

Monthly Disciplinary Actions June 1996

Unless otherwise indicated, suspensions will begin with the opening of business on Monday, June 17, 1996. The information relating to matters contained in this section is current as of June 5, 1996. Information received subsequent to June 5, 1996, is not reflected in this section.

Firm Fined, Individual Sanctioned

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 National Business Conduct Committee (NBCC) affirmed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Litwin, filed inaccurate FOCUS Part I and IIA 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 Securities and Exchange Commission (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.

Firm Fined

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.

Individuals Barred Or Suspended

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.

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

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.

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 of 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 of and obtain prior written authorization from his member firm to engage in such activities.

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.

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 examination 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.

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 SEC Rule 15g. 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.

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.

Carl W. Goings (Registered Representative, Springfield, Vermont) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goings consented to the described sanctions and to the entry of findings that he misappropriated for his own use and benefit insurance customer funds totaling \$720.30.

Joseph G. 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.

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.

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.

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.

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 firms.

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 be 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 to and approval from his member firms. The NASD also found that Prescott failed to inform his member firm in writing of certain outside business 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.

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.

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.

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.

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.

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.

Individuals Fined 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.

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 examination.

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 examination.

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.

Firm Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

American Trading & Investments, Inc., Oklahoma City, Oklahoma

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 (formerly Article IV, Section 5 of the NASD Rules of Fair Practice) and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Donnellan Haylett & Co., Inc., Sarasota, Florida (May 6, 1996)
Greystone Capital Group, Inc., Columbus, Ohio (May 6, 1996)
Intervest Capital Corporation, Jackson, Mississippi (May 6, 1996)
Metro Equities Corporation, Chicago, Illinois (May 6, 1996)
Taylor, Pruitt & Sylvester, Inc., Houston, Texas (May 6, 1996)

Suspensions Lifted

The NASD has lifted suspensions from membership on the dates shown for the following firms because they have complied with formal written requests to submit financial information.

James Harold Goode, Jr., San Clemente, California (April 23, 1996)
Land Mark, Inc., Brewer, Maine (April 22, 1996)
RBG Investments, Inc., Chicago, Illinois (April 30, 1996)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Timothy L. Burkes, Pleasanton, California
John D. Peckskamp, Jr., Cincinnati, Ohio
Bruce R. Rubin, Staten Island, New York
Ronald L. Wigington, Oklahoma City, Oklahoma

NASD Fines Reynolds Kendrick Stratton, Inc. And Eight Brokers A Total Of \$415,000

The NASD announced that **Reynolds Kendrick Stratton, Inc. (RKS)**, and eight brokers from the firm's San Francisco office, have been fined a total of \$415,000 and censured. The eight brokers were also suspended for up to four months.

The announcement closes a formal disciplinary action filed by the NASD against the firm and the eight individuals in connection with their failure to disclose crucial negative information about Worldwide Collections Fund, Inc. (Worldwide) to investors. In 1992, RKS's San Francisco office sold more than one million shares of Worldwide in 500 separate transactions.

RKS has already paid its \$50,000 fine under the settlement agreement. The fines against all eight brokers total \$365,000. The eight brokers are: **Robert W. Kendrick, Jeffrey A. Kahn, Ruth E. Sutherland, Sione Tangen, Karen Mae Brantseg, Howard J. Levy, Dan Patrick Dougherty**, and **William John Drake**. RKS was based in Beverly Hills, California, although the brokers in today's action worked in the firm's San Francisco office. The firm ceased operations in 1994.

"Every broker's first responsibility is to his or her clients and to give them the information they need to make a sound investment," said Mary L. Schapiro, President of NASD Regulation,

Inc., the independent operating subsidiary that regulates the nation's broker/dealers. "When that doesn't happen, it's the investor who suffers."

John Pinto, Executive Vice President Member Regulation added: "These were egregious sales practice violations. While there was material negative news about the issuer in public filings, this was not disclosed by the respondents when recommending the stock. This reflects total disregard for the interests of the public customers who were solicited to buy these shares."

These sanctions are the result of a lengthy investigation by NASD Regulation Enforcement Department. The disciplinary action was taken by the San Francisco DBCC.

Kendrick was censured, suspended from association with any NASD member in any principal capacity for three months, suspended from association with any NASD member in any capacity for 30 calendar days, and fined \$150,000. To requalify as a General Securities Principal, Kendrick must pass the NASD Series 24 exam. Kendrick was Executive Vice President of retail sales.

Kahn and Sutherland were each censured, suspended from association with any NASD member in any capacity for four months, fined \$75,000, and each must requalify as a general securities principal by taking the NASD exam. Kahn was the branch manager at RKS's San Francisco office until August 1992. Sutherland was the assistant branch manager until August 1992, when she became the branch manager.

Tangen and Dougherty were each censured, suspended from association with any NASD member in any capacity for 30 calendar days, fined \$20,000, and each must requalify as a general securities representative by taking the NASD exam.

Brantseg was censured, suspended from association with any NASD member in any capacity for 30 calendar days, and must requalify as a general securities representative by taking the NASD exam.

Levy was censured, suspended from association with any NASD member in any capacity for 20 calendar days, fined \$15,000, and must requalify as a general securities representative by taking the NASD exam.

Drake was censured, suspended from association with any NASD member in any capacity for 10 business days, fined \$10,000, and ordered to requalify by examination as a general securities representative.

The NASD found, and RKS and the eight brokers consented to findings, that investors were not told about serious problems at Worldwide, including several adverse legal decisions against the company and the bankruptcy of Worldwide's major subsidiary.

Worldwide, whose founder and chief executive officer had a disciplinary history with the SEC, specialized in the purchase and collection of defaulted consumer debt. To collect on this debt, Worldwide filed property liens against consumers, many of them in Florida. In January 1992, a Dade County Court invalidated all of Worldwide's existing property liens in Dade County. In March 1992, Worldwide was fined \$1.8 million and found in contempt of court for refusing to remove the liens. This precipitated a bankruptcy filing in April 1992 by Worldwide's major subsidiary.

Kendrick, Kahn, and Sutherland also consented to findings that, as managers in the RKS San Francisco office, they made material misrepresentations and omissions concerning Worldwide to the brokers they supervised, who in turn recommended the security to customers based on those misrepresentations and omissions. RKS, Kendrick, Kahn, and Sutherland consented to findings that they inadequately supervised the RKS San Francisco office.

NASD Orders Fines And Restitution Of Nearly \$600,000 Against Josephthal, Lyon & Ross, Inc; Imposes Additional Sanctions

The NASD fined **Josephthal, Lyon & Ross, Inc.**, nearly \$350,000 and ordered the firm to pay more than \$225,000 in restitution to customers who were victimized by the firm's excessive mark-ups.

Josephthal's Chairman and Chief Executive Officer, **Dan David Purjes**, was censured in connection with these violations and its head trader, **Frank Garriton**, was suspended for 15 business days and fined \$10,000.

The settlement between NASD Regulation, Inc., and Josephthal requires the firm to return \$152,853 in excessive mark-ups, plus \$72,364 in accrued interest, to customers in connection with the sale of the common stock of ACTV, Inc.

This disciplinary action results from three separate investigations conducted by NASD District Offices in New York and Boston.

"Protecting the nation's investing public means guaranteeing that every broker/dealer treat their customers fairly," said NASD Regulation President Mary L. Schapiro, "and not profiting by willfully overcharging investors is a key element of that protection. I am especially pleased that we were able to develop and implement a program to help investors recover their losses along with the interest due them."

Based in New York, Josephthal was also charged with other significant violations in addition to the mark-ups in ACTV stock. As part of the settlement agreement, Josephthal must conduct a comprehensive review of its supervisory procedures under the guidance of an independent consultant acceptable to NASD Regulation. The review will focus on areas cited in this action, and will make recommendations (which the firm must accept or propose a reasonable alternative) designed to remedy deficiencies in Josephthal's supervisory and compliance system.

Executive Vice President Member Regulation John Pinto said, "I view the protection of investors as our primary enforcement mission. The restitution portion of this settlement ensures that harmed investors are not only reimbursed for amounts that they were overcharged, but that they also receive over four years of interest for their lost opportunity costs. And the retention of an outside consultant ensures that the review conducted of the firm's compliance and supervisory structure is not only comprehensive, but an objective assessment of the firm's procedures."

Without admitting or denying the alleged violations, Josephthal, Purjes, and Garriton consented to NASD Regulation findings that the firm, acting through Purjes and Garriton, dominated and controlled the common stock of ACTV between July 23, 1991, and August 21, 1991. As a result, Josephthal was able to charge its customers excessive markups of between 5.26 percent and 41.7 percent over the firm's contemporaneous cost in 387 separate transactions.

As part of the settlement, the affected customers will be reimbursed more than \$225,000, representing the amount that the customers were overcharged (\$152,853.48) plus pre-judgment interest dating back to the violative conduct (\$72,364.15). Mark-ups in excess of 10 percent are deemed fraudulent, and therefore violate NASD Rule 2120 (formerly Article III, Section 18 of the NASD Rules of Fair Practice). Rule 2120, the NASD counterpart to SEC Rule 10b-5, prohibits the use of manipulative, deceptive, or other fraudulent devices in connection with the purchase or sale of any security.

Josephthal, acting through Purjes and Garriton, also distributed ACTV while bidding for and/or purchasing the same securities for the firm's account, and induced others to purchase the securities, before completing the distribution. This conduct violates SEC Rule 10b-6 which prohibits anyone engaged in the distribution of a particular security or securities from selling or purchasing (for any account in which they have a beneficial interest) any security which is part of that distribution, or attempting to induce others to purchase the particular security or securities in question, until they have completed their participation in the distribution.

Josephthal also consented to NASD Regulation findings that in two separate public offerings it failed to comply with the NASD Board of Governors' Free-Riding and Withholding Interpretation. This policy requires that a bona fide distribution be made to public investors of any new issue that immediately trades at a premium over the public offering price. In this matter, Josephthal placed shares of two new issues (Medsonic, Inc., and Sciclone Pharmaceuticals), which traded at higher prices in the immediate after-market, in the firm's error accounts and later in the firm's trading account. As a result, the firm garnered improper profits and concessions of more than \$33,000.

Josephthal also consented to findings that for nearly two years (between November 11, 1992, and August 31, 1994) it failed to register its branch office in Providence, Rhode Island, and did not designate it as a supervisory office, as required by the NASD. During the two-year period, Josephthal also improperly paid compensation belonging to certain registered representatives to a nonmember for investment banking activities conducted at the branch office, a practice which violates NASD Rule 2420 (formerly Article III, Section 25 of the NASD Rules of Fair Practice).

Purjes also consented to NASD Regulation findings that as the former president and current CEO of the firm, he was responsible for the Josephthal's failure to establish and maintain a system to supervise the activities of its employees. Josephthal and Purjes also agreed to NASD Regulation findings that the firm failed to establish, maintain, and enforce adequate supervisory procedures designed to prevent and detect violations described in this settlement.