

DEPARTMENT OF THE TREASURYOffice of the Assistant Secretary
(Domestic Finance)**17 CFR Part 403****Implementing Regulations for the
Government Securities Act of 1986****AGENCY:** Office of the Assistant
Secretary (Domestic Finance), Treasury.**ACTION:** Proposed rule.

SUMMARY: The Department of the Treasury ("Department") is issuing for comment proposed amendments to the regulations issued on July 24, 1987 (52 FR 27910) under the Government Securities Act of 1986 (the "Government Securities Act" or "GSA") (Pub. L. 99-571, 17 CFR Ch. IV). The proposed amendments would implement a buy-in requirement for (1) Mortgage-backed securities that are in a fail to receive status for more than 60 calendar days, and (2) all government securities that are needed to complete a sell order of a customer (other than a short sale) if the securities have not been received from the customer within ten business days after the settlement date. These proposed requirements would apply to all entities that are required to register or provide notice of their status as government securities brokers or dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act").

DATES: Comments must be submitted on or before June 17, 1991.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Public Debt, Department of the Treasury, Room 209, 999 E Street, NW., Washington, DC 20239-0001. Comments received will be available for public inspection and copying at the Treasury Department Library, room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Ken Papa (Director) or Clifford Rones (Attorney-Advisor), Public Debt, room 209, 999 E Street NW., Washington, DC 20239-0001, (202) 376-4632.

SUPPLEMENTARY INFORMATION:**I. Background**

Sections 403.1 and 403.4 (17 CFR 403.1 and 403.4) of the final GSA regulations incorporate the buy-in provision contained in Securities and Exchange Commission (SEC) Rule 15c3-3(d)(2) (17 CFR 240.15c3-3(d)(2)) for transactions in government securities conducted by registered brokers or dealers and registered government securities brokers

or dealers. Financial institutions that filed notice as government securities brokers or dealers are subject to a similar buy-in rule set out at § 403.5(c)(1)(iii) of the GSA regulations. These rules require a government securities broker or dealer to take prompt steps to obtain possession or control of customers' fully paid and excess margin government securities that have been in a fail to receive status for more than 30 calendar days through a buy-in or other procedure. Mortgage-backed securities, however, are not subject to these buy-in requirements.

The buy-in provisions for fails to receive of mortgage-backed securities, which had been included in the temporary GSA regulations (52 FR 19642, 19703-19705), were suspended in the final regulations. This suspension was in response to a number of industry comments which expressed concerns over the difficulties and problems of buying-in mortgage-backed securities, particularly where the customer specified delivery of a particular pool number with unique characteristics. In addition, the SEC had already suspended enforcement of the buy-in requirement as it applied to mortgage-backed securities. For these reasons, the Department suspended the buy-in provision for mortgage-backed securities pending further examination and investigation of this market. The Department and staff of the SEC have worked together to gain a better understanding of the complexities and unique features of the mortgage-backed securities market that contribute to the scarcity of securities and to the larger number of deliveries not accomplished on the scheduled settlement date as compared to transactions in other government securities. Treasury and the SEC have been assisted in their efforts to develop a workable buy-in rule for mortgage-backed securities by an industry task force, organized by the Public Securities Association (PSA).¹ For the reasons more fully explained below, the Department supports a 60-day buy-in rule for mortgage-backed securities.

In addition, the Department is reproposing that paragraph (m) of SEC Rule 15c3-3 (17 CFR 240.15c3-3(m)), which requires the buying-in of securities that have not been received after ten days and that are needed to

¹ The task force, having completed its examination of the mortgage-backed securities market, recommends that government securities brokers or dealers initiate buy-in procedures for customers' fully paid or excess margin mortgage-backed securities that are failed to receive for more than 60 calendar days.

complete a customer sell order (other than a short sale), be incorporated by cross reference and be made applicable to government securities transactions conducted by registered brokers and dealers and registered government securities brokers and dealers.² A similar provision that would apply to financial institutions that have filed notice as government securities brokers or dealers is also being proposed at § 403.5(g).

II. Analysis**A. Buy-ins for Fails to Receive**

Currently, 17 CFR 403.4(g), which applies to both registered brokers or dealers and registered government securities brokers or dealers, states that the buy-in requirement of paragraph 240.15c3-3(d)(2) is suspended with respect to mortgage-backed securities. The Department proposes to modify § 403.4(g) such that the requirements of paragraph 240.15c3-3(d)(2) to take prompt steps to obtain possession or control of failed to receive securities through a buy-in procedure or otherwise would apply to mortgage-backed securities in a fail to receive status for more than 60 calendar days. Similarly, paragraph 403.5(c)(1)(iii), which applies to financial institutions that have filed notice as government securities brokers or dealers, would be modified to prescribe a similar buy-in requirement for these entities.

The Department proposes a longer buy-in period of 60 calendar days for fails to receive for mortgage-backed securities (as compared to the 30 calendar day time frame applicable to other government securities that is currently in place). This difference can, for the most part, be attributed to the length of the settlement cycle associated with mortgage-backed securities, which, in many instances, may be as long as 30 days. In addition, as previously stated, the buying-in of mortgage-backed securities can be difficult to the complexities of the instruments, the particularities of the settlement process, and the scarcity in the market of specified pools, especially when a customer requests delivery of a particular pool with unique characteristics. These factors indicate that a time frame greater than 30 days may be required to successfully settle or otherwise acquire a specified mortgage-backed securities trade. Therefore, a time frame of 60 calendar days reasonably addresses the concerns of

² The temporary regulations incorporated, with some revisions, SEC Rule 15c3-3(m). See 52 FR 19642, 19704 (temporary § 403.4(i)).

customer protection while, at the same time, taking into consideration the ability of brokers or dealers to acquire the securities.

Historically, mortgage-backed securities have had a high fail rate because of the reasons cited above, particularly the variances in the settlement time frames. As a result, several years ago, an attempt was made by market participants to standardize the settlement process for mortgage-backed securities. Specific monthly settlement dates were assigned to each particular class or pool of mortgage-backed securities. This settlement date system has proved to be successful in alleviating the workload during the heaviest settlement periods. Although a settlement date other than a scheduled settlement date can be requested, the buyer pays a premium for this exception. Thus, in order to avoid the additional expenses associated with abnormal settlements, any buy-in accomplished pursuant to the proposed rules would be permitted to settle on the next regularly scheduled settlement date for that particular class or pool of mortgage-backed securities.

The Department is also aware that a larger number of fails have been due to the loss of physical securities and problems associated with the clearance and settlement of mortgage-backed securities that have not yet been converted to book-entry form and maintained by the Participant Trust Company (PTC) system, which serves as a book-entry depository for Government National Mortgage Association (GNMA) securities. Although the number of fails of mortgage-backed securities is expected to decrease as more GNMA securities are converted to book-entry form and maintained by PTC, the scarcity of specific pools, together with the complexity of mortgage-backed securities and their extended settlement cycle, will continue to be problematic. Thus, a 60-day buy-in time frame for mortgage-backed securities appears to be reasonable and appropriate as part of an overall framework to ensure that customer security positions are protected. The 60-day time frame will provide adequate time for most fails to receive to be corrected through existing procedures.

It is the Department's understanding that the PSA will develop buy-in procedures for mortgage-backed securities similar to those already in place for other government securities. We also understand that the SEC staff does not object to the 60-day buy-in time frame for mortgage-backed securities and that it intends, at some future time,

to recommend to the Commission a proposal to revise Rule 15c3-3(d)(2) in a manner consistent with the Department's proposed change to paragraph 403.4(g).

B. Buy-ins for Customer Sell Orders

The Department is reproposing a buy-in requirement for customer sell orders that was included in the temporary regulations but was suspended in the final regulations. In the temporary regulations (52 FR 19642, 19704), the Department adopted, with certain modifications, paragraph (m) of SEC Rule 15c3-3 (17 CFR 240.15c3-3(m)) for government securities. This rule had been suspended by the SEC in 1973 with respect to exempted securities, including government securities.³ Paragraph (m), which was applicable to registered brokers and dealers and registered government securities brokers and dealers, states that if a broker or dealer executes a customer sell order (other than a short sale) and the broker or dealer has not obtained the securities from the customer within ten business days after the settlement date, then the broker or dealer shall close out the transaction with the customer by purchasing securities of like kind and quantity. The temporary GSA regulations (paragraphs 403.1 and 403.4(i)) modified paragraph (m) of SEC Rule 15c3-3 by defining the term "short sale" and by extending the time frame to 30 calendar days for mortgage-backed securities. However, in response to commenters' objections to the operational burdens of this provision, the incorporation of paragraph (m) was excluded from the final regulations (52 FR 27910, 27921-22), which had the effect of suspending the applicability of this paragraph to transactions in government securities conducted by government securities brokers and dealers. The Department also noted that it would, in consultation with the SEC, continue to study this issue to determine if eventual application of a buy-in rule for customer sell orders in government securities would be desirable.

In light of the resolution of issues in the mortgage-backed securities market that now enables the Department to propose a buy-in rule for fails to receive on mortgage-based securities, and given the fact that a buy-in rule for all other government securities has been in operation for approximately three years without any significant problems, the Department believes that the operational burdens associated with a

buy-in rule for customer sell orders have been significantly diminished.

Accordingly, the Department proposes to add paragraph 403.4(1) to the GSA regulations, which incorporates by reference, paragraph (m) of SEC Rule 15c3-3, with one modification. The modification defines "short sale" for the purposes of the rule to mean that the customer has informed the broker or dealer that the sale is a short sale.

A companion buy-in rule for financial institutions that have filed notice as government securities brokers or dealers is also being proposed by adding this provision as new paragraph 403.5(g). Existing paragraph 403.5(g) would be redesignated as paragraph 403.5(h), and it would be revised to give the appropriate regulatory agencies for financial institutions the authority to grant extensions of the 10-day buy-in requirement for customer sell orders. This additional authority is being provided to the bank regulatory agencies because paragraph (n) of SEC Rule 15c3-3 (17 CFR 240.15c3-3(n)) gives a registered national securities exchange or a registered national securities association the authority to grant extensions of time for the close-out of a customer sell order in exceptional circumstances.

The main purpose of the buy-in requirements for customer sell orders is to encourage brokers and dealers to close-out transactions after a stated period of time. These provisions are also intended to prevent customers from attempting to take advantage of changes in the market value of securities by refusing to deliver a security to a broker or dealer when the price goes up after a sell order has been executed. The buy-in rules for customer sell orders will also enhance customer protection since a customer's failure to deliver a security to the executing broker or dealer could result in that broker's or dealer's failure to deliver to its counterparty.

The Department is proposing a 10-day close-out time frame for all government securities. The rules provide an exemption for short sales, which are the primary cause of non-delivery. Since the government securities market is primarily a dealer market, and one in which short sales are common practice, the exemption of short sales from these requirements should make the rules inapplicable to the majority of sell orders. In addition, if more than ten days are needed, the appropriate regulatory agencies have the authority to extend the buy-in time period, if so requested by the broker or dealer. The Department specifically invites comments regarding the appropriateness of the 10-day time frame.

³ 36 FR 12103 (May 8, 1973).

It is the Department's understanding that the SEC staff intends to recommend to the Commission's a proposal to reinstate paragraph 15c3-3(m) in a manner that conforms with the Department's proposed rule in paragraph 403.4(1).

III. Special Analysis

The proposed rules would require government securities brokers or dealers that registered or filed notice pursuant to section 15C(a)(1) of the Exchange Act to take prompt steps to buy-in or otherwise obtain mortgage-backed securities that are in a fail to receive status longer than 60 calendar days. The proposed rules supplement the 30-day buy-in requirement for other government securities by terminating the suspension of buy-in requirements for mortgage-backed securities. The Department had previously incorporated buy-in requirements for mortgage-backed securities in the proposed and temporary regulations. However, they were suspended in the final regulations in response to commenter concerns, including a suggestion that an industry task force, organized by the PSA, study the issues involved and develop a recommended buy-in rule and related procedures. It was understood, that upon completion of this evaluation, a buy-in rule for mortgage-backed securities would be forthcoming.

These amendments proposing a 60-day buy-in rule for mortgage-backed securities are responsive to the concerns expressed by the industry commenters and reflect the additional complexities of the mortgage-backed securities market. As such, the proposed rules would establish buy-in requirements for mortgage-backed securities. Similar rules are already in place for all other government securities. Regarding the buy-in rule for customer sell orders, the exemption for short sales provided in the rules should exclude most fails from being subject to this provision. Thus, the two proposed buy-in rules do not impose any substantial additional regulatory requirements.

It is the Department's view that the proposed buy-in regulations will not impose any major increase in costs on those affected or significantly affect the economy in general. The buy-in rules are intended to strengthen customer protection and to ensure that transactions which have been contracted to occur, actually do occur. Since the proposed regulations reinstate a suspended buy-in requirements for mortgage-backed securities, and a suspended buy-in rule for customer sell orders, the Department has also concluded that they will not have an

unnecessary or inappropriately differential impact on classes of entities affected by them such as to create a burden on competition. The rules are intended to impact equally upon all participants in the government securities market. Based on the foregoing, the Department has concluded that the proposed regulations do not constitute a major rule for the purposes of Executive Order 12291 and that a regulatory impact analysis is not required.

In addition, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities and, as a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act (44 U.S.C. 3504(h)) requires that collections of information prescribed in proposed rules be submitted to the Office of Management and Budget for review and approval. Since these proposed rules contain no new collections of information, the submission described in the Paperwork Reduction Act is inapplicable.

List of Subjects in 17 CFR Part 403

Banks, banking, Brokers, Government securities.

For the reasons set out in the Preamble, it is proposed that 17 CFR part 403 be amended to read as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(A), (b)(2)).

2. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c-1 of this title (SEC Rule 8c-1), as modified by § 403.2(a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2), as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3), as modified by § 403.4(a)-(d), (e)(2)-(3), (f)-(1), and (1), constitutes compliance with this part.

3. Section 403.4 is amended by revising paragraph (g) and by adding paragraph (1) to read as follows:

§ 403.4 Customer protection—reserves and custody of securities.

* * * * *

(g) For the purposes of this section, § 240.15c3(d)(2) of this title is modified to read as follows:

"(2) Securities included on his books or records as failed to receive more than 30 calendar days, or in the case of mortgage-backed securities, more than 60 calendar days, then the broker or dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain possession or control of securities so failed to receive through a buy-in procedure or otherwise; or"

* * * * *

(1) For purposes of this section, § 240.15c3-3(m) of this title shall apply to government securities, notwithstanding the May 9, 1973, order of the Commission (38 FR 12103) suspending such applicability, except that "an order to execute a sale of securities which the seller does not own" shall mean that the customer placing the sell order has identified the sale as a short sale to the broker or dealer.

* * * * *

4. Section 403.5 is amended by revising paragraph (c)(1)(iii); by redesignating paragraph (g) as paragraph (h) and revising newly redesignated paragraph (h); and by adding new paragraph (g) to read as follows:

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

* * * * *

(c)(1) * * *

(iii) Take prompt steps to obtain possession or control of securities failed to receive for more than 30 days, or in the case of mortgage-backed securities, for more than 60 days; or

* * * * *

(g) If a financial institution executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the financial institution) and if for any reason whatever the financial institution has not obtained possession of the securities from the customer within ten business days after the settlement date, the financial institution shall immediately thereafter close the transaction with the customer by purchasing securities of like kind and quantity.

(h) The appropriate regulatory agency of a financial institution that is a government securities broker or dealer may extend the period specified in paragraphs (c)(1)(iii) and (g) of this

section on application of the financial institution for one or more limited periods commensurate with the circumstances, provided the appropriate regulatory agency is satisfied that the financial institution is acting in good faith in making the application and that exceptional circumstances warrant such action. Each appropriate regulatory agency should make and preserve for a period of not less than three years a record of each extension granted pursuant to this paragraph, which contains a summary of the justification for the granting of the extension.

Dated: April 5th, 1991.

Jerome H. Powell,

Assistant Secretary for Domestic Finance.

[FR Doc. 91-8925 Filed 4-16-91; 8:45 am]

BILLING CODE 4810-40-M

Notice To Members

National Association of Securities Dealers, Inc.

June 1991

Number 91-42**Suggested Routing:***

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|---|---|--|---|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance | <input type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options | <input checked="" type="checkbox"/> Systems |
| <input type="checkbox"/> Government Securities | <input checked="" type="checkbox"/> Municipal | <input type="checkbox"/> Registration | <input type="checkbox"/> Trading |
| <input type="checkbox"/> Institutional | <input type="checkbox"/> Mutual Fund | <input type="checkbox"/> Research | <input type="checkbox"/> Training |

*These are suggested departments only. Others may be appropriate for your firm.

Subject: Appointment of SIPC Trustees for Two Firms

On April 23, 1991, the United States District Court for Connecticut appointed the Securities Investor Protection Corporation (SIPC) trustee for:

Gateway Securities, Inc.
45 E. Putnam Avenue
Greenwich, CT 06830.

Questions regarding the firm should be directed to SIPC trustee:

Securities Investor Protection Corporation
805 15th Street, NW, Suite 800
Washington, DC 20005-2207
(202) 371-8300.

On April 24, 1991, the United States District Court for the Middle District of Florida appointed a Securities Investor Protection Corporation (SIPC) trustee for:

C. J. Wright & Company, Inc.
2403 SE 17th Street, Suite 401
Ocala, FL 32671.

Questions regarding the firm should be directed to SIPC trustee:

K. Rodney May, Esquire
Foley & Lardner
111 North Orange Avenue, Suite 1800
P.O. Box 2193
Orlando, FL 32802-2193

and

200 W. Forsyth Street, Suite 1700
P.O. Box 1290
Jacksonville, FL 32201-1290.

Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close out open over-the-counter contracts. Also, Municipal Securities Rulemaking Board Rule G-12(h) provides that members may use the above procedures to close out transactions in municipal securities.

Notice To Members

National Association of Securities Dealers, Inc.

June 1991

Number 91-43

Suggested Routing:*

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| <input type="checkbox"/> Senior Management | <input checked="" type="checkbox"/> Internal Audit | <input checked="" type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options | <input checked="" type="checkbox"/> Systems |
| <input type="checkbox"/> Government Securities | <input checked="" type="checkbox"/> Municipal | <input type="checkbox"/> Registration | <input checked="" type="checkbox"/> Trading |
| <input type="checkbox"/> Institutional | <input type="checkbox"/> Mutual Fund | <input type="checkbox"/> Research | <input type="checkbox"/> Training |

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Subject: Independence Day — Trade Date-Settlement Date Schedule

Securities markets and the Nasdaq system will be closed on Thursday, July 4, 1991, in observance of Independence Day. "Regular way" transactions made on the preceding business days will be subject to the settlement-date schedule listed below:

Trade Date	Settlement Date	Reg. T Date*
June 26	July 3	July 8
27	5	9
28	8	10
July 1	9	11
2	10	12
3	11	15
4	Markets Closed	—
5	12	16

Brokers, dealers, and municipal securities dealers should use these settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."

Notice To Members

National Association of Securities Dealers, Inc.

June 1991

Number 91-44

Suggested Routing:*

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|--|--|--|---|
| <input type="checkbox"/> Senior Management | <input checked="" type="checkbox"/> Internal Audit | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance | <input type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options | <input checked="" type="checkbox"/> Systems |
| <input type="checkbox"/> Government Securities | <input type="checkbox"/> Municipal | <input type="checkbox"/> Registration | <input checked="" type="checkbox"/> Trading |
| <input type="checkbox"/> Institutional | <input type="checkbox"/> Mutual Fund | <input type="checkbox"/> Research | <input type="checkbox"/> Training |

*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Nasdaq National Market System (Nasdaq/NMS) Additions, Changes, and Deletions
As of May 13, 1991**

As of May 13, 1991, the following 28 issues joined Nasdaq/NMS, bringing the total number of issues to 2,540:

Symbol	Company	Entry Date	SOES Execution Level
PNRL	Penril DataComm Networks, Inc.	4/15/91	1000
BTRE	Brooktree Corporation	4/17/91	1000
CVTY	Coventry Corporation	4/17/91	1000
PLAT	PLATINUM technology, inc.	4/18/91	500
LESL	Leslie's Poolmart	4/19/91	1000
UAHC	United American Healthcare Corporation	4/23/91	1000
OUTL	Outlook Graphics Corp.	4/24/91	1000
SERA	Sierra Semiconductor Corporation	4/24/91	1000
CEPH	Cephalon, Inc.	4/25/91	500
IHSI	Integrated Health Services, Inc.	4/25/91	1000
ROSS	Ross Systems, Inc.	4/26/91	500
XPLX	Xyplex, Inc.	4/26/91	1000
CCLRB	Commerce Clearing House, Inc. (Cl B)	4/29/91	1000
QHRI	Quantum Health Resources, Inc.	4/30/91	1000
BSMT	Filene's Basement Corp.	5/1/91	1000
AISX	Applied Immune Sciences, Inc.	5/2/91	1000
HOME	Homedco Group, Inc.	5/2/91	200
CHPM	Chipcom Corporation	5/3/91	1000
BMDC	Biomedical Dynamics Corporation	5/7/91	1000
BIOP	Bioplasty, Inc.	5/7/91	1000
MTEC	Machine Technology, Inc.	5/7/91	1000
MYLX	Mylex Corporation	5/7/91	1000
OSGI	OTRA Securities Group, Inc.	5/7/91	1000
RHMO	Ramsey-HMO, Inc.	5/7/91	1000
SNRS	Sunrise Technologies, Inc.	5/7/91	1000

Notice to Members 91-44

Symbol	Company	Entry Date	SOES Execution Level
MEDI	MedImmune, Inc.	5/8/91	1000
HILO	Hi-Lo Automotive, Inc.	5/9/91	1000
OESI	OESI Power Corporation	5/10/91	1000

Nasdaq/NMS Symbol and/or Name Changes

The following changes to the list of Nasdaq/NMS securities occurred since April 12, 1991:

New/Old Symbol	New/Old Security	Date of Change
CAREW/CAREW	Care Group, Inc. (The) (4/24/92 Wts)/Care Group, Inc. (The) (4/24/91 Wts)	4/17/91
UTLX/MOLE	UTILX Corporation/FlowMole Corporation	4/19/91
IPPIF/IHEIF	Interprovincial Pipe Line Inc./Interhome Energy, Inc.	5/1/91
MTEL/MTTL	Mobile Telecommunication Technologies Corp./Mobile Telecommunication Technologies Corp.	5/1/91
ISLI/ISLI	INTERSOLV/Sage Software, Inc. (INTERSOLV)	5/6/91
CSFCB/CSFCB	CSF Holdings, Inc. (Cl B)/Citizens Savings Financial Corporation (Cl B)	5/9/91
STLG/WLBK	Sterling Bancshares Corporation/Waltham Corporation (The)	5/13/91

Nasdaq/NMS Deletions

Symbol	Security	Date
ATTWY	Attwoods plc	4/12/91
FEXC	First Executive Corporation	4/16/91
FEXCP	First Executive Corporation (Ser. E Dep. Pfd.)	4/16/91
FEXCO	First Executive Corporation (Ser. F Dep. Pfd.)	4/16/91
FEXCM	First Executive Corporation (Ser. G Dep. Pfd.)	4/16/91
FEXCN	First Executive Corporation (Ser. H Dep. Pfd.)	4/16/91
UBKS	United Banks of Colorado, Inc.	4/22/91
BNHI	Bancorp Hawaii, Inc.	4/24/91
NECC	Critical Care America, Inc.	4/24/91
NHLI	National Health Laboratories, Inc.	4/24/91
EBMI	E & B Marine Inc.	4/25/91
FFSD	First Federal Savings Bank	4/25/91
SIZZ	Sizzler Restaurants International, Inc.	4/29/91
BIOW	Banks of Iowa, Inc.	4/30/91
DPHZ	DATAPHAZ, Inc.	4/30/91
SOBK	Southern Bankshares Inc.	5/1/91
ACOM	Astrocom Corporation	5/1/91
MFTN	Metropolitan Federal Bank, a federal savings bank	5/2/91
PPSA	Prospect Park Financial Corporation	5/2/91
JHSL	John Hanson Bancorp, Inc.	5/8/91
ENST	Enstar Group, Inc. (The)	5/9/91
HLCO	Healthco International, Inc.	5/9/91

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (301) 590-6429.

Board Briefs

National Association of Securities Dealers, Inc.

June 1991

Actions Taken by the NASD Board of Governors in May

■ **President's Message** — Regulation of cross-border trading on organized markets and through screen-based trading systems was the major agenda item at a recent meeting of the Federation Internationale des Bourses de Valeurs (FIBV). In a panel discussion on these subjects, a majority of the participants, including Joseph R. Hardiman, representing the NASD, were of the view that electronic trading systems will continue to grow and that international regulation of these markets should foster competition rather than restrict it.

J. Lynton Jones, Managing Director, Nasdaq International-Europe, and Hardiman also participated in the April meeting of the International Councils of Securities Associations (ICSA), an organization that the NASD and the Securities Industry Association co-founded in 1988 with four other organizations located in Canada, France, Japan, and the United Kingdom. The purpose of ICSA is to provide a vehicle through which securities industry practitioners from around the world can have their voices heard on the growing list of international regulatory issues being considered by such groups as the International Organization of Securities Commissions (IOSCO), the Group of 30, the European Community, and the Basle group on banking issues.

Among the issues under active consideration by these organizations are capital adequacy standards, clearance and settlement standards, multinational offerings, international registration of industry professionals, regulation of secondary markets and electronic trading systems, and bilateral and multinational arrangements for sharing compliance information. It is important that the views of practitioners be expressed early in the rulemaking and/or legislative process before positions on these issues are established.

With the growing interest on the part of NASD members, Nasdaq companies, and issuers in international trading, the NASD has created an In-

ternational Market Advisory Board. Composed of securities industry participants from here and abroad, the Board will hold its first meeting June 18 in London with the second meeting scheduled for September in Washington, D.C. Chaired by David Brooke with the London-based firm J O Hambro & Partners Limited, the group will advise the NASD Board on developments in the major international markets that have a significant impact on Nasdaq in its role as an increasingly important market for global securities.

In recent weeks, there have been a number of developments in the legislative area that are of great interest to the securities industry and the NASD's membership. Of particular concern to the NASD is the Securities and Exchange Commission (SEC)/Commodity Futures Trading Commission (CFTC) jurisdictional bill, which passed the Senate without SEC- and NASD-supported changes. The bill is troubling because it places the authority to determine regulation over products that have both securities and futures characteristics within the ambit of the CFTC. One positive feature of the bill is the provision that establishes federal oversight of margins on stock index futures.

Another legislative development of significant interest to the NASD is the reauthorization of the Government Securities Act of 1986. In testimony before the House Subcommittee considering this bill, the NASD recommended that its sales-practice rules be made applicable to secondary trading in Treasury securities. Currently, the NASD can take action only if the violative activity rises to the level of fraud. The Treasury, the Office of the Comptroller of the Currency, and the General Accounting Office support the NASD's proposal.

■ **Business Conduct Matters** — Changes to Forms U-4 and U-5 to accommodate recent legislative actions have been approved by the Board for filing with the SEC. The Securities Acts Amendments of 1990 and the Securities Enforcement

Remedies and Penny Stock Reform Act of 1990 require several changes to the disciplinary disclosure questions in these forms, which are used throughout the securities and commodities industries for the registration of representatives and principals. Along with these legislated changes, other minor ones requested by the commodities regulators have been included.

The Board authorized publication of a release advising members that advisory fees paid in connection with transactions executed away from the member with which the registered representative/investment advisor is registered is deemed selling compensation and subject to the notice, recordkeeping, and supervision requirements of Article III, Section 40(c) of the Rules of Fair Practice. Among the issues requiring clarification is whether these measures apply when registered representatives refer customers to broker-dealers other than their employers.

Members also will be asked to comment on an exemption for directly marketed mutual funds from the requirement that they obtain information about a customer's employment status (i.e., the customer's occupation, the name and address of the customer's employer, and whether the customer is an associated person of another member). Because this information is usually needed to facilitate member recommendations to customers, it is not considered necessary by the Investment Companies Committee for directly marketed mutual funds that do not involve a recommendation.

■ **Market Operation Issues** — The Board approved, subject to SEC approval, extending for six months the current SelectNetSM operational rules. The current rules are:

- SelectNet is available only for agency or principal orders that are greater than the SOES tier size.
- Market makers receiving orders through SelectNet are not required to execute partial orders, but may elect to execute partials at their discretion.
- In the event of an emergency or during extraordinary market conditions, either one or both of the aforementioned conditions may be eliminated under the authority granted by the rule.

In another action, the Board, subject to SEC approval, extended the moratorium on autoquoting for up to six months. The purpose of the previous moratorium was to give the NASD time to study

the issues involved with the use of automated quotation update mechanisms, including their impact on Nasdaq in terms of additional traffic, processing capacity, and response time. The Board will use the additional time to clarify certain policy issues that were raised as a result of its *Study on the Impact of Autoquote in the Nasdaq System*.

The NASD also will file with the SEC to extend for six months the current operations of the OTC Bulletin Board pending implementation of the enhanced service and permanent fee structure. Among these changes are quotation dissemination via broadcast feeds and the establishment of appropriate subscriber charges applicable to vendors' customers. The filing will include the NASD's plan to ensure that the OTC Bulletin Board adheres to the Penny Stock Reform Act of 1990.

In addition, the OTC Bulletin Board Users Committee is seeking a series of enhancements to the service for implementation later this year. These include improved presentation in terms of compatible update and query capability to Nasdaq Workstations;SM improved quote display in terms of calculation of an inside, bid/ask ranking of quotations; a firm indicator for priced domestic issues and an indicative indicator for foreign/American Depositary Receipt (ADR) issues; development of a vendor feed for inside quotations and individual market-maker quotes; indications of firm/indicative pricing; and a Computer-to-Computer Interface (CTCI) to follow quote updates in foreign/ADR issues by batch transmission twice a day.

The Board authorized the staff, after meeting with the SEC, to submit a petition for rulemaking to amend Rule 10b-6 so as to permit passive market making by market makers in Nasdaq National Market System (Nasdaq/NMS) securities that intend to participate in a fixed-price distribution. The proposed amendment would not affect the ability of an underwriter to engage in stabilization activities under Rule 10b-7.

The Board took action to amend the Small Order Execution System (SOES) operating rules governing the preferencing of orders to market makers. The rules, subject to SEC approval, would require market makers to execute orders preferenced to them by order-entry firms only when both parties have agreed to the preference arrangement. It also would adjust SOES to execute orders preferenced to market makers that have not

agreed to accept preferencing from the particular order-entry firm on a normal basis, that is, executed on a rotational basis against market makers that are at the inside.

■ **Business Practice Developments** — The Board approved for member comment a change to the corporate finance review process intended to expedite transnational capital formation. The proposal, which provides an exemption from filing requirements for certain Canadian issuers and offerings of securities, is in conjunction with an SEC effort to facilitate cross-border offerings of securities.

The SEC effort involves the development of a multijurisdictional reporting system using four proposed registration forms (Forms F-7, F-8, F-9, and F-10). The SEC asked the NASD to review the forms to determine whether to exempt such filings from its corporate finance review. The NASD's proposal would exempt Canadian issuers utilizing Forms F-9 and F-10 from review, but not Forms F-7 and F-8. However, the NASD will accord these filings an expedited review and notify members that an expedited review is available.

The Board adopted a new rule, subject to SEC approval, that would prohibit brokers from receiving differential compensation for soliciting votes on roll-ups of limited partnerships into master limited partnerships, real estate investment trusts, and corporations. The rule would prohibit an NASD member from receiving compensation in a roll-up of a limited partnership unless the terms of the solicitation agreement provide that such compensation:

- Is payable when the limited partner votes either affirmatively or negatively on the proposed transaction.
- Is equal in amount notwithstanding whether the limited partner votes affirmatively or negatively on the transaction.
- In the aggregate, does not exceed 2 percent

of the exchange value of the newly created securities.

- Is paid even though the limited partners reject the transaction.

In addition, the rule would prohibit a member from participating in a solicitation of votes in connection with a roll-up unless the general partner or sponsor agrees to pay all solicitation expenses of the proposed transaction, including all preparatory work involved, if the roll-up is not approved.

The Board also authorized for public comment a package of proposed governance standards that, among other things, would require limited partnerships traded on the Nasdaq National Market System (Nasdaq/NMS) to issue annual and interim reports and have two independent directors on the board of the corporate general partner.

■ **Advisory Council Recommendations** — The Advisory Council, comprised of the chairmen of the 11 District Business Conduct Committees (DBCC) and the Market Surveillance Committee, recently met and formulated the following recommendations to the Board:

- Amend the NASD's supervisory rules to require that all branch-office managers with delegated supervisory responsibility register as principals and pass the qualification test for principals.
- Adopt a rule to require that registered persons notify their employing member in writing before borrowing funds or securities from customers for any purpose.
- Give the NASD expulsion and revocation authority for failure to pay arbitration awards.
- Apply the NASD's rules on private securities transactions to securities activity by registered representatives who are also registered investment advisors where such activity is not executed through the member with which the representative is registered.

Disciplinary Actions

National Association of Securities Dealers, Inc.

June 1991

Disciplinary Actions Reported for June

The NASD is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice, securities laws, rules, and regulations, and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions began with the opening of business on Monday, June 3, 1991. The information relating to matters contained in this notice is current as of the 20th of the month preceding the date of the notice. Information received subsequent to the 20th is not reflected in this publication.

FIRMS EXPELLED, INDIVIDUALS SANCTIONED

Parker Jameson, Inc. (Boca Raton, Florida) and **Mark Salvatore Creamer (Registered Principal, Delray Beach, Florida)** were fined \$50,000, jointly and severally. The firm was expelled from membership in the NASD, and Creamer was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Creamer, effected as principal sales of over-the-counter corporate securities to public customers at prices that were not fair. In addition, the firm, acting through Creamer, failed to record information on several customer new-account records.

FIRMS SUSPENDED, INDIVIDUALS SANCTIONED

Diehl & Company (Newport Beach, California) and **Russell Reed Diehl (Registered Principal, Irvine, California)**. The firm and Russell Diehl were fined \$25,000, jointly and severally. In addition, the firm was suspended from membership in the NASD for 30 days, and Russell Diehl was suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 2. The sanctions were based on findings that the firm, acting through Russell Diehl, conducted a securities business while failing to maintain sufficient net capital and failed to maintain its books and records properly.

IPI Securities, Inc. (Birmingham, Alabama) and **Vincent C. Haydock (Registered Prin-**

icipal, Birmingham, Alabama) submitted an Offer of Settlement pursuant to which the firm was fined \$10,000 and suspended from membership in the NASD for one day. Haydock was suspended from association with any member of the NASD in any capacity for three months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Haydock, failed to keep current and preserve ledgers or other records reflecting all assets and liabilities.

The NASD also found that the firm, acting through Haydock, engaged in a securities business when its net capital was below the required minimum. Furthermore, the findings stated that IPI, acting through Haydock, failed to immediately give telegraphic notice to the SEC and the NASD concerning the firm's net capital deficiency. In addition, the NASD determined that the firm, acting through Haydock, recorded the firm's net capital on its FOCUS Part I report inaccurately and failed to file its FOCUS Part II report.

Whitehouse & Moore Investments, Inc. (Englewood, Colorado) and **George Raymond Johnston, Jr. (Financial and Operations Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined \$2,500, jointly and severally. In addition, the firm was prohibited from conducting a securities business without having a properly qualified financial and operations principal acting in that capacity. Johnston was fined an additional \$2,500, suspended from association with any member of the NASD as a financial and opera-

tions principal for 60 days, and required to requalify by examination in that capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Johnston, conducted a securities business while failing to maintain its required minimum net capital, and that it filed inaccurate FOCUS Part I reports. The findings also stated that the firm, acting through Johnston, failed to maintain accurate books and records.

Johnston's suspension commenced with the opening of business on May 6, 1991.

FIRMS FINED, INDIVIDUALS SANCTIONED

General Securities Corp. (North Kansas City, Missouri) and **David S. Miller (Registered Principal, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$11,666.75, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Miller, failed to comply with the NASD's Mark-Up Policy in that it effected corporate securities transactions at prices that were unfair and unreasonable. In addition, the NASD found that the firm, acting through Miller, failed to obtain quotations as required by the Board of Governors' Interpretation with respect to Execution of Retail Transactions in the Over-the-Counter Market.

Paragon Capital Corporation (New York, New York) and **George Bernard Levine (Registered Principal, North Miami Beach, Florida)** 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 sanctions and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through Levine, sold to restricted accounts shares of two new issues that traded at a premium in the immediate aftermarket. The findings also stated that the firm, acting through Levine, failed to make, prior to the execution of the transactions, an affirmative inquiry about the identities of the ultimate purchasers and the names and/or business connections of all persons having any beneficial interest in the accounts.

Furthermore, the NASD determined that the firm, acting through Levine, caused the filing of inaccurate Free-Riding and Withholding Questionnaires. In addition, the findings stated that Paragon, acting through Levine, failed to establish and implement supervisory procedures to ensure compliance with the Board of Governors' Free-Riding and Withholding Interpretation.

Parliament Hill Capital Corp. (New York, New York) and **Eugene Duchin (Registered Principal, Livingston, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$11,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through Duchin, sold to restricted accounts shares of two new issues that traded at a premium in the immediate aftermarket.

The findings also stated that the firm, acting through Duchin, failed to deposit subscriber funds promptly into a separate bank account in connection with two contingent private-placement offerings. In addition, the NASD found that Parliament, acting through Duchin, in connection with another private-placement offering, failed to transmit subscriber funds totaling \$175,000 to the entitled parties promptly.

FIRMS FINED

Dean Witter Reynolds Inc. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$70,000. Without admitting or denying the allegations, Dean Witter 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 failed to make a bona fide public distribution of a common stock at the public offering price in that a portion of the shares allocated to the firm for distribution was placed in a branch office's error account and subsequently was sold in the secondary market.

INDIVIDUALS BARRED OR SUSPENDED

Donald Bruce Adams (Registered Representative, Salem, Oregon) was fined \$154,000 and barred from association with any member of the

NASD in any capacity. The sanctions were based on findings that Adams misused customer funds in that his member firm issued two checks totaling \$84,009.73 representing surrender requests purportedly made by an insurance customer. The checks were subsequently endorsed and deposited into a bank account controlled by Adams. The customer did not endorse or receive any of the funds nor did he authorize anyone else to sign or endorse the checks on his behalf. Adams also failed to respond to NASD requests for information.

Bernadette Anderson (Registered Representative, Ulster Park, New York) was fined \$22,500 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 10. The sanctions were based on findings that Anderson opened an account in the name of a public customer and purchased shares of stock for the account without the prior knowledge or consent of the customer. Anderson also recommended and purchased securities for the same customer's account without having reasonable grounds for believing that such transaction was suitable for the customer based on his other securities holdings, financial situation, and needs. In addition, Anderson failed to respond to NASD requests for information.

Paul V. Anderson (Registered Representative, Pittsburgh, Pennsylvania) was barred from association with any member of the NASD as a registered principal. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 9. The sanction was based on findings that a former member firm, acting through Anderson, effected securities transactions while failing to maintain its minimum required net capital and failed to give telegraphic notice of the net capital deficiencies to the NASD or the SEC. In addition, the firm, acting through Anderson, purchased Treasury obligations totaling \$8 million that reduced the firm's net capital to a deficit.

Kevin A. Bikus (Registered Representative, Highlands Ranch, Colorado) was fined \$25,000 and suspended from association with any member of the NASD in any capacity for 20 days. The sanctions were based on findings that Bikus executed unauthorized transactions in public customer accounts.

Joseph Warren Bishop (Registered Representative, Grapevine, Texas) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Bishop consented to the described sanctions and to the entry of findings that he failed to honor a \$70,000 arbitration award.

James H. Blackman (Registered Representative, Aurora, Colorado) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Blackman failed to honor a \$4,751.53 arbitration award.

Ralph Richard Boerner (Registered Representative, Coppell, Texas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Boerner failed to respond to an NASD request for information concerning a customer complaint.

Philip S. Brown (Registered Representative, Denver, Colorado) was fined \$3,000 and suspended from association with any member of the NASD in any capacity for two business days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Brown executed unauthorized transactions in the joint accounts of public customers.

This action has been appealed to the Securities and Exchange Commission, and the sanctions are not in effect pending consideration of the appeal.

Brian Joseph Chaffee (Registered Representative, Cheney, Washington) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Chaffee consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers. The NASD found that Chaffee opened three accounts at his member firm ostensibly for Canadian customers when, in fact, the accounts were for the benefit of residents of the states of Washington and California.

According to the findings, Chaffee effected the purchase of securities for those three accounts

when such securities had not been registered or qualified in accordance with applicable provisions of the securities laws of those states or exempted from such registration or qualification. Moreover, the findings stated that Chaffee opened two fictitious accounts at his member firm purportedly for customers when, in fact, these were nominee accounts controlled by Chaffee and used by him to create the appearance of bona fide customer purchases of securities.

Ronald M. Chapoton (Registered Representative, Metairie, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for one week. Without admitting or denying the allegations, Chapoton consented to the described sanctions and to the entry of findings that he signed the name of a public customer to an application to invest in a tax-exempt fund. In addition, the findings stated that Chapoton failed to amend his Uniform Application for Securities Industry Registration (Form U-4) promptly to disclose that a settlement had been reached with a public customer in connection with a lawsuit filed against him and a member firm.

John J. Connolly (Registered Representative, Monmouth Junction, New Jersey) was fined \$83,206.04 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 9. The sanctions were based on findings that, in contravention of Regulation T of the Federal Reserve Board, Connolly maintained a personal securities account with a member firm and failed to pay for securities purchased in the account on a timely basis. In addition, Connolly established a securities account under a fictitious name and effected transactions by means of "free-riding" in that he bought and sold securities without paying for them and thereby failed to conform to the payment and credit restrictions of Regulation T. Furthermore, Connolly established a securities account with a member firm for his wife without disclosing her relationship to him on the new-account form.

Dennis Ray Dees (Registered Representative, Zachary, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any

member of the NASD in any capacity for six months. Without admitting or denying the allegations, Dees consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without obtaining written authorization from the customer and without having his member firm accept the account in writing as a discretionary account.

Raul E. DelRio, Jr. (Registered Representative, Escondido, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$43,142 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, DelRio consented to the described sanctions and to the entry of findings that he caused the issuance of four checks totaling \$28,142 from a public customer's account, forged the customer's signature on the checks, and deposited the checks into a bank account. The findings further stated that the bank account was under DelRio's control and that he converted the funds to his own use and benefit.

Kenneth Wayne Elsberry (Registered Principal, La Jolla, California) and **David John Wildsmith Lewis (Registered Principal, Pinner Middlesex, Great Britain)** submitted an Offer of Settlement pursuant to which Elsberry was fined \$10,000 and suspended from association with any member of the NASD for seven days as a registered principal. Lewis was fined \$10,000 and suspended from association with any member of the NASD for six months 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 Elsberry and Lewis, acting on behalf of a member firm, engaged in a general securities business while failing to maintain sufficient net capital, and failed to preserve accurate books and records. In addition, the NASD found that Elsberry and Lewis failed to give telegraphic notice to the SEC or to the NASD concerning the firm's net capital deficiency.

William J. Fogler (Registered Representative, Copley, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Fogler consented to the described sanctions and to the entry of findings that, on two occasions, he pur-

chased life insurance policies for public customers without the authorization of the customers. The NASD found that these purchases were paid for by means of unauthorized loans against other insurance policies owned by the same customers.

Kelly Page Frost (Registered Representative, San Diego, California) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Frost failed to respond to NASD requests for information concerning his termination from a member firm.

Michael Thomas Hesse (Registered Representative, Denton, Texas) and **Ray Edward Johnston (Registered Principal, Carrollton, Texas)**. Hesse was fined \$20,000, and Johnston was fined \$5,000 and suspended from association with any member of the NASD in any capacity for five business days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 6.

The sanctions were based on findings that Hesse exercised discretion and control over the accounts of a public customer and effected transactions in these accounts that were excessive in size and frequency. Furthermore, Hesse recommended to the same customer the purchase and sale of securities, including options, without having reasonable grounds for believing that such recommendations were suitable for the customer considering her financial situation, needs, and investment objectives. In addition, Johnston failed to supervise Hesse's activities adequately and properly.

Ray Edward Johnston (Registered Principal, Carrollton, Texas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Johnston failed to respond to an NASD request for information concerning a customer complaint.

Robert H. Joyce (Registered Representative, Lakewood, Colorado) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Joyce failed to respond to NASD requests for information in connection with a special examination for which the NASD requested bank statements to ascertain the financial condition of his member firm.

Norman Kaufman (Registered Representative, Santa Monica, California) and **Norman Her-**

bert Gershman (Registered Principal, New York, New York). Kaufman was fined \$25,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination before acting again in any registered capacity. In addition, Gershman was fined \$10,000. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 2.

The sanctions were based on findings that Kaufman exercised discretionary trading authority over a customer's account and executed securities transactions without having reasonable grounds for believing such transactions were suitable for the customer considering her financial situation and investment objectives. Furthermore, Gershman failed to supervise Kaufman's activities properly and adequately.

Joseph H. King, Jr. (Registered Principal, Cazenovia, New York) was fined \$2,500, jointly and severally with a member firm, and suspended from association with any member of the NASD in any capacity for six months. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that King and a member firm failed to respond to an NASD request for information concerning the firm's termination from membership with the NASD.

Peter David Kozlowski (Registered Representative, Dover, Massachusetts) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kozlowski executed numerous transactions in municipal securities between accounts in which he had an interest and in customer accounts at prices that were unfair and unreasonable in relation to the prevailing market price for the securities.

William Joseph Ladwig (Registered Representative, Stephenville, Texas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ladwig failed to respond to an NASD request for information concerning a customer complaint.

Elizabeth Longo (Registered Representative, Bridgeport, Connecticut) was fined \$25,000 and barred from association with any member of

the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that Longo misappropriated customer funds in that she forged the endorsements of six public customers on checks totaling \$4,700 and converted the proceeds to her own use without the knowledge or consent of the customers.

Frank A. Marra (Registered Principal, Orlando, Florida), Charles R. Kiefner (Registered Principal, Baton Rouge, Louisiana), and Ricky E. Hartness (Financial and Operations Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which Marra was suspended from association with any member of the NASD in any principal capacity for one month and required to requalify as a general securities principal. Kiefner was suspended from association with any member of the NASD in any capacity for one business day and required to requalify as a general securities principal, and Hartness was suspended from association with any member of the NASD in any capacity for two weeks.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Marra failed to supervise properly the activities of another individual. The NASD also found that Kiefner and Hartness, acting on behalf of their member firm, failed to establish, maintain, and enforce a supervisory system reasonably designed to ensure that other individuals complied with applicable securities laws and regulations, and with NASD rules.

Thomas Larry Martin (Registered Representative, St. Petersburg, Florida) was fined \$5,000 and suspended from association with any member of the NASD in any capacity for six months. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that Martin induced a public customer to transfer securities and monies from the customer's account at another member firm to his current employer by means of false and misleading representations.

John T. Murray (Registered Representative, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any ca-

capacity. Without admitting or denying the allegations, Murray consented to the described sanctions and to the entry of findings that he received from a public customer \$10,000 in bearer bonds with instructions to deposit the bonds in the customer's account. The findings stated that, instead, Murray deposited only \$5,000 of the bonds in the customer's account and deposited the remaining \$5,000 in the account of a second customer without the first customer's knowledge or consent. Furthermore, the NASD determined that Murray then sold the bonds for \$5,772.50, remitted \$2,000 of the proceeds to the second customer as repayment for a personal loan, and converted the remaining \$3,772.50 to his own use.

Timothy J. O'Neill (Registered Representative, Buffalo, New York) submitted an Offer of Settlement pursuant to which he was fined \$3,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination. Without admitting or denying the allegations, O'Neill consented to the described sanctions and to the entry of findings that, while taking the Series 63 examination, he had in his possession handwritten notes pertaining to the subject matter of the examination.

James D. Panagiotis (Registered Representative, Oak Lawn, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Panagiotis consented to the described sanctions and to the entry of findings that he accepted \$3,000 in cash from an insurance customer with instructions to use the funds for a premium payment. The findings stated that he failed to follow the customer's instructions and, instead, gave the funds to another person.

Dennis Pedings (Registered Representative, New Stanton, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$24,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Pedings consented to the described sanctions and to the entry of findings that he received funds totaling \$27,000 from a public customer to pay the premium on the customer's insurance policy. The findings stated that, instead, Pedings converted \$4,000 of the funds to his own

use without the knowledge or consent of the customer.

Bruce Alan Price (Registered Representative, Marion, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Price consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use insurance premiums totaling \$823.52 received from his insurance customers.

David Scott Sachs (Registered Representative, Fort Lee, New Jersey) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sachs executed an unauthorized purchase transaction in the account of a public customer. Sachs also failed to respond to NASD requests for information.

John L. Schaffler, III (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any member of the NASD in any capacity for six months, and required to requalify as a general securities representative. Without admitting or denying the allegations, Schaffler consented to the described sanctions and to the entry of findings that he executed the sale of a customer's government securities fund and used the proceeds to purchase another fund that had similar investment objectives while costing the customer an additional sales charge of \$9,876.25.

The NASD also found that Schaffler executed the purchase of shares of a government fund without informing another public customer that such purchase could have been made in the customer's existing government fund account at a reduced sales charge at the breakpoint level under the rights-of-accumulation feature of that fund. Furthermore, the NASD determined that Schaffler made inaccurate statements regarding a sales charge when confirming a purchase with a different public customer. In addition, the findings stated that Schaffler made inaccurate statements that induced six other public customers to purchase shares of an investment company.

Donald R. Seekins (Registered Representative, Compton, New Hampshire) was fined \$20,000 and barred from association with any of

the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that Seekins failed to respond to NASD requests for information concerning his termination from a member firm.

Richard A. Sena (Registered Representative, Cincinnati, Ohio) submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for two months and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Sena consented to the described sanctions and to the entry of findings that he executed certain municipal securities purchase and sale transactions with a member firm at prices that were not reasonably related to the current market price for the securities and constituted a practice commonly known as adjusted trading. Adjusted trading is generally a two-step transaction in which a security is sold at a price above the prevailing market price (usually to conceal a loss) and another security is purchased at a price above the true market value at the time of the purchase to offset the overpayment in the earlier sale transaction.

According to the findings, Sena also caused the falsification of books and records of the firms and customers involved in that the realized losses on such sales were concealed and the new securities purchased were recorded at inflated prices. In addition, the findings stated that Sena caused false and misleading confirmations to be mailed to the firms and customers involved.

Edward R. Sikora (Registered Representative, Glendale Heights, Illinois) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that Sikora received two checks totaling \$4,791.90 from an insurance customer for payment on a life insurance policy. He failed to follow the customer's instructions and used the funds for his personal benefit. Sikora also failed to respond to NASD requests for information.

John Michael Sorensen (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he

was fined \$50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Sorensen consented to the described sanctions and to the entry of findings that he received funds totaling \$313,664.56 from public customers, deposited the monies into a checking account under his control, and converted the funds to his own use and benefit.

Franklin Lloyd Stiles (Registered Principal, Tampa, Florida), Neal Sherman Allen (Registered Principal, Tampa, Florida), David Paul Schrader (Registered Representative, New Port Richey, Florida), Charles P. Davis, Jr. (Registered Representative, Hudson, Florida), and Peter K. Lloyd (Registered Representative, Odessa, Florida). Stiles, Allen, and Lloyd were each fined \$10,000, barred from association with any member of the NASD in a principal or supervisory capacity, and suspended from association with any member of the NASD in any capacity for 20 days. Schrader and Davis were each fined \$5,000 and suspended from association with any member of the NASD in any capacity for 10 days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 7.

The sanctions were based on findings that Stiles, Allen, and Lloyd sold securities to public customers in private securities transactions without providing their member firm with prior written notice. In addition, Stiles, Allen, Lloyd, Schrader, and Davis made recommendations to public customers regarding the purchase of securities without having reasonable grounds for believing that such recommendations were suitable based on the customers' other securities holdings and their financial situations and needs.

Lloyd has appealed this action to the Securities and Exchange Commission, and the sanctions regarding him, other than the bar, are not in effect pending consideration of the appeal.

Charles J. Sullivan (Registered Principal, Greenlawn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 10 business days. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that, while acting on behalf of a former member firm, he con-

ducted a securities business and failed to maintain the firm's required minimum net capital. The findings also stated that Sullivan, acting on behalf of the firm, failed to make the required monthly Reserve Formula Computation after receiving customer funds, and failed to make the required deposit and to maintain the required balance in the Special Reserve Bank Account for Exclusive Benefit of Customers.

In addition, the NASD determined that Sullivan, acting on behalf of the firm, failed to abide by the firm's restriction agreement when it exceeded the number of issues in which it could make a market. Furthermore, according to the findings, Sullivan, acting on behalf of the firm, failed to supervise properly the firm's financial and operational activities.

Diane L. Thorpe (Registered Representative, Lansing, Michigan) submitted an Offer of Settlement pursuant to which she was fined \$10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Thorpe consented to the described sanctions and to the entry of findings that she engaged in private securities transactions with public customers without providing prior written notice to her member firm. Thorpe also failed to respond to NASD requests for information.

Charles D. Tom (Registered Representative, Issaquah, Washington) was suspended from association with any member of the NASD in any capacity for one year. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanction was based on findings that Tom executed options transactions in the joint account of two public customers without obtaining prior written discretionary trading authority from the customers and without written acceptance of the account as discretionary by his member firm. In addition, Tom guaranteed these customers against losses in their account.

This action has been appealed to the Securities and Exchange Commission, and the sanction is not in effect pending consideration of the appeal.

Phillip J. Tullis (Registered Representative, Dunwoody, Georgia) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors follow-

ing an appeal of a decision by the DBCC for District 5. The sanctions were based on findings that Tullis failed to execute the order of a public customer in a timely manner. He also made improper use of funds and securities of the same customer in that he asked the customer to endorse a \$29,181.96 check to him and then deposited the check into his own bank account. In addition, Tullis failed to respond to NASD requests for information.

Neal Van Schouwen (Registered Principal, Schererville, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Van Schouwen consented to the described sanctions and to the entry of findings that, in connection with three limited partnership offerings, a former member firm, acting through Van Schouwen, failed to comply with SEC Rule 15c2-4. The findings stated that, by releasing and using monies received from subscribers before the contingencies in the offerings were met, he failed to properly safeguard investors' funds.

Joseph L. Varszegi (Registered Representative, Glastonbury, Connecticut) and **Timothy H. Masley (Registered Representative, Manchester, Connecticut)** submitted an Offer of Settlement pursuant to which Varszegi was fined \$25,000 and suspended from association with any member of the NASD in any capacity for two years. Masley was fined \$20,000 and suspended from association with any member of the NASD in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Varszegi and Masley purchased shares of new issues that traded at a premium in the immediate after-market.

Gary Frank Vick (Registered Representative, Albuquerque, New Mexico) was fined \$7,500, suspended from association with any member of the NASD in any capacity for two years, and required to be under additional supervision by any member firm with which he associates for two more years following his suspension. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 3. The sanctions were based on findings that Vick held customer funds in an account over

which he had control and misappropriated funds totaling \$19,942 for his own purposes from this account.

William W. Whitmore (Registered Representative, Wilmette, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any member of the NASD in any capacity for 15 business days, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Whitmore consented to the described sanctions and to the entry of findings that he purchased, or caused to be purchased, shares of stock for the accounts of 31 public customers without the knowledge or consent of the customers and in the absence of written or oral authorization from the customers to exercise discretion in the accounts. Furthermore, the findings stated that he caused shares of stock to be transferred from seven of these accounts to seven other accounts without the knowledge or consent of the customers.

Dennis Michael Williams (Registered Principal, Laguna Hills, California) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Williams failed to respond to NASD requests for information concerning his termination from a member firm.

Robert Arthur Wilson (Registered Representative, South Hampton, New York) submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any member of the NASD in any capacity for two weeks. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

FIRMS EXPELLED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

J. V. Ace & Company, Incorporated, Houston, Texas
Kettler and Company, Chicago, Illinois
New South Securities, Incorporated, Amarillo, Texas

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 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 request for information, the listing also includes the date the suspension concluded.

Accord Capital Growth, Inc., Dallas, Texas (April 24, 1991)

Allied Equity Group, A Financial Services Corp., Bodega Bay, California (April 24, 1991)

American Classic Financial Company, Haverford, Pennsylvania (April 24, 1991 to May 2, 1991)

Amlife Brokerage Corporation, Scottsdale, Arizona (April 24, 1991)

Bailey & Associates, Inc., Knoxville, Tennessee (April 24, 1991)

Capital Equity Corporation, Raleigh, North Carolina (April 24, 1991)

Capital Fusion Group, Inc., Buffalo, New York (April 24, 1991)

M. Curley & Co., Inc., New York, New York (April 24, 1991)

Dove Securities, Inc., Waco, Texas (April 24, 1991)

EIC Capital Corporation, Redwood City, California (April 24, 1991)

Entertainment Securities, Inc., Orlando, Florida (April 24, 1991)

Esquire Investments, Inc., Lansing, Michigan (April 24, 1991)

First Corporate Brokerage Services, Inc., Minneapolis, Minnesota (April 24, 1991)

GCC Securities, Inc., San Francisco, California (April 24, 1991)

James Harold Goode, Jr., San Clemente, California (April 24, 1991 to May 9, 1991)

Grace Securities, Inc., Winter Park, Florida (April 24, 1991)

Great Southern Securities Company, Tallahassee, Florida (April 24, 1991)

Hancock & Bell Investments, Inc., San Francisco, California (April 24, 1991)

Island Planning Corp. of America, New York, New York (April 24, 1991)

KAJ Financial Corp., Los Angeles, California (April 24, 1991)

Monarch Investment Company, Norcross, Georgia (April 24, 1991)

Monet Securities, Inc., San Diego, California (April 24, 1991)

National Equity Resources, Inc., Boulder, Colorado (April 24, 1991 to May 2, 1991)

Norris & Hirshberg, Inc., Duluth, Georgia (April 24, 1991)

Resonance Securities Corp., North Miami Beach, Florida (April 24, 1991)

Royalty Securities Corp., New York, New York (April 24, 1991)

V.M. Ruch & Co., Inc., Buffalo, New York (April 24, 1991)

Sutter Street Securities, San Francisco, California (April 24, 1991)

USH Securities Corp., Phoenix, Arizona (April 24, 1991)

John G. Varel, Haleiwa, Hawaii (April 24, 1991)

VIP Financial Companies, Inc., Denver, Colorado (April 24, 1991 to May 2, 1991)

INDIVIDUALS WHOSE REGISTRATIONS WERE REVOKED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

Joseph V. Ace, Houston, Texas

Terry D. Bixler, Aurora, Colorado

William R. Buckley, Oak Forest, Illinois

Nancy D. Chletcos, Levittown, Pennsylvania

Charles L. Crawford, Jr., Lafayette,

Louisiana

William R. Eyler, West Linn, Oregon

Barry W. Fortner, Aurora, Colorado

Paul Gallerani, London, England

Ana Z. Goldberg, Denver, Colorado

George L. Gore, Jr., Castelrock, Colorado

Stuart M. Helffrich, Phoenix, Arizona

Paul Kettler, Chicago, Illinois

Timothy H. Masley, Manchester, Connecticut

Daryl T. Moore, Charleston, South Carolina

Timothy J. Moore, Coral Springs, Florida

Timothy J. O'Neill, Buffalo, New York

George J. Paukert, Los Angeles, California

Michael E. Schlater, Lakewood, Colorado

Zachary L. Shultz, Amarillo, Texas

Nicholas J. Sprung, Breckenridge, Colorado

Dale E. Towers, Federal Way, Washington

Joseph L. Varszegi, Glastonbury, Connecticut

Glendall D. Verner, Brentwood, Tennessee

Timothy D. Wise, Fort Lauderdale, Florida

**NASD EXPELS FIRST EAGLE, INC., FOR
MANIPULATION, FRAUD, MISREPRESENTATIONS,
AND EXCESSIVE MARKUPS IN A "PENNY STOCK"**

**Four Officers and 24 Branch Office
Personnel Also Sanctioned**

The NASD has expelled First Eagle, Inc., of Englewood, Colorado, from membership in the NASD and has taken disciplinary action against Barry W. Fortner, Chairman of the Board and President; Robert C. Valerius, Compliance Officer; Thomas L. Svalberg, Chief Financial Officer; Terry D. Bixler, Head Trader; Bradley A. Sandlin and Jann E. Sandlin, managers of the Metairie, Louisiana, branch office; Carol A. Browning, manager of the Charleston, South Carolina, branch office; and 21 salesmen.

Pursuant to Offers of Settlement, First Eagle was fined \$100,000 and expelled from membership in the NASD; Fortner was fined \$10,000 and suspended for two years in all capacities; Valerius was suspended for one week in all capacities and ordered to requalify as a principal; Svalberg was suspended for two weeks in the capacity of financial principal; Bixler was fined \$5,000, suspended for 30 days in all capacities, suspended for two years in the capacity of principal or a head trader, and ordered to requalify as a principal; and Browning was suspended for one week in all capacities and ordered to requalify as a principal.

Also, pursuant to Offers of Settlement, the following salesmen in various branch offices were suspended for one day in all capacities: Robert J. Stonicher, David G. Nicholson, Ned L. LeBlanc, III, Kevin R. Smith, John P. Carpenter, Gregory J. Simonds, John F. Yakimczyk, Michael S. Cluphf, Legrand R. Groves, Jr., Robert L. Murray, Timothy Carr, Joseph B. Murdock, David M. Baker, Harold H. Herman, and William G. Baum. Furthermore, assistant branch manager/salesmen Terry B. McNeal, John A. Barron, and George M. Spolski were suspended for one week in all capacities and ordered to requalify as principals. Finally, John W. Strand, a salesman in the Metairie, Louisiana, branch office, was fined \$15,000 and barred in all capacities. The Offers of Settlement were made without admitting or denying the allegations in the complaint.

In a related decision, Bradley Sandlin was fined \$15,000 and barred in all capacities, Jann

Sandlin was fined \$5,000 and suspended for six months in all capacities, salesman Robert L. Sullivan was fined \$10,000 and suspended for one month in all capacities, and salesman Glen A. Hatteberg was suspended for one day in all capacities.

This disciplinary action was taken by the NASD's DBCC for District 5 in New Orleans, Louisiana, which has jurisdiction over members with main and branch offices in Louisiana, Mississippi, Alabama, Arkansas, Tennessee, Oklahoma, and Kentucky. "The development of this case demonstrates not only the NASD's continued commitment on a national and regional level to eliminate egregious sales and trading practice abuses in the penny-stock market, but also that we will hold employees at the branch level accountable if they knowingly participate and gain excessive profits from their activities with a firm that does not charge fair and reasonable prices," says John E. Pinto, NASD Executive Vice President for Compliance.

Cartel Acquisitions, Inc. was a blank-check initial public offering (IPO) that was underwritten by First Eagle in late 1988. The NASD found that First Eagle, acting through Fortner and Bradley Sandlin, made false and misleading representations to investors in the IPO of Cartel and also failed to disclose material information to these investors. In connection with the IPO, the NASD also found that First Eagle, acting through Fortner, sold Cartel units to five individuals or entities that possessed material, nonpublic information concerning merger negotiations between Cartel and another company.

The NASD found that First Eagle dominated and controlled the secondary market for Cartel, accounting for 94 percent of the purchase volume and 95 percent of the sales volume for the period between November 14, 1988, and May 23, 1989. The NASD found that, in light of the firm's dominant share of after-market trading and the virtual absence of competition by market makers, First Eagle was the only market in Cartel and therefore could not rely on quotes as indicative of the prevailing market in Cartel but instead was required to use the firm's contemporaneous cost of acquiring Cartel to compute its allowable markups. The NASD found that, while dominating and controlling the market for Cartel, all the respondents, with the exception of Valerius and Svalberg, charged their customers excessive markups in approxi-

mately 1,500 transactions ranging from 11 percent to 130 percent over the prevailing market price of the security.

The NASD also found that First Eagle manipulated the market price for Cartel and that all the respondents (with the exception of Valerius and Svalberg) charged different public customers widely varying prices, arbitrarily set those prices to produce the trading activity that followed, and neglected to disclose to their customers the pricing method used and the absence of a relationship of the pricing method to a bona fide assessment of demand for the stock. The NASD found that these respondents failed to inform their customers that they charged excessive markups or to disclose the amount of the markups and the fact that the firm dominated and controlled the market for Cartel.

In addition, the NASD found that First Eagle, acting through Fortner, Svalberg, and Bradley Sandlin, sent inaccurate confirmations to the purchasers of Cartel units in the IPO. The NASD further found that First Eagle, acting through Fortner, Svalberg, Valerius, Bradley Sandlin, and Jann Sandlin, paid commissions on Cartel transactions to an unregistered broker-dealer, and that Bradley Sandlin and Jann Sandlin allowed salesmen to send a misleading videotape to investors.

The NASD found that each of the respondents violated various NASD rules. The Association also found that First Eagle and Bradley Sandlin, in particular, violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and Article III, Section 18 of the NASD's Rules of Fair Practice. These provisions prohibit the use of any manipulative, deceptive, or other fraudulent devices in the purchase or sale of any security.

The suspensions imposed on the respondents began April 19, 1991.

NASD EXPELS ATLANTA FIRM, BARS ITS PRESIDENT, IMPOSES FINES OF \$120,000, AND ORDERS RESTITUTION OF \$2.5 MILLION

The NASD's DBCC for District 7 has taken disciplinary action against First Alliance Securities, Inc., located in Atlanta, Georgia; its former President, William F. Lincoln; and Robert Hartnagel, an associated person.

The misconduct involved, among other things, charging fraudulently excessive markups to

customers in the sale of millions of shares of seven securities of different issuers. All of the securities were over-the-counter penny stocks. The NASD expelled the firm from membership in the NASD and fined it \$50,000. Furthermore, the firm, jointly and severally with Lincoln, was ordered to pay restitution totaling \$2.5 million to the customers who were harmed. Lincoln was also fined \$50,000 and barred from associating with any member of the NASD. Hartnagel, who was charged with acting as a financial and operations principal without being properly registered and with violating a suspension imposed in a prior disciplinary action by the NASD, was fined \$20,000, suspended from associating with any member firm for a period of six months, and barred from associating with any member of the NASD in a principal capacity.

The NASD's decision followed a disciplinary hearing before the District 7 (Atlanta) DBCC and was based on findings that the firm, Lincoln, and Hartnagel violated various NASD rules, including violations by the firm and Lincoln of Article III, Section 18 of the NASD's Rules of Fair Practice. Section 18 of the Rules of Fair Practice is the NASD's anti-fraud rule, which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

The NASD found that the firm was not acting as a market maker for the seven over-the-counter securities at issue, which are not listed either on Nasdaq or an exchange. The securities involved were Sea Venture Cruises, Inc.; C-Square Ventures, Inc.; Cimarron Consolidated Mining and Oil, Inc.; Pioneer Petroleum and Mining, Inc.; Triangle Group, Inc.; Salvatori Ophthalmics, Inc.; and American Pizza Company. In addition, the NASD found that the firm, acting through Lincoln, charged its customers fraudulently excessive markups ranging from 10 percent to 3,300 percent above the prevailing market price. In imposing the fines, expulsion, and bar, the NASD said that the sanction appropriately reflects the serious nature of the violations.

This proceeding and the sanctions imposed are part of the NASD's continuing commitment to address fraud and other abuses in the securities industry with aggressive enforcement actions. The investigation was conducted by the NASD's Atlanta district office and is part of a concerted nationwide effort by the NASD to eliminate sales-practice abuses in over-the-counter penny stocks.

For Your Information

National Association of Securities Dealers, Inc.

June 1991

PLATO Development Center Address in Los Angeles Changes

Effective immediately, the Los Angeles, California, PLATO Development Center is relocating to 701 North Brand Boulevard, Suite 340,

Glendale, CA 91203. The new telephone number is (818) 545-7383.

North Dakota Increases Broker-Dealer and Agent Registration Fees

Effective July 7, 1991, North Dakota will increase its broker-dealer and agent fees. The broker-dealer registration and renewal fee will rise from \$175 to \$200. Agent registration, transfer, and re-

newal fees will climb from \$35 to \$50.

If you have questions regarding these changes, call NASD Information Services at (301) 590-6500.