

# ALERT

## NASD Finds No Need for Separate Order-Flow Rule

Cash payments are not sufficiently different from other inducements for order flow to justify separate regulation, according to a recently completed six-month study by the NASD Payment for Order Flow Committee.

The Committee, which delivered its report to the NASD Board of Governors at its July meeting, was chaired by David S. Ruder, the 1987-89 Securities and Exchange Commission (SEC) Chairman and now a partner in the Chicago law firm of Baker & McKenzie, a professor at Northwestern University Law School, and an NASD Governor. In its report, the Committee also concluded that small orders executed at the best bid or offer are receiving best execution.

The group recommended that the factors and inducements that influence order-routing and execution systems be disclosed to customers at the time of account openings and periodically thereafter.

The use of order-flow inducements, according to the Committee, results from competition in the securities markets, and it exerts a beneficial impact on the services and costs ultimately available to investors.

The study pointed out that cash payments for order flow, while more visible than other inducements, are not substantially different from them. Like most forms of inducements, cash payments reflect competition for execution services and figure in the operations of exchanges, broker/dealers, and clearing firms.

In response to the suggestion that the economic benefits of order-flow inducements should be passed on directly to customers, the study concluded that these benefits result from the aggregation of small orders

and as such cannot be translated into a single order.

Cash payments, the study found, cannot be mathematically divided among customers and therefore attached to or reflected in the execution price of each order.

The Board established the Committee in 1990 to examine cash payments and other practices in the securities industry that affect the routing by brokers of streams of small orders to dealers for execution. The appropriate NASD committees will review the report's recommendations, and the Board will take final action at future meetings.

The 48-page study includes a general overview of trading in the United States securities markets, a description of the inducements found to affect order-routing decisions for aggregated small orders, an analysis of the competitive impact of inducements on the securities markets, and recommendations regarding best execution and customer disclosure.

In addition, in the appendices to the report, the Committee presents

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## Evaluation of NASD-Registered Persons Moves Step Closer

The NASD has decided to move forward with plans to develop an industry-wide program of continuing education and assessment for the more than 400,000 securities professionals who are registered with it.

"The NASD is taking the lead in increasing the standards of professionalism for securities industry practitioners," says NASD President and CEO Joseph R. Hardiman. "Investors and the public should feel confident that securities industry professionals have a thorough knowledge of the investment products they sell, the rules they must follow, and the increasingly complex financial markets in which they operate."

### Program Details

The NASD Membership Committee, which is comprised of securities industry representatives from a cross section of member firms, has been authorized by the NASD Board of Governors to begin developing the

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VOL. 5, NO. 3  
SEPTEMBER 1991

details of the program. In doing so, the Board concluded that member firms should have the option to either:

- Adopt a continuing education program for registered personnel that must include an assessment capability and be approved by the NASD, or
- Require their registered personnel to undergo periodic assessment by the NASD of their knowledge in their areas of responsibility.

The Board also authorized the Committee to design the program with a limited grandfather provision in order to exempt from these requirements persons with significant industry experience and no disciplinary histories.

Ronald E. Buesinger, Chairman of the Membership Committee and a former member of the NASD Board, said: "The action taken by the NASD Board is a commitment to competency and professionalism in our industry. The program our Committee will develop will provide an appropriate vehicle to demonstrate that competency and professionalism."

The NASD Board asked the Membership Committee to report to it later this year with specific proposals in a number of areas:

- The standards that the NASD will apply in reviewing and approving continuing education and assessment programs adopted by member firms;
- The manner in which the NASD will monitor members' continuing education and assessment programs;
- The role, if any, for the NASD in providing educational materials for continuing education programs conducted by and for members;
- The terms of the grandfather provision;
- The number of years in the assessment cycle, with possible variations for limited representatives; and
- The consequences for an individual who fails to complete successfully either the member's continuing education program or the NASD's assessment program.

The continuing education and assessment program being developed by the NASD was guided by many

constructive comments and suggestions provided by more than 100 member firms and securities industry organizations in response to a concept paper circulated by the NASD in June 1990.

That proposal resulted from widespread concerns in the industry and among the state securities regulators that the proliferation of new securities products, as well as new laws and regulations, may be creating a need for a formal program to provide assurances that minimum knowledge levels are being maintained by securities industry professionals after their initial registration.

## NASD Fines, Suspends Officer Of Member Firm For Insider Trades

The NASD has disciplined Ronald F. Beck of Denver, Colorado, formerly a Senior Vice President in the Investment Banking Division of an NASD member firm. The NASD's decision was based on proceedings before its Market Surveillance Committee and Board of Governors.

The allegations of misconduct involved, among other things, Beck's effecting transactions in a joint account (with two aunts) that he controlled while possessing material, nonpublic information regarding a proposed merger transaction in 1989 in American Capacity Group, Inc., formerly a Nasdaq-listed security.

The NASD found that Beck had obtained the material, nonpublic information through his fiduciary position as an investment banker to the issuer.

In addition, Beck used the joint account maintained at a firm other than his employer to place orders for his personal gain. Based on trading within the joint account, Beck realized a profit of approximately \$30,000. In its decision, the NASD found that Beck had a clear duty to refrain from trading in the subject security once he became aware of mate-

rial, nonpublic information regarding the proposed tender offer.

Because Beck failed to do so, the NASD found that he had violated Article III, Sections 1 and 18 of the Association's Rules of Fair Practice, Sections 10b and 14e of the Securities Exchange Act of 1934, and Rules 10b-5 and 14e-3 thereunder.

Based on these findings, Beck was censured, fined \$56,056, suspended in all capacities for one year, and barred from association with any member firm in a principal capacity in an investment banking or corporate finance function.

These disciplinary proceedings and sanctions imposed are part of the NASD's continuing commitment to address fraud and other abuses in the securities markets.

## SROs Set Minimum Standards for "Chinese Walls"

In a joint memorandum to members, the NASD and the New York Stock Exchange have set forth the minimum requirements for appropriate "Chinese Wall" procedures.

These Chinese Walls are intended to prevent the misuse of material, nonpublic information by employee and proprietary accounts.

At a minimum, the following are necessary elements of adequate Chinese Walls:

- Memorialization of the firm's Chinese Wall procedures and documentation of actions taken.
- Procedures concerning proprietary trading when the firm is in possession of material, nonpublic information.
- Review of employee and proprietary trading.
- Substantive supervision of interdepartmental communications.
- Education and training of employees.

Under these requirements, a firm has to formalize and organize its Chinese Wall procedures and incorpo-

rate these into its procedural/policy manuals. In addition, a firm has to maintain documentation of its written policies and procedures as well as its analyses and investigations of employee proprietary trading in accordance with SEC recordkeeping requirements.

Firms that conduct investment banking, research, or arbitrage activities must maintain some form of watch lists and restricted lists and conduct reviews of employee and proprietary trading in securities appearing on those lists.

The firm's written procedures should address its method for determining whether proprietary trading should be restricted or prohibited once a department of the firm comes into possession of material, nonpublic information.

Generally speaking, a restricted list is a current list of securities in which proprietary, employee, and certain solicited customer transactions are restricted or prohibited. A watch list is a current list of securities that generally do not carry trading restrictions, but the trading of which is subject to close scrutiny by the firm's compliance and/or legal department.

A firm's procedures must explain why, when, and how a security should be placed on and deleted from a restricted list or watch list, and which activities are prohibited or restricted when a security is on either list. Minimum documentation has been established for the use of restricted and watch lists.

Adequate Chinese Walls must also include policies and procedures reasonably designed to limit or contain the necessary flow of material, nonpublic information to employees who have a "need to know."

They include policy statements in this regard, the physical separation of the trading and sales departments from departments that regularly receive confidential information, other restrictions to access (i.e., separate recordkeeping and support systems for sensitive departments), and supervision of interdepartmental communications involving material, nonpublic information.

A firm's procedures must adequately address how the firm monitors employee transactions outside the firm in securities on a watch list or restricted list and specify the time period and frequency of any review of proprietary and employee trading (including who is responsible for the review).

Also, a firm must *reasonably* inquire into or investigate possible misuse of material, nonpublic information. Any such investigation must be documented. Failure to investigate merely because the employee worked in a "nonsensitive" area may be insufficient.

Finally, employees must have a firm understanding of the rules and procedures relating to the use of material, nonpublic information. To accomplish this, each firm must have procedures in place to ensure these requirements are provided or made available to each employee. Each employee must sign an attestation of his or her knowledge and understanding of such requirements.

Firms must have a process in place to update employees on new or revised requirements and to continue their education and compliance in this area. Policy or education memos may be useful in conjunction with the annual compliance review for registered employees, which is required under Article III, Section 27 of the NASD Rules of Fair Practice.

## Syndication Changes Result in Rule Change Proposal

**I**n light of changes in the syndication business, the NASD has proposed amendments to Schedule C that would permit Direct Participation Program Representatives to sell partnership debt.

This approach, in the NASD's view, does not compromise the limited scope of the direct participation registration categories. Because this change would replace past interpretations of the direct participation pro-

grams registration provisions, the NASD requests comment by September 25 from members and other interested parties before taking action to adopt these measures.

Since implementing the direct participation programs registration categories in the early 1980s, the NASD has consistently interpreted the relevant provisions of Schedule C to apply only to the sale of equity interests in direct participation programs as this term is defined in Schedule C to the By-Laws. In recent years, however, partnership syndicators have begun to issue debt securities of direct participation programs, usually promissory notes, for sale to "qualified plans" as that term is defined under the Employee Retirement Income Security Act regulations.

The principal reason for issuing the security as a debt instrument is to avoid the receipt of unrelated business taxable income as part of the distribution to debtholders. The NASD believes that these debt instruments are equivalent to equity interests in a partnership and would be offered as equity if not for the adverse tax consequences that would occur.

## NASD Advertising Department Notes Shortcomings in CMO Literature

**T**he NASD's Advertising Department has received member advertising and sales literature promoting collateralized mortgage obligations (CMOs) that did not comply with NASD requirements.

CMOs are bonds backed by a pool of mortgages or mortgage certificates that are issued by either government agencies or private investment banking firms.

Although the collateral backing CMOs is typically issued by a government or government-sponsored entity, only those CMOs issued by a government entity carry a government guarantee.

Advertisements for government agency issues are subject to regula-

tion under Section 8 of the NASD Government Securities Rules, and those for private-issue CMOs fall under Article III, Section 35 of the NASD Rules of Fair Practice. The standards of Section 8 generally match those of Section 35 with one major exception.

Section 8(c)(1) requires NASD members to file government securities advertisements with the Advertising Department within 10 days of first use.

Therefore, if a member publishes or broadcasts an advertisement for a CMO issued by a government agency, the member must submit the piece for review.

Like yields on other mortgage-backed issues, CMO yields are generally quoted as estimated-bond-equivalent yields based on an assumed prepayment rate derived from the Public Securities Association benchmark.

When preparing this type of yield, NASD member firms must use a prepayment rate that is reasonable under the circumstances.

Although the estimated yield lets an investor compare a CMO with conventional bonds, not all investors realize the yield is an estimate and that the actual yield may vary.

Thus, advertisements should identify the yield as an estimate

based on an assumed prepayment rate and explain that the investor's actual yield will vary depending on the actual prepayments and market conditions.

The ad should disclose the prepayment assumption. Members should also provide the coupon rate and price of the security used in computing the yield as well as the effective date for calculating the yield. Communications should accurately depict the guarantees associated with CMO securities.

For example, in most cases, it would be misleading to state that CMOs are government-guaranteed securities. Instead, members may characterize government agency issues as "government agency guaranteed." If a private-issue CMO contains a pool of guaranteed securities, this relationship may be described.

For example, an advertisement could state that a Government National Mortgage Association collateralized issue includes securities that carry the full faith and credit guarantee of the U.S. government.

In addition, advertisements should clearly indicate that the guarantees apply only to the timely payment of principal and interest.

Furthermore, when referring to guarantees, communications should state that neither the market value nor

the yield of the CMO is guaranteed.

Both Section 8 and Article III, Section 35 prohibit exaggerated and misleading language. Therefore, members should not overstate the relative safety offered by the bonds.

Although CMOs generally offer low credit risk, like all investment securities they are subject to market risk.

In addition, despite the greater predictability of prepayments provided by the CMO structure, the securities remain subject to prepayment risk, and this fact should be made clear.

Members should avoid describing yields for bonds with particularly long maturities (i.e., more than 10 years) as predictable. Any reference to predictability should be balanced by disclosure of the prepayment risks associated with the securities.

Although private issuers frequently obtain credit ratings for their CMO issues, government agencies do not usually seek these ratings because agency securities are considered to have an implied AAA rating.

While the Advertising Department would not object to member firms describing government agency CMOs as having an "implied AAA rating," members should avoid references to "AAA rated" unless such rating has actually been obtained.

### Example of Ad That Lacks Adequate Disclosure

■ The headline implies that the 9.10 percent rate is guaranteed by the U.S. government.

■ There is no explanation of the 9.10 percent. Is it a coupon rate or bond equivalent yield? How was it calculated (e.g., the price, prepayment assumption, average life, and effective date of the return should be disclosed).

■ The "Liquidity" feature should be expanded to disclose that the security will fluctuate with market changes, and liquidation prior to maturity may result in the investor receiving more or less than the original cost.

■ The final feature, "No interest penalty when you sell," implies

that CMOs and CDs are comparable. Disclosure should be added to

explain the differences between the two investments.

**U.S. GOVERNMENT GUARANTEED**

**9.10%\***

- Monthly Payment
- U.S. Government Guarantee on the Timely Payment of Principal and Interest
- Liquidity
- No Interest Penalty When You Sell

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\*Subject to prior sale Geared to Sell: Poised to Buy

## New Rule Applies To Member Names in Public Communications

The SEC recently approved new standards in the NASD's advertising rule covering the use and disclosure of member names in public communications.

To give members enough time to use existing supplies of such business stationery as letterhead, business cards, confirmation forms, and similar printed material, the amendment will not take effect for such items until November 1, 1991. In all other respects, the amendment became effective June 1, 1991.

The new rule reflects the NASD's concern that the investors may be confused by public communications that either fail to refer to an NASD member firm by its registered name or include unclear references to both NASD member firms and entities that are not NASD members.

### Confused Identities

Unless the identity of, and the products offered by, an NASD member firm are made clear in such communications, the possibility exists that it will confuse or mislead the public as to which entity is, in fact, offering securities.

The revision addresses this problem by establishing general and specific standards for disclosing member names in communications with the public.

The general standards contained in the amendment require, among other things that:

- The names of NASD members be disclosed clearly and prominently;
- When multiple entities are named in one communication, the nature of the relationships, if any, between the NASD member and the named entities, and the products offered by each entity be clear; and,
- When an individual and multiple entities are named in one communication, the nature of the

individual's relationship with the NASD member be clear.

The general standards also prohibit communications from including references to nonexistent degrees or designations and bar the use of bona fide degrees or designations in a misleading manner when referring to individuals.

Further, the standards require that references to memberships (e.g., NASD, SIPC, etc.) make it clear which entity is the member of the referenced organization.

In addition to general standards, the amendment sets forth a number of specific standards to address certain recurring problem areas.

### Fictional Names

Under the amendment, members may voluntarily use fictional or DBA ("doing business as") designations in communications when the DBA name has been filed with the NASD and the SEC on the Form BD and is the only name under which the member is recognized.

If a state or other regulator requires a member to use a DBA (e.g., to avoid confusion with a previously registered corporation) the member may use the DBA only in the jurisdiction that requires its use and, if possible, the member must use the same DBA name in every jurisdiction requiring its use.

### Generic Names

Under certain circumstances, a member may use an altered version of its name to promote certain areas of its business or to promote name recognition through the use of an "umbrella" tag line.

However, the member's name has to be clearly and prominently disclosed, the relationship between the generic name and the member has to be clear, and the member cannot imply that the generic name is its official name.

For using "division of" and similar designations, members may designate a portion of their business in this manner only when the designation is used for a bona fide division of the member (i.e., a division that re-

sults from a merger or acquisition, or a functional division that conducts a specialized aspect of the member's business).

In addition, the member name must be clearly and prominently disclosed, and the division clearly identified as a division of the member.

If financial planners or other nonmember entities use phrases such as "service of" or "securities offered through" followed by the name of a member firm, the nonmember must disclose the member's name clearly and prominently.

In addition, the nonmember must clearly identify the securities function as a function of the member rather than of the financial planning or other entity that also is named in the communication.

### Derivative Names

In certain limited circumstances, the member may use a "derivative" of its name, without also including the member's full name, if:

- The derivative name is used to promote a specific area of the firm's business; and,
- Use of the derivative would not be misleading in context. For example, a member firm that uses a "derivative" name to promote its investment banking business could omit the full firm name from typical "tombstone" advertisements.

This use of a derivative would not be misleading since these advertisements are primarily directed to an institutional, nonretail audience that would not be confused by the absence of the full broker/dealer name, the NASD believes.

### Payment for Order Flow

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background information on prior discussions of payment-for-order-flow practices and descriptions of current order-routing practices. Copies of the report, which costs \$15 per copy, may be obtained by sending a check or money order (made payable to the NASD) to the NASD Book Order Department, P.O. Box 9403, Gaithersburg, MD 20898-9403.

## Compliance Short Takes

■ Stay ahead of fast moving developments in the securities industry by attending the 1991 NASD Securities Conference at the Registry Resort in Scottsdale, Arizona November 22 and 23. Sponsored by NASD Districts in Seattle, San Francisco, Los Angeles, Denver, Kansas City, and Dallas, this seminar focuses on compliance and market-related topics. Those interested in registration information and a seminar schedule should contact Elisabeth Owen, NASD Meeting Coordinator, 1735 K Street, NW, Washington, DC 20006-1506, or call (202) 728-8005.

■ Effective July 1, the NASD began requiring that every bid and/or offer quotation entered into the OTC Bulletin Board service for domestic securities, whether one- or two-sided, be firm for one unit of trading. Quotations displayed for foreign securities, including Canadian stocks and American Depositary Receipts, will remain indicative and subject to twice-daily updates.

■ Beginning October 1, members selling investment company shares will have to disclose the existence of deferred sales charges on the front of the customer's purchase confirmation. Specifically, the confirmation will have to include the following legend, in at least 8-point type: "On selling your shares, you may pay a sales charge. For the charge and other fees, see the prospectus."

■ All members filing FOCUS reports with the NASD should note that the September quarterly filing, due on October 23, 1991, must be filed electronically. Hard-copy filings will not be accepted for regulatory purposes except from members who have temporary exemptions from the electronic filing requirement. Members should also note that no further notifications or FOCUS forms will be provided to alert the member to upcoming filing requirements. Thus, all members should be familiar with the FOCUS filing requirements set forth in SEC Rule 17a-5. During Sep-

tember, all members that file FOCUS reports with the NASD will receive an electronic FOCUS filing software upgrade to install before transmitting their September quarterly FOCUS filings.

## Members Give NASD Sanctions Expanded Flexibility

A proposal, recently approved by the membership, would provide the NASD with greater flexibility in crafting its disciplinary sanctions. The change would exclude from the rule the requirement that suspensions be for a specific length of time.

If approved by the SEC, the measure would allow the NASD to impose, as a sanction for violations, a suspension either of membership or of the registration of an associated person until the person or firm proves to have fulfilled all stipulations of the sanction.

Current NASD rules permit it to "suspend the membership of any member or suspend the registration of a person associated with a member, if any, *for a definite period . . .*" (emphasis added).

The proposal deletes the words "for a definite period," thereby allowing the NASD to impose an indefinite suspension.

The existing limitation on suspensions precludes imposing suspensions ordered to remain effective until an arbitration award is paid or until the respondent proves restitution, among others.

Such a suspension would end when the associated person or member fulfills the additional requirement imposed by the NASD. These suspensions are useful, particularly in cases involving customer losses, the NASD believes.

### Appealed Actions

In appeals of NASD disciplinary actions, the SEC has rejected suspensions imposed under similar cir-

cumstances, stating that the suspensions violated the NASD rules because the lengths were indefinite.

The proposal eliminates the self-imposed prohibition and provides the NASD with greater leeway in crafting sanctions.

A substantial number of disciplinary actions brought by the NASD involve scenarios in which, as part of the sanction imposed, the member or associated person has to take a particular action.

The ability to impose suspensions contingent on proof that a respondent performed the required action will allow the Board to formulate sanctions that meet the NASD's diverse needs.

A significant benefit of the amendment, the NASD adds, is that it can ensure that the penalties imposed in disciplinary actions afford a measure of customer protection and preclude registered individuals from associating with NASD members.

The amendment also prevents members from acting in their registered capacities unless and until they perform the required activity.

## Proposal on Compensation Generates Many Comments

A recent NASD request for comment on compensation arrangements, including "wrap fees," for investment advisory activities of registered representatives who are also registered as investment advisers (RR/IAs) generated more than 140 letters from member firms and others. The NASD Board of Governors will consider action on these issues this month.

The comment request was in response to several members that have sought advice on the applicability of certain NASD rules to RR/IAs where such activity does not take place through the member with which the RR/IA is registered. Among others, the NASD's position is that Article III, Section 40 definitely applies.

In reaching this conclusion, the NASD determined that the receipt of any compensation by RR/IAs outside the scope of their employment with a member, whether the compensation is directly related to a transaction or in the form of a performance- or asset-based advisory fee, constitutes the receipt of selling compensation.

Section 40 provides that an associated person taking part in a private securities transaction must, before participating, notify the employing member in writing, describing the proposed transaction and stating whether he or she will receive selling compensation. The member must then, in writing, approve or disapprove the proposed transaction.

If the member approves a transaction that includes selling compensation, the member must record the transaction on its books and records and supervise this transaction under Article III, Section 27 as if the transaction were its own.

If the approved transaction does not include selling compensation, the member may, at its discretion, require the registered person to adhere to specified conditions when participating in the transaction.

### Rule's Provisions

Under the NASD rules, a private securities transaction is one outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings securities not registered with the SEC. In addition, selling compensation is defined as any compensation paid directly or indirectly, from whatever source, in connection with or as a result of, the purchase or sale of a security.

Such compensation includes commissions; finder's fees; securities or rights to acquire securities; rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise; or expense reimbursements.

It is the NASD's position that Section 40's requirements apply to investment advisory activities that involve compensation to the RR/IA. The section also applies to such activ-

ities when conducted away from the member if they generate management or advisory fees for the RR/IA.

## SEC Considers Proposal on Suspension for Failure to Pay

The SEC is considering a member-approved proposal to permit the NASD to suspend or cancel the registration of an associated person for failing to pay fees, dues, or assessments.

The NASD's current authority to suspend or cancel registrations, after providing written notice, for failure to fulfill such obligations extends only to member firms, not associated persons.

Although the NASD can revoke the registration of an associated person for not paying fines or costs associated with an NASD disciplinary action, such revocation does not extend to nonpayment of arbitration forum fees.

To correct this anomaly, the NASD is proposing to amend its rules to suspend or cancel after 15 days notice, in writing, the registration of any associated person who has failed to pay fees, dues, assessments, or other charges owed for the use of facilities or systems operated or controlled by the NASD.

The NASD believes this rule change is needed to protect the integrity of the arbitration process and the marketplace and to provide uniformity in the treatment of associated persons failing to pay fees.

## Members Vote on Codification of Branch Office Interpretations

The NASD recently asked members to vote to codify certain NASD interpretations regarding the definition of branch office. The interpretations, first issued in 1989, clarified the definition and

exemptions from branch office registration available to nonbranch business locations meeting certain conditions.

Currently, an exemption from registration as a branch office is available if the location is identified to the public only in telephone book listings or on business cards or stationery that include the address and telephone number of the branch office or Office of Supervisory Jurisdiction (OSJ) responsible for supervising the nonbranch business location.

Under the proposal, members' sales literature may include the local address of a nonbranch business location. However, the literature also must identify the location and telephone number of the appropriate supervisory branch office or OSJ of the member.

In addition, members' advertisements may include a local telephone number and/or local post-office box of a nonbranch location if the advertisements also identify the location and telephone number of the appropriate branch office or OSJ. These advertisements may **not** include the street address of the nonbranch location.

Another proposal allows a member to use its main-office address and telephone number for reply purposes on sales literature, advertisements, business cards, and business stationery. However, a member wishing to list such a central site instead of a supervisory branch or OSJ must show that it has in place a significant and geographically dispersed supervisory system appropriate to its business.

In addition, any complaints coming through the central site have to be sent to and resolved in conjunction with the office or offices with jurisdiction over the nonbranch business location.

These exemptions from the branch-office definition provide, the NASD believes, a reasonable accommodation to firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds. Branch office registration would still be required for locations that:

■ Perform any function under the definition of Office of Supervisory Jurisdiction.

■ Publicly display signage other than on lobby directories or doors in office-building internal corridors.

■ Operate from public areas of buildings, such as bank branches, even when such locations are temporarily staffed.

■ Advertise an address in public media.

## SEC Approves Changes to Disciplinary Notifications

The SEC recently approved three clarifications to the NASD's Resolution of the Board of Governors — Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions under Article V, Section 1 of the Rules of Fair Practice ("Resolution"). The changes provide that:

■ Sanctions imposed in District Business Conduct or Market Surveillance Committee (DBCC/MS) decisions do not become effective and will not be publicized until 45 days after the DBCC's decision.

■ Expulsions and bars imposed pursuant to an "offer of settlement" or an "acceptance, waiver and consent" are effective and may be published immediately on approval by the National Business Conduct Committee (NBCC).

■ All final decisions of the NASD that call for bars or expulsions will become effective immediately.

These changes conform the Resolution to current practices of the NASD for the effectiveness of and publicity on disciplinary actions.

The Resolution currently provides that a DBCC/MS decision may become effective, and thus its sanctions publicized, after a 30-day period following the date of the decision.

This suggests that a DBCC/MS decision may become effective and its sanctions made known to the public during the last 15 days of the 45-day period in which the NBCC may call a decision for review and the respondent may appeal the decision to the NBCC.

As amended, the Resolution now clarifies that the sanctions imposed in the DBCC/MS decisions that are not appealed to or called for review by the NBCC become effective 45 days after the DBCC/MS's decision. As a result, notices of decisions imposing monetary sanctions of \$10,000 or more, or penalties of ex-

pulsion, revocation, suspension, and/or the barring of a person from being associated with all members shall not be publicized until 45 days after the DBCC/MS's decision.

Respondents in NASD disciplinary actions waive all rights to appeal when they agree to an Offer of Settlement ("Offer") or Letter of Acceptance, Waiver and Consent (AWC). Thus, once the NBCC approves the Offer or AWC, it becomes final and the sanctions referenced earlier are effective and may be published immediately on approval by the NBCC.

Under the current Resolution, all Board decisions, if not appealed to the SEC, are effective on the later of 30 days after the date of the decisions or on a date specified by the NASD. The current practice is to make any bars or expulsions effective immediately on issuance of the decision.

As amended, the Resolution provides that a final NASD decision issued by either the NBCC or the Board that calls for a bar or expulsion is effective immediately regardless of whether it is appealed to the SEC.

All other final decisions of the NBCC or Board, if not appealed to the SEC, continue to be effective on the later of 30 days after the date of the decision or on a date specified by the NASD.

## NASD DISCIPLINARY ACTIONS

In June and July 1991, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and to the penalties that may result.

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

Cooper-Daher Securities, Inc. (San Francisco, California), Jerome Alan Cooper (Registered Principal, San Francisco, California), Mohamad Ali Ghaleb Daher (Registered Representative, Dallas, Texas), Stanley Emerson Barber (Associated Person, Dallas, Texas), and Sheriff Kamal Saudi (Registered Representative, Fort Worth, Texas). The firm was fined \$6,000, jointly and severally with Cooper, and suspended

from membership in the NASD for 20 days. Cooper also was fined \$85,000 and barred from association with any member of the NASD in any capacity. Daher, Barber, and Saudi were each fined \$15,000 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 District Business Conduct Committee (DBCC) for District 1. The sanctions were based on findings that, in contravention of the firm's voluntary restriction agreement with the NASD and of Schedule C to the NASD's By-Laws, Cooper-Daher Securities, acting through Cooper, effected with public customers over-the-counter securities transactions with bid and ask prices of less than \$5 per share. In addition, the firm, acting through Cooper, conducted a securities business while failing to maintain required minimum net capital. Cooper also participated in private securities transactions without giving prior written notification to his mem-

ber firm and misappropriated customer funds totaling \$25,000 intended for the purchase of stock. Furthermore, Cooper, Daher, Barber, and Saudi failed to respond to NASD requests for information.

Eldon James Fry (Registered Representative, Pearl City, Hawaii) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Fry opened and effected securities transactions in an account at a member firm without informing the firm of his association with two other member firms. Fry also failed to respond to NASD requests for information.

Tasos Chrls Hatzimichael (Registered Representative, Lafayette, California) was fined \$88,373 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hatzimichael accepted from public customers two checks totaling \$18,373.09 intended for the purchase of securities.



He misappropriated the funds by depositing them into the bank account of a firm in which he had a controlling interest and used the funds to pay the firm's expenses. Hatzimichael also failed to respond to NASD requests for information.

**Earl Daniel Lemond (Registered Representative, Honolulu, Hawaii)** was fined \$225,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Lemond received funds totaling \$115,500 from 10 public customers for investment purposes, and misappropriated and converted the funds to his own use and benefit. Lemond also failed to respond to NASD requests for information.

**Wayne Isamu Oride (Registered Representative, Honolulu, Hawaii)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Oride engaged in private securities transactions without providing prior written notification to his member firm.

**Arveal Paggett Jr. (Registered Representative, Fresno, California)** was fined \$13,000 and suspended from association with any member of the NASD in any capacity for two years. The sanctions were based on findings that Paggett received from a public customer \$3,000 intended for investment in a money market fund and misappropriated the funds for his own use.

**Sacks Investment Company, Inc. (Novato, California)** and **Richard Lawrence Sacks (Registered Principal, Novato, California)** were fined \$101,891.20, jointly and severally. The firm was prohibited from engaging in principal transactions for two years. Richard Sacks was prohibited from acting in any principal, proprietary, or managerial capacity unless Sacks Investment Company, or any other broker-dealer with which he associates, has in its employ a financial and operations principal and a full-time general securities principal who are not the same individual and who are individuals other than Sacks. In addition, Sacks was suspended from association with any member of the NASD in any capacity for 60 days and required to requalify by examination as a principal. The sanctions were imposed following the Securities and Exchange Commission's (SEC) dismissal of an application for review of the action taken by the NASD's Board of Governors.

The NASD's sanctions were based on findings that the firm and Sacks charged retail customers unfair prices with markups ranging from 5.4 to 100 percent above their contemporaneous costs, used a customer's account as a second inventory account for the firm, failed to disclose on customer confirmations the firm's markups or the fact that the firm was acting in a principal capacity, guaranteed a customer against loss, executed fictitious trades to facilitate a loan to a customer, operated without a financial and operations principal, and engaged in municipal securities transactions without registering with the Municipal Securities Rulemaking Board and without having a municipal securities principal.

**Kendall Cooksan Shaffer, Jr. (Registered Representative, Morgan Hill, California)** was fined \$5,000 and suspended from association with any member of the NASD in any capacity for three years. The sanctions were based on findings that Shaffer received five checks made payable to another person, forged the person's endorsement, and forwarded the endorsed checks to a third party at a branch office of his member firm.

District 2 - Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo) and southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye)

**Jeffrey Lester Casperson (Registered Principal, Mission Viejo, California)** submitted an Offer of Settlement pursuant to which he was fined \$8,500 and suspended from association with any member of the NASD in any capacity for 90 days. Without admitting or denying the allegations, Casperson consented to the described sanctions and to the entry of findings that a former member firm, acting through Casperson, participated in three contingent offerings of limited partnership interests and failed to transmit promptly funds received from public customers for the purchase of such limited partnership interests to a separate escrow account. Casperson also failed to respond to an NASD request for information.

**Barry Ryan Clark (Registered Representative, La Costa, California)** submitted an Offer of Settlement pursuant to which he was fined \$42,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he engaged in the purchase and sale of securities in the accounts of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions and the customer's financial situation and needs. The findings also stated that Clark engaged in private securities transactions while failing to provide prior written notification of such transactions to his member firm.

**Direct Capital Corporation (Los Angeles, California)**, **Brian Lee Potashnik (Registered Principal, La Jolla, California)**, and **Danny Marc Hershey (Associated Person, Los Angeles, California)**. The firm was expelled from membership in the NASD, and Potashnik and Hershey were each fined \$11,000 and suspended from association with any member of the NASD in any capacity for six months. Potashnik also must requalify by examination as a principal.

The sanctions were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 2. The sanctions were based on findings that the firm, acting through Potashnik and Hershey, engaged in the sale of limited partnership interests in three offerings and failed to transmit investor funds to separate escrow accounts promptly. In addition, the firm, acting through Potashnik and Hershey, made misrepresentations to investors in connection with one of the offerings in that it failed to return investor funds when the contingency was not met. The respondents also effected securities transactions while failing to maintain sufficient net capital. Moreover, the firm and Potashnik allowed Hershey to engage actively in the management of the firm's securities business without proper registration with the NASD.

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

**Frederick Alan Gladle (Registered Representative, Woodland Hills, California)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with

any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Gladle consented to the described sanctions and to the entry of findings that he circumvented his member firm's internal policy by opening securities accounts and executing securities transactions for nonresident aliens by using the address of a New York resident. Furthermore, the NASD determined that Gladle misrepresented the true beneficial owners of the accounts to his member firm.

**Phillip Jacobs (Registered Representative, Solana Beach, 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 Jacobs failed to respond to NASD requests for information concerning his termination from a member firm.

**Charles Evans Kinnick (Registered Representative, Signal Hill, California)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Kinnick engaged in the sale of automatically renewed non-negotiable promissory notes to six public customers while failing to provide prior written notification of such sales to his member firm.

**Connie Haywood Rogers (Registered Representative, Los Angeles, California)** was fined \$5,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Rogers accepted a \$1,000 check from a public customer for a mutual fund purchase. She failed to purchase the fund or to immediately return the money to the customer. Instead, Rogers deposited the money into a personal checking account and converted the funds to her own benefit. Furthermore, Rogers falsified the signature of her branch manager on two letters of transmittal for the purchase of securities.

**Hal Tornroth (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 Tornroth failed to respond to NASD requests for information concerning an investigation of a customer complaint.

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

**Brian D. Christensen (Registered Representative, Colorado Springs, Colorado)** and **Carlos H. Hoover (Registered Representative, Colorado Springs, Colorado)**. Christensen was fined \$22,500 and suspended from association with any member of the NASD in any capacity for 120 days. Hoover was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 60 days. In addition, Christensen and Hoover each must disgorge \$1,738 in profits and must requalify by examination as general securities representatives.

The sanctions were based on findings that Christensen sold securities to a public customer without providing prior written notification of such transactions to his member firm. Christensen also submitted new-account information to his member firm for a customer that contained a false address and telephone number and failed to indicate that he was a relative of the customer. In addition, Christensen and Hoover purchased and sold securities for their own benefit in the account of a public

customer without disclosing their interest in these transactions. Furthermore, they arranged to borrow \$8,000 and used the proceeds of the loan to purchase a nonmarginable security.

**Susan C. Cumpston (Registered Representative, Aurora, Colorado)** was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, she must requalify by examination as a registered representative and disgorge \$2,400 representing illegal gains. The sanctions were based on findings that Cumpston falsified her firm's books and records by changing a public customer's address in order to circumvent state securities laws. In addition, she effected securities transactions without providing prior written notification to her member firm.

**Dain Bosworth, Inc. (Minneapolis, Minnesota), Ronald William Dunlap (Registered Principal, Bellevue, Washington), and Lucile Kerr Arendt (Registered Representative, Bothell, Washington)** submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Dunlap was fined \$7,500, suspended from association with any member of the NASD in any general securities principal capacity for one year, and required to requalify by examination in that capacity. Arendt was fined \$25,000 and barred from association with any member of the NASD in any capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Arendt exercised effective control over the account of a customer and recommended the purchase and sale of securities without having reasonable grounds for believing that the recommendations were suitable considering the customer's financial situation and objectives. In connection with these activities, Dain Bosworth and Dunlap failed to supervise Arendt properly and adequately, according to the findings.

**Marlen V. Johnson (Registered Principal, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,074,300 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he implemented and directed a scheme of inducing the purchase of stock by others in order to raise or maintain the price of such securities so that the stock he owned or controlled, at little or no cost, could be sold at substantial profits.

According to the findings, Johnson also sold unregistered securities through his account to public customers and to other broker-dealers. The NASD also found that he failed to inform those customers of material facts necessary in order that statements made were not misleading under the circumstances.

**Bradley M. Katz (Registered Representative, Boulder, Colorado)** was fined \$105,000, suspended from association with any member of the NASD in any capacity for 180 days, and required to requalify by examination as a registered representative. In addition, he must disgorge \$8,300 in commissions. The sanctions were based on findings that Katz made misrepresentations to a public customer in connection with the customer's purchase of securities, including promises of profits and assurances as to the lack of risk involved.

Furthermore, Katz recommended and executed 27 highly speculative securities transactions in low-priced stocks in the same customer's account without having reasonable grounds for believing such recommendations were suitable for the customer considering her other security holdings, financial situation, and needs. Katz also effected unauthorized and excessive securities transactions in cus-

tomers' accounts and filed an inaccurate Uniform Application for Securities Industry Registration or Transfer (Form U-4).

**William John Kennedy (Registered Representative, Englewood, Colorado)** was fined \$10,000. The sanction was based on findings that Kennedy executed purchase transactions in the Individual Retirement Accounts of two public customers without obtaining their prior authorization and consent.

**Gerald Herman Kirkingburg (Registered Representative, Spokane, Washington)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kirkingburg established a nominee account in the name of a family member and effected securities transactions in the account that generated profits totaling \$30,825. He then deposited the profits into a bank account of a company he co-owned and used the proceeds to pay himself with checks drawn on the account. Kirkingburg also failed to respond fully to NASD requests for information.

**Russell Gordon Koch (Registered Principal, Issaquah, Washington)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Koch failed to respond to NASD requests for information.

**Matthew Edward Maleta (Registered Representative, Tigard, Oregon)** was fined \$30,000 and required to requalify by examination for any capacity requiring registration. In addition, he must provide evidence that restitution of \$45,118 was made to customers. The sanctions were based on findings that Maleta recommended to public customers the purchase of securities without having reasonable grounds for believing such recommendations were suitable considering the customers' financial situations and needs. In connection with such activity, Maleta also made false representations and omissions of material facts, including the risks involved.

**Kevin W. Marcum (Registered Principal, Sandy, Utah)** 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 on review of a decision by the DBCC for District 3. The sanctions were based on findings that Marcum falsified his member firm's books and records by submitting false address change requests and sending falsified account information to a public customer. He also effected 32 unauthorized transactions in the same customer's account and attempted to conceal these transactions from the customer by the aforementioned actions. In addition, Marcum deposited \$1,925 in the same customer's securities account as reimbursement for losses incurred in the account without obtaining prior written permission from his member firm.

**Theodore Joseph Meyer (Registered Representative, Redmond, Washington)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Meyer failed to respond to an NASD request for information regarding customer complaints.

**Paramount Securities, Inc. (Phoenix, Arizona) and Larry E. Bell (Registered Principal, Scottsdale, Arizona)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally, and the firm was suspended from participating in any private offering in securities for five business days. Without admitting or de-

nying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with two contingent offerings of limited partnership interests, the firm, acting through Bell, disbursed funds for underwriting fees and sales commissions prior to reaching the required contingencies. The firm, acting through Bell, also failed to return investor subscriptions when the contingency was not met in one of the two "all or none" offerings. The findings also stated that the firm, acting through Bell, caused an affiliate to extend credit to customers in the two partnerships and repaid the affiliate an amount in excess of the amount loaned.

**Candace Prosser-Powers (Registered Principal, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver and Consent 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, Prosser-Powers consented to the described sanctions and to the entry of findings that she accepted orders from an individual whom she knew or should have known was acting as a nominee for other accounts, and failed to reflect the beneficial ownership of these accounts on her firm's books and records. The findings stated that she also failed to file an accurate Form BD disclosing to the NASD and the SEC the true ownership of her member firm.

**Kenneth Laurence Ruff (Registered Representative, Englewood, Colorado)** was fined \$150,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, on 16 separate occasions, Ruff obtained customer checks, forged the customers' signatures on the checks, and endorsed the checks over to himself. In addition, in order to conceal his misuse of customers' funds and securities, Ruff forged customers' signatures on documents of his member firm and used false addresses on nine customer accounts. Ruff also executed 25 unauthorized transactions in customer accounts and failed to respond to an NASD request for information.

**San Marino Securities, Inc. (Salt Lake City, Utah), Mark Edward Eames (Registered Principal, Salt Lake City, Utah), Garth Orson Potts (Registered Principal, Salt Lake City, Utah), and Jody Art Thompson (Registered Principal, Sandy, Utah)** submitted an Offer of Settlement pursuant to which the firm was fined \$40,000, suspended from conducting a securities business for 10 days, prohibited for six months from acting as a market maker in any security for which it had not acted as a market maker prior to the issuance of this action, and prohibited from participating in any underwriting or as a member of any syndicate or selling group of an underwriting for six months. Eames was fined \$45,000 and suspended from association with any member of the NASD in any capacity for 30 days, and Potts was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, Thompson was fined \$5,000 and suspended from association with any member of the NASD in any capacity for 10 days.

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' Interpretation with respect to the NASD Mark-Up Policy, the firm, acting through Eames, Potts, and Thompson, engaged in the purchase and sale of securities with public customers in the secondary market at prices that were unfair. Markups and markdowns ranged

from 5.1 to 70.1 percent in relation to the prevailing market price, according to the findings.

**Delbert L. Stephens (Registered Representative, Eugene, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Stephens consented to the described sanction and to the entry of findings that, without the prior approval by a principal of his member firm, he caused a letter to be mailed to prospective clients that contained misrepresentations concerning the past performance of an investment program and the types of investments used to achieve that performance.

**J.B. Sterling Corporation (Aurora, Colorado)** and **Richard D. Gilson (Registered Principal, Golden, Colorado)**. The firm was fined \$10,000 and expelled from membership in the NASD. Gilson was fined \$4,500, suspended from association with any member of the NASD in any capacity for 10 days, and required to requalify by examination prior to acting 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 3. The sanctions were based on findings that the firm, acting through Gilson, failed to file its FOCUS Part I reports on a timely basis and failed to file accurate FOCUS Parts I and II reports for certain periods.

**Dennis W. Vibbert (Registered Representative, Glendale, Arizona)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Vibbert prepared two new-account forms for public customers that contained false and inaccurate information. These accounts were opened without the customers' knowledge or consent. Thereafter, Vibbert effected unauthorized purchase transactions in the same accounts.

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

**Paul Steven Bauer (Registered Representative, Maryland Heights, Missouri)** was fined \$30,250.64 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 4. The sanctions were based on findings that, in contravention of the Board of Governors' Policy with respect to Fair Dealing with Customers, Bauer purchased and sold shares of common stock in the accounts of public customers without their knowledge or consent. In addition, Bauer failed to respond to NASD requests for information.

**Larry William Birk (Registered Representative, Gordonville, Missouri)** 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, Birk consented to the described sanctions and to the entry of findings that he arranged for the issuance of a \$107 refund check from the insurance policy of a public customer. According to the findings, Birk forged the customer's endorsement on the check and converted the proceeds to his own use and benefit. In addition, the NASD found that, without the knowledge or consent of the same customer, Birk forged the customer's signature to three other surplus refund request forms totaling \$2,020.40 to be used to pay premiums and/or loan installments for other unrelated customers. Furthermore, the NASD

determined that Birk requested a change of address for this customer, forged the customer's name to another surplus refund request form, and requested a change of the surplus refund option from "paid in cash" to "premium reduction" without the knowledge or consent of the customer.

**Leonard William Lister Jr. (Registered Representative, Kansas City, Missouri)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without the knowledge or consent of three public customers, Lister requested a change of address for these customers and arranged for the issuance of checks totaling \$2,211.24 that were endorsed and deposited by another individual. That individual then wrote checks totaling \$1,855 to Lister, who converted the funds to his own use and benefit.

**LSCO Securities, Inc. (Wichita, Kansas)** and **Arthur Sykes Jr. (Registered Principal, Goddard, Kansas)**. The firm was fined \$10,000. It was further fined \$2,500, jointly and severally with other individuals, and \$15,000, jointly and severally with Sykes. Sykes also was fined \$5,000, individually, and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were imposed following a review by the SEC of an action taken by the NASD's Board of Governors. The sanctions were based on findings that the firm, acting through Sykes, effected securities transactions as principal, with retail customers, at prices that were unfair and unreasonable. Furthermore, the firm conducted a securities business when its net capital was below the minimum requirement.

Sykes' suspension commenced with the opening of business on Monday, April 22, 1991.

**James R. Sherrod, Jr. (Registered Representative, Ferguson, Missouri)** 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, Sherrod consented to the described sanctions and to the entry of findings that he received checks and money orders from public customers with instructions to purchase insurance and/or securities products. The findings stated that Sherrod failed to follow the customers' instructions and, instead, endorsed the checks and money orders and deposited them into his personal bank account without the knowledge or consent of the customers. In addition, Sherrod failed to respond to NASD requests for information.

**Patricia Rose Swearngin (Associated Person, Independence, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Swearngin consented to the described sanctions and to the entry of findings that, without the knowledge or consent of five public customers, Swearngin detached money orders totaling \$250 from mutual fund applications, changed the payee names to her own name, cashed the money orders, and converted the proceeds to her own use and benefit.

**Darren Lee Vellawald (Registered Representative, Cahokia, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$8,000, suspended from association with any member of the NASD in any capacity for four months, and required to requalify by examination for any registered capacity. Without admitting or denying the allegations, Vellawald consented to the described sanctions and to the entry of findings that, in contra-

vention of the Board of Governors' Interpretation with Respect to Fair Dealing with Customers, Vellawald executed purchases and sales of securities in the accounts of five customers without their knowledge or consent.

**District 5 - Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee**

**Norman G. Allbright (Registered Representative, Memphis, Tennessee)** 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 one week. Without admitting or denying the allegations, Allbright consented to the described sanction and to the entry of findings that he guaranteed in writing to a public customer a fixed interest rate and a return of the customer's entire principal on an investment. The NASD also found that Allbright failed to disclose to the customer that interest rate fluctuations could cause a change in the rate of return and the investment's net asset value. In addition, the findings stated that Allbright failed to obtain his branch manager's prior approval of a communication with the public (the handwritten personal guarantee to the public customer).

**Samuel G. Cole III (Registered Representative, Jackson, Mississippi)** submitted an Offer of Settlement 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, Cole consented to the described sanctions and to the entry of findings that he exercised discretionary power in the accounts of a public customer without prior written authorization from the customer and prior written acceptance of the discretionary account by his member firm. The findings also stated that Cole recommended and executed margin transactions in one of the accounts of the same customer without having reasonable grounds for believing that such recommendations were suitable based on the customer's financial situation, investment experience, and investment objectives and needs.

**Glenn Z. Crawford (Registered Representative, Atoka, Oklahoma)** 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, Crawford consented to the described sanctions and to the entry of findings that he received cash totaling \$11,800 from two public customers for deposit in the customers' insurance policies. Instead, the NASD found, Crawford converted the funds to his own use without the knowledge or consent of the customers.

**Jon T. Franklin (Registered Representative, Mobile, Alabama)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Franklin consented to the described sanctions and to the entry of findings that he recommended and engaged in options purchase and sale transactions in the accounts of public customers without having reasonable grounds for believing such transactions were suitable for the customers based on the customers' financial situations, objectives, and needs. The NASD also found that Franklin executed unauthorized purchase and sale transactions in the options accounts of public customers.

The findings further stated that Franklin executed, or caused to be executed, "naked" put op-

tions transactions in the joint account of public customers when the account had been approved only for "covered" options trading by his member firm. In addition, according to the findings, Franklin recommended that customers liquidate their certificates of deposit and reinvest in various closed-end investment companies without having reasonable grounds for believing that the transactions were suitable for the customers.

The NASD also determined that Franklin exercised discretionary power in the account of a public customer without prior written authorization from the customer and prior acceptance of the account as discretionary by his member firm. Furthermore, Franklin failed to respond to NASD requests for information.

**Thomas A. Griffin (Registered Representative, Huntsville, Alabama)** 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 one week. Without admitting or denying the allegations, Griffin consented to the described sanction and to the entry of findings that he exercised discretion in the account of a public customer without obtaining prior written discretionary authorization from the customer and without written acceptance of the account as discretionary by his member firm.

**Virginia A. Hudspeth (Registered Representative, Jenks, Oklahoma)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hudspeth solicited a \$10,061.78 check from a public customer for investment in a bond fund but failed to open an account. Instead, she deposited the funds in a bank account that she controlled, thereby converting the funds to her own use without the knowledge or consent of the customer. Furthermore, in order to conceal this activity, Hudspeth provided the customer with a false receipt and account statement. In addition, Hudspeth failed to respond to NASD requests for information.

**Shearson Lehman Brothers Inc. (Baton Rouge, Louisiana)** and **Charles W. Gladney (Registered Principal, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$50,000. Gladney was fined \$5,000, suspended from association with any member of the NASD in any principal capacity for six months, and required to requalify by examination as a principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Shearson, acting through Gladney, failed to establish, maintain, and/or enforce written supervisory procedures.

**Shearson Lehman Hutton, Inc. (New York, New York)** submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, Shearson consented to the described sanction and to the entry of findings that the firm failed to establish, maintain, and reasonably enforce procedures that would have enabled it to supervise properly the mutual fund sales activities of a salesperson in a branch office.

#### District 6 - Texas

**Amtex Financial, Inc. (Grapevine, Texas)** and **Brian Tobias-Jones (Registered Principal, Dallas, Texas)**. The firm was expelled from membership in the NASD. The sanction against the firm was based on findings by the DBCC for District 6. Tobias-Jones submitted an Offer of Settlement pur-

suant to which he was fined \$10,000, suspended from association with any member of the NASD in any capacity for two years, and required to requalify by examination in any capacity.

Without admitting or denying the allegations, Tobias-Jones consented to the described sanctions and to the entry of findings that Amtex, acting through Tobias-Jones, failed to maintain accurate books and records and failed to maintain its required minimum net capital. The NASD found that the firm, acting through Tobias-Jones, did not satisfy the conditions of its (k)(2)(i) exemption in that it had customer funds in its operating account, failed to prepare reserve computations, and failed to maintain a Special Reserve Bank Account for the Exclusive Benefit of Customers.

Furthermore, the findings stated that, in connection with the offer and sale of limited partnership interests, Amtex, acting through Tobias-Jones, failed to transmit subscriber funds totaling \$127,500 to a bank escrow account promptly and failed to return investors' subscription funds when the minimum amount was not sold. The findings also stated that Tobias-Jones withdrew subscriber funds and deposited these funds into his firm's operating account. In addition, Amtex, acting through Tobias-Jones, failed to file telegraphic notice with the SEC and the NASD in a timely manner regarding its net capital deficiency and its failure to maintain accurate books and records, according to the findings. The NASD also determined that the firm, acting through Tobias-Jones, failed to establish current written supervisory procedures.

In addition, the NASD found that, on behalf of another member firm, Tobias-Jones failed to comply with Schedule C of the NASD's By-Laws in that he acted as a principal of the firm without proper registration with the NASD and that he failed to establish current written supervisory procedures.

**Jimmy Allen Dickerson (Registered Representative, Garland, Texas)** was fined \$15,000 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 6. The sanctions were based on findings that Dickerson received from two public customers a \$3,979.66 check intended for prepayment of insurance premiums. Instead, Dickerson deposited the check in his checking account and converted the funds to his own use and benefit without the knowledge or consent of the customers.

**InterAmerican Securities Corporation (Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that InterAmerican effected transactions in securities prior to becoming a member of a securities association. The NASD also found that the firm effected transactions in municipal securities without having paid an initial or annual fee to the Municipal Securities Rulemaking Board. In addition, the findings stated that the firm effected transactions in municipal securities without employing a registered municipal securities principal. Furthermore, the firm, acting through an individual, failed to prepare and maintain its books and records, according to the findings.

**Philip Allen Pendergraft (Registered Principal, Arlington, Texas)** 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 as a financial and

operations principal for one year, and required to requalify as a financial and operations principal. Without admitting or denying the allegations, Pendergraft consented to the described sanctions and to the entry of findings that, on behalf of a former member firm, he failed to make required deposits to the firm's Special Reserve Account for the Exclusive Benefit of Customers within two business days.

The findings also stated that the same firm, acting through Pendergraft, effected transactions in securities while failing to maintain its required minimum net capital. In addition, the NASD determined that Pendergraft allowed withdrawals to be made from the firm's reserve account without making a record of the computation that formed the basis for making the withdrawals.

**Mark Andrew Stephens (Registered Representative, San Antonio, Texas)** was fined \$50,000 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 6. The sanctions were based on findings that Stephens purchased and sold shares of stock in the accounts of public customers without the knowledge or consent of the customers.

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

**Alison, Baer Securities, Inc. (Boca Raton, Florida)**, **Jeffrey Eric Britz (Registered Principal, New York, New York)**, and **Phillip Gurian (Registered Representative, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which the firm was fined \$50,000 and expelled from membership in the NASD. Britz was fined \$40,000 and suspended from association with any member of the NASD in any principal or supervisory capacity for three years, and Gurian was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Britz and Gurian, effected principal transactions with public customers at prices that were unfair. The NASD also found that the firm, acting through Britz, sold units of common stock prior to the effective date of the registration statement and allowed unregistered personnel to transact business with public customers. In addition, the NASD determined that the firm, acting through Britz, failed to institute and enforce written procedures that would have enabled it to supervise its pricing policy properly.

**American Wallstreet Securities, Inc. (Tampa, Florida)**, **Eric J. Walloga (Registered Principal, Brandon, Florida)**, and **Kevin D. Ward (Registered Principal, Brandon, Florida)** were fined \$100,000, jointly and severally. The firm was expelled from membership in the NASD, and Walloga and Ward were barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Walloga and Ward, violated its restriction agreement with the NASD by maintaining a proprietary trading account with its clearing firm and holding a customer's funds.

In connection with the above activity, the firm, acting through Ward, failed to establish and fund a reserve account for customers' funds. The

firm, acting through Ward, deposited a \$7,200 cashier's check, which was received from a public customer and intended for the purchase of securities, into the firm's operating bank account. American Wallstreet, acting through Ward, also conducted a securities business while failing to maintain its required minimum net capital, failed to maintain accurate books and records, and failed to file accurate FOCUS Parts I and IIA reports.

Furthermore, the firm, acting through Ward, approved the securities accounts of five nonaccredited and nonestablished public customers for transactions in designated securities and failed to deliver written suitability statements to the customers. In addition, the firm, acting through Ward, failed to disclose on confirmations the markups charged in riskless principal transactions with public customers. And, the firm, acting through Walloga and Ward, failed to establish, maintain, and enforce written supervisory procedures and effected transactions in over-the-counter, non-Nasdaq corporate securities at prices that were unfair.

**Bachus & Stratton Securities, Inc. (Pompano Beach, Florida), Salvatore Lanza (Registered Principal, Boca Raton, Florida), and Richard Love (Registered Principal, Plantation, Florida)** submitted an Offer of Settlement pursuant to which the firm and Lanza were fined \$67,800, jointly and severally. Lanza was suspended from association with any member of the NASD in any capacity for three days, and Love was fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, through deceptive and fraudulent devices, the firm, acting through Lanza, effected principal transactions with public customers at prices that were unfair. The findings further stated that Love failed to establish, maintain, and enforce written procedures that would have enabled the firm to supervise its pricing policy properly.

**Berachah Securities Corporation (Tampa, Florida) and Shelton Allen Thorne (Registered Principal, Tampa, Florida)** were fined \$70,000, jointly and severally. The firm was expelled from membership in the NASD, and Thorne was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Thorne, breached its restrictive agreement with the NASD by employing more registered representatives than authorized and by effecting transactions in municipal securities. The firm, acting through Thorne, effected transactions in nonexempt securities while failing to maintain its required minimum net capital, filed inaccurate FOCUS Parts I and IIA reports, failed to maintain accurate books and records, and failed to give telegraphic notice concerning the net capital and recordkeeping deficiencies. Furthermore, the firm, acting through Thorne, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures. In addition, in order to inflate the firm's net capital falsely, Thorne deposited checks into the firm's bank account to repay unsecured advances when he knew the checks would be dishonored because of insufficient funds.

**Bruce Underhill Clayton (Registered Principal, Charlotte, North Carolina)** submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD as a general securities principal for 10 days. Without admitting or denying the allegations, Clayton consented to the described sanction and to the entry of findings that he purchased corporate bonds in his personal account, and in accounts of his family members, at prices that were below the prevail-

ing fair market value for such bonds.

**Barry F. Cohen (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,500, jointly and severally with other respondents, and suspended from association with any member of the NASD in a principal capacity for 10 business days. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he failed to register with the NASD as a principal while president and owner of a member firm. The findings also stated that Cohen permitted his member firm to compensate an individual prior to the effective date of the individual's registration with the NASD.

In addition, the NASD found that Cohen allowed his member firm to effect options transactions with public customers without having a registered options principal or designated senior registered options principal. Cohen was also responsible for his member firm's failure to develop and implement written procedures to supervise the firm's options business, according to the findings.

**Howard Edrich (Registered Representative, Plantation, Florida)** was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Edrich failed to pay an arbitration award in the amount of \$4,475 plus interest and a \$100 filing fee.

**John Mitchell Ellis (Registered Representative, Clearwater, Florida)** was fined \$5,735, suspended from association with any member of the NASD in any capacity for 10 business days, required to requalify by examination as a registered representative, and ordered to make restitution of \$1,669 to a customer. The sanctions were based on findings that Ellis effected the purchase of common stock for the accounts of two public customers without the knowledge or consent of the customers.

**Graystone Nash, Inc. (Bloomfield, New Jersey) and Thomas V. Ackerly (Registered Principal, Glen Ridge, New Jersey)** were fined \$1,325,000, jointly and severally. The firm was expelled from membership in the NASD, and Ackerly was 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 7. The sanctions were based on findings that the firm, acting through Ackerly, engaged in the distribution as sole underwriter of units on a best-efforts contingency basis and accepted purchasers' monies through its clearing agent instead of requiring that the funds be deposited promptly in a separate bank trust or escrow account.

While still participating in the distribution of these units, the firm, acting through Ackerly, bid for and purchased common stock for the same security and induced others to purchase the common stock at arbitrary prices. In addition, the firm, acting through Ackerly, dominated and controlled the market in the same security and effected, as principal, over-the-counter sales of the common stock to public customers at prices that were unfair.

**Ricardo Juan Grimes (Registered Representative, Boca Raton, Florida)** was fined \$500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Grimes failed to pay a \$5,100 arbitration award.

**Charles Cameron Jordan (Registered Principal, Delray Beach, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any

member of the NASD in any capacity for two years. Without admitting or denying the allegations, Jordan consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, Jordan converted to his own use \$84,000 of his member firm's monies by overstating postage expenses for the offices he managed.

The NASD also found that Jordan obtained more funds in various amounts from his member firm by drawing out-of-sequence checks on his firm's bank account payable to himself and converting the funds to his own use. In addition, the NASD determined that Jordan caused false credits totaling \$59,000 to be entered in his securities account with his member firm.

**Terry A. Knight (Registered Principal, Newtown, Pennsylvania)** 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, Knight consented to the described sanctions and to the entry of findings that he instructed his member firm to issue checks totaling \$140,750.98 from two securities accounts of a public customer. The checks were made payable to an entity that Knight owned. Thereafter, the NASD found that Knight negotiated the checks and converted the proceeds to his own use and benefit without the knowledge or authorization of the customer.

**Ulrich Edmund Konig (Registered Representative, Miami, Florida)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Konig caused the issuance of seven checks totaling \$278,000 by his member firm drawn on two joint securities accounts of a public customer without authority and applied the proceeds to his own use and benefit. Konig also engaged in deceptive and fraudulent devices and contrivances to conceal such activity by creating and furnishing false monthly statements to the same customer. In addition, Konig failed to respond to an NASD request for information.

**Stanley Levin (Registered Representative, Plantation, Florida)** was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Levin failed to pay a \$2,076 arbitration award.

**Michael David Luther (Registered Representative, Port Orange, Florida)** was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Luther failed to pay a \$350 arbitration award.

**Craig Suydam McManus (Registered Representative, Charleston, South Carolina)** was fined \$10,000, suspended from association with any member of the NASD in any capacity for 10 days, and required to make restitution of \$3,686.41 to a member firm. The sanctions were based on findings that McManus effected the purchase of shares of common stock for the account of a public customer without the knowledge or consent of the customer.

**Michael Peter Noto (Registered Representative, Clearwater, Florida)** was fined \$10,000, suspended from association with any member of the NASD in any capacity for 30 calendar days, and required to make and provide proof of restitution of \$4,000 to a member firm and \$2,085 to a public customer. The sanctions were based on findings that Noto purchased securities in the accounts of two public customers without the knowledge or consent

of the customers.

**Winston Charles Pitman (Registered Representative, Largo, Florida)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that, in connection with the sale of common stock to three public customers, Pitman engaged in private securities transactions and failed to provide prior written notification of such sales to his member firm. In connection with these private securities transactions, Pitman failed to disclose material facts regarding the use of the proceeds and the consequences of the offering failing to close.

**Neil L. Rothstein (Registered Representative, Coral Springs, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Rothstein consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the securities accounts of three public customers.

**Schwitzer & Company (Plantation, Florida) and Amnon Israel Schwitzer (Registered Principal, Plantation, Florida)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally, and required, jointly and severally, to make restitution of \$4,687 to customers. Amnon Schwitzer also was suspended from association with any member of the NASD in any capacity for 10 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Schwitzer, effected principal transactions with public customers at unfair prices with markups exceeding 100 percent.

The NASD also found that the firm, acting through Schwitzer, failed to disclose on confirmations to public customers its capacity as a market maker, the reported price, trade price, and markup. In addition, the NASD determined that the firm, acting through Schwitzer, allowed customers to trade options prior to approval by a registered options principal and failed to indicate a registered options principal's approval date on new-account forms for options customers.

**Southeastern Capital Group, Inc. (Orlando, Florida), Richard T. Wagner (Registered Principal, Maitland, Florida), and Charles E. LeCroy (Registered Representative, Winter Park, Florida)** submitted an Offer of Settlement pursuant to which the firm and Wagner were fined \$25,000, jointly and severally, and LeCroy was fined \$10,000. Wagner also must requalify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wagner, permitted LeCroy to function as the firm's president without being qualified as a general securities principal or a municipal securities principal. The NASD also found that the firm, acting through Wagner, failed to establish, maintain, and enforce adequate written supervisory procedures and designated a nonprincipal as responsible for the firm's supervisory systems, procedures, and inspections. The findings also stated that the firm, acting through Wagner, permitted an unqualified individual to function as a municipal securities representative. In addition, Wagner permitted the firm to conduct a securities business while failing to maintain its required minimum net capital, according to the findings.

**Shelton Allen Thorne (Registered Principal, Tampa, Florida)** was fined \$10,000, sus-

pending from association with any member of the NASD in any capacity for 30 days, and required to make and provide proof of restitution totaling \$17,517.50. The sanctions were based on findings that Thorne recommended to a public customer the purchase of various securities without having reasonable grounds for believing such recommendations were suitable based on the customer's other security holdings, financial situation, and needs.

**John T. Truman, Jr. (Registered Representative, Tampa, Florida)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Truman effected purchases and sales of securities in the accounts of public customers without the knowledge or consent of the customers.

**Edward Richard Walsh (Registered Representative, Clearwater, Florida)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Walsh received a check for \$5,115 from a public customer for the purchase of securities. Walsh did not purchase the securities and instead converted the proceeds to his own use by depositing the check in his personal savings account.

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

**Alms Capital Corporation (Ada, Michigan), Timothy S. Baumann (Registered Principal, Holland, Michigan), and Maynard A. Baer (Registered Principal, Ada, Michigan)** submitted an Offer of Settlement pursuant to which the firm was fined \$15,000 and expelled from membership in the NASD. Baumann was fined \$55,000 and barred from association with any member of the NASD in any capacity, and Baer was fined \$20,000 and barred from association with any member of the NASD in any 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 Baumann and Baer, effected retail sales of common stock to public customers by means of fraudulent, deceptive, and/or manipulative devices in that it charged customers arbitrary prices and failed to disclose material facts regarding the stock. Furthermore, the findings stated that the firm, acting through Baumann, operated a securities business while failing to maintain minimum required net capital, prepared inaccurate net capital computations and general ledgers, and filed inaccurate FOCUS Parts I and II reports.

**Jack Baldwin (Registered Representative, Norwalk, Ohio)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Baldwin engaged in private securities transactions without providing prior written notification to his member firm. In addition, Baldwin failed to respond to NASD requests for information.

**Curtis Brady (Registered Principal, Bourbonnais, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Brady consented to the described sanctions and to the entry of findings that

he failed to respond to an NASD request for information concerning possible violations of NASD rules regarding private securities transactions.

**John Russell Bragg (Registered Representative, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$12,044 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Bragg consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of three public customers.

**Stephan S. Buckley (Registered Representative, Schaumburg, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$35,000, suspended from association with any member of the NASD in any capacity for 10 business days, and required to requalify by examination as a registered principal. Without admitting or denying the allegations, Buckley consented to the described sanctions and to the entry of findings that he participated in the sale of limited partnership interests to public customers without giving written notice to his member firms and failed to give written disclosure to the purchasers that he was an officer and/or director of the limited partnerships.

The NASD also found that, without the required preapproval, Buckley prepared and mailed to members of the public form letters that contained exaggerated, unwarranted, and misleading statements regarding mutual funds. The findings further stated that Buckley prepared and mailed, to at least 100 members of the public, documents that purported to be confirmations of trades for mutual funds and limited partnership interests bearing the name of a company that was not a registered broker-dealer. Moreover, according to the findings, Buckley failed to supervise his subordinates properly in that he permitted them to sell limited partnership interests without the prior approval of his member firm.

**Todd Leroy Desmond (Registered Representative, Louisville, Kentucky)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 8. The sanctions were based on findings that Desmond recommended to a public customer uncovered call-option contracts on a common stock without having reasonable grounds for believing the recommendations were suitable for the customer based on his other securities holdings, financial situation, and needs.

Furthermore, without the knowledge or consent of his member firm, Desmond caused false journal entries to be made to the account of a customer. In addition, Desmond failed to respond to NASD requests for information in a timely manner.

**Curtis Lelf Hoff (Registered Representative, Mequon, Wisconsin)** was fined \$10,000. The sanction was based on findings that Hoff prepared and delivered, or caused to be prepared and delivered, to members of the public sales literature containing exaggerated, promissory, and misleading statements in that they set forth performance figures for mutual funds without disclosing the method used to calculate such figures. Furthermore, Hoff delivered to public customers, without prospectuses, two brochures relating to mutual funds and wrote on the brochures performance figures for the funds without providing the method used to calculate such figures.

**Michael L. Laidlaw (Registered Principal, Belgrade, Minnesota)** was fined \$50,000 and

barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Laidlaw engaged in private securities transactions and failed to give written notification to his member firm of his intention to engage in such activities. In addition, he used investors' funds totaling \$38,821 for his personal benefit as a result of these private securities transactions. Furthermore, Laidlaw received \$2,000 from two public customers intended for the purchase of limited partnership interests, failed to follow the customers' instructions, and used the funds for his own benefit. Laidlaw also failed to respond to NASD requests for information.

**Roger T. Leonard (Registered Representative, Naperville, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$55,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Leonard consented to the described sanctions and to the entry of findings that he submitted to his member firm false order tickets for purported purchases by public customers of interests in a limited partnership offering. As a result, he received from his member firm \$25,788.25 in commissions to which he was not entitled, according to the findings. The NASD also found that Leonard submitted an amended Form U-4 that failed to disclose the true facts surrounding his termination from a member firm.

**Glenn S. Mitchell (Associated Person, Waukegan, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Mitchell consented to the described sanctions and to the entry of findings that, contrary to instructions given to him, Mitchell took into an examination room certain notes that contained material relevant to the Series 7 examination.

**Kenneth D. Moore, Jr. (Registered Principal, Columbus, Ohio)** and **Mark A. Cyphers (Registered Principal, Worthington, Ohio)** submitted an Offer of Settlement pursuant to which Moore was fined \$50,000 and barred from association with any member of the NASD in any capacity. Cyphers was fined \$2,500 and suspended from association with any member of the NASD as a general securities principal for three days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Moore caused four checks totaling \$9,100 drawn on the accounts of two public customers to be endorsed and deposited into his personal bank account without the knowledge or consent of the customers.

The findings also stated that Moore recommended to the same customers the purchase and sale of securities without having reasonable grounds to believe such recommendations were suitable for the customers in view of the size and frequency of trades and the customers' financial situations, needs, and investment objectives. Furthermore, Moore purchased options in his personal account without making payment or having an adequate credit balance, according to the findings. In addition, Moore failed to respond to NASD requests for information. The NASD further found that Cyphers failed to supervise the activities of Moore adequately.

**Brent L. Rush (Registered Representative, Zanesville, Ohio)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Rush misappropriated and converted to his own use customer funds totaling

\$903.95 intended to pay insurance premiums. Rush also failed to respond to NASD requests for information.

**Jim W. Smith (Registered Representative, Dubuque, Iowa)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Smith failed to return funds to another registered representative. Specifically, he canceled an exposition booth that was reserved and paid for by the representative without her knowledge or consent, received a refund check for \$150, endorsed the check, and deposited the funds into his personal account. In addition, Smith failed to respond to NASD requests for information.

**Kevin M. Vander Kelen (Registered Representative, St. Petersburg, Florida)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Vander Kelen, without the knowledge or consent of a public customer, caused two checks totaling \$11,500 to be drawn from the customer's account and deposited into his personal bank account for his own benefit. In addition, Vander Kelen executed unauthorized securities transactions in the same customer's account.

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

**Bailey, Martin & Appel, Inc. (Philadelphia, Pennsylvania)** and **Howard M. Appel (Registered Principal, Penn Valley, Pennsylvania)** submitted an Offer of Settlement pursuant to which the firm and Appel were each fined \$125,000. Appel was also barred from association with any member of the NASD in any 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 Appel, effected principal sales of equity securities, agency cross transactions, and municipal securities to public customers at unfair prices. According to the findings, the firm, acting through Appel, failed to make certain disclosures on confirmations and sold unregistered shares of common stock to customers. In addition, the NASD found that the firm, acting through Appel, sold limited partnership interests on an all-or-none basis and caused funds to be disbursed from the escrow account before the contingency was met.

The findings also stated that the firm, acting through Appel, failed to comply with NASD rules concerning options accounts, failed to maintain a program of written supervisory procedures, failed to maintain accurate books and records, and filed inaccurate FOCUS reports. Furthermore, the NASD determined that the firm did not record on its order tickets the names of the dealers contacted and the quotations received for transactions in non-Nasdaq securities.

**Carey Jamison & Company (Silver Spring, Maryland)** and **Peter F. Hibbard (Registered Representative, Columbia, Maryland)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD, and Hibbard was fined \$10,000 and barred from association with any member of the NASD in a principal 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 Hibbard, failed to amend its Form BD promptly and subsequently filed inaccurate amendments to its Form BD. The NASD also found that the firm, acting through Hibbard, conducted a securities business at times when it maintained less than its required minimum net capital and that it filed inaccurate FOCUS Parts I and IIA reports.

In connection with a private placement memorandum in an all-or-none offering, the NASD determined that the firm, acting through Hibbard, represented to investors that the offering would terminate on a specified date unless it was extended at the discretion of the general partner. Thereafter, the offering was amended to extend the termination date, but no affirmative written reconfirmation was extended to at least two investors in the offering. Furthermore, the NASD found that the firm, acting through Hibbard, sold interests in the same offering to four investors, and the checks received from these investors were deposited into the escrow account subsequent to the termination date of the offering.

**Christopher I. Carlisle (Registered Representative, Coatesville, Pennsylvania)** submitted an Offer of Settlement 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, Carlisle consented to the described sanction and to the entry of findings that he executed unauthorized options transactions in a public customer's account and made false and misleading statements to the customer concerning the value of his securities account. The findings also stated that Carlisle misrepresented to the customer that he had executed securities transactions that were ordered by the customer when, in fact, such transactions were not executed.

**Joseph L. Dietrick III (Registered Representative, Virginia Beach, Virginia)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Dietrick received from his member firm a \$7,000 check that was intended to be delivered to a public customer by Dietrick. Instead, Dietrick misappropriated the funds for his personal benefit. He also failed to respond to NASD requests for information.

**Lawrence J. Gaughenbaugh (Registered Representative, Clarks Summit, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$175,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Gaughenbaugh consented to the described sanctions and to the entry of findings that he received from public customers insurance premiums totaling \$133,000, failed to remit the funds to an insurance company, and converted the monies to his own use and benefit. Gaughenbaugh also failed to respond to NASD requests for information.

**Edward P. Harris (Registered Representative, Holmdel, New Jersey)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Harris failed to pay a \$2,000 arbitration award.

**Carl V. May, Jr. (Registered Representative, Greensboro, North Carolina)** was fined \$2.25 million and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that May misappropriated funds totaling \$2 million from seven customers by selling notes to them and misrepresenting that their funds would be combined with other

investors' funds and invested in jumbo certificates of deposit. In addition, May engaged in the above sales without providing written notice to or receiving approval from his member firm to engage in such sales. May also failed to respond to NASD requests for information.

**Princeton Securities Corporation (Lawrenceville, New Jersey) and Stephen J. Taormina (Registered Principal, Princeton, New Jersey)** were fined \$62,000, jointly and severally. The sanction was based on findings that the firm, acting through Taormina, effected principal transactions in a common stock with public customers at prices that were unfair in relation to the market value of the security, at markups ranging from 8 to 85 percent.

**Howard Randolph, Jr. (Registered Representative, Verona, Pennsylvania)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Randolph misappropriated \$7,797.45 in customer funds by forging the customers' signatures on withdrawal requests and by converting the proceeds of an insurance-premium check and policy-loan checks to his own use and benefit. Randolph also failed to respond to NASD requests for information.

**John W. Swiger (Registered Representative, Jacksonville, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, a member firm, acting through Swiger, sold shares of a new issue that traded at a premium in the aftermarket to restricted persons. Swiger also failed to respond to NASD requests for information.

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

**Equitable Securities of New York, Inc. (New York, New York)** was expelled from membership in the NASD. The sanction was based on findings that the firm failed to honor a \$22,000 arbitration award and failed to pay \$400 in forum fees.

**Thomas Edward Francis (Registered Representative, Farmingdale, New York)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Francis failed to respond to NASD requests for information concerning a customer complaint.

**Gilbert Hodges II (Registered Representative, Brooklyn, New York)** was fined \$30,000 and

barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hodges failed to pay a \$17,283 arbitration award. In addition, he failed to respond to NASD requests for information.

**Mostel & Taylor Securities, Inc. (New York, New York)** was expelled from membership in the NASD. The sanction was based on findings that the firm failed to pay a \$10,000 arbitration award.

**Donald Eric Motschwiler (Registered Principal, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$13,250. Without admitting or denying the allegations, Motschwiler consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Motschwiler purchased, in a restricted account, shares of a new issue that traded at a premium in the immediate aftermarket.

**Rector Capital Corporation (New York, New York), Alan Cohen (Registered Principal, Lynbrook, New York), and Leonard Gurin (Financial and Operations Principal, Monmouth, New Jersey)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. Cohen was fined \$250,000 and barred from association with any member of the NASD in any capacity, and Gurin was fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cohen, sold units of common stock to public customers from the firm's inventory at prices that were unfair with markups ranging from 25 to 100 percent above the prevailing market price.

The NASD also found that the firm, acting through Gurin, conducted a securities business while failing to maintain its required minimum net capital and failed to file its FOCUS Part I reports on a timely basis. In addition, the NASD determined that the firm, acting through Gurin and Cohen, violated its restriction agreement with the NASD in that it modified its business activities, acted as a market maker, and engaged in a municipal securities business without first notifying and receiving the NASD's written approval.

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

**Robert C. Abraham (Registered Representative, Auburn, New York)** submitted an Offer

of Settlement 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, Abraham consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit funds totaling \$3,590.63 received from public customers and intended for payment of insurance premiums or loan installments.

**Michael E. Duda (Registered Representative, Buffalo, New York)** submitted an Offer of Settlement 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, Duda consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, he withheld and misappropriated to his own use and benefit funds totaling \$8,329 intended for commission payments to insurance agents. The NASD also found that he falsified records to reflect disbursement of the commissions.

**Eastern States Securities, Inc. (Derby, New York) and Ambrose W. Szur, Jr. (Registered Principal, Derby, New York)** submitted an Offer of Settlement 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 the firm, acting through Szur, offered and sold units in a private offering and failed to comply with the all-or-none contingency and the stated terms established in the private offering memorandum.

Specifically, the NASD determined that the respondents continued to offer and sell units after the expiration date and failed to terminate the offering and return customer funds when the offering was not completed. In addition, the NASD determined that the firm, acting through Szur, broke escrow when only a portion of the required funds was deposited and cleared.

**Thomas F. Greblewski (Registered Representative, Rochester, New York)** 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, Greblewski consented to the described sanctions and to the entry of findings that he withheld and misappropriated customer funds totaling \$2,000 intended for investment in a mutual fund without the knowledge or consent of the customer. In addition, Greblewski failed to respond to NASD requests for information.

**Elliott I. London (Registered Representative, Danvers, Massachusetts)** 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, London consented to the described sanctions and to the entry of findings that he withheld and misappropriated, to his own use and benefit, funds totaling \$3,000 received from a public customer for investment purposes without the knowledge or consent of the customer.

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