

ALERT

National Association of Securities Dealers, Inc.

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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)

CONTENTS

<p>1 Cover Stories NASD Regulation Announces Internet Site NASD Regulation Clarifies Members' Suitability Responsibilities</p> <p>3 Regulation Ongoing Responsibilities When Customers' Investment Objectives Or Financial Circumstances Change NASD Sales Practice Rules Apply To Government Securities Transactions Compliance Questions & Answers All FINOPs Are Subject To NASD Rule 1022(b) Compliance Short Takes</p>	<p>SEC Adopts Order Execution Rules</p> <p>7 Municipal Securities Regulatory Roundup MSRB Rule Filings MSRB Reminder</p> <p>9 Advertising Ask the Analyst Blended Fund Family Performance Concerns NASD Regulation Guide To Locating Advertising And Sales Literature Rules</p> <p>12 Corporate Financing Members Reminded To Complete Firm-Commitment Underwritings</p>	<p>13 Corporate News New NASD Chairman Heads Search Committee To Find Successor For NASD President And CEO NASD Establishes Individual Investor Office NASD Creates Ombudsman Office</p> <p>15 Rules NASD Rule Filing Status</p> <p>16 NASD Disciplinary Actions</p> <p>24 NASD Regulation Toll-Free Numbers</p>
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(Suitability, from page 1)

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.

Supervisors and registered representatives are reminded that a material change in a customer's investment objective or financial circumstances must be properly documented and requires that a new suitability determination be made in light of any changes. In this regard, members are encouraged to undertake a periodic review of customer accounts and, where necessary, update suitability information. Member firms are advised to create and maintain appropriate documentation demonstrating the actions taken in compliance with these responsibilities.

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 3010 (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 currently is reviewing them to determine whether changes are necessary. However, members should note that, if 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 Pilcher, 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.

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) per-

form? 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 prin-

cipals (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-

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 responsibil-

ity 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.

NASD 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. Gevanyahu, 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. □

NASD 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 work force 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 spe-

cial "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. □

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 solic-

itations 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. □

(Internet Site, from page 1)

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.nasdr.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. □

NASD Regulation jumps on the information superhighway, come visit us.

<http://www.nasdr.com>



“ASK THE ANALYST”

“Ask The Analyst” provides member firms a forum to pose questions regarding communications with the public. Not all questions are answered in this publication. We respond to some questions by contacting the member directly. If members have any questions or comments, 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 advertisement or video presentation?

A. NASD Rules do not specify a time limit or method of communicating disclosure. Members must ensure their communications present material information (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 information displayed on screen, the type is easily 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 disclosures 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 advertisements for money market mutual funds contain prominent disclosures regarding their lack of guarantees and risks.

Q. When must communications with the public include an explanation of the special 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 commensurate 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 section in the prospectus for details regarding this strategy. In contrast, a longer discussion of the merits of international, as opposed to domestic, markets requires further and more specific disclosure in the communication itself. For example, in addition to a reference to the prospectus for information on international risk, such a communication must identify specific risks such as currency 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 investments in overseas emerging markets must reflect a higher degree of risk disclosure 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 relevant 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 conditions. Depending on the emphasis given to the comparison, you may need to include this information in the main body of the text rather than a footnote.

Depending on the subjects of the comparison, further material differences between the products may need to be explained.

For example, if you compare a stock mutual fund to 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.

NASD 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 defin-

ing 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. □

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)

Approval, Filing Requirements And Standards For Options-Related Communications With The Public

- Rule 2220 of the NASD Rules (formerly Article III, Section 35A of the RFP)
- NASD Manual (page 4207)

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. □

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.
- **Robert R. Glauber**, adjunct lecturer at the Center for Business and Government of the Kennedy School, Harvard University in Cambridge, Massachusetts, and former Under Secretary of the U.S. Treasury for Finance in the Bush Administration.
- **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-increas-

ing 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

96-34—Amend Rule 10335 (formerly Section 47) of the *Code of Arbitration Procedure* to clarify that parties are required to expedite any proceeding where a court has issued temporary injunctive relief and that failure to expedite a proceeding under the Rule will constitute a failure to arbitrate in violation of NASD Rules.

96-32—Amend Rule IM-8310-2 (formerly Article V, Section 1 of the Rules of Fair Practice) to permit the Association to provide a copy of any disciplinary complaint or decision upon request and require that such

copy be accompanied by a disclosure statement in certain circumstances.

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 (7/24/96); 61 FR 39686 (7/30/96).

95-63—Amend the Rules of Fair Practice to adopt a new section to reg-

ulate the conduct of a broker/dealer on the premises of a financial institution. Published for comment in Rel. No. 34-369890 (3/15/96); 61 FR 11913 (3/22/96).

95-61—Amend Rules 2830 and 2820 (formerly Article III, Sections 26 and 29 of the Rules of Fair Practice) to regulate the receipt by members and their associated persons of cash and non-cash compensation for the sale of investment company and variable contract securities. Published for comment by the SEC in Rel. No. 34-37374 (6/26/96); 61 FR 35822 (7/8/96). Comment period extended by the SEC in Rel. No. 34-37528 (8/5/96); 61 FR 41816 (8/12/96).

95-40—Amend Rule 5300, The PORTAL Market, (formerly Schedule I to the By-Laws) to adopt a pilot program for reporting transactions in PORTAL securities. Published for comment by the SEC in Rel. No. 34-37317 (6/17/96); 61 FR 33156 (6/26/96).



Rule Filings Recently Approved By The SEC

96-29—Permanent approval requested for the Plan of Allocation and Delegation setting forth the purpose,

function, governance, procedures and responsibilities of the NASD, NASD Regulation, and Nasdaq. Temporary accelerated approval granted by the SEC 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 5 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 (formerly 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).

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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 persons to actionable behavior and the penalties that may result.

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

June Actions

None

July Actions

Robert Martin Dickerson (Registered Representative, San Francisco, California) was fined \$20,000, suspended from association with any NASD member in any capacity for 90 days, and ordered to requalify by exam in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that 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 Hipps (Registered Representative, Pacifica, California) submitted an Offer of Settlement pursuant to which he was fined \$45,000. Without admitting or denying the allegations, Hipps consented to the described sanction 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 Phillip Hanadel (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 Hanadel failed to pay a \$61,720.57 NASD arbitration award.

Roger James Molloy (Registered Principal, San Jose, California) was fined \$302,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Molloy received \$132,173.97 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 Hwy Shin (Registered Representative, Sunnyvale, California) was fined \$20,000 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 Wiwi (Registered Representative, Moraga, California) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wiwi 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.

June Actions

Michael Dzurko (Registered Representative, Howard Beach, New York), Peter David Ragofsky (Registered Principal, Brooklyn, New York), and Jay Nance (Registered Principal, Las Vegas, Nevada) submitted Offers of Settlement pursuant to which Dzurko was fined \$5,668.40 and suspended from recommending any penny stock transactions for two years. Ragofsky was fined \$3,125.71 and suspended from recommending any penny stock transactions for two years. Nance was fined \$5,000 and suspended from association with any NASD member as a general securities principal for 15 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Dzurko and Ragofsky effected \$50,982 in penny stock transactions for public customers in contravention of Section 15g 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 improperly relying on the non-recommended transaction exemption. 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 (Registered Representative, Los Angeles, California) and Graham A. Rowe (Registered Principal, Los Angeles, California) submitted Offers of Settlement pursuant to which Fink was suspended from association with any NASD member in any capacity for 60 days and ordered to requalify by exam as a general securities representative. Rowe was fined \$5,000, jointly and severally with a member firm, suspended from association with any NASD member as a general securities principal for 15 days, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Fink engaged in numerous purchase and sales transactions in various securities for the account of a public customer that were excessive in size or frequency in view of the financial resources and character of the account. The NASD found that Rowe failed to establish or follow adequate procedures reasonably designed to carry out the supervision of Fink to ensure compliance with applicable rules and failed to respond when confronted with various situations that indicated that the recommendations by Fink were unsuitable. The findings also stated that Rowe failed to approve promptly in writing each discretionary order entered in the discretionary account or to review such account at frequent intervals to detect and prevent the transactions.

Richard Francis Norris (Registered 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 days, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Norris consented to the described sanctions and to the entry of findings that he failed to supervise the activities of an individual to assure compliance with the rules and failed to respond adequately to red flags when reviewing order tickets and monthly account statements that revealed unsuitable trading activity.

Sergio Silver (Registered Representative, Culver City, California) was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$32,000 in restitution to a customer. The sanctions were based on findings that Silver received from a public customer five checks totaling \$32,000 for investment purposes, cashed the checks, and converted the funds. Silver also failed to respond to NASD requests for information.

July Actions

Jason Brian Barshop (Registered Representative, Malibu, California) was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution to customers. The sanctions were based on findings that Barshop participated in a private securities transaction and failed to provide prior written notification to his member firm. Barshop also failed to respond to NASD requests for information.

Robert A. Grunburg (Registered 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 requalify by exam as a principal. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Grunburg approved newspaper advertisements that contained misleading or exaggerated statements about the ranking of mutual funds and failed to file the advertisements with the NASD within 10 days of the first use of the advertisements as required. Furthermore, Grunburg entered into a special sales concession arrangement with another member firm relating to the sale of mutual funds on an oral basis with no written agreement executed and without disclosing this fact in the funds' prospectuses. Grunburg also failed to establish and maintain adequate written supervisory procedures.

Grunburg has appealed this action to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal.

Atiq Ur Rahman (Associated Person, Pasadena, California) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rahman participated in private securities transactions while failing to provide prompt written notification to his member firm before participating in such transactions. Rahman also failed to respond to NASD requests for information.

James Arthur Revels (Registered Representative, San Diego, California) submitted an Offer of Settlement pursuant to which he was fined \$4,672.50 and suspended from recommending any transactions in penny stock for two years. Without admitting or denying the allegations, Revels consented to the described sanctions and to the entry of findings that he effected \$12,705 in penny stock transactions for public customers in contravention of Section 15g of the Exchange Act.

Kevin Marshall Sylvia (Associated Person, San Luis Obispo, California) was fined \$32,500, barred from association with any NASD member in any capacity, and ordered to pay \$2,500 in restitution to a customer. The sanctions were based on findings that Sylvia received from a public customer \$2,500 for the purchase of stock, failed to purchase the stock and, instead, cashed the check and converted the funds. To conceal the conversion, Sylvia fabricated a customer confirmation statement that falsely represented the stock had been purchased for the customer when, in fact, the shares had not been purchased for the customer and no such account existed. Sylvia also failed to respond to NASD requests for information.

Erik Wilhelm Wachtmeister (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Wachtmeister consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide prompt, written notification to his member firm of his participation in such activities.

August Actions

William K. Cantrell (Registered Principal, Los Angeles, California) was fined \$2,500, suspended from association with any NASD member as a financial and operations principal for 10 days, and ordered to requalify by exam as a financial and operations principal. The NBCC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Cantrell permitted his member firm to effect securities transactions while failing to maintain the minimum required net capital.

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

Scott L. Lencz (Registered Representative, Studio City, California) was fined \$20,027. The NBCC imposed the sanction following appeal of a Los Angeles DBCC decision. The sanction was based on findings that Lencz engaged in the securities business without being registered with the NASD in any capacity, introduced customers to his member firm, and received compensation from the firm for such activities.

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

June Actions

Schneider Securities Inc. (Denver, Colorado) submitted an Offer of Settlement pursuant to which the firm was fined \$12,500, jointly and severally with two individuals. Without admitting or denying the allegations, the firm consented to the described sanction 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 (Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and ordered to be subject to the requirement that should he wish to offer to sell any qualifying security, such offer to sell or sale 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 SEC Rule 15c2-4 until the earlier of the effective date of the issuer's registration as a broker/dealer or the date upon which the offering documents provide for the return of investor funds if broker/dealer registration has not occurred. Without admitting or denying the allegations, Sogard consented to the described sanctions and to the entry of findings that he offered and sold securities pursuant to three offering memoranda that contained material misrepresentations and omissions.

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 sanction and to the entry of findings that it failed to enforce its written supervisory procedures with respect to the issuance of a signature guarantee stamp and otherwise failed to supervise adequately the activities and registration of a registered representative to detect and prevent the improper use of customer funds by the representative. The firm also failed to maintain adequate supervisory procedures addressing the supervision of outside business activities of its associated persons.

W.B. McKee Securities, Inc. (Phoenix, Arizona) was fined \$20,000. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and failed to file a FOCUS Part 1 report revealing the deficiency. The firm also failed to maintain accurate books and records.

David Bahr (Registered Representative, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$174,000 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 solicited and entered 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 (Associated Person, Aurora, Colorado) 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 60 days. Without admitting or denying the allegations, Battista con-

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 submitted 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 \$90,000 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 \$10,000, suspended from association with any NASD member in any capacity for five business days, required to disgorge \$12,000 to the NASD, and required to requalify by exam as a general securities sales representative. Without admitting or denying the allegations, 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 his member firm without providing prompt written notice to the 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, Yacolt, Washington) submitted an Offer of Settlement pursuant to which she was fined \$20,000 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 failed to respond to NASD requests for information about her termination from a member firm.

Donald K. Railsback (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, Railsback 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 management and 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, Los Lunas, New Mexico) 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 must pay \$792,000 in restitution to four entities. Without admitting or denying the allegations, Stonebanks consented to the described sanctions and to the entry of findings that she obtained \$792,000 from four entities 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 of the Exchange Act.

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 \$60,251.82, 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 with the right to reapply after two years in any representative capacity and in any principal capacity after five years. Without admitting or denying the allegations, Zakian consented to the described sanctions and to the entry of findings that while taking the Series 24 exam, he used unauthorized exam materials.

Michael J. Dormanen (Registered Principal, Tucson, Arizona) was fined \$15,000, ordered to disgorge \$4,478.08 to the NASD, and ordered to pay \$2,076.45 in restitution to a customer. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Dormanen recommended the purchase of securities on margin to a customer without having reasonable grounds for believing that the recommendations were suitable for the customer.

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

Craig F. Edelman (Registered Representative, Littleton, Colorado) was fined \$20,000 and required to disgorge \$1,837 to the NASD. The sanctions were based on findings that Edelman caused transactions to be effected in the account of a public customer and received commissions for these transactions prior to his effective registration with the NASD. Edelman also failed to disclose a felony conviction on his Form U-4.

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 sanction 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. Whitener (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, Whitener consented to the described sanction and to the entry of findings that he effected unauthorized transactions for the account of a public customer.

August Actions

Chatfield 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 as a financial and operations principal for 10 business days and required to requalify 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 the firm, acting through 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 to become associated with an NASD member after 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 offered securities subject to SEC Rule 10b-9 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 fully and timely respond to NASD requests for information about his termination from a member firm.

Ronald H.V. Justiss (Registered Representative, Denver, Colorado) was barred from association with any NASD member in any capacity. The SEC affirmed the sanction following appeal of a May 1995 NBCC decision. The sanction was based on findings that while taking the Series 65 exam Justiss was observed reviewing unauthorized materials that contained information relating to the exam.

James C. Placet (Registered Representative, Paradise Valley, Arizona) was fined \$15,000 and barred from association with any NASD member in any capacity with a right to reapply after one year. The sanctions were based on findings that Placet misused customer funds totaling \$35,000 by using for his own benefit the proceeds of a check drawn on the customer's bank account that was made payable to his member firm.

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

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 withdrew funds from a limited partnership offering, used \$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 construction loan and various personal and business obligations without the knowledge or consent of the limited partners.

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. 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.

William Douglas Stirrat (Registered Representative, Creve Coeur, Missouri) 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, Stirrat consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling \$52,039.01 to pay life insurance policy premiums. The NASD determined that Stirrat did not apply the funds as instructed and instead, deposited the checks into his personal or business bank accounts and used some of the customer's funds for personal expenses.

August Actions

None

District 5—Alabama, Arkansas, Kentucky, Louisiana,

June Actions

Jesse M. Chase, Jr. (Registered Representative, Jackson, Mississippi) was fined \$13,000 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 customer's account, without having reasonable grounds for believing that the trading was suitable, given the customer's financial situation, investment objectives, and needs. Chase also exercised discretion in a public customer's account without having obtained 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 misstated 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 unwarranted 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 \$100,000, barred 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, endorsed the checks, and deposited them into his personal bank account, thereby converting the funds for his own use and benefit.

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 from four individuals \$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 their 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 entity to his member firm.

John C. Peterson, Jr. (Registered Principal, North Little Rock, Arkansas) and William S. Loye (Registered Principal, Hot Springs, Arkansas) submitted an Offer of Settlement pursuant to which Peterson was barred from association with any NASD member in any capacity and Loye was fined \$25,000 and suspended from association with any NASD member in any capacity for three years. The fine will be reduced by any amount that Loye can demonstrate that he pays in satisfaction of an arbitration award. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that in connection with a scheme involving the sale of a \$4 million debenture collateralized by an unencumbered bond, Peterson and Loye made, or caused to be made, untrue statements concerning material facts and/or omitted material facts. The findings also stated that Peterson and Loye failed to pay a \$400,000 joint and several NASD arbitration award.

Robert L. Prescott (Registered Principal, Montgomery, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Prescott consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice and approval from his member firm. The NASD also found that Prescott failed to inform his member firm in writing of certain outside business activities.

Bryan A. Thomas (Associated Person, New Orleans, Louisiana) submitted an Offer of Settlement pursuant to

which he was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he submitted to the NASD false and inaccurate FOCUS Part I and IIA reports that falsely indicated that his member firm was not conducting business and falsely represented the status of his member firm's annual audit. The findings also stated that Thomas failed to respond to NASD requests for information.

July Actions

BOSC, Inc. (Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it allowed eight individuals to maintain their representative registrations with the firm when they were not actively engaged in the securities business of the firm.

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 executed unauthorized transactions in the account of a public customer 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 \$110,000, 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 from public customers a \$22,955.10 check for a new individual retirement account. The NASD determined that Earle failed to establish the account and, instead, deposited the check into an account that he controlled, thereby converting the funds for his own use and benefit without the customers' knowledge or consent. The findings also stated that Earle prepared and provided to public customers a false account statement 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 a \$1,263 check representing insurance premiums, failed to submit the full amount to his member firm and, instead, converted \$785.75 of the funds for his own use and benefit without the customers' knowledge or consent. The findings also stated that Meyer submitted a completed insurance application to his member firm on a public customer's behalf and signed the customer's name to the application without the knowledge or consent of the customer. The NASD also found that Meyer failed to respond to NASD requests for information.

August Actions

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 customers' knowledge or consent. Brashier also generated 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 pay a \$36,874 NYSE arbitration award.

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 sanction and to the entry of findings that it failed to file Municipal Securities Rulemaking Board (MSRB) Form G-37 within 30 days after the end of the quarter and filed an inaccurate Form G-37. The findings also stated that the firm allowed an individual to act as a municipal securities principal without being registered as such with the NASD.

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 them with 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 \$18,000 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 executed unauthorized purchase and sale transactions in the accounts of public customers without the customers' knowledge or consent and without having obtained a written third-party authorization allowing a customer's son to direct trades. The NASD also found that Ponder exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Michael C. Sealey (Registered Representative, Baton Rouge, Louisiana) was fined \$220,000, 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 the customers' knowledge or consent and prepared and distributed at least 16 false customer account statements in an effort to conceal the conversion of funds. Sealey also removed a confirmation statement from the mailbox of a public customer and falsified the books and records of his member firm by providing the firm with a fictitious mailing address for a public customer. In addition, Sealey engaged in an unauthorized sale of stock in the account of a public customer and failed to respond to NASD requests for information.

District 6—Texas

June Actions

None

July Actions

George E. Dullnig and Co. (San Antonio, Texas) and George R. Dullnig (Registered Principal, San Antonio, Texas) submitted an Offer of Settlement pursuant to which they were fined \$25,000, jointly and severally. Dullnig also was suspended from association with any NASD member as a general securities principal for 30 business days and required to qualify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions

and to the entry of findings that the firm, acting through Dullnig, failed to disclose on customer confirmations the amount of remuneration it received concerning the sale of securities. The NASD also found that the firm, acting through Dullnig, failed to establish and maintain a system to supervise 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, Pruitt & Sylvester, Inc. (Houston, Texas), Charles Weldon Taylor, Jr. (Registered Principal, Houston, Texas), Alvin Pruitt, Jr. (Registered Principal, Houston, Texas), and Jerry Moore Hill (Registered Principal, Dallas, Texas) submitted a Letter 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 sanction and to the entry of findings that the firm, acting through Taylor, Pruitt, 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 week, and required to requalify by exam. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that he executed 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 recommended the purchase of warrants to a public customer without having reasonable grounds to believe that the transaction was 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 effected the purchase of the warrants on margin in a customer's account without having been authorized to effect margin transactions and without a duly executed margin agreement. The NASD found that Wells effected 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 such recommendations were suitable for the customer in light of the nature of the options; the size and frequency of the transactions; and the customer's financial situation, needs, and investment objectives.

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 \$12,686.50 in restitution to customers, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he effected options transactions in the accounts of public customers without obtaining the appropriate documentation and the necessary account approval. The findings also stated that Wells effected unsuitable options transactions in these accounts.

August Actions

None

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

June Actions

Litwin Securities, Inc. (Miami Beach, Florida) and Harold A. Litwin (Registered Principal, Miami Beach, Florida) were fined \$25,000, jointly and severally, and Litwin was barred from association with any NASD member as a financial and operations principal. The NBCC

affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm, acting through Litwin, filed inaccurate FOCUS Part I and II reports and submitted false and misleading financial documents to the NASD. The firm, acting through Litwin, also failed to maintain current and accurate books and records and conducted a securities business while failing to maintain its minimum required net capital. The firm, acting through Litwin, failed to give notice of the capital deficiency to the SEC and the NASD.

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

July Actions

Gateway Financial Group, Inc. (Boca Raton, Florida), Lisa K. Paige (Registered Principal, Boca Raton, Florida), Joseph J. Giuliano (Registered Principal, Hallandale, Florida), and Howard A. Cass (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which the firm and Paige were fined \$10,000, jointly and severally. The firm was suspended from participating in the private placement of securities for one year and ordered to disgorge \$25,000 in commissions. Paige was suspended from association with any NASD member as a general securities principal for 30 days and ordered to requalify by exam as a general securities principal. Cass was fined \$5,000, suspended from association with any NASD member as a general securities principal for 30 days, suspended from association with any NASD member as a general securities sales representative for 15 days, ordered to requalify by exam as a general securities sales representative, and ordered to disgorge \$29,000 in commissions. Giuliano was fined \$5,000, suspended from association with any NASD member as a general securities principal for 15 days, suspended from association with any NASD member as a financial and operations principal for 10 days, and ordered to requalify by exam as a general securities principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Paige and Cass, participated in a best efforts, private placement offering in which the offering memorandum and subscription agreement contained material omissions and/or was materially false and misleading. The findings also stated that the firm, acting through Paige and Giuliano, failed to establish and promptly transmit customer subscription funds to a bank escrow account. The NASD found that the firm, acting through Paige and Giuliano, failed to terminate an offering and return investor funds when it did not receive the required minimum amount, when the offering period was extended, and when sales of half-units were made to investors. The NASD also determined that Paige and Giuliano failed to disclose the firm's participation in an offering when asked by the NASD staff.

Thomas N. Dawson, III (Registered Representative, Naples, Florida) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Dawson consented to the described sanction and to the entry of findings that he engaged in private securities transactions that were outside the regular course or scope of his employment with his member firm and failed to provide written notice to, or obtain approval from, his member firm.

David F. Sowers (Registered Representative, Coralville, Iowa) 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 \$130,000 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 N. Wolf (Registered Principal, New Vernon, New Jersey) submitted an Offer of Settlement pursuant to

which he was fined \$500,000 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 effected 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 \$20,000 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. Kautz (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 appeal of a July 1995 NBCC decision. The sanctions were based on findings that Kautz 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. Maikisch (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 Maikisch effected 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 signed a customer's name to an application to convert the customer's term life insurance policy to a whole life insurance policy. The findings also stated that Major signed the name of the same customer's wife to an application for whole life insurance without authorization.

Wayne C. Rasch (Registered Representative, Athens, Georgia) was fined \$20,000, barred from association with any NASD member in any capacity with the right to reapply after one year, and required to requalify by exam as 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 the 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 to become associated after one year. The sanctions were based on findings that Shelton failed to respond to NASD requests for information.

Bodo 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. Weber also effected unauthorized transactions in the account of a public customer.

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

June Actions

Leontina M. Cieply (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, Cieply consented to the described sanctions and to the entry of findings that she participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice to, and obtain prior written authorization from, her member firm to engage in such activities.

Sheldon Clifton (Registered 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 on a private basis 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 (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Salerno consented to the described sanctions and to the entry of findings that he sold and purchased securities for customer accounts without their knowledge or consent and without written or oral authorization to exercise discretion in the accounts.

Gerald James Stoiber (Registered Representative, Mokena, Illinois) was fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. However, the fine may be reduced by any amounts Stoiber pays in restitution to public customers. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Stoiber 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.

Stoiber has appealed this action to the SEC; the sanctions are not in effect pending consideration of the appeal.

Paul R. Tautvaisas (Registered 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, Tautvaisas consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer and failed to obtain written authorization from the customer and written acceptance of the discretionary authority by his member firm.

Phillip R. Cox (Registered 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 sanction and to the entry of findings that he offered and sold to 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 (Registered Principal, 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 sanction and to the entry of findings that the firm and Bressman failed to respond fully to NASD requests for information.

Madison Financial Group, Inc. (Chicago, Illinois) submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it 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 (Registered 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 Anderson recommended the purchase 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.

Furthermore, the NASD determined that at the time Anderson recommended the opening transactions in the options contracts to public customers, he did not have reasonable basis for believing that the customers had such knowledge and experience in financial matters that they could be reasonably expected to be capable of evaluating the risks of the recommended transactions, and be financially able to bear the risks of the recommended positions in the options contracts. The NASD also determined that Anderson failed to respond to NASD requests for information.

Willie Lee Wyatt (Registered Representative, Gary, Indiana) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wyatt received \$1,932.15 from a public customer with instructions to use the funds for variable insurance policies. Wyatt failed to follow said instructions and used the funds for a purpose other than the benefit of the customer.

August Actions

Rosario O. Caldarazzo (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, Caldarazzo consented to the described sanctions and to the entry of findings that he signed the names of public customers to insurance applications causing the cash values in their existing policies to be used for purchasing the new policies without the customers' knowledge or consent.

Chicago Partnership Board, Inc. (Chicago, Illinois) and **James R. Frith, Jr. (Registered Principal, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which the firm was fined \$27,500 and Frith was fined \$27,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Frith, effected the purchases and/or sales of limited partnership interests at prices that were not fair and reasonable under the circumstances.

Gerard E. Miller (Registered Representative, Waupaca, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$37,500, barred from association with any NASD member in any capacity, and required to pay \$7,500 in restitution to a customer. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he requested that his member firm issue a \$7,500 loan check to a public customer from the customer's insurance policy. The NASD found that Miller obtained and endorsed the check, deposited it in an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customer without the customer's knowledge or consent.

Craig Thomas Puff (Registered Representative, Warren, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Puff consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis and failed to give prior written notice to, and to obtain prior written authorization from, his member firm to engage in such activities.

Lawrence C. Schmelzer (Registered 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 or qualified. The findings 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 (Registered 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 received \$61,879 from public customers to be applied to the payment of insurance policy premiums. The NASD determined that Fugate converted the funds for his own use and benefit and then provided the policy holders with false statements showing that the funds had been applied to the payment of their policy premiums.

Donald L. Gilberg (Registered 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 placed 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.

Rodney I. Lee (Registered 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 an individual. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he borrowed \$10,000 from a public customer and misrepresented to the customer that he would repay the loan. The NASD found that Lee wrote two checks totaling \$10,225 and when the customer attempted to cash the checks, his bank would not honor them due to insufficient funds.

Pashko Mrnaci (Registered Principal, Yonkers, 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, Mrnaci consented to the described sanction and to the entry of findings that he took the Series 7 exam for another individual.

Stephen M. Phelps, Sr. (Registered Representative, Rustburg, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, 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 (Registered Representative, Centreville, 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

falsified 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 \$5,000 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 \$600 from a cash drawer under his control as an employee at a bank and converted the funds for his own use.

August Actions

Carl A. Marbury (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 Marbury received \$1,700 from a public customer for investment purposes, but instead, retained the funds for his own use and benefit. Marbury 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.

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

June Actions

Roland Acevedo (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$75,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam. Without admitting or denying the allegations, Acevedo 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, Acevedo failed to pass the required exam, solicited and opened new accounts, executed securities transactions for public customers, and generated about \$35,000 in commissions.

Roy 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 Interpretation, 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. DeSanto (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 requalify by exam in all capacities. The United States Court of Appeals for the Second Circuit affirmed the sanctions following appeal of a June 1995 SEC decision. The sanctions were based on findings that DeSanto caused securities transactions to be effected in the accounts of two 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 \$14,927.89 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 falsified life insurance applications.

Inga Marie Werlitz (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, Werlitz 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, thereafter, credited the accounts by debiting funds from another customer's account. The findings also stated that Werlitz executed unauthorized transactions in a public customer's accounts.

Walter Durchhalter (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 24 registration. Without admitting or denying the allegations, Durchhalter consented to the described sanctions and to the entry of findings that he served in a capacity which required a Series 24 registration, but 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

Stratton 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-disclosure and confidentiality clauses, 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 NBCC imposed the sanctions following appeal of a New York DBCC 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, and/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 Drinkwine (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 restitution to a customer. The sanctions were based on findings that Drinkwine received from a public customer checks totaling \$45,654.22 for investment purposes, failed to deposit the funds in the customer's account and, instead, endorsed the checks and converted the funds for his personal use. Drinkwine 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 deposit the funds in the policyholders' accounts and, instead, converted the funds for his own use. Torres also failed to respond to NASD requests for information.

Andrew V. Vellios (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 Vellios submitted to his member firm 31 insurance policy applications, 29 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 banks. Submission of the false applications and checks to his member firm caused Vellios to receive approximately \$7,764 in commissions to which he was not entitled. Vellios also failed to respond to NASD requests for information.

August Actions

Mayer A. Amsel (Registered Principal, Brooklyn, New York) was fined \$100,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1995 NBCC decision. The sanctions were based on findings that Amsel, as a part of a continuing scheme to conceal the true ownership of securities, caused seven fictitious accounts to be established at his member firm and prepared false purchase and sales memoranda, thereby having 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, Amsel bought 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 broker/dealers, resulting in an unjust profit in excess of \$55,000 for the family-related accounts. Amsel instructed his member firm's clearing firm to issue checks to the family-related accounts and have them delivered to him ostensibly for redelivery to the proper party. Whenever Amsel needed money, he endorsed some of the checks by signing the payees' names and negotiated the checks through third parties such that he received the proceeds and/or the benefits of the checks for his own use without notifying his member firm of his interest in the accounts. Furthermore, Amsel interpositioned the family-related accounts between the customer account and/or his member firm and the best available market and failed to time stamp order tickets. Amsel also failed to note on order tickets his checking with other dealers for the best available price and effected 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 J. McAndris (Registered Principal, Montvale, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through McAndris, conducted a securities business while failing to maintain its minimum required net capital.

James A. Edgar, Jr. (Registered Principal, Poughquag, 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 securities accounts, resulting in immediate 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 disgorge \$10,957.18 in commissions, and ordered to requalify 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 another employee to sign a public customer's name to a reinstatement 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.

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

June Actions

Louis A. Beekerman (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, Beekerman 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 mem-

ber 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. Hartshorne (Registered Representative, Loudonville, New York) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hartshorne 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 Hartshorne 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 \$7,500 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 his account wherein he withheld and misappropriated for his own use and benefit proceeds totaling \$1,409.69.

July Actions

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 sanction and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Nolan and Hoag, sold shares of stock that traded at a premium in the secondary market to restricted persons.

Cathi O'Neill Collins (Registered Representative, Omaha, Nebraska) was fined \$20,000 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 termination from a member firm.

Michael Sami Daoud (Registered Representative, Weston, 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, Daoud consented to the described sanctions and to the entry of findings that he misused customer funds totaling \$80,000 intended for investment in a mutual fund.

Richard R. Gorton (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 requalify by exam. Without admitting or denying the allegations, Gorton consented to the described sanctions and to the entry of findings that he signed a customer's name to life insurance checks totaling \$421.13, deposited the checks in his personal bank account, withdrew the funds, and placed the cash in an envelope in the customer's file.

Patrick A. Jalbert (Associated Person, Naugatuck, Connecticut) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jalbert withheld and misappropriated for his own use and benefit \$1,474 in customer funds representing property and premium payments, without the knowledge or consent of his member firm or the customers. Jalbert also failed to respond to NASD requests for information.

Mariusz Kazimierczyk (Registered Representative, Manchester, Massachusetts) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kazimierczyk misappropriated customer funds totaling \$10,000 for his own use and benefit.

Garry C. Loomis, Sr. (Associated Person, Lisbon, Connecticut) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Loomis made personal use of customer funds. Loomis also failed to respond to NASD requests for information.

Nancy L. Rizza (Registered Representative, Quincy, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rizza consented to the described sanctions and to the entry of findings that, without the knowledge or consent of her member firm, she misappropriated \$3,680.03 from the firm's account.

August Actions

None

Market Surveillance Committee

June Actions

None

July Actions

Daniel Morris 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 requalify 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 29,000 shares of the stock to the customer at the then current bid price of 3/8, which he then repurchased from the customer at 5/8.

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 requalify by exam as a general securities representative. The sanctions were based on findings that Shryack made negligent misstatements and omissions of material fact to retail customers to induce them to place purchase orders and commit 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.

NASD Regulatory & Compliance Alert Information

Regarding Any Items In This Publication

If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Susan Lang, Senior Writer/Editor, NASD Regulatory & Compliance Alert, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-6969.

Regarding NASD Disciplinary Actions & Histories

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