application of rules, policies, procedures, or interpretations, will be directed to the appropriate office.

- Complaints from member firms and/or their associated persons' regarding disciplinary rulings, issuers regarding listing proceedings, member firms regarding the staff of market operations application of existing rules, staff misconduct during an investigation, prosecutorial bias, bias by a Hearing Panel, or a conflict of interest by a Hearing Panel member are subject to review under the existing NASD appellate procedures and processes. Where a structured dispute resolution and/or appellate process currently exists, that process should continue to be used by parties seeking a redress.

- **Arbitration And Mediation**—Complaints from parties in arbitration or mediation dealing with arbitrators' rulings, conduct, or awards will not be the focus of the Ombudsman. The arbitration staff currently investigates and responds to complaints regarding the arbitration and mediation processes.

- **Member Complaints**—Members that complain about the actions of another member (or associated person) will be directed to pursue the matter through arbitration when it relates to monetary disputes or in the case of violative conduct, the complainants will be directed to call the District Office in their region. Complaints that are clearly within the jurisdiction of another department or organization will be referred by the Ombudsman to those areas that have the jurisdiction and expertise to handle them.

- **Board Actions, Rulemaking, Or Policy Decisions**—As a matter of policy, any complaints of disparate impact resulting from all Boards' (or Board Committee) actions, rulemaking, or policy decisions will not be handled by the Ombudsman.
Questions relating to these types of complaints will continue to be directed to the Corporate Secretary, or the staff liaison for a particular Board Committee. To the extent someone believes he/she has been aggrieved by a Board decision, he/she should petition the Board to reverse itself or challenge the decision at the SEC or in court, where the complainant’s arguments can be fully aired.

If a member, associated person, investor, issuer, or other has a complaint or comment appropriate for the Ombudsman as described above, that person should contact the Ombudsman by phone, at (202) 728-8442 or (888) 700-0028; by E-mail: ombuds@nasd.com, or by writing to:

NASD Ombudsman
Bernard Thompson
1735 K Street, NW
Washington, DC 20006-1500.

Questions regarding this information should be directed to the NASD Department of Internal Review at (202) 728-8973 or (202) 728-8442.

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 current as of September 12, 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 Gwilliam, 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

96-31—Amend Rule 8210 (formerly Article IV, Section 5 of the Rules of Fair Practice) to require members to submit information requested for an investigation in electronic form.

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

96-30—Implement Rule 3350, Short Sale Rule, (formerly Article III, Section 48 of the Rules of Fair Practice) on a permanent basis and extend the effectiveness of the pilot program. Partial accelerated approval granted by the SEC and published for comment in Rel. No. 34-37492 (7/29/96); 61 FR 40693 (8/5/96).

96-28—Add new Rule 2211 and amend Rule 3110 (formerly Article III, Section 21 of the Rules of Fair Practice) to impose time restriction and disclosure requirements on telemarketing calls. Published for comment by the SEC in Rel. No. 34-37475 (7/2/96); 61 FR 39686 (7/30/96).

95-63—Amend the Rules of Fair Practice to adopt a new section to reg-
function, governance, procedures and responsibilities of the NASD, NASD Regulation, and Nasdaq. Temporary accelerated approval granted by the SEC and published for comment in Rel. No. 34-37425 (7/11/96); 61 FR 37518 (7/18/96).

96-21—Amend the By-Laws for mandatory electronic filing of registration-related filings. Published for comment by the SEC in Rel. No. 34-37291 (6/7/96); 61 FR 30269 (6/14/96). Approved by the SEC in Rel. No. 34-37439 (7/15/96); 61 FR 37950 (7/22/96).

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 (6/6/96); 61 FR 29777 (6/12/96). Temporary accelerated approval granted by the SEC in Rel. No. 34-37424 (7/11/96); 61 FR 37515 (7/18/96).

96-19—Adopt amendments to Forms U-4 and U-5. Published for comment by the SEC in Rel. No. 34-37289 (6/7/96); 61 FR 30272 (6/14/96). Accelerated approval granted by the SEC in Rel. No. 34-37407 (7/5/96); 61 FR 36595 (7/11/96).

96-17—Amend Rule 2720 (formerly Schedule E to the By-Laws) to define “bona fide independent market” and “bona fide independent market maker.” Published for comment by the SEC in Rel. No. 34-37223 (5/17/96); 61 FR 26239 (5/24/96). Approved by the SEC in Rel. No. 34-37471 (7/23/96); 61 FR 40054 (7/31/96).

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 (5/6/96); 61 FR 21517 (5/10/96). Approved by the SEC in Rel. No. 34-37310 (6/13/96); 61 FR 31604 (6/20/96).

96-14—Amend Rule 8210 (formerly Article IV, Section 3 of the Rules of Fair Practice) 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 (4/29/96); 61 FR 20299 (5/6/96). Approved by the SEC in Rel. No. 34-37561 (8/13/96); 61 FR 43107 (8/20/96).

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 Rule 2310 (former 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 (3/14/96); 61 FR 11655 (3/21/96). Approved by the SEC in Rel. No. 34-37588 (8/20/96); 61 FR 44100 (8/27/96).

### NASD Disciplinary Actions

In June, July, and August 1996, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated person 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

**June Actions**

**None**

**July Actions**

**Robert Martin Dickerson** (Registered Representative, Pacifica, California) was fined $20,000, suspended from association with any NASD member in any capacity for 90 days, and ordered to remain in any capacity. The National Business Conduct Committee (NBCC) imputed the sanctions following a review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Dickerson maintained securities accounts with two member firms without notifying his member firm of the accounts and without notifying the other firms of his association with his member firm. In contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation, Dickerson purchased securities that traded at a premium in the immediate aftermarket. Dickerson also failed to respond to NASD requests for information in a complete and timely manner.

**Dennis Patrick Higgs** (Registered Representative, Pacifica, California) submitted an Offer of Settlement pursuant to which he was fined $45,000. Without admitting or denying the allegations, Higgs consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchases and sales of mutual funds without having reasonable grounds for believing that the recommendations were suitable for the customer based on the customer's security holdings, financial situation, needs, and the number of transactions.

**Catherine Ann Jensen** (Registered Representative, Manhattan Beach, California) submitted an Offer of Settlement pursuant to which she was fined $10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that she exercised effective control over the account of a public customer and recommended to the customer the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the size and frequency of the recommended transactions and the customer's other security holdings, financial situation, and needs.

Jensen's suspension began June 17, 1996, and concluded July 8, 1996.

**August Actions**

**Kraig Phillips Hasedad** (Registered Representative, Bakersfield, California) was fined $10,000 and suspended from association with any NASD member in any capacity for 90 days and thereafter, until an arbitration award is satisfied. The sanctions were based on findings that Hasedad failed to pay a $32,122.97 NASD arbitration award.

**Roger James Molloy** (Registered Principal, San Jose, California) was fined $302,300 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Molloy received $312,173.97 from public customers for investment purposes but converted the funds for his own use and benefit. Molloy also prepared and provided to customers fictitious account statements reflecting that the customers owned stocks and failed to respond to NASD requests for information.

**Jin Ho Yu Shin** (Registered Representative, Sunnyvale, California) was fined $21,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shin failed to respond to NASD requests for information.

**Richard George Wivi** (Registered Representative, Moraga, California) was fined $200 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wivi participated in private securities transactions without providing prior written notice to his member firm.

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

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National Association of Securities Dealers, Inc. November '96
June Actions

Michael Dzurko ( Ranked Principal, Howard Beach, New York), Peter David Ragofsky ( Ranked Principal, Brooklyn, New York), and Jay Nance ( Ranked Principal, Las Vegas, Nevada) submitted Offer of Settlement pursuant to which Dzurko was fined $3,125.71 and suspended from recommending any penny stock transactions for 15 years. Nance was fined $5,000 and suspended from association with any NASD member as a general securities principal for 15 years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Dzurko and Ragofsky effected $5,089,252 in penny stock transactions for public customers in violation of Section 15b of the Securities Exchange Act of 1934 (Exchange Act). The findings also stated that Nance failed to supervise two sales representatives to prevent ongoing penny stock violations and failed to respond adequately to red flag warning signals indicating that the sales representatives were continuing to violate the penny stock rules by issuing unsolicited promotions in penny stock transactions. The NASD found that Dzurko solicited investors to purchase penny stocks and that Dzurko accepted orders from customers without being registered with the NASD. Jonathan G. Fink ( Ranked Representative, Los Angeles, California) and Graham A. Rowe ( Ranked Principal, Los Angeles, California) submitted Offers of Settlement pursuant to which Fink was fined $5,000 and ordered to provide a written notice to his member firm before participating in transactions, Rowe was fined $5,000, jointly and severally, for failing to cooperate as a witness, for failing to respond as a witness to the sanctions, and for the entry of findings that Rowe failed to supervise Fink in numerous penny stock transactions, which resulted in Fink being suspended from association with any NASD member as a general securities principal for 15 years, and required to supervise as a general securities principal. Without admitting or denying the allegation, the respondents consented to the described sanctions and to the entry of findings that Fink engaged in penny stock transactions while failing to issue prompt written notification to his member firm before participating in transactions, and Rowe failed to supervise Fink in numerous penny stock transactions while failing to issue prompt written notification to his member firm. The sanctions also stated that Rowe failed to approve, promptly in writing, all discretionary orders entered into the discretionary account or to review such account at frequent intervals to detect unauthorized transactions. Richard Francis Norris ( Ranked Principal, Los Angeles, California) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member as a general securities principal for 15 years, and ordered to provide a written notice to his member firm before participating in transactions, and Norris failed to supervise any activities of an individual to ensure compliance with the rules and failed to respond adequately to red flags when reviewing orders tickets and monthly account statements that revealed unsatisfactory trading activity. Sergio Silver ( Ranked Representative, Culver City, California) was fined $10,000, suspended from association with any NASD member in any capacity, and ordered to provide a written notice to his member firm before participating in transactions, and Norris failed to supervise any activities of an individual to ensure compliance with the rules and failed to respond adequately to red flags when reviewing orders tickets and monthly account statements that revealed unsatisfactory trading activity. William K. Cantrell ( Ranked Principal, Los Angeles, California) was fined $2,500, suspended from association with any NASD member as a financial and operations principal for 10 years, and ordered to provide a written notice to his member firm before participating in transactions, and Norris failed to supervise any activities of an individual to ensure compliance with the rules and failed to respond adequately to red flags when reviewing orders tickets and monthly account statements that revealed unsatisfactory trading activity. Scott L. Lenz ( Ranked Representative, Studio City, California) was fined $5,200. The NASD imposed the sanctions following a complaint involving the issuance of $20,000 in investment advice. The findings also stated that Lenz engaged in securities business without being registered with the NASD in any capacity, introduced customers to the member firm, and received compensation from the firm for his services. July Actions

Jason Brian Balsrud ( Ranked Representative, Malibu, California) was fined $35,000, fined from association with any NASD member in any capacity, and ordered to pay $35,000 in restitution to customers. The sanctions were based on findings that Balsrud participated in a private securities transaction and failed to provide prior written notification to his member firm. Balsrud also failed to respond to NASD requests for information.

Robert A. Grunhub ( Ranked Principal, Marina del Rey, California) was fined $5,000, suspended from association with any NASD member as a principal for 30 days, and required to supervise as a principal. The NASD imposed the sanctions following a complaint involving the issuance of $20,000 in investment advice. The findings also stated that Lenz engaged in securities business without being registered with the NASD in any capacity, introduced customers to the member firm, and received compensation from the firm for his services.

June Actions

Schneider Securities Inc. (Denver, Colorado) submitted an Offering Circular pursuant to which it was fined $12,500, jointly and severally with any other issuers. Without admitting or denying the allegations, the firm submitted to the described sanctions and to the entry of findings that it engaged in an offering of securities in which investor funds were released from escrow before the receipt of the minimum subscription amount described in the Offering Circular. The findings also stated that the firm failed to supervise the conduct of the contingency offering in a manner reasonably designed to achieve compliance with NASD Rules and to supervise properly the office from which the offering was conducted. The NASD also found that the firm failed to establish, maintain, and enforce procedures to achieve compliance with SEC and NASD rules pertaining to sales literature and advertising.

Steven J. Sogard ( Ranked Principal, Phoenix, Arizona) submitted an offering of Settlement pursuant to which he was fined $15,000 and ordered to be subject to the requirement that he should wish to offer to sell any qualified security, such offering must be made on the condition that all investor funds are deposited into and remain in an escrow account established and maintained in conformity with the procedures set forth in the Offering Circular. The findings also stated that Sogard consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce procedures to achieve compliance with SEC and NASD rules pertaining to sales literature and advertising.

July Actions

Walnut Street Securities, Inc. (St. Louis, Missouri) submitted an Offer of Settlement pursuant to which the firm was fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce procedures to achieve compliance with SEC and NASD rules pertaining to sales literature and advertising.

W.B. McKeever Securities, Inc. (Phoenix, Arizona) was fined $20,000. The NASD imposed the sanctions following a complaint involving the issuance of $20,000 in investment advice. The findings also stated that the firm failed to establish, maintain, and enforce procedures to achieve compliance with SEC and NASD rules pertaining to sales literature and advertising.

David Bahr ( Ranked Registered Representative, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $14,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bahr consented to the described sanctions and to the entry of findings that he received from public customers $20,000 for investment purposes, failed to invest the funds, and used $18,000 of the funds for his own benefit. The findings also stated that Bahr failed to obtain and provided securities transactions for public customers and received compensation while in an unregistered capacity. The NASD found that Bahr sold shares of stock to a public customer and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his role therein, and whether he would receive selling compensation in connection with the transactions.

Patricia A. Battista ( Ranked Associate Person, Aurora, Colorado) submitted an Offering Circular pursuant to which she was fined $10,000 and suspended from association with any NASD member in any capacity for 60 days without admitting or denying the allegations.
sent to the described sanctions and to the entry of findings that while seated, before the Series 7 exam began, she was found in possession of materials pertaining to the exam.

Mark Eugene Hendrickson (Registered Representative, Bothell, Washington) 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 two years. Without admitting or denying the allegations, Hendrickson consented to the described sanctions and to the entry of findings that he satisfied a false and inaccurate Uniform Application for Securities Industry Registration (Form U-4) to his member firm which failed to disclose a felony charge and conviction.

Lamar Nathan Jensen (Registered Representative, Kirkland, Washington) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that he recommended to and effected for public customers investments and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his role therein, and whether he would receive selling compensation in connection with the transactions. The findings also stated Jensen failed to forward customer funds to the issuer and, instead, deposited the funds into a bank operating account over which he had control.

Craig L. Niebuhr (Registered Representative, Murray, Utah) submitted an Offer of Settlement pursuant to which he was fined $12,000 from association with any NASD member in any capacity for five business days, required to disgorge $12,000 to the NASD, and required to timely file an annual Form U-4. Niebuhr consented to the described sanctions and to the entry of findings that he maintained a securities account with a member firm other than his employer and executed transactions in this account, but failed to notify his member firm of this account in writing. The findings also stated that Niebuhr participated in business activities outside the scope of his relationship with the member firm without providing prompt written notice to his firm. The NASD also determined that Niebuhr sold shares of a security to another individual for compensation without providing prior written notice to, and without receiving approval from, his member firm to participate in this transaction.

Wendy Kay Probstfield (Registered Representative, Yacona, Washington) submitted an Offer of Settlement pursuant to which she was fined $250,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Probstfield consented to the described sanctions and to the entry of findings that she maintained a securities account with a member firm for a period exceeding 14 months, and failed to exercise due diligence in connection with the entry of findings that she failed to supervise adequately the activities of a registered representative to detect and prevent excessive trading. Probstfield also failed to establish, maintain, and enforce written procedures to supervise the activities of registered representatives to prevent and detect excessive trading activity.

Donald K. Rainback (Registered Representative, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to continue paying restitution pursuant to previous agreement. Without admitting or denying the allegations, Rainback consented to the described sanctions and to the entry of findings that while acting in a fiduciary capacity with respect to funds entrusted to him for investment, he invested the funds in a manner contrary to the instructions and expectations of the beneficial owners and used a portion of the funds for his own benefit.

Beatrice Lynn Stonebanks (Registered Representative, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $752,000 in restitution. Without admitting or denying the allegations, Stonebanks consented to the described sanctions and to the entry of findings that she obtained $792,000 from a customer by representing that such funds would be used to purchase certificates of deposit. Contrary to such representations, Stonebanks deposited the funds for her own benefit into one or more bank accounts of an entity she solely or jointly controlled. The findings also stated that Stonebanks conducted a business through an entity that represented itself and functioned as a broker-dealer without complying with the broker-dealer registration provisions.

David Keith Weaver (Registered Principal, La Junta, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000, required to disgorge $6,251.82, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Weaver consented to the described sanctions and to the entry of findings that he participated in soliciting the purchase of shares of stock outside the scope of his employment with his member firm without providing prior written notice to the firm of his participation in such activities. The NASD also found that Weaver failed to provide full and complete responses to NASD requests for information.

Robert Zakian (Registered Representative, Scottsdale, Arizona) 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. The findings stated that Zakian consented to the described sanctions and to the entry of findings that while taking the Series 43 exam, he used unauthorized exam materials.

Michael J. Dorman (Registered Principal, Tucson, Arizona) was fined $4,478.08 to the NASD, and ordered to pay $2,076.45 in restitution to a customer. The NBCC imposed the sanctions following an appeal of a Denver DBCC decision. The sanctions were based on findings that Dorman recommended the purchase of securities on margin to a customer without having reasonable grounds for believing that the recommendations were suitable for the customer.

Jose Padilla (Registered Principal, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Padilla consented to the described sanctions and to the entry of findings that he failed to supervise adequately the activities of a registered representative to detect and prevent excessive trading. Padilla also failed to establish, maintain, and enforce written procedures to supervise the activities of registered representatives to prevent and detect excessive trading activity.

Bradley D. Whitner (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000. Without admitting or denying the allegations, Whitner consented to the described sanctions and to the entry of findings that he forged customers’ signatures on insurance applications and submitted the applications to his member firm without the knowledge or consent of the customers.

August Actions

Cynthia Dean & Co. (Greenwood Village, Colorado) and Scott Carothers (Registered Principal, Greenwood Village, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $25,000, jointly and severally. Carothers was suspended from association with any NASD member in a financial and operations principal for 10 business days and required to timely file by exam as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to supervise adequately the activities of a registered representative to detect and prevent excessive trading. Carothers, conducted a securities business while failing to maintain its minimum required net capital.

Steven S. Etkind (Registered Representative, Albuquerque, New Mexico) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000, and barred from association with any NASD member in any capacity with the right to reapply in three years. Without admitting or denying the allegations, Etkind consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written notification to his member firm. The findings also stated that Etkind engaged in securities subject to SEC Rule 10b-5 without complying with the Rule and engaged in activities for which broker-dealer registration is required without being registered as a broker-dealer.

Elijah Johnson, III (Registered Representative, Portland, Oregon) was fined $15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson failed to timely respond to NASD requests for information about his termination from a member firm.

Ronald H. Justis (Registered Representative, Denver, Colorado) was fined $15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Justis engaged in securities subject to SEC Rule 10b-5 without complying with the Rule and engaged in activities for which broker-dealer registration is required without being registered as a broker-dealer.

James C. Placet (Registered Representative, Paradise Valley, Arizona) was fined $15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Placet misused customer funds totaling $15,000 by using for his own benefit the proceeds of a check drawn on the customer’s account that was made payable to his member firm.

June Actions

Mark S. Shaner (Registered Principal, Fairfield, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $621,805 in restitution. Without admitting or denying the allegations, Shaner consented to the described sanctions and to the entry of findings that he established funds from a limited partnership offering totaling $675,000 of the funds to purchase a certificate of deposit that he used as collateral on a home construction loan, and withdrew $621,805 from the certificate of deposit to pay off the loan.

July Actions

William Christopher Boettcher (Registered Representative, Columbia, Missouri) 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, and required to pay $621,805 in restitution. Without admitting or denying the allegations, Boettcher consented to the described sanctions and to the entry of findings that he forged customers’ signatures on insurance applications and submitted the applications to his member firm without the knowledge or consent of the customers.

August Actions

None

District 5—Alabama, Arkansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Dakota, Tennessee, and Virginia

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June Actions

Jesse M. Chase, Jr. (Registered Representative, Jackson, Mississippi) was fined $1,000 and suspended from association with any NASD member in any capacity for one week. The sanctions were based on findings that Chase engaged in a pattern of trading in a public company’s securities without having reasonable grounds for believing that the trading was of fair value, given the customer’s financial situation, investment objectives, and needs. Chase also exercised discretion in a public customer’s account without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. In addition, Chase provided documentation to a public customer that omitted or misrepresented material facts, in that the document failed to disclose the risks inherent with the trading strategy of the program, failed to disclose the increased trading costs and tax liabilities, and made unwar- ranted forecasts concerning future results.

William R. Daniels (Registered Representative, Ridgeland, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $1,000 and suspended from association with any NASD member in any capacity, and required to pay $62,696 in restitution. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he obtained eight checks from a public customer totaling $62,696, endorse the checks, and deposited them into his personal bank account, thereby consuming the funds for his own use and benefit. The findings also stated that the document failed to disclose the risks inherent with the trading strategy of the program, failed to disclose the increased trading costs and tax liabilities, and made unwar- ranted forecasts concerning future results.

Glenn P. Pellegrin (Registered Representative, Bourg, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $175,000, barred from association with any NASD member in any capacity, and required to pay $317,585.12 in restitution to customers. Without admitting or denying the allegations, Pellegrin consented to the described sanctions and to the entry of findings that he received $317,585.12 for investment purposes, failed to invest the funds on the individuals’ behalf, and, instead, converted the funds for his own use and benefit without the knowledge or consent. The findings also stated that Pellegrin prepared and sent false account statements to customers regarding their investments and made material misstatements regarding risk and return to customers so that the customers would liquidate their funds for these various investments. The NASD also determined that Pellegrin engaged in outside business activities and that he failed to disclose his ownership and operation of an investment fund.

John C. Petersen, Jr. (Registered Principal, North Little Rock, Arkansas) and William S. Loye (Registered Principal, Hot Springs, Arkansas) submitted an Offer of Settlement. Peter Petersen was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $785.75 in restitution to a member firm. Without admitting or denying the allegations, Petersen consented to the described sanctions and to the entry of findings that he received $25,000 from a customer in exchange for a check representing insurance premiums, premiums, failed to submit the full amount to his member firm and, instead, diverted $785.75 of the proceeds to his own account without the knowledge or consent of the customer. The findings also stated that Petersen engaged in a pattern of trading in a public company’s securities without having reasonable grounds for believing that the trading was of fair value, given the customer’s financial situation, investment objectives, and needs.

William H. Berrier, III (Registered Representative, Knoxville, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $15,100 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berrier consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer’s account without the customer’s knowledge or consent. The NASD also found that Berrier failed to respond to NASD requests for information.

James G. Earle, Sr. (Registered Representative, Knoxville, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $10,000, barred from association with any NASD member in any capacity, and required to pay $22,955.10 in restitution to customers. Without admitting or denying the allegations, Earle consented to the described sanctions and to the entry of findings that he received $22,955.10 from a customer in exchange for a check representing insurance premiums, premiums, failed to submit the full amount to his member firm and, instead, diverted $785.75 of the proceeds to his own account without the knowledge or consent of the customer. The findings also stated that Earle prepared and provided to customers false account statements and a false IRS form that represented that the funds had been invested on the customers’ behalf.

Timothy L. Meyer (Registered Representative, Westlake, Louisiana) 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 $785.75 in restitution to a member firm. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he received from public customers $25,000 in exchange for a check representing insurance premiums, premiums, failed to submit the full amount to his member firm and, instead, diverted $785.75 of the proceeds to his own account without the knowledge or consent of the customer. The findings also stated that Meyer engaged in a pattern of trading in a public company’s securities without having reasonable grounds for believing that the trading was of fair value, given the customer’s financial situation, investment objectives, and needs.

Charles G. Brashier (Registered Representative, Hoover, Alabama) was fined $270,000, barred from association with any NASD member in any capacity, and required to pay $303,913.05 in restitution to the appropriate parties. The sanctions were based on findings that Brashier received from public customers $303,913.05 for investment purposes, failed to invest the funds on the customers’ behalf, and, instead, converted the monies for his own use and benefit. Without the knowledge or consent of the customer. Brashier also engaged in fictitious account statements that were sent to a public customer and failed to respond to NASD requests for information.

Carl A. Grimstad (Registered Representative, Nashville, Tennessee) was fined $5,000 and suspended from association with any NASD member in any capacity for two weeks and thereafter, until he demonstrates that all amounts under a New York Stock Exchange (NYSE) arbitration proceeding have been paid or that a payment schedule or other form of settlement has been agreed upon. The sanctions were based on findings that Grimstad failed to respond to NASD requests for information.

Gulf Financial Services, Inc. (Mobile, Alabama) submitted an Offer of Settlement pursuant to which the firm was fined $11,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond to NASD requests for information. The findings also stated that the document failed to disclose the risks inherent with the trading strategy of the program, failed to disclose the increased trading costs and tax liabilities, and made unwar- ranted forecasts concerning future results.

Lamar Jones (Registered Representative, Philadelphia, Pennsylvania) was fined $5,000, suspended from association with any NASD member in any capacity for one year, and required to pay $460 in restitution to a member firm. The sanctions were based on findings that Jones pledged a laptop computer that was the property of his member firm as collateral for a personal loan without the knowledge or consent of his member firm.

David A. Nahmias (Registered Representative, Memphis, Tennessee) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, unbeknownst to his member firm, Nahmias entered into an agreement with public customers to reimburse them $102,480 for losses incurred in their account and provided a check that was not honored at his bank due to insufficient funds. Nahmias also failed to respond to NASD requests for information.

Victor B. Ponder (Registered Representative, Big Bend National Park, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $9,500, barred from association with any NASD member in any capacity, and required to pay $10,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Ponder consented to the described sanctions and to the entry of findings that he converted the funds of his own account without the knowledge or consent of the customer. The findings also stated that Ponder engaged in a pattern of trading in a public company without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Michael C. Sealey (Registered Representative, Baton Rouge, Louisiana) was fined $25,000, barred from association with any NASD member in any capacity, and required to pay $592,880.50 in restitution to the appropriate parties. The sanctions were based on findings that Sealey converted $592,880.50 in customer funds for his own use and benefit. Without admitting or denying the allegations, Sealey consented to the described sanctions and to the entry of findings that he converted $25,000 in customer accounts, and prepared and distributed at least 16 false customer account statements in an effort to conceal the conversion of funds. Sealey also engaged in a pattern of trading in a public company’s securities without the knowledge or consent of the customer and failed to respond to NASD requests for information.

District 6—Texas

June Actions

None

July Actions

George F. Dullinger and Du Siani, Austin, Texas) and George F. Dullinger (Registered Principal, San Antonio, Texas) submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally. Dullinger also engaged in a pattern of trading in a public company’s securities without the knowledge or consent of the customer and failed to respond to NASD requests for information.

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and to the entry of findings that the firm, acting through Duffing, failed to disclose to clients on customer confirmations the amount of remuneration it received concerning the sale of securities. The NASD also found that the firm, acting through Duffing, failed to establish and maintain a system to anticipate the activities of an individual and failed to maintain adequate written supervisory procedures to prevent and detect private securities transactions and outside business activities.

Taylor Proutt & Sylvester, Inc. (Houston, Texas), Charles Weldon Taylor, Jr. (Registered Principal, Houston, Texas), Alvin Proutt, Jr. (Registered Principal, Houston, Texas), and Jerry Moore Hill (Registered Principal, Dallas, Texas) submitted letters of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Taylor, Proutt, and Hill, conducted a securities business while failing to maintain its minimum required net capital.

Robert Joseph Becker (Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for one year, and fined $4,000 in restitution which will be credited towards the fine. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that he caused unauthorized transactions in the account of a public customer.

Richard W. Wells, Sr. (Registered Representative, Rockwall, Texas) submitted an Offer of Settlement pursuant to which he was fined $41,800, suspended from association with any NASD member in any capacity for 10 business days, and required to pay $41,800 in restitution which will be credited towards the fine. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he caused unauthorized transactions in the account of a public customer.

Richard W. Wells, Sr. (Registered Representative, Rockwall, Texas) submitted an Offer of Settlement pursuant to which he was fined $15,000, ordered to disgorge $11,774.50 in commissions, required to pay $12,680.50 in restitution to customers, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he caused unauthorized transactions in another customer’s account without the customer’s knowledge or consent, exercised control over the account, and recommended the unauthorized transactions without having reasonable grounds to believe that the transactions were suitable for the customer in light of the speculative nature of the security, the customer’s age, financial status, needs, and investment objectives. The findings also stated that Wells caused unauthorized transactions in another customer’s account without the customer’s knowledge or consent, exercised control over the account, and recommended the unauthorized transactions without having reasonable grounds to believe that the transactions were suitable for the customer in light of the speculative nature of the security, the customer’s age, financial status, needs, and investment objectives.

David F. Sowers (Registered Representative, Corvalis, Oregon) 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, Sowers consented to the described sanctions and to the entry of findings that he obtained $310,000 from life insurance policies of three public customers without their knowledge or authorization. The NASD determined that Sowers used the funds to pay premiums on several insurance policies owned by a public customer and retained $3,000 to reimburse himself for personal funds he had used to pay premiums on insurance policies owned by the customer.

Franklin S. Wolf (Registered Principal, New Vernon, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $350,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wolf consented to the described sanctions and to the entry of findings that he caused unauthorized transactions in a common stock at prices that were unfair and not reasonably related to the prevailing market price of the securities and engaged in fraudulent and deceptive practices in connection with the transactions.

August Actions Byron M. Britt (Registered Representative, Greensboro, North Carolina) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity with the right to reapply for association with a member after three years. Without admitting or denying the allegations, Britt consented to the described sanction and to the entry of findings that he forged the signatures of five customers on forms used to borrow money from insurance policies.

James A. Crumrine (Registered Representative, Winter Park, Florida) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Crumrine failed to respond to an NASD request for information.

Charles E. Kauth (Registered Representative, Clearwater, Florida) was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. The SEC affirmed the sanctions following an appeal of a July 1993 NRO order and sanction based on findings that Kauth caused seven registered representatives under his supervision to list their names falsely as the representative of record on applications for annuities that he sold.

Christopher J. Mulkisch (Registered Representative, Deltona, Florida) was fined $25,000 and barred from association with any NASD member in any capacity with the right to reapply to become associated with a member after two years. The sanctions were based on findings that Mulkisch authorized an unauthorized transaction in a public customer’s account and failed to respond to NASD requests for information.

Matthew E. Major (Registered Representative, Deerfield Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Major consented to the described sanctions and to the entry of findings that he caused unauthorized transactions in another customer’s account without the customer’s knowledge or consent, exercised control over the account, and recommended the unauthorized transactions without having reasonable grounds to believe that the transactions were suitable for the customer in light of the speculative nature of the security, the customer’s age, financial status, needs, and investment objectives.

Wayne C. Rasch (Registered Representative, Athens, Georgia) was fined $30,000, barred from association with any NASD member in any capacity with the right to reapply after one year, and required to repay by exam in a general securities representative. The sanctions were based on findings that Rasch engaged in private securities transactions outside the regular course or scope of his registration with his member firm without providing written notice to or obtaining approval from his firm. Rasch also failed to respond to NASD requests for information.

Jeffrey W. Shelton (Registered Representative, Tallahassee, Florida) was fined $20,000 and barred from association with any NASD member in any capacity with the right to reapply after one year. The sanctions were based on findings that Shelton failed to respond to NASD requests for information.

Bodu B. Weber (Registered Representative, Los Altos, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Weber failed to respond to NASD requests for information concerning unauthorized transactions in the account of a public customer.

District 6—Illinois, Indiana, part of upstate New York (the counties of Livingston, Monroe, and Steuben), and the remainder of the state west of such counties, Ohio, and Wisconsin

National Association of Securities Dealers, Inc.
June Actions

Leontina M. Cipely (Associated Person, Westland, Michigan) submitted an Offer of Settlement pursuant to which she was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cipely consented to the described sanctions and to the entry of findings that she participated in the offer and sale of securities to public customers and failed to give prior written notice to, and obtain prior written authorization from, her member firm to engage in such activities.

Sheldon Clifton (Representative, Battle Creek, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Clifton consented to the described sanctions, and to the entry of findings that he participated in the offer and sale of securities to public customers and failed to give prior written notice to, and obtain prior written authorization from, his member firm to engage in such activities.

John N. Salerno (Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association as a NASD member in any capacity for six months, and required to pay $45,000 in restitution to public customers. However, the fine may be reduced by any amounts Salerno pays in restitution to public customers. The NBCC imposed the sanctions following an appeal of a Chicago BBOC decision. The sanctions were based on findings that Salerno engaged in private securities transactions while failing to give prior written notice to, and obtain prior written approval from, his member firm to engage in such activities.

Gerald James Stobier (Representative, Michigan) was fined $50,000, suspended from association with any NASD member in any capacity for six months, and required to pay $45,000 in restitution to public customers. However, the fine may be reduced by any amounts Stobier pays in restitution to public customers. The NBCC imposed the sanctions following an appeal of a Chicago BBOC decision. The sanctions were based on findings that Stobier engaged in private securities transactions while failing to give prior written notice to, and obtain prior written approval from, his member firm to engage in such activities.

Rahel M. Trott (Representative, Indian Head Park, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trott consented to the described sanctions and to the entry of findings that he exercised discretion to purchase securities in public customer accounts and failed to obtain written authorization from the customer and written acceptance of the discretionary authority by his member firm.

Phillip R. Cox (Representative, Lebanon, Ohio) submitted an Offer of Settlement pursuant to which he was fined $15,000. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he offered and sold investors shares of stock and failed to provide prior written notice to, or receive authorization from, his member firm to participate in these transactions.

July Actions

A.R. Baron & Co., Inc. (New York, New York) and Andrew Bressman (Representative, New York, New York) submitted an Offer of Settlement pursuant to which they were fined $11,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Bressman failed to respond fully to NASD requests for information.

Audison Financial Group, Inc. (Chicago, Illinois) submitted an Offer of Settlement pursuant to which the firm was fined $2,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it conducted a securities business while failing to maintain its minimum required net capital.

The NASD also found that the firm failed to comply with the terms of its restrictive agreement with the NASD.

Erik Joseph Anderson (Representative, Peoria, Illinois) 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, Anderson consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers and failed to give prior written notice to, and obtain prior written authorization from, his member firm to engage in such activities.

Furthermore, the NASD determined that at the time Anderson recommended the opening transactions in the options contracts to the public customers, he did not have reasonable basis for believing that the options transactions were suitable for the customers based on the information disclosed to him concerning the customers' investment objectives, financial situations, and needs.

The NASD also determined that Anderson failed to respond to NASD requests for information.

Willie Lee Wyatt (Representative, Gary, Indiana) was fined $101,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wyatt consented to the described sanctions and to the entry of findings that he failed to maintain the firm's minimum required net capital, and/or sale of options contracts to public customers without having a reasonable basis for believing that the options transactions were suitable for the customers based on the information disclosed to him concerning the customers' investment objectives, financial situations, and needs.

The NASD also determined that Wyatt failed to respond to NASD requests for information.

Rosario O. Caldarazano (Associated Person, Westchester, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Caldarazano consented to the described sanctions and to the entry of findings that he failed to maintain the firm's minimum required net capital, and/or sale of options contracts to public customers without having a reasonable basis for believing that the options transactions were suitable for the customers based on the information disclosed to him concerning the customers' investment objectives, financial situations, and needs.

The NASD also determined that Caldarazano failed to respond to NASD requests for information.

Lawrence C. Schmelzer (Principal, Shaker Heights, 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 15 business days. Without admitting or denying the allegations, Schmelzer consented to the described sanctions and to the entry of findings that he acted as a general securities principal, without being registered as such. The NASD also stated that Schmelzer failed to respond to NASD requests for information.

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

June Actions

None

July Actions

Dwain P. Fugate (Representative, Erie, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay restitution to customers. Without admitting or denying the allegations, Fugate consented to the described sanctions and to the entry of findings that he failed to maintain the firm's minimum required net capital, and/or sale of options contracts to public customers without having a reasonable basis for believing that the options transactions were suitable for the customers based on the information disclosed to him concerning the customers' investment objectives, financial situations, and needs.

The NASD also determined that Fugate failed to respond to NASD requests for information.

Donald L. Gilberg (Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Gilberg consented to the described sanctions and to the entry of findings that he failed to maintain the signature of public customers on a life insurance enrollment form, a consent and disclosure letter, and a withdrawal authorization form without the customers' knowledge or consent and submitted the forms to his member firm as if the signatures were genuine.

Roderick L. Lee (Representative, Lynchburg, Virginia) submitted an Offer of Settlement pursuant to which he was fined $2,500, suspended from association with any NASD member in any capacity for three months, and required to pay $10,000 in restitution to customers. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he failed to maintain the signature of public customers on a life insurance enrollment form, a consent and disclosure letter, and a withdrawal authorization form without the customers' knowledge or consent and submitted the forms to his member firm as if the signatures were genuine.

Pusha M. Mrauci (Representative, Newark, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mrauci consented to the described sanctions and to the entry of findings that he failed to maintain the signature of public customers on a life insurance enrollment form, a consent and disclosure letter, and a withdrawal authorization form without the customers' knowledge or consent and submitted the forms to his member firm as if the signatures were genuine.

Stephen M. Phelps, Sr. (Representative, Rustburg, Virginia) submitted an Offer of Settlement pursuant to which he was fined $10,000, barred from association with any NASD member in any capacity, and required to pay $45,000 in restitution to customers. Without admitting or denying the allegations, Phelps consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about his termination from a member firm.

David A. Roth (Representative, CenterLine, Virginia) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roth consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

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falsetti account statements of public customers by reflecting corrections that had not occurred.

Michael P. Tchou (Registered Representative, North Potomac, Maryland) submitted an Offer of Settlement pursuant to which he was fined $3,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tchou consented to the described sanctions and to the entry of findings that he withdrew $650 from a cash drawer under his control and paid it to an employee at a bank and converted the funds for his own use.

August Actions

Carl A. Murhavy (Registered Representative, Pittsburgh, Pennsylvania) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Murhavy had no valid reason to receive $1,700 from a public customer for investment purposes, but instead, retained the funds for his own use and converted them to his own use. Murhavy also failed to respond to NASD requests for information.

Eric J. Snee (Registered Representative, Dayton, New Jersey) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Snee failed to respond to NASD requests for information.

June Actions

Roland A. Accevedo (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined $75,000 and suspended from association with any NASD member in any capacity for 60 days, and required to repay by exam. Without admitting or denying the allegations, Accevedo consented to the described sanctions and to the entry of findings that he functioned as a general securities representative without being registered with the NASD. According to the findings, Accevedo failed to pass the required exam and solicited and opened new accounts, executed securities transactions for public customers, and generated about $35,000 in commissions.

Ray Ageloff (Registered Representative, Staten Island, New York) 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 five business days. Without admitting or denying the allegations, Ageloff consented to the described sanctions and to the entry of findings that, in contravention of the NASD Board of Governors Free-Riding and Withholding Investigation, Ageloff failed to make a bona fide public distribution of common stock in that he effected the sale of units to a restricted account.

Keith L. Delano (Registered Representative, New York, New York) was fined $15,000, suspended from association with any NASD member in any capacity for five days, and required to repay by exam in all capacities. The United States Court of Appeals for the Second Circuit affirmed the sanctions following a June 1995 SEC decision. The sanctions were based on findings that Delano caused securities transactions to be effected in the names of public customers without their knowledge, authorization, or consent.

John James Garahan (Registered Representative, Toms River, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Garahan consented to the described sanctions and to the entry of findings that, by using his position at the securities operations division of a bank, he caused checks totaling $14,927.19 to be issued to his brother-in-law and caused an entry to be made in the bank's accounts receivable to offset the checks. The findings also stated that Garahan failed to respond to NASD requests for information.

Bernard Pace (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $31,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pace consented to the described sanctions and to the entry of findings that he prepared and submitted to his member firm false communications. Inadлежа

Inga Marie Welzlit (Registered Principal, Westbury, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $100,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Welzlit consented to the described sanctions and to the entry of findings that she wrote two checks totaling $18,100 that were drawn against the accounts of public customers and, thereby, credited the accounts by debiting funds from another customer's account. The findings also stated that Welzlit executed unauthorized transactions in public customer's accounts.

Walter Duerchhalter (Registered Principal, Middle Village, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and required to qualify for Series 4 registration. Without admitting or denying the allegations, Duerchhalter consented to the described sanctions and to the entry of findings that he served in a capacity which required a Series 24 registration for all his transactions with customers. The findings also stated that Duerchhalter failed to qualify for Series 24 registration by exam.

Salvatore Lauria (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and required to qualify for Series 24 registration. Without admitting or denying the allegations, Lauria consented to the described sanctions and to the entry of findings that he failed to qualify for Series 24 registration by exam.

July Actions

Starron Oakmont, Inc. (Lake Success, New York) was fined $20,000 and ordered to submit to the NASD, and thereafter utilize in its settlement agreements, a form of Offer of Settlement containing non-disparagement and confidentiality classes, if any, acceptable to the NASD. The firm also is required, upon request by the NASD in connection with the NASD's investigative duties, to identify customers that should be released from settlement agreements that impose conditions on a customer's ability to provide information to the NASD. The firm failed to follow the sanctions.

The sanctions imposed the NASD following a June 1995 SEC decision. The sanctions were based on findings that the firm prepared, utilized, and executed agreements when settling customer complaints that preclude, restrict, or condition customers' ability to cooperate with the NASD in connection with its investigation of customer complaints. The firm also failed to release a public customer from the restrictive provisions of a settlement agreement that precluded, restricted, or conditioned the customer from cooperating in an NASD investigation. This action had been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Craig Irwin Deitchman (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Deitchman failed to appear at the NASD for on-the-record interviews about his activities and affiliations with an unregistered broker-dealer.

Wayne Thomas Drinnkeine (Registered Representative, Eastport, New York) was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $41,254.22 in investor complaint. The sanctions were based on findings that Drinnkeine received from a public customer checks totaling $43,654.22 for investment purposes, failed to deposit the funds in the customer's account, endorsed the checks and converted the funds for his personal use. Drinnkeine also failed to appear at the NASD for on-the-record interviews about his termination from a member firm.

Christopher Frederick Fallon (Registered Representative, Bridgeport, Connecticut) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fallon failed to appear at the NASD for on-the-record interviews about a customer complaint.

Gene Todd (Registered Representative, Chula Vista, California) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Todd failed to appear at the NASD for on-the-record interviews.

Juan Bautista Torres (Registered Representative, Bronx, New York) was fined $25,091.65 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Torres collected from policyholders $91,65 for premium payments, failed to establish his names in his policyholders' accounts and, instead, converted the funds for his own use. Torres also failed to respond to NASD requests for information.

Andrew V. Yellos (Registered Representative, Brooklyn, New York) was fined $58,500, barred from association with any NASD member in any capacity, and ordered to pay $7,764 in restitution to a member firm. The sanctions were based on findings that Yellos submitted to his member firm 31 insurance policies' accounts that were for fictitious persons or for persons who did not reside or work at the addresses listed on the application, and checks which were all dishonored by the bank. The sanctions were based on the firm's failure to check on the facts of his member firm's books and records reflect purchase and sales transactions in the fictitious accounts. In a scheme to unjustly enrich family-related accounts and himself, Yellos bought a common stock from a customer account at his member firm and sold it to the family-related accounts at prices that were at or below the market. He also caused the same stock to be purchased from the family-related accounts at prices that were at or above the market and sold the stock to either his member firm's trading account or to other buyers, resulting in an increase of $55,000 for the family-related accounts. Yellos instructed his member firm's clearing firm to issue checks to the family-related accounts and have them processed through Yellos' firm, ostensibly for redemption to the proper party. Whenever Yellos needed money, he endorsed some of the checks by signing the payee's names and negotiated the checks through third parties such that he received the proceeds and ultimately the benefits of the checks for his own use without notifying his member firm of his interest in the accounts. Furthermore, Yellos interposed the family-related accounts between the customer account and his member firm and the best available market and failed to time stamp order tickets. Amiel also failed to note on order tickets his checking activity with other dealers for the best available price and the purchase of shares of common stocks in the account of a public customer without the customer's prior knowledge or approval, resulting in a loss of $4,750 when the positions were liquidated in the account.

A.R. Baron & Co., Inc. (New York, New York) and John M. McAndris (Registered Principal, Montvale, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $30,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McAndris, conducted business while failing to maintain its minimum required net capital.

National Association of Securities Dealers, Inc.
James A. Edgar, Jr. (Registered Principal, Paughquag, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Edgar consented to the described sanctions and to the entry of findings that he caused a series of trade corrections to be effected for customer discretionary accounts by removing shares of profitable securities from customer accounts and causing the shares to be transferred to one or more of his personal accounts, resulting in unreported potential profits of $33,800, at the expense of the customers.

Robert James Laws (Registered Representative, West Hempstead, New York) was fined $50,000, suspended from association with any NASD member in any capacity for 90 days, required to disgorged $10,957.18 in commissions, and ordered to reconcile by exam. The sanctions were based on findings that Laws functioned as a registered representative without being properly registered with the NASD. Laws also solicited and opened new accounts, executed securities transactions on behalf of public customers, generated commissions totaling $73,000, and took steps to conceal his misconduct from regulatory authorities.

Joshua Mondschein (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000. Without admitting or denying the allegations, Mondschein consented to the described sanctions and to the entry of findings that he directed an employee to sign a public customer’s name to a reimbursement application for a term life insurance policy without the knowledge or consent of the customer.

John Pantelis (Registered Representative, Valley Stream, New York) was fined $20,000, barred from association with any NASD member in any capacity, and required to pay $54,463 in restitution to a member firm. The sanctions were based on findings that Pantelis executed options transactions in the account of a public customer without the customer’s knowledge or consent. Pantelis also failed to respond to NASD requests for information.

Nolan Securities Corporation (Salisbury, Connecticut), Terrence M. Nolan (Registered Principal, Southampton, New York), and Anthony P. Hoag (Registered Principal, Lakeville, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $22,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they forged an insurance agent’s signature on five life insurance commission checks made payable to the agent, co-signed each, and deposited them into an account wherein he withheld and misappropriated for his own use and benefit proceeds totaling $1,409.69.

July Actions

Nolan Securities Corporation (Salisbury, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Collins failed to respond to NASD requests for information about her former employer.

Michael Sand Doud (Registered Representative, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Doud consented to the described sanctions and to the entry of findings that he misused customer funds totaling $10,000 intended for investment in a mutual fund.

Richard R. Cottam (Registered Representative, Dracut, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $3,000, suspended from association with any NASD member in any capacity for 30 days, and required to equalize by exam. Without admitting or denying the allegations, Cottam consented to the censured sanctions and to the entry of findings that he failed to equalize by exam.

June Actions

Louis A. Beckerman (Registered Representative, Newton, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Beckerman consented to the described sanctions and to the entry of findings that he converted for his own use and benefit funds totaling $39,183 that were intended for investment in certificates of deposit.

Carl W. Goings (Registered Representative, Springfield, Vermont) 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, Goings consented to the described sanctions and to the entry of findings that he misappropriated for his own use and benefit insurance customer funds totaling $720.30.

Joseph G. Hartford (Registered Representative, Louisville, New York) submitted an Offer of Settlement pursuant to which he was fined $30,000, barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hartford consented to the described sanctions and to the entry of findings that he improperly used customer funds totaling $2,465.56 for his own use and benefit. The findings also stated that Hartford failed to respond to NASD requests for information.

Joseph K. Norton (Registered Representative, Wrentham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $3,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Norton consented to the described sanctions and to the entry of findings that he forged an insurance agent’s signature on five life insurance commission checks made payable to the agent, co-signed each, and deposited them into an account wherein he withheld and misappropriated for his own use and benefit proceeds totaling $1,409.69.

July Actions

Cathleen O’Neill Collins (Registered Representative, Omaha, Nebraska) was fined $30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Collins failed to respond to NASD requests for information about her former employer.

August Actions

Market Surveillance Committee

June Actions

None

July Actions

Daniel Murriss Kantrowitz (Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member in any capacity for 120 days, ordered to pay $3,625 in restitution to a member firm, and required to equalize by taking the Series 7 exam. Without admitting or denying the allegations, Kantrowitz consented to the described sanctions and to the entry of findings that he engaged in manipulative, deceptive, and fraudulent conduct in trading a common stock. According to the findings, Kantrowitz, as a means of compensating a customer, arranged to sell 20,000 shares of the stock to the customer at the then current bid price of 38, which he then repurchased from the customer at 38.

August Actions

John Edward Shryack (Registered Principal, Dallas, Texas) was fined $10,000, suspended from association with any NASD member in any capacity for five business days, and required to equalize by exam as a general securities representative. The sanctions were based on findings that Shryack made negligent misrepresentations and omissions of material fact to retail customers to induce them to place purchase orders and contract to investment decisions.
NASD Regulation Establishes Toll-Free Number To Report Anti-Competitive Market-Maker Behavior

NASD Regulation, Inc., has established a dedicated toll-free telephone number in furtherance of its efforts to investigate and discipline market makers who:

- harass other market makers for narrowing the displayed quotations in The Nasdaq Stock Market;
- harass other market makers for quoting in size not greater than the minimum quantities of securities they are required to trade under NASD Rules; or
- otherwise engage in anti-competitive conduct.

Any information concerning the above-described harassment, coordination between or among market makers of quotes, trades and trade reports, or concerted discrimination and concerted refusals to deal by market makers should be brought to the attention of the Market Regulation Department by calling (800) 208-2098.

NASD Regulation Establishes Toll-Free Number To Provide For Resolution Of Backing-Away Complaints On A Real-Time Basis

NASD Regulation, Inc., also has established a system to permit the resolution of backing-away complaints on a real-time basis. If a member firm believes a market maker has failed to honor its quotations, it should contact the Market Regulation Department within five minutes of the suspected backing-away incident. A procedure has been created to address complaints immediately during the trading day so that valid complaints may be satisfied with a contemporaneous trade execution. Any potential backing-away complaint should be brought to the attention of the Market Regulation Department by calling (800) 925-8156. NASD Regulation also will continue to accept and investigate backing-away complaints received off-line.

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If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Susan Lang, Senior Writer/Editor, NASD Regulatory & Compliance Alert, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-6999.

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