NASD REGULATORY & COMPLIANCE

ALERT

NASD Expels and Sanctions Firms, Representatives

The NASD recently took four separate, significant disciplinary matters arising from Market Surveillance Committee cases.

In the first action, the NASD expelled General Bond & Share Co. (Denver, Colorado) and barred its owner, Samuel C. Pandolfo, from associating with any member in any capacity. They were also fined $60,000, jointly and severally. General Bond and Pandolfo have appealed to the Securities and Exchange Commission (SEC), which has stayed the imposition of the foregoing sanctions pending its consideration of the matter.

The NASD found that General Bond and Pandolfo accepted over $25,000 from approximately 45 OTC issuers in consideration for listing General Bond as a market maker in the National Quotation Bureau, Inc.'s, "Pink Sheets."

The NASD found that General Bond did not provide bona fide market-making services in these issues as evidenced by its lack of trading in the securities. In addition, General Bond and Pandolfo continued to accept payments from or on behalf of issuers after being advised by NASD staff that these payments were not permissible and after representing to the NASD they would not do so.

The decision found that General Bond's and Pandolfo's practices "were in fact unethical, were undertaken by [them] in bad faith, and did in fact mislead market participants as to the relationship between [the firm] and individual issuers."

As a separate violation, the NASD also found that General Bond and Pandolfo failed to provide information which was repeatedly requested by the NASD pursuant to Article IV, Section 5 of its Rules of Fair Practice.

In the second case, the NASD sanctioned Whale Securities Co., LP (New York, New York) and four associated persons, including William G. Walters (Chairman), Elliot J. Smith (Managing Director and President), Nicholas C. Anari (Financial and Operations Principal), and Robert S. Rosenfeld (trader). Pursuant to a settlement and without admitting or denying the allegations, the respondents consented to the imposition of findings and sanctions.

These include a financial sanction against Whale of $615,000. The NASD has already collected fines totaling $292,500 from Whale, $10,000 each from Walters and Smith and $5,000 each from Rosenfeld and Anari for a total of $322,500, which payments were required within 10 days after approval of the settlement terms by the NASD. The balance of

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Focus Is on Fairness of Markups and Markdowns

During the last several years, securities regulators have focused their examination and enforcement programs more and more on members' markup and markdown practices.

Recently, the NASD and other regulators have initiated a substantial number of disciplinary proceedings alleging excessive markups that involve mainly low-priced securities.

The Association has also placed a great deal of emphasis on member education in this area as well as a variety of other sales and trading practice abuses at NASD educational seminars and in *Notices to Members*.

To help and guide members as well as provide them with a comprehensive and authoritative release concerning existing practices with regard to markups and markdowns, the

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NASD 1735 K STREET, NW WASHINGTON, DC 20006-1506

VOL. 6, NO. 2
JUNE 1992

NASD has issued *Notice to Members 92-16*. This Notice reiterates the key elements to consider when calculating appropriate markups and markdowns for retail transactions in equity securities. The Notice establishes no new policies, procedures, or rules relating to markups. It simply sets forth in a concise, single document longstanding practices established and supported by SEC and NASD case law and history.

NASD examiners have been following the concepts described in the Notice for some time, and no new investigative or special enforcement efforts have been initiated in conjunction with or as a result of this Notice.

From the NASD's perspective, there is no change in what its regulatory staff is doing during examinations nor is there any change in the enforcement of the NASD's Mark-Up Policy. The Notice was issued to put in one document the concepts established by many years of case law.

The NASD is not embarking on a new enforcement initiative, rather it is continuing with its existing procedures and practices. The Notice, which was issued at the request of many members, is designed to simply set forth these longstanding policies.

Members should have in place compliance procedures that guard against abusive markup/markdown practices, and that ensure critical issues such as prevailing market price, market-maker status, market environment for a security, and validation of quotations, among others, that are routinely and consistently considered.

Thus, the Notice describes the methodology for determining the prevailing market price and the ensuing markup computation in the various equity markets which the NASD regulates (i.e., Nasdaq/NMS, regular Nasdaq, and non-Nasdaq over-the-counter) and under differing market conditions (i.e., active/competitive, inactive/competitive, and dominated and controlled).

The NASD is committed to ensuring fair pricing with customers and requires strict adherence to all rules and regulations to accomplish this goal. Markup and markdown practices will continue to be carefully reviewed during examinations and investigations.

As the Notice embodies existing principles governing markups and markdowns, it should aid members in their compliance efforts so customer protection is enhanced and fewer disciplinary actions are required.

Advertising Filing Requirements Clarified

Members often ask the NASD Advertising Department to clarify its filing requirements for advertising and sales literature. Along with the exemptions contained in the rules, the Department from time to time provides interpretations that cover circumstances not specifically addressed by the rules. To assist members to better understand their obligations under the rules, the Department has provided the following information.

Members need not refile advertising and sales literature if it is being reused without change. However, changes to the text or significant design or presentation differences between the initial draft filed with the NASD and final copy require refiling.

In addition, members do not have to refile material revised to include changes that the NASD recommended unless the Advertising Department specifically requests refiling. However, members must keep the final copy in their files for three years pursuant to the NASD recordkeeping requirements.

Also, when sending material for NASD review, members need to send only one copy. This copy becomes part of the Department's files and is not returned. Such filings should include a brief cover letter describing the material's use and whether the filing fee is enclosed or is to be deducted from the member's account.

Another area of confusion for members involves changes to material containing performance or financial data for a specific product. The NASD interprets the rules to exempt from its filing requirements any material using the identical format of a previously filed item if it only updates performance or financial data.This interpretive exemption also applies to material for unit investment trusts offered in a series or as one of several state-specific trusts offering tax-free income. Although each trust is a new offering, the Department does not require members to file material that merely lists new portfolios and corresponding yields, if a representative filing has been made.

The Advertising Department appreciates member concerns regarding the filing requirements and welcomes all inquiries on these or any other issues. The department may be reached at (202) 728-8330.

Compliance Short Takes

- The SEC has approved amendments to the NASD's rules to require members to forward proxy material to beneficial owners on the request of either the issuer of the securities or a stockholder of such issuer. In addition, the stockholder must provide sufficient copies of all soliciting material and satisfactory assurance of reimbursement to the NASD member before the member has to forward the stockholder's proxy material.
- Direct Participation Program (DPP) Limited Principals and Representatives may now offer and sell DPP debt as well DPP equity instruments. Although the rule change permits DPP-registered persons to sell DPP debt securities in a distribution, such persons are still prohibited from buying or selling DPP debt securities in the secondary market.
- Acting with the SEC's approval, the NASD on May 27 extended the hours of its SelectNet[SM] service to include an after hours session from 4 to 5:15 p.m., Eastern Time. (In November, the extended hours will include a preopening session from 9 to 9:30 a.m., Eastern Time.) SelectNet is a screen-based

trading system that allows NASD members to enter orders, direct orders to one or all market makers in a security, and negotiate the terms of the orders through counter-offers entered over their computers. With these new hours members will be able to negotiate trades before the opening and after the close of normal trading hours. The operational rules and procedures that apply to normal market hours will continue to apply during the off-hour periods.

■ The securities in the American Stock Exchange's Emerging Company Marketplace (ECM) are not automatically eligible for margin even though they trade on a national securities exchange. Since these companies tend to be thinly capitalized and unseasoned, the Amex rules provide that ECM securities may not trade on margin until it determines that they qualify under the OTC margin rules of the Federal Reserve Board (Fed). Accordingly, the NASD has amended its rules governing the margining of securities by members to conform to the Amex's ECM margin provision. As a result, no member may trade an ECM security on margin until the Amex determines that it satisfies the criteria for inclusion and continuance on the Fed's List of OTC Margin Stocks.

■ All Nasdaq securities, except for regular Nasdaq convertible bonds, become subject to real-time transaction reporting on June 15. These real-time reporting requirements have applied to the Nasdaq National Market System since 1984. "This move will enhance market transparency by providing investors with more immediate and detailed pricing and transaction data on all Nasdaq securities," said Joseph R. Hardiman, President of The Nasdaq Stock Market℠. "This initiative continues our efforts to strengthen the regular Nasdaq segment of our market, which has proven to be very successful in assisting small- and mid-sized growth companies to raise equity capital."

■ To facilitate the payment of disciplinary fines, the Board approved new procedures for installment payments for such fines. At the NASD's option, based on, among other things, demonstrated financial hardship, respondents fined $5,000 or more may discharge their fines on an installment plan. Any such plan would require an initial payment of at least 25 percent of the total fine, the execution of a promissory note for the balance, and an interest charge imposed on the balance at the then-designated prejudgment interest rate. Repayment must be accomplished within two years, and monthly payments must be at least $500. For fines of $50,000 to $250,000, respondents may be allowed three years to pay. For fines exceeding $250,000, respondents may negotiate the repayment term with the NASD.

■ Market makers quoting American Depositary Receipts and foreign securities, exempt from Rule 12g3-2(b), on the NASD's OTC Bulletin Board® service may only update their individual quotes/indications of interest in these securities twice a day; once, between 8:30 and 9:30 a.m. and, again, between 12 and 12:30 p.m., Eastern Time. The NASD's Market Surveillance Department, which enforces compliance with this operational requirement through an automated surveillance report, has seen increasing instances where members have multiple quote updates prior to the market opening at 9:30 a.m., not realizing that they are only permitted to enter a quote(s) **once** between the 8:30 a.m. and 9:30 a.m. time frame. Members are reminded that such conduct violates the rule, and therefore could be subject to action by the Market Surveillance Committee. Therefore, steps should be taken to ensure that controls are in place to prevent even inadvertent violations.

■ The NASD is seeing an increase in the number of members that do not routinely capture the time of execution on order tickets or other memoranda. Under SEC Rule 17a-3, members must make and keep current a memorandum (i.e., an order ticket) for each purchase and sale, showing among other things the price and, to the extent feasible, the time of execution. This applies to orders received for the account of a customer and to dealer transactions for the account of the member. In addition, the memorandum for brokerage orders must include the time of receipt, terms and conditions of the order, and account for which it was entered. Members are asked to review their procedures in this area, and to take steps to improve compliance if deficiencies are noted. Aside from being specifically required by SEC Rule 17a-3, NASD utilizes information detailed on these order tickets to determine members' compliance with, among other things, best execution and the applicable trade reporting rules.

NASD Reminds Members of l0b-6 Obligations

The SEC's Division of Market Regulation has informed the NASD that increased activity in offerings of securities appears to have resulted in a number of violations of the cooling-off provisions of SEC Rule l0b-6. Members are advised they should take steps to ensure that compliance procedures on the syndicate and trading desks are adequate to assure compliance with this rule.

Rule 10b-6, entitled Prohibitions Against Trading by Persons Interested in a Distribution, is an anti-manipulative rule designed to avoid the appearance of apparent trading activity in the market for an issuer's securities in the short time immediately prior to the commencement of an offering. The Rule requires a member involved in underwriting an issuer's securities to refrain from making bids or purchases, or soliciting customer orders in that issuer's securities during the two (or nine) business days prior to the commencement of the offering. Therefore, the member is required to withdraw as a market maker from the Nasdaq market, or halt its solicitation activities in the securities of a listed company.

The two-day cooling-off period

applies to any security that trades at or above $5.00 a share and has 400,000 or more shares in public float. The nine-day cooling off period applies to all securities that trade at less than $5.00 or have less than 400,000 shares in public float. The Rule does not restrict brokerage transactions that involve unsolicited customer orders.

Questions regarding the applications of the cooling-off period may be directed to either Suzanne E. Rothwell, Associate General Counsel at (202) 728-8247 or Charles L. Bennett, Director Corporate Financing Department at (202) 728-8253.

Members Advised Of Canadian Concerns

The staff of the Ontario Securities Commission (OSC) has expressed concern that some members trading in Canada may not be complying fully with the requirements governing private placements made by non-Canadian issuers in Ontario.

Before conducting any financing activity in Ontario, the NASD advises members and non-Canadian issuers to retain legal counsel in Ontario for advice regarding the applicable rules.

Generally, non-Canadian issuers may sell securities on a private placement basis to Ontario residents. However, in many cases, Ontario requires that each purchaser receive an offering memorandum containing contractual rights of action for rescission or damages.

Registration requirements regarding the activity of market intermediaries (a broadly defined term) in private placement transactions also apply in Ontario.

In addition, an indefinite statutory hold period may restrict an Ontario purchaser's ability to sell privately placed securities if the issuer is not a reporting issuer in Ontario. If the issuer is a reporting issuer in Ontario, hold periods ranging between 6 and 18 months may apply.

Finally, it should be noted that each vendor of privately placed securities must file with the OSC a prescribed form and two copies of the offering memorandum along with the applicable fee.

NASD States View On "Hot Issues" And Investment Partnerships

The NASD has received numerous inquiries asking if an investment partnership that has restricted persons as partners may invest in "hot issues" under the NASD's Free-Riding and Withholding Interpretation if the partnership is structured to preclude the restricted persons from benefiting from the hot-issue purchases. Both the NASD Corporate Financing and the National Business Conduct Committees have considered this issue.

The committees affirmed the position — which the NASD has taken since at least 1980 — that regardless of whether the partnership internally allocates profits and losses from hot-issue transactions away from restricted persons, a member may not sell a hot issue to an investment partnership if restricted persons have a beneficial interest in such partnership unless the sale complies with the provisions of the Interpretation.

Since the NASD has no jurisdiction over investment partnerships or similar entities, it has no way to verify whether such restrictions or allocations are being followed. This position also considers the fact that the Interpretation provides for granting exemptions in only one area (i.e., issuer-directed with such exemptions available only in very limited circumstances, not related to investment partnerships).

Therefore, a partnership that has persons associated with a broker/dealer as partners may **not** purchase hot issues because such persons are absolutely restricted by the Interpretation.

Partnerships that have other categories of conditionally restricted persons as partners would only be able to purchase hot issues if the partnerships were able to demonstrate compliance with the "investment history," "insubstantial," and "not disproportionate" tests of paragraph 5 of the Interpretation.

In response to the interpretative issues raised and to a request by the NASD's Advisory Council, the Board of Governors has authorized the creation of a committee composed of members of the Corporate Financing, National Business Conduct, and Insurance-Affiliated Broker/Dealer Committees to conduct a general review of interpretative issues regarding the Free-Riding and Withholding Interpretation, including the treatment of restricted persons in investment partnerships.

This committee will report its recommendations for consideration and action by the Board of Governors.

SEC Approves Branch-Office Interpretation Codification

The SEC has approved the codification of certain NASD interpretations regarding the definition of branch office. The interpretations, first issued in 1989, clarify the definition and exemptions from branch office registration available to nonbranch business locations meeting certain conditions.

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

Now, 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, a location is also exempt from registration if the members' advertisements include a local telephone number and/or local post-office box of a nonbranch location so long as 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.

A member may also use the firm's main-office address and telephone number on sales literature, advertisements, business cards, and business stationery instead of the address and telephone number of the supervisory branch office or OSJ.

To do so, however, the member has to demonstrate that it maintains a significant and geographically dispersed supervisory system appropriate to its business. In addition, the main office must forward any complaints it receives to 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 OSJ.
- Publicly display signage.
- Operate from public areas of buildings, such as bank branches, even when such locations are temporarily staffed.
- Advertise an address in public media.

Such locations hold themselves out to the public as being places where the member conducts a securities business and, thus, come within the definition of a branch office.

The NASD will not, however, regard a listing in a lobby directory or a sign on an interior corridor door as holding the location out to the public in such a way as to require branch-office registration unless other indicia of the location's status as a branch office are present.

Under these rules, the registration of locations as branch offices is only necessary under two circumstances:

- One, their securities activity would require the continuous direct supervision of a principal (i.e., OSJ-type activity).
- Two, the location is held out to the public as a place where the full range of securities activity is conducted (requiring supervisory oversight of the initial interactions between customers and the member).

SEC Requires Full Disclosure On UIT Return

The SEC's Divisions of Investment Management and Market Regulation have expressed their concern about advertising unit investment trusts (UITs) in the secondary market solely on the basis of estimated current return (ECR).

In a joint letter, they said that a trust's ECR and its long-term return can be significantly different if the trust trades at a premium.

The price the investor pays in the secondary market includes this premium but the investor does not recover that amount when the trust matures or is called. In addition, the ECR does not reflect the amortization of premium.

The letter requires that, if a trust's ECR differs materially from its long-term return, any quotation of the ECR should be accompanied by a quotation of the trust's long-term yield or internal rate of return.

This requirement applies to quotations in prospectuses, advertisements, sales literature, and through oral communication.

The text of the letter, directed to secondary market dealers and unit investment trust sponsors, follows:

United States Securities and
Exchange Commission
Washington, D.C. 20549

April 8, 1992
Re: Unit Investment Trusts

Dear :

This letter is to advise you of the concerns of the Divisions of Investment Management and Market Regulation that, in the current interest rate climate, the promotion of unit investment trusts ("UIT") in the secondary market on the basis of "estimated current return" ("ECR") alone does not give the full picture to investors.

UITs have fixed portfolios and are sold in the secondary market at a price based on the current market value of the securities in the trust, which may be higher or lower than their principal amount. Advertising materials for secondary market sales typically quote the ECR of the UIT. This represents the estimated net annual interest income per unit divided by the offering price per unit. It is measured at the time ECR is quoted in the prospectus or advertisement. While most advertisements quote the ECR along with the long-term return of the UIT,[1] some advertisements give only ECRs.

Some UITs created in the early 1980s are quoting current returns of 8% or 9%. The true long-term return to the secondary market investor is often closer to 6%. The difference arises because, as interest rates have fallen, bonds with the higher coupon rates common in the early 1980s have traded at a premium to their principal amount (e.g., a bond with a principal amount of $1,000 may have a market value of $1,080, or an $80 premium). This premium is reflected in the price a secondary market investor pays for units of the trust, but will only be partly recovered by a new investor, if at all, when the bonds in the UIT's portfolio are called or mature. The ECR figure does not reflect this amortization of premium, which lowers real return.

In an environment where in-

come-oriented investors are increasingly concerned over the reduced yield of their investments due to declining interest rates,[2] it is particularly important that prospective UIT investors are not misled as to the potential returns of UITs with high ECRs. Brokers and others selling secondary-market UITs to investors must make sure that investors are given full and fair information about the potential returns of UITs with high ECR.

To achieve this objective any quotation of a UIT's ECR should be accompanied by a quotation of the UIT's long-term yield or internal rate of return, if the ECR varies materially from the long-term return of the trust. To do otherwise would risk misleading investors. This would be so regardless of whether the quote is in a prospectus, sales literature, advertisements for shares of UITs offered in the secondary market, or oral communications with potential investors.[3] Secondary market prospectuses that only contain ECR may have to be stickered.

Sincerely,
William H. Heyman, Director
Division of Market Regulation

Marianne K. Smythe, Director
Division of Investment Management

[1]The estimated long-term return of a UIT is calculated using a formula that averages the yields to maturity of the bonds in the trust, giving weight to the maturity and market value of each bond. The formula subtracts annual expenses from the average yield and multiplies the result by a fraction equal to the net asset value of the trust divided by the product of (a) the total number of units outstanding multiplied by (b) the maximum offering price per unit as of the day of computation, excluding accrued interest.

[2]*See*, e.g., "Investors Pull Out Billions of Dollars From Money Funds," *Wall Street Journal* (Jan. 3, 1992) C1; "Companies Rush to Sell New Bonds," *Wall Street Journal* (Jan. 8, 1992) C1.

[3]However, "junk bond" UITs that advertise long-term yields should do so only in the context of an explanation of the limitations of the long-term figure. Junk bond UITs typically trade at a discount, reflecting the market's assessment that a portion of the portfolio is likely to default prior to a maturity. The long-term return calculation assumes that the bonds in the portfolio will mature on schedule. *See* letter to registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management (Oct. 3, 1989) for a more detailed discussion of the risks associated with junk bond portfolios.

Recent SEC Ruling Affects Members' Foreign Branches

Members cannot rely on foreign laws, including secrecy provisions, to avoid SEC scrutiny of records in their branch offices, according to a recent SEC ruling. In its decision, the SEC sanctioned a member firm for failing to make, keep, and promptly provide SEC staff with records of accounts of its foreign branch office.

The firm's sanction included a censure and a requirement that it adopt, implement, and maintain policies and procedures reasonably designed to prevent and detect such violations in the future. The branch office manager was barred from association in a supervisory or proprietary capacity for five years after which the manager may reapply for association and was suspended from association in any capacity for three months.

The SEC found that the member failed to make and keep records relating to eight customer accounts in its foreign branch office. The firm, with the aid of its branch manager, treated the holders of these accounts as customers of one of its foreign affiliates, which was not registered as a broker/dealer.

In its defense, the firm claimed that the laws, including secrecy laws, of the country where the branch office was located prohibited the member from producing the required records. Instead, the firm maintained, the SEC had to use existing treaty arrangements with the country to access the disputed records.

The SEC rejected the member's principal claim that the foreign country's laws relieved it of its pre-existing obligation to comply with a demand for the inspection or prompt production of records under federal securities laws. These laws, according to the SEC, do not distinguish between domestic and foreign branch offices of registered broker/dealers or limit the obligation of firms that maintain foreign branch offices to furnish required records.

In fact, the SEC deemed it essential to the proper exercise of its regulatory authority that, as with domestic offices, it have prompt access to records created in foreign offices of U.S. registered broker/dealers.

The SEC noted that registered broker/dealers with offices in multiple jurisdictions must conduct their operations in a way that ensures compliance with the U.S. securities laws. According to the SEC, such firms have an affirmative obligation to implement whatever special record-keeping procedures are needed to avoid conflicts with the foreign country's law, including its secrecy provisions.

The SEC also found that the firm failed to maintain in an "easily accessible place" certain of the required books and records that it kept only in its foreign branch office. According to the SEC, the broker/dealer, which said it could not legally furnish the required records from the foreign country, could not claim that the required books and records it chose to keep only in the foreign country were "easily accessible" or "accessible."

Consequently, the SEC found that the member failed to keep the required records demanded by the Commission in an "easily accessible place," or an "accessible place" as the rules require.

Members with foreign branch offices interested in the views articulated in this decision should obtain a copy from the SEC of *Securities and Exchange Act Release No. 34-29243 (May 29, 1991) Administrative Proceeding File No. 3-7502.*

NASD Finds Fictitious Intraday Trade Reporting

The Market Surveillance Committee (the committee) has taken numerous disciplinary actions against certain members and

individuals who have engaged in "marking the close" of the market. This practice usually involves entering fictitious trade reports, at or near the close of market to influence the closing price of a security. Recently, however, the NASD reviewed a case that involved a pattern of reporting fictitious transactions throughout the trading day and not just at the close.

In this instance, the trader intentionally entered a significant number of fictitious "intraday" trades to conceal certain trading losses. The trader selected unsuspecting order-entry firms that did not routinely "browse" their Automated Confirmation Transaction (ACT)[SM] screen for open trades. For example, if the order-entry firm failed to "decline" a given fictitious ACT trade by 2:30 p.m. on trade date +1 (TD+1), the trade would be automatically locked in and sent to the National Securities Clearing Corporation.

Subsequently, the trader would cancel the fictitious transaction before the settlement date. As a result of this trading practice, the firm's clearing agent processed an inordinate number of canceled trades.

The committee reminds all members that it is good business practice and necessary to comply with ACT's reporting requirements and urges members to address all open ACT trades prior to 2:30 p.m. on TD+1.

Additionally, all members should review their compliance procedures to ensure adequate supervision in this area as well as to review for instances of a pattern of canceled trades to ensure that those cancellations are indeed bona fide. For further information, contact Bernard Thompson, Assistant Director, Market Surveillance at (301) 590-6436.

Firms Must Disclose Form U-5 Details

NASD rules requires a member to file a Form U-5 promptly, but not later than 30 calendar days after terminating a registered person. The member must answer questions concerning apparent misconduct by a person while associated with the firm submitting the Form U-5.

A "yes" answer to any of these questions requires a detailed explanation of the apparent misconduct.

While some members are very diligent in making the appropriate Form U-5 filings and disclosures, others are far more lax.

In a specific area of concern, recent problems were noted among members which are affiliates of insurance companies who may only be disclosing on Form U-5 that an individual was terminated by the insurance company affiliate and not disclosing the actual reason for the termination.

Clearly, disclosures of this type are not in compliance with reporting requirements and members must rectify such disclosure deficiencies and provide accurate information.

While recognizing members' concerns about potential litigation risks when completing a Form U-5 on an individual who has been terminated, the NASD believes it is critical that members provide complete and accurate information when making such filings.

Therefore, the NASD reminds all members that a failure to provide complete and accurate disclosures on Form U-5 could permit the terminated person to avoid regulatory oversight for potential violations and sanctions for actual violations of NASD rules and other applicable federal statutes and regulations.

Failure to provide this information also may subject the investing public to repeated misconduct as well as deprive other member firms of the ability to make informed hiring decisions.

Moreover, members may be subject to administrative, civil, and even criminal penalties for failing to provide complete and accurate information on Forms U-5 regarding the termination of any registered personnel.

For more details on these issues, see NASD *Notices to Members 88-67*, which addresses member obligations to provide accurate information on Form U-5.

Also, at the direction of the 1992 Advisory Council which expressed concern over inadequate disclosures on Form U-5 submissions at its May 1992 meeting, a follow up *Notice to Members* on this matter will be issued shortly.

Adviser Performance Prohibited in New Fund Advertising

NASD members may not use an investment adviser's track record in advertising or sales literature for new mutual funds. Such information may lead investors to conclude that the new fund would perform as well as the adviser's previous accounts.

Although it does not regulate the activities of registered investment advisers, the NASD does review mutual fund communications used by NASD members that contain advisory performance.

Prohibited presentations include tables, charts, graphs, or narrative descriptions of percentage or dollar amount results.

The NASD does permit general discussions of the adviser's experience. Sales material may describe the amount of assets managed by the adviser, the age of the advisory firm, the type of accounts usually managed by the adviser, and the qualifications of the adviser's employees, among other things.

The NASD has reviewed the use of adviser performance in new fund sales material since 1987. At that time, the SEC staff began permitting, on a case-by-case basis, the use of adviser performance in prospectuses for new closed-end funds.

The NASD has no jurisdiction over information contained in prospectuses. However, it has concluded that the use of adviser performance in promotional material could be misleading.

The NASD reaffirmed this posi-

tion in 1989 after the SEC staff permitted open-end funds meeting certain conditions to include past adviser performance in their prospectuses during the first year of a fund's operation.

The SEC staff does not permit the use of such performance in advertisements for new open-end funds.

The NASD Advertising Department can assist members in determining whether a presentation is fair and not misleading. The Advertising Department staff may be contacted at (202) 728-8330.

Members Should Check Adequacy Of Supervisory Procedures

Since the 1989 revisions of Article III, Section 27 of the Rules of Fair Practice which broadened the requirement for members to maintain written supervisory procedures, many member firms have revised and expanded their own procedures.

As a result of the Association's examinations, a number of areas have been identified as being ones in which members (depending upon their own mix of business) may need to have such procedures.

As a service to members to help them in evaluating the adequacy of their own system of written supervisory procedures the following list is provided.

It is recommended that each member firm review the list and consider whether its own business is such that it should adopt procedures for the areas listed.

Written Supervisory Procedures

Areas That May Need Coverage Depending on Business Mix:

Basic Principles of Conduct
Gifts and Gratuities
Sharing in Accounts
Designated Principals for Specific Areas
Proper Registration and Licensing
Principals Responsible for Books and Records
Background Investigations on Prospective Employees
Regulation T
Handling Customers' Funds and Securities
Possession and Control Procedures
Bank Secrecy Act/SEC Rule 17a-8
Branch and OSJ Inspections
Annual Compliance Meeting
NNOTC Market Making Activity (SEC Rule 15c2-11)
SOES Trades (Physical Security and Trading Limits)
Best Execution
Limit Order Execution (No Proprietary Accounts Preference)
Transaction and Volume Reporting
Payment for Order Flow
Acceptance of New Accounts
Review of Transactions
Fair Price to Customers (Markups/Markdowns/Commissions)
Sales Techniques and Approach
Review of Accounts
Review of Correspondence
Suitability of Recommendation
Monitoring for Unauthorized Trading
Sale of Designated Securities (SEC Rule 15c2-6)
Discretionary Accounts
Recommendations to Customers (Oral/Written)
Marking Order Tickets Long and Short
Short Selling Activity
Mutual Fund Sales (Breakpoint, Rights of Accumulation, Letters of Intent, Switching)
Private Securities Transactions
Advertising/Sales Literature
Handling of Customer Complaints
Sales of Restricted Securities
Due Diligence Procedures
Options Assignments and Exercise Notices
CROP Reports to Management
Uncovered Short Options
Misuse of Confirmations and Statements
Free-Riding/Withholding
Insider Trading Procedures (Mandatory)

Supervision Rules Cover Members' Off-Site Personnel

Many NASD members have registered principals, registered representatives and associated persons who engage in securities-related activities at locations away from the offices of the members.

These off-site personnel frequently are classified for compensation purposes as independent contractors, although members also may have independent contractors working at main office locations.

The NASD maintains its longstanding position that, irrespective of an individual's location or compensation arrangement, all persons associated with a member are subject to NASD rules governing their conduct. Members supervisory responsibilities extend to all such persons.

The fact that an individual conducts business at a separate location or is compensated as an independent contractor does not alter the obligations of the individual and the firm to comply fully with the applicable regulatory requirements.

Members should note, however, that the NASD's position regarding these supervisory responsibilities does not address the issue of employee vs. independent contractor status under Internal Revenue Service (IRS) rules and regulations or those of the individual states.

Members that engage independent contractors may wish to consult their attorneys or accountants to determine compliance with applicable IRS or state requirements.

Rule Changes Allow Regulation After Termination

The NASD now has two years to bring disciplinary actions against resigned member firms and terminated associated persons. This expanded authority, ap-

proved by the SEC, applies also to cancellations and revocations.

The changes further clarify that associated persons have to provide information to the NASD so long as it retains jurisdiction to file a complaint.

As amended, the NASD's rules extended the one-year jurisdictional period, which ran from the time the NASD permitted the resignation or termination to take effect.

The period now runs for two years from the date a resignation or termination is filed or from the date the NASD revokes or cancels a member or associated person.

The amendments also provide that the two-year period begins on the date the last amendment to a person's Form U-5 is filed within the two-year period.

Situations Covered

This covers a situation where a routine Form U-5 is filed at the time of termination but a subsequent amendment discloses potential violations that would require an investigation.

Starting the two-year period with the last Form U-5 amendment filing will prevent a person from avoiding sanctions by concealing information or through a filing delayed by others.

Moreover, because members have to send any amended Form U-5 to the terminated person, he or she will know when the two-year period began.

Status of Held Terminations

For those terminations subject to holds under the previous rule, the NASD has two years from the effective date of the revised rules (April 15, 1992) to file a complaint pursuant to the amendments.

Changes to the NASD By-Laws also permit the NASD to bring disciplinary action against any associated person who fails to provide information requested by the NASD while that person remains subject to NASD jurisdiction.

This authority applies even though the person's registration has been terminated or revoked.

Finally, because members and their associated persons have to keep their records current, the NASD will consider any request for information as having been received by the member or associated person at their last known address as reflected in the NASD records.

Thus, the ability of members and associated persons to receive proper notice of requests for information will depend on the member's and associated person's compliance with their obligations to update the information on file with the NASD.

Members Approve New Short-Sale Rule

By a 4-to-1 ratio, NASD members overwhelmingly approved a new short-sale rule for Nasdaq/NMS securities which contains a new exemption for qualified market makers.

"The NASD short-sale rule has been designed to prevent inappropriate short-selling activity that adversely affects the pricing efficiency of The Nasdaq Stock Market," said Joseph R. Hardiman, NASD President and Chief Executive Officer.

"At the same time, the package calls for an exemption for qualified market makers to give market makers depth and liquidity in Nasdaq National Market System securities."

Rule Based on Bid

The new rule would prohibit NASD members from selling a Nasdaq/NMS security short for themselves or their customers at or below the bid when it is lower than the previous inside bid price in the security. (The Nasdaq system calculates the inside bid as the best bid from all market makers in the security. The Nasdaq system will be configured to indicate on traders' screens whether the current bid is an "up bid" or "down bid.")

The proposed short-sale rule has been filed with the SEC. The NASD will also request an amendment to the SEC short-sale rule (Rule 10a-1) so that these new restrictions will apply to all market participants.

The exemption for market makers is based on objective, quantitative criteria that can be applied equitably to all market makers, regardless of size. These criteria are also within a market maker's ability to control and satisfy. In order to qualify for the exemption, a market maker would have to be designated a "primary" market maker.

Threshold Standards

This status would be achieved by the market maker fulfilling two of the following three specific test threshold standards:

- It must be at the inside bid or offer as shown in Nasdaq no less than 35 percent of the time.
- It must maintain a spread no greater than 102 percent of the average dealer spread.
- No more than 50 percent of its quotation updates may occur without an execution of at least one unit of trading.

If a market maker satisfies only one of the criteria above, it may qualify as a primary market maker if it also accounts for a threshold level of volume in the security.

This volume test would be met if a market maker accounts for one-and-a-half times its proportionate share volume in a stock. For a stock with 10 market makers, for example, each dealer's proportionate share would be 10 percent. Therefore, one-and-a-half times proportionate share represents 15 percent of overall volume.

The time period for review of market-maker performance in each standard under consideration would be a calendar month. Compliance with the criteria would be tracked via Nasdaq, and this would enable market makers to use the Nasdaq Workstation® service to review their status in each criterion in each stock.

It also would provide members with regular notice of their compliance with the standards.

NASD Fines Firm And Sanctions Associated Individuals

The NASD has taken disciplinary actions against Madison Chapin Associates, Inc. (New York, New York); registered principals Mark Allen Bolender (Dix Hills, New York), William Rubin Kelman (New York, New York), Robert S. Ellin (Los Angeles, California), and Rita Malm (Palm Beach Gardens, Florida); and registered representatives David Lee Stetson (Roslyn, New York) and Robert W. Berg (New York, New York). The firm, Bolender, and Kelman were fined $927,715, jointly and severally, and the firm and Bolender were fined an additional $15,000, jointly and severally.

In addition, Bolender and Kelman were each fined $10,000, suspended from association with any member of the NASD in any capacity for six months, suspended from association with any member of the NASD as a general securities principal for two years, and required to requalify by examination in any capacity.

Ellin was fined $27,455.50, suspended from association with any member of the NASD in any capacity for three months, and required to requalify by examination in any capacity.

Malm was fined $15,000 and suspended from association with any member of the NASD in any principal capacity for 10 days, and Stetson was fined $10,000 and required to requalify as a registered representative.

Berg was fined $20,412.50, suspended from association with any member of the NASD in any capacity for three months, and required to requalify by examination 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 for District 10 in New York.

The sanctions were based on findings that the firm, acting through Bolender, Kelman, and Stetson, dominated and controlled the market in immediate secondary aftermarket activity in a non-Nasdaq over-the-counter security following its initial public offering, by selling the common stock and warrants to customers from inventory at prices that were fraudulent and unfair.

The excessive markups ranged from 11 to 779 percent over the prevailing market price. In addition, the findings stated that the firm, acting through Bolender, Kelman, Ellin, and Berg, refused and failed to execute orders for six customers.

The NASD also determined that Ellin and Berg executed transactions in the accounts of public customers without the authorization or consent of the customers.

In addition, Ellin opened accounts for three other customers and failed to note on account documentation that the individuals were registered with another member firm.

The NASD found that Malm, Bolender, and Kelman failed to establish and implement supervisory procedures to detect and prevent the violations relating to fraudulent and excessive markups, unauthorized trading and failure to execute customer orders. This action has been appealed to the SEC by Kelman, Ellin, Malm, and Berg, and their sanctions are not in effect pending consideration of the appeal.

Actions *(From Page 1)*

$322,500 will be paid out by Whale over a period not to exceed two years.

Along with the fines, Walters was suspended in any principal or supervisory capacity for 30 calendar days; Smith was suspended in any principal or supervisory capacity for 45 calendar days; Anari was suspended in any principal or supervisory capacity for 15 business days; and Rosenfeld was suspended in any capacity for 10 business days.

Both Smith and Rosenfeld are also required to requalify by examination. Whale also agreed to undertake several remedial measures designed to prevent a repetition of the alleged misconduct. Whale was found to have violated various provisions of the Association's Rules of Fair Practice including Article III, Sections 2 and 18.

The former provision requires that a broker/dealer have a reasonable ground for believing that any security recommendation is suitable for its customers.

The latter provision prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

The sanctions are based on findings that Whale dominated and controlled the market in R.T. Acquisition Associates, Inc. (RTAC) common stock between April 2, 1990 and June 20, 1990 and in the Class A and Class B warrants between April 2, 1990 and July 12, 1990.

RTAC had been underwritten by Whale in December of 1988. At all relevant times, the securities traded in the non-Nasdaq over-the-counter market. While dominating and controlling the market in RTAC, Whale, acting through its trader Rosenfeld, charged markups and markdowns that exceeded 10 percent in approximately 50 transactions in common stock, and charged excessive markups and markdowns in approximately 120 transactions in the Class A and Class B warrants.

Excessive Charges

The markups in RTAC common stock, Class A warrants, and Class B warrants ranged from 10 percent to 67 percent above the firm's contemporaneous cost, while the markdowns ranged from 10 percent to 30 percent below the firm's contemporaneous sales.

In addition, Whale, through the actions of its present and former registered representatives, was alleged to have engaged in a series of improper sales practices, including unauthorized trading, excessive trading

in customer accounts, and the use of nominee accounts for RTAC securities.

The NASD alleged that Walters, Smith, and Anari failed to establish, maintain, and enforce written supervisory procedures concerning compliance with NASD guidelines for charging markups and markdowns as well as procedures concerning sales practices.

In the third action, the NASD announced findings and sanctions against R.B. Marich, Inc. (Denver, Colorado) and 11 individuals associated with the firm.

These include Rudy Marich (President), John Harmann (Executive Vice-President and Compliance Director), Craig Norton and Bonita Schroder-Crockett (traders), and Shirley A. Garrity, Arnold Fallon, Guy Robert LaBone, Ronald Sparkman, David Charles Green, Keith Allen Remson, and Gene Anthony Hochevar (registered representatives).

Firm Fined

The firm was fined $145,755, suspended as a market maker for six months in non-Nasdaq securities, and prohibited for one year from participating in any initial public offering where the offering price is less than $3 per share.

In addition to sanctioning the firm, Harmann was suspended for 90 days from associating with any member in any capacity; Norton was fined $12,305 and suspended for 10 days from associating with any member in any capacity; Crockett was fined $10,555 and suspended for 10 days from associating with any member in any capacity; and Rudy Marich was fined $12,000 and suspended for 15 days from associating with any member in any capacity.

Garrity, Fallon, LaBone, Sparkman, Green, Remson, and Hochevar were each fined $5,000 and suspended for five days in all capacities.

All of the individuals must requalify by examination as registered representatives except Harmann, who must requalify as a principal. Rudy Marich must requalify as both a representative and a principal.

The decision was based on a determination that R.B. Marich, acting through its traders, Norton and Crockett together with the knowing and substantial assistance of Harmann, dominated and controlled the aftermarket in two blind pools, High Sierra Acquisitions, Inc. and Magellan Corp., that were underwritten by the firm. Excessive markups in the two securities totaled nearly $100,000.

The registered representatives were found to have charged unfair prices to certain of their customers who purchased High Sierra and/or Magellan.

Although the registered representatives were not charged with knowledge of the markup amounts, they determined the gross commission on trades and were paid portions of these gross commissions.

In all of these trades, the representatives received in excess of 10 percent of the total amount of the trade, and in a number of instances 30 percent to 50 percent or more of the total price paid by the retail customer to purchase the security was shared between Marich and the registered representative.

Regarding the conduct of the registered representatives, the decision stated that "when a registered representative's gross commission is excessive, the price paid by the customer is obviously unfair."

Employee Duties

Moreover, the decision emphasized that "a registered representative does not function merely as a salesperson. He or she is a securities professional operating in a highly regulated environment, the rules of which that representative is bound to know and follow."

Harmann, Garrity, LaBone, Green, and Hochevar have appealed to the SEC. While the matter is being considered by the SEC, the sanctions against them are not effective.

In the fourth action, the NASD announced findings and sanctions against Adams Securities, Inc. (Las Vegas, Nevada), James W. Adams (Registered Principal, Henderson, Nevada), and Daniel B. Perry (Registered Principal, Henderson, Nevada).

The firm and James Adams were fined $600,000, jointly and severally. Further, James Adams was fined an additional $25,000 and suspended from association with a member of the NASD in any capacity for two years. Perry was also fined $25,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination.

These sanctions were imposed by the NASD's National Business Conduct Committee following an appeal of a decision by the Market Surveillance Committee.

Markup Violations

The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Adams and Perry, sold securities to its retail customers in principal transactions at unfair prices.

The markups on these transactions were excessive and fraudulent and ranged from 12.5 percent to 600 percent above the prevailing market price. In addition, the firm and Adams failed to establish, maintain, and enforce adequate supervisory procedures.

The firm, Adams, and Perry have appealed this case to the SEC and the sanctions are not in effect pending consideration of the appeal.

The NASD investigations were carried out by its Anti-Fraud and Market Surveillance Departments and are part of a continuing nationwide effort by the NASD to eliminate trading and sales-practice abuses in non-Nasdaq and low-priced securities.

The Market Surveillance Committee, which initiated these disciplinary cases, is a national committee responsible for maintaining the integrity of the Nasdaq and the non-Nasdaq markets and for disciplining members that fail to comply with relevant NASD rules and federal securities laws.

NASD DISCIPLINARY ACTIONS

In February, March, and April 1992, 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

Amerdream Securities Corporation (Kahului, Hawaii) and **Frank John Sarcone (Registered Principal, Kahului, Hawaii)** were fined $80,000, jointly and severally. The firm was also expelled from membership in the NASD , and Sarcone was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Sarcone, failed to file its Reports on Finances and Operations of Government Securities (FOGS) Parts I and II and failed to respond to NASD requests for information.

Ronald Leon Brock (Registered Principal, Larkspur, California) was fined $25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Brock failed to pay a $19,000 NASD arbitration award and to respond to NASD requests for information.

Liquidity Fund Investment Corporation (Emeryville, California) submitted an Offer of Settlement pursuant to which it was fined $125,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it engaged in the purchase and sale of direct participation program interests in the secondary market at unfair prices.

In connection with such activity, the findings stated that Liquidity Fund engaged in securities transactions by means of material misrepresentations and omissions of fact. Specifically, the NASD determined that the firm represented to customers that the transactions involved no markups or markdowns and failed to disclose the markups and markdowns on the transactions.

Sacks Investment Company, Inc. (Novato, California) and **Richard Lawrence Sacks (Registered Principal, Novato, California)** were fined $100,000, jointly and severally. In addition, the firm was expelled from membership in the NASD. Richard Sacks was barred from association with any member of the NASD in any capacity, with the right to apply to become associated with a member as a registered representative after a period of five years.

The sanctions were based on findings that the firm, acting through Sacks, engaged in the sale of municipal securities without having first registered with the Municipal Securities Rulemaking Board and without paying the required fees. Furthermore, the firm, acting through Sacks, failed to register a municipal securities principal and a financial and operations principal.

In contravention of its voluntary restriction agreement with the NASD, the respondents engaged in the purchase and sale of securities on a principal basis without having obtained written approval from the NASD.

Also, in contravention of the NASD's Mark-Up Policy, the firm, acting through Sacks, sold securities from its inventory to customers at unfair prices and failed to disclose the markups on customers' transactions. The markups on these transactions ranged from 5 to 70.5 percent above the firm's contemporaneous costs.

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)

Andres Epiala Antenorcruz (Registered Representative, Burbank, California) was fined $55,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Antenorcruz participated in a private securities transaction without giving prior written notification to his member firms.

Chris Thomas Christensen (Registered Representative, Utica, Michigan) 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 year. Without admitting or denying the allegations, Christensen consented to the described sanction and to the entry of findings that he executed purchase transactions in the accounts of six public customers without the customers' knowledge or consent.

Judith Marie Dedeaux (Registered Representative, Solvang, California) was fined $1,388,585 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Dedeaux engaged in a fraudulent scheme pursuant to which she caused the transfer of funds totaling $2,482,112.88 from 15 public customer securities accounts maintained at her member firm to two other securities accounts maintained at her member firm. Furthermore, Dedeaux falsely represented to customers that they had invested in a security when, in fact, no such security existed. Thereafter, she converted at least $638,585.85 of these funds to her own use and benefit. Dedeaux also failed to respond to an NASD request for information.

Stephen Alan Holloway (Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $12,500 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Holloway consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of limited partnership interests. According to the findings, this recommendation was made without having reasonable grounds for believing that such transaction was suitable for the customers in view of the size of the recommended transaction and the customers' financial situations and needs.

Susan Hopkins Murphy (Associated Person, Malibu, California) was fined $170,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Murphy, while acting as a securities trader for a member firm, engaged in purchase and sales transactions with other broker/dealers for the inventory account of her member firm and submitted false and misleading order tickets to her firm.

In addition, Murphy failed to prepare or submit sales memoranda or other evidence of such transactions to her member firm for processing and posting to the firm's books and records. Moreover, she failed to otherwise inform the firm that such transactions had been executed. Murphy also failed to respond to NASD requests for information.

Eric Martin Schimansky (Registered Representative, Sherman Oaks, California) was fined $74,736 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Schimansky caused the withdrawal of $4,736 from dividends that accrued from a life insurance policy issued to a public customer. Schimansky took delivery of the check, forged the customer's endorsement on the check, deposited the funds into his bank account, and converted the monies to his own use. Schimansky also failed to respond to NASD requests for information.

Scott Merrill Snider (Registered Representative, Westlake Village, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Snider consented to the described sanction and to the entry of findings that he executed unauthorized securities transactions in the accounts of public customers. According to the findings, these transactions resulted in losses to the customers totaling $180,451 and in commissions totaling $5,659, of which Snider received $4,810.

Torrey Pines Securities, Inc. (Solana Beach, California), Jack Clark Smith, Jr. (Registered Principal, Rancho Santa Fe, California), and **Harvey Glen Leason (Registered Representative, Carlsbad, California)** were fined $19,588.12, jointly and severally. The sanction was based on findings that, in contravention of the Board of Governors' Interpretation with respect to the NASD Mark-Up Policy, the firm, acting through Smith and Leason, engaged in sales to public customers of shares of securities in the secondary market at prices that were unfair in that such sales resulted in markups ranging from 5.26 to 23.8 percent.

Westok Securities, Inc. (Irvine, California) and **Michael Anthony Oliva, Jr. (Registered Principal, Irvine, California)** submitted an Offer of Settlement pursuant to which they were fined $50,000, jointly and severally. In addition, Oliva was suspended from association with any member of the NASD in any capacity for two years and barred from association with any member of the NASD in any principal capacity.

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, Westok Securities, acting through Oliva, engaged in sales of shares of stock in the secondary market to public customers at unfair prices.

According to the findings, the markups ranged from 33.33 to 48.22 percent above the firm's

contemporaneous costs.

Raymond Paul Whipp, III (Registered Representative, Santa Ana, California) 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, Whipp consented to the described sanctions and to the entry of findings that he sold securities held in a public customer's account without the customer's knowledge or consent. According to the findings, Whipp then effected a change of address for the customer without her knowledge or consent in order to prevent her from receiving any information concerning the sale.

The findings also stated that Whipp took delivery of a $773.06 check issued by his member firm as a result of the aforementioned sale, forged the customer's signature, and converted the funds to his own benefit.

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

Joel Hight Austin (Registered Principal, Medford, Oregon) was fined $500,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that a former member firm, acting through Austin, effected securities transactions while failing to maintain its minimum required net capital.

In addition, Austin engaged in a course of conduct that operated as a fraud and deceit on his customers. Specifically, he solicited and received from customers $328,000 and told the customers that the funds would purchase limited partnership interests and other investments. Austin failed to remit the funds for their intended purposes and, instead, the monies were deposited into a checking account controlled by Austin. Thereafter, the majority of the funds were paid out to Austin, but the customers never received their money back nor any indication that investments were made on their behalf.

Philip Sean Brown (Registered Representative, Tucson, Arizona) was fined $10,504 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Brown executed securities transactions in four public customer accounts without obtaining the customers' prior authorization and consent.

Chyle James Edic (Registered Representative, Monroe, Washington) was fined $10,000 and required to pay $27,520 in restitution to a public customer. In addition, Edic must requalify by examination prior to becoming associated with any member of the NASD in any capacity. The sanctions were based on findings that Edic recommended and effected securities transactions in the account of a public customer without having reasonable grounds for believing such recommendations were suitable considering the customer's financial situation and investment needs.

First Affiliated Securities, Inc. (La Jolla, California) was fined $10,000 and required to pay restitution to public customers. The sanctions were based on findings that the firm failed to supervise the activities of a registered representative adequately and to establish and/or enforce its supervisory procedures.

First Choice Securities Corporation (Englewood, Colorado) and **Gregory F. Walsh (Registered Principal, Los Angeles, California)** were fined $20,000, jointly and severally. In addition, the firm was suspended from membership in the NASD for 60 days and required to comply immediately with all provisions of the firm's restriction agreement.

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 3. The sanctions were based on findings that the firm, acting through Walsh, opened four branch offices in contravention of the terms of its restriction agreement with the NASD. Specifically, the firm, acting through Walsh, made markets in 15 securities and maintained an inventory level that was in excess of the terms defined in the agreement.

First Choice and Walsh have appealed this case to the Securities and Exchange Commission (SEC), and the sanctions are not in effect pending consideration of the appeal.

GRH Securities, Inc. (Tempe, Arizona) and **Nelson Frederick Gould (Registered Representative, Phoenix, Arizona)** submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally. In addition, the firm was expelled from membership in the NASD, and Gould was 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 they failed to pay a $45,680 arbitration award, jointly and severally, and that Gould failed to pay an additional $7,220 arbitration award.

Salvatore Giallanza (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was fined $75,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Giallanza consented to the described sanctions and to the entry of findings that he made certain misrepresentations to a public customer concerning the customer's purchase of limited partnership units.

The NASD also found that Giallanza failed to notify an executing broker/dealer at which he maintained a securities account of his affiliation with another member firm. In addition, the NASD determined that Giallanza made improper use of customers' funds. Specifically, the findings stated that he accepted from five public customers funds totaling $19,095 intended for the purchase of securities, deposited $9,695 of these funds into a bank account in which he was the sole signatory, and retained $9,398 in the form of a cashier's check made payable to himself. The findings also stated that Giallanza effected private securities transactions through an unregistered securities broker without providing prior written notice to his member firm.

Furthermore, Giallanza provided a customer with a statement indicating that certain securities had been purchased for this customer when, in fact, these securities had not been purchased.

Russell R. Haden (Registered Principal, Sandy, Utah) was fined $9,000 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 3. The sanctions were based on findings that Haden caused a $900 check received from a public customer to be deposited into his firm's bank account. Moreover, Haden failed to purchase the securities for which the funds were intended and did not return the monies to the customer. Haden also failed to respond to NASD requests for information.

Russell R. Haden (Registered Principal, Sandy, Utah) was fined $25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Haden failed to pay the full amount of an NASD arbitration award.

Calvin Glasco Heisler (Registered Representative, Englewood, Colorado) was fined $48,581.84 and required to requalify by examination as a general securities representative. The sanctions were based on findings that Heisler engaged in the sale of securities to eight public customers without providing prior written notice to his member firm.

John Franklin Horjes (Registered Representative, Beaverton, Oregon) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any member of the NASD in any capacity for 15 business days. Without admitting or denying the allegations, Horjes consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities, including options transactions, in the account of a public customer. According to the findings, these recommendations were made without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size, nature, and frequency of the recommended transactions and the customer's financial situation, circumstances, and needs.

Hutchison Financial Corporation (Phoenix, Arizona) and **Patricia J. Prasad (Registered Principal, Phoenix, Arizona).** The firm was fined $25,000 and suspended from membership in the NASD for six business days. Prasad was fined $5,000, suspended from association with any member of the NASD as a financial and operations principal for one year, and required to requalify by examination as a financial and operations principal.

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 Prasad, conducted a securities business while failing to maintain its minimum required net capital. In addition, the firm, acting through Prasad, filed inaccurate FOCUS Part I reports with the NASD.

Hutchinson Financial has appealed this case to the SEC, and the sanctions against the firm are not in effect pending consideration of the appeal.

Livingston Securities, Inc. (Portland, Oregon), Les Thomas Livingston (Registered Principal, Portland, Oregon), Cletus Herman Niebur (Registered Principal, Beaverton, Oregon), and, **James Frank Nieder (Registered Representative, Portland, Oregon)** submitted an Offer of Settlement pursuant to which they were fined $15,000, jointly and severally. In addition, Les Livingston was suspended from association with any member of the NASD as a general securities principal for 10 business days, and Niebur was suspended from association with any member of the NASD as a general securities principal for two years. Furthermore, the firm must pay $153,670 in restitution to customers.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Les Livingston and Nieder, effected securities transactions at unfair prices. According to the findings, the respondents sold securities to customers with markups greater than 8 percent without disclosing such markups to the customers.

The NASD also found that the firm, acting through Niebur, failed to supervise the aforemen-

tioned activities properly and to establish and implement adequate written supervisory procedures. Moreover, the NASD determined that the firm, acting through Niebur, conducted a securities business while failing to maintain sufficient net capital.

Merrill Lynch, Pierce, Fenner and Smith, Inc., (New York, New York), Robert L. Sheeran (Registered Principal, Fall City, Washington), and **Clinton E. Kratzke (Registered Principal, Bellevue, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $30,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Sheeran and Kratzke, who were located at the firm's Seattle, Washington branch office, failed to supervise properly the activities of a registered representative, Molly Wilson, to prevent her from effecting unsuitable and unauthorized transactions.

In accepting these sanctions, the DBCC for District 3 considered the extensive remedial actions and undertakings that Merrill implemented to improve the firm's supervision over its branch offices and to enhance the level and effectiveness of direct branch management supervision over sales practices. The NASD barred Molly Wilson from acting in any capacity with an NASD member and fined her $90,000 for making improper use of customer funds while associated with another broker/dealer.

Peter Anselm Meyers (Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that he executed transactions in four customer accounts without their prior authorization, knowledge, or consent. According to the findings, Meyers received approximately $1,000 in commissions as a result of these unauthorized transactions.

Robert Bruce Mitchell (Registered Representative, Lakewood, Colorado) was fined $100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Mitchell effected at least 30 unauthorized transactions in the accounts of public customers. In addition, Mitchell falsified his member firm's books and records by changing customer accounts to reflect incorrect addresses. Moreover, Mitchell made certain misrepresentations to a customer regarding her securities account in order to induce the customer to effect securities transactions through him. Mitchell also sent false and misleading information to a mortgage company on behalf of the same customer that misrepresented the current value of her account and the amount of income the account generated.

Robert Theodore Nelson (Registered Principal, Seattle, Washington) and **Paul Arthur Wilbur (Registered Representative, Everett, Washington)** were barred from association with any member of the NASD in any capacity. In addition, Nelson was fined $83,000. 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 Wilbur and Nelson engaged in fraudulent conduct in connection with their solicitation and sales of common stock to public customers. In addition, Wilbur made material misrepresentations and omissions of material facts concerning such sales. He represented to customers that there was no risk involved, that their funds would be deposited in an escrow account, and that they were guaranteed profits. Moreover, a former member firm, acting through Wilbur and Nelson, engaged in the sale to public investors of common stocks for which no proper registration was filed with the SEC or for which no exemption from registration existed.

Wilbur and Nelson also engaged in private securities transactions without providing prior written notice to their member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his firm's branch office and failed to discharge those responsibilities properly and adequately.

Wilbur and Nelson have appealed this case to the SEC and the sanctions, other than their bars, are not in effect.

Gary William Oldham (Registered Representative, Federal Way, Washington) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Oldham failed to respond to NASD requests for information concerning a customer complaint.

RCM Government Securities, Inc. (Boulder, Colorado) and **Gil Lipp (Registered Principal, Boulder, Colorado)** were fined $25,000, jointly and severally. The sanction was based on findings that Lipp, acting on behalf of the firm, made inaccurate and defamatory statements regarding the competency of other firms in the brokerage community in order to gain competitive advantage. Moreover, Lipp, acting on behalf of the firm, acted in an inappropriate manner by making unprofessional and improper comments to customers and potential customers regarding a registered representative's personal and business ethics and moral standing.

R.A. Johnson and Company, Inc. (Salt Lake City, Utah), Ronald A. Johnson (Registered Principal, Salt Lake City, Utah), and **Elaine Johnson (Registered Principal, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Elaine Johnson, conducted a securities business while failing to maintain its minimum required net capital.

The NASD also found that the firm, acting through Elaine Johnson, failed to prepare and report the firm's net capital accurately and to make the required deposit to the Special Reserve Bank Account. In addition, the NASD determined that the firm, acting through Elaine Johnson, filed inaccurate FOCUS Part I reports and delivered customer fully-paid securities during a period when such deliveries created or increased a deficit position in those securities.

Furthermore, the firm, acting through Elaine Johnson, failed to sell out or otherwise cancel transactions in five customer accounts pursuant to Regulation T of the Federal Reserve Board, according to the findings.

In connection with customer order tickets, the NASD found that the firm, acting through Ronald Johnson, failed to mark listed and over-the-counter securities as long or short, to make an affirmative determination as to the location of the securities, to stamp the time of entry, and to mark the tickets with a representative number of market makers' quotes. The findings also stated that the firm, acting through Ronald Johnson, failed to maintain new-account forms, to have all of the information required on 21 new-account cards, to report Nasdaq National Market transactions executed on a principal basis, and to have in its files information about 10 securities for which the firm was a market maker.

Moreover, the NASD determined that the firm, acting through Ronald Johnson, charged excessive commissions on agency trades and excessive markups or markdowns on principal transactions. In addition, the findings stated that the firm, acting through Ronald Johnson, failed to prepare adequate written supervisory procedures, to have adequate procedures in place describing the firm's methods of obtaining possession and control of customer fully-paid securities, and to disclose the correct capacity in which the firm was acting on a confirmation. The NASD further found that the firm, acting through Ronald Johnson, failed to report non-Nasdaq over-the-counter transactions, to have a general securities principal approve customer account forms, and to place a required customer statement in its audited financial report.

Gregg Suzuki (Registered Representative, Denver, Colorado) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Suzuki made misrepresentations to a customer and guaranteed the customer against loss in order to induce him to purchase securities. Specifically, Suzuki made statements to the customer that he had contacts at certain brokerage firms that would allow him to obtain securities from canceled trades at favorable prices and that, as a result, the customer could earn 20 percent on his investment within three weeks. Moreover, Suzuki delivered falsified confirmations to the customer that purported to show the purchase and sale of these securities at a certain brokerage firm when, in fact, these transactions had not been effected. Suzuki also failed to respond to NASD requests for information.

Bernard Lee Woody (Registered Representative, Denver, Colorado) was fined $19,500 and required to requalify by examination as a general securities representative. 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 Woody engaged in the sale of securities to public customers without providing prior written notice to his member firm.

Gary Ronald Yocum (Registered Representative, Phoenix, Arizona) was fined $100,000 and barred from association with any member of the NASD in any capacity. In addition, Yocum is required to provide proof that he has paid $2,730,180 in restitution to investors prior to seeking permission to associate with a member firm. The sanctions were based on findings that Yocum received funds in excess of $6 million from investors through the sale of limited and general partnership interests. He used $2,730,185 of the funds in a manner inconsistent with the stated use of such proceeds in the offering memoranda.

In addition, Yocum engaged in a securities business with public customers through two firms that were not registered with the SEC as securities broker/dealers. Furthermore, Yocum solicited and sold offerings of real estate interests that were not registered under Section 5 of the Securities Act of 1933. Yocum also failed to respond to NASD requests for information.

Frank B. Zieg (Registered Representative, Littleton, Colorado) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Zieg consented to the described sanction and to the entry of findings that he effected 13 unauthorized securi-

ties transactions in the joint account of public customers. In addition, the NASD found that Zieg reimbursed these customers $800 for losses sustained in their securities account as a result of the unauthorized transactions.

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

Judith K. Anderson (Registered Representative, Fridley, Minnesota) submitted an Offer of Settlement pursuant to which she was fined $10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that she exercised discretion in the accounts of public customers without written authorization from the customers or written acceptance of the accounts as discretionary by her member firm.

In addition, Anderson effected transactions in the account of a public customer without having a reasonable basis for believing that such transactions were suitable for the customer in view of the customer's income, financial situation and needs, investment history, and objectives.

John Robert Berigan, Jr. (Registered Representative, Omaha, Nebraska) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Berigan failed to respond to NASD requests for information concerning his termination from a member firm.

Robert Malone Fehrman (Registered Principal, Florissant, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any principal capacity for two years. In addition, he was suspended from ownership of a controlling interest in any member firm for two years and required to requalify by examination in all principal capacities. Without admitting or denying the allegations, Fehrman consented to the described sanctions and to the entry of findings that he failed to supervise properly the activities of an individual associated with his member firm.

Hayne, Miller & Farni, Inc. (Minneapolis, Minnesota), Edward C. Farni (Registered Principal, Minneapolis, Minnesota), George W. Fredericks (Registered Principal, St. Louis Park, Minnesota), Daniel J. Bubalo (Registered Principal, Minneapolis, Minnesota), Wesley C. Hayne (Registered Principal, Plymouth, Minnesota), and **DuWayne R. Kollodge (Registered Principal, Albertville, Minnesota).** The firm, Farni, Fredericks, and Bubalo were fined $30,000, jointly and severally, and the firm, Hayne, and Kollodge were fined $15,000, jointly and severally. In addition, the firm was suspended from making markets in non-Nasdaq over-the-counter equity securities for one year, and Bubalo was fined an additional $5,000.

The sanctions were based on findings that the firm, acting through Bubalo, Fredericks, Farni, Hayne, and Kollodge, effected principal securities transactions with public customers at prices that were unfair and unreasonable. The firm, acting through Hayne, also permitted a statutorily disqualified individual to be actively engaged in the securities business without being supervised by the designated principal, which was one of the special supervisory conditions imposed following an NASD Membership Continuance Proceeding.

The firm's suspension began December 31, 1991.

Bradley David Holliday (Registered Representative, Topeka, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any member of the NASD in any capacity. In addition, Holliday must demonstrate that he has paid $95,831.98 in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceeding.

Without admitting or denying the allegations, Holliday consented to the described sanctions and to the entry of findings that he processed requests for cash surrenders, dividend withdrawals, and loans from insurance policies of public customers, and converted the proceeds totaling $95,831.98 to his own use and benefit without the knowledge or consent of the customers.

John G. Kinnard and Company, Inc. (Minneapolis, Minnesota) and **Jeffrey Dean Peterson (Registered Representative, Minnetonka, Minnesota)** were fined $25,000, jointly and severally. In addition, Peterson must requalify by examination as a registered representative. The sanctions were based on findings that the firm, acting through Peterson, effected principal securities transactions with public customers at prices that were unfair and unreasonable, in contravention of the NASD's Mark-Up Policy. The markups ranged from 37.5 to 61.1 percent above the firm's contemporaneous cost for the securities.

Michael Joseph Liskiewicz (Registered Representative, Duluth, Minnesota) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Liskiewicz failed to respond to NASD requests for information concerning his termination from a member firm.

Lowell H. Listrom (Registered Principal, Kansas City, Missouri) and **Stephen L. Mock (Registered Principal, Overland Park, Kansas).** Listrom was fined $25,000, jointly and severally with a former member firm, and barred from association with any member of the NASD as a general securities principal. Mock was fined $5,000, suspended from association with any member of the NASD in any capacity for 10 days, and required to requalify by examination as a financial and operations principal. The sanctions were imposed by the SEC following an appeal of a decision by the NASD's Board of Governors.

The sanctions were based on findings that a member firm, acting through Listrom and Mock, failed to prepare and maintain certain books and records and failed to state excess net capital accurately. The NASD also found that the same member firm, acting through Listrom and Mock, conducted a securities business while failing to maintain its required minimum net capital. In addition, the member firm, acting through Listrom and Mock, incurred a deficiency in its reserve bank account as a result of insufficient unrestricted cash, impermissible withdrawals, and inaccurate computations. The findings also stated that the member firm, acting through Mock, inaccurately calculated its reserve bank account computations.

Listrom has appealed this action to the U.S. Court of Appeals.

David Paul Mann (Registered Representative, Bloomington, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $30,000 and barred from association with any member of the NASD in any capacity. In addition, Mann must demonstrate that full restitution was paid should he seek re-entry to the securities industry through the NASD's eligibility proceeding. Without admitting or denying the allegations, Mann consented to the described sanctions and to the entry of findings that he received funds totaling $6,675.80 from public customers. These monies were intended for deposit in a tax-sheltered annuity, the purchase of a variable life insurance policy, and an insurance premium payment. Instead, the NASD determined that Mann used the funds for other purposes, resulting in additional commission payments to him.

In addition, the NASD found that Mann forged the signature of a public customer on a check issued by his member firms and deposited the check in his personal account. Mann also charged a customer an improper enrollment fee of $220, according to the findings.

Phillip Thomas McMillan, Jr. (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, McMillan consented to the described sanction and to the entry of findings that he guaranteed public customers against loss in connection with their purchases of shares of a common stock.

Roger Paul Reetz (Registered Representative, Hiawatha, Kansas) 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, Reetz consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning his termination from a member firm.

William Milton Rosenberger (Registered Representative, Leawood, Kansas) was fined $137,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Rosenberger made recommendations to public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the nature, size, and frequency of the transactions and the customers' investment objectives, financial situations, and needs. Rosenberger exercised discretionary power and executed purchase and sale transactions in the accounts of public customers without obtaining prior written discretionary authority from the customers and without the accounts being accepted as discretionary by his member firms. In assuming discretionary authority for one customer, Rosenberger also failed to explain the impact and potential risk involved in the securities transactions.

In addition, Rosenberger recommended and induced a public customer to increase her margin debit balance by making loans to him for his own use to support the margin debit balance in his personal securities account. Furthermore, Rosenberger signed customer names to a margin agreement without the knowledge or consent of the customers. Rosenberger also fraudulently stated to a customer's son that additional funds of $1,064,375 were required to cover a margin call and that the account would be liquidated unless the funds were received. Rosenberger then stated that if the customer's son issued a personal check for the account, it would not be presented for payment and would be returned the next day.

Moreover, Rosenberger guaranteed customers against loss in connection with their purchases of securities. On several occasions, Rosenberger prepared and sent customer account statements that inaccurately stated the status of the accounts.

Van Clemens & Co., Inc. (Minneapolis, Minnesota), Thomas J. Vanyo (Registered Principal, Robbinsdale, Minnesota), and **Patrick J. Vanyo (Registered Principal, Brooklyn Park, Minnesota)** submitted an Offer of Settlement pursuant to which they were fined $40,000, jointly and severally. In addition, the firm was prohibited from effecting any principal sales of non-Nasdaq over-the-counter securities to retail customers for one year.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Thomas and Patrick Vanyo, effected principal sales of common stock to customers at unfair and unreasonable prices in relation to the prevailing market price of the securities.

Scott Allan Verhey (Associated Person, Albert Lea, Minnesota) was fined $1,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Verhey received assistance while taking the Series 7 examination in that he brought notes regarding the exam into the testing room and utilized them.

James R. Voigtsberger (Registered Principal, Minneapolis, Minnesota) was fined $50,000 and barred from association with any member of the NASD in any capacity. In addition, Voigtsberger must demonstrate that he has paid $80,000 in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceeding. The sanctions were based on findings that Voigtsberger engaged in conduct that was found to be fraudulent in nature. Specifically, he received $80,000 from public customers for investment purposes but, instead, deposited the funds into an account that he controlled and used the monies for his own use and benefit. The NASD also found that Voigtsberger participated in private securities transactions without providing prior written notification to his member firm. In addition, Voigtsberger failed to respond to NASD requests for information.

Kenneth Irving Zeigler, Jr. (Registered Representative, Minnetonka, Minnesota) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Zeigler failed to respond to NASD requests for information concerning his termination from a member firm.

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

Regena K. Adams (Registered Representative, Edmond, Oklahoma) was fined $50,000 and barred from association with any member of the NASD in any capacity. In addition, Adams must demonstrate that she has paid $851,006.07 in restitution to public customers should she seek re-entry into the securities industry through the NASD's eligibility proceeding. The sanctions were based on findings that Adams engaged in a fraudulent scheme by soliciting $851,006.07 from public customers. Adams inaccurately represented to the customers that she had been offered an investment at a guaranteed interest rate in excess of 30 percent per annum and further represented that she would share the investment with the customers.

In furtherance of this scheme, Adams failed to disclose to the customers that such an investment did not exist and had not been offered to her. Instead, Adams converted the monies to her own use and benefit without the knowledge or consent of the customers. In addition, Adams failed to respond to NASD requests for information.

Dean Witter Reynolds, Inc. (Baton Rouge, Louisiana) 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 the firm failed to have an adequate or effective supervisory system at a branch office. The findings also stated that the firm did not have supervisory personnel at the branch office and was unable to monitor adequately the suitability of trades by a registered representative. In addition, the firm's branch-office records failed to evidence approval of a registered representative's trading activity in 39 public customer accounts.

Dennis R. Driscoll (Registered Representative, Shreveport, Louisiana) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Driscoll consented to the described sanctions and to the entry of findings that he exercised discretionary power in the accounts of public customers without obtaining prior written authorization from the customers or prior written acceptance of the accounts as discretionary by his member firm.

The NASD determined that Driscoll recommended and engaged in options purchase and sale transactions and options put writing strategies in the accounts of public customers without having reasonable grounds for believing such recommendations were suitable for the customers based on their financial situations, objectives, and needs. The findings stated that Driscoll also failed to disclose all of the material risks of his options strategies to public customers. In addition, Driscoll executed options transactions in the accounts of public customers at option trading levels that were not approved by his member firm, according to the findings.

Jerry W. Edmondson (Registered Representative, Cullman, Alabama) was fined $30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Edmondson received from public customers checks totaling $9,900.55 for the purchase of mutual fund shares and, instead, deposited the funds into his own account and converted the funds to his own use without the knowledge or consent of the customers. Edmondson attempted to conceal the delay in the transactions by having the account statements mailed to his home address and by changing the trade dates on the confirmation statements before delivering them to the customers.

Edmondson circumvented a suspension imposed by his member firm by using the name of another registered representative to open a new account for a public customer. The aforementioned activities were fraudulent in nature. In addition, Edmondson failed to respond to NASD requests for information.

John E. Elliott, Jr. (Registered Representative, Metairie, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Elliott consented to the described sanctions and to the entry of findings that he received a $15,000 check from a public customer for investment purposes. Instead of following the customer's instructions, the NASD found that Elliott deposited the check into his personal bank account and converted the funds to his own use without the knowledge or consent of the customer.

Joe T. Emmons, Jr. (Registered Representative, Mobile, Alabama) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Emmons failed to submit to his member firm $259 received from public customers as payments on insurance policies. Instead, Emmons converted the funds to his own use without the knowledge or consent of the customers. Emmons also pawned a personal computer belonging to a co-worker without the knowledge or consent of that individual. Furthermore, his member firm advanced Emmons $1,206.52 to cover the expenses of a regional business conference that he did not attend. Emmons converted the funds to his own use without the knowledge or consent of his member firm. In addition, Emmons failed to respond to NASD requests for information.

Donald Bryce Evans (Registered Principal, Lucedale, Mississippi) was fined $20,000 and barred from association with any member of the NASD in any capacity. In addition, Evans must demonstrate that he has paid $255,519.98 in restitution to public customers should he seek re-entry into the securities industry through the NASD's eligibility proceeding.

The sanctions were based on findings that Evans received from public customers $255,519.98 intended for investment purposes. Evans deposited the funds into the bank account of a corporation in which he had an ownership interest and converted the monies to his own use and benefit without the knowledge or consent of the customers. Furthermore, Evans prepared a confirmation that falsely showed that a purchase order had been placed for $100,000 on behalf of two customers.

Paul Hansen (Registered Representative, Broken Arrow, Oklahoma) was fined $20,000 and barred from association with any member of the NASD in any capacity. In addition, Hansen must demonstrate that he has paid $25,000 in restitution to his member firm should he seek re-entry to the securities industry through the NASD's eligibility proceeding.

The sanctions were based on findings that Hansen caused his member firm to open an account in his mother's name and then deposited a $40,000 check into the account when he knew that the check had been drawn on insufficient funds. Thereafter, Hansen caused a $25,000 check to be issued against the deposit and converted the funds to his own use and benefit. In addition, Hansen failed to respond to NASD requests for information.

Thomas E. Hurston (Registered Representative, Brandon, Mississippi) was fined $30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hurston engaged in conduct that was found to be fraudulent in nature. Specifically, he received from a public customer a $10,000 check for the purchase of a money market fund. Instead, Hurston deposited the check into his personal checking account and converted the funds to his own use and benefit without the knowledge or consent of the customer. In addition, Hurston failed to respond to NASD requests for information.

Investment Advisors, Inc. (Louisville, Kentucky) and **James Allen Brady (Registered Principal, Louisville, Kentucky)** were fined $10,000, jointly and severally. The sanction was based on findings that the firm, acting through Brady, conducted a securities business while failing to maintain its required minimum net capital.

Charles L. Johnson (Registered Represen-

tative, Baton Rouge, Louisiana) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Johnson effected the sale and subsequent purchase of shares of stock in the accounts of public customers, thereby engaging in unsuitable transactions which cost the customers sales charges totaling $13,800.

Without the knowledge or consent of public customers, Johnson executed purchase and sale transactions in customers' accounts and entered orders to purchase Treasury bonds on behalf of the customers. These unauthorized purchases of Treasury bonds were found to have been fraudulent in nature. In addition, Johnson recommended and executed transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations were suitable for the customers given their respective financial situations, investment objectives, and needs. Johnson also failed to respond to NASD requests for information.

Lawrence W. Legel (Registered Principal, Fort Lauderdale, Florida) was suspended from association with any member of the NASD in any capacity for one week. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 5. The sanction was based on findings that, in connection with a consulting agreement and management agreement, Legel improperly funneled payments from a member firm, through nonregistered broker/dealers, to a nonregistered individual who was barred by the SEC from association with any broker/dealer.

Legel has appealed this case to the SEC, and the sanction is not in effect pending consideration of the appeal.

Danny E. Look (Registered Representative, Oklahoma City, Oklahoma) was fined $50,000 and barred from association with any member of the NASD in any capacity. In addition, Look must demonstrate that he has paid $50,000 in restitution to a public customer should he seek re-entry to the securities industry through the NASD's eligibility proceeding.

The sanctions were based on findings that Look received a $50,000 check from a public customer for investment purposes and, instead, invested the funds through another broker/dealer in an account that listed him as a joint tenant owner. Thereafter, Look withdrew the funds from the account and converted the monies to his own use without the knowledge or consent of the customer. In addition, Look failed to disclose accurate information when applying for registration with the NASD and failed to respond to NASD requests for information.

Ivan L. McKinney (Registered Principal, Bossier City, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, suspended from association with any member of the NASD in any capacity for two weeks, and barred from association with any member of the NASD in any principal capacity. In addition, McKinney is required to requalify by examination as a general securities representative.

Without admitting or denying the allegations, McKinney consented to the described sanctions and to the entry of findings that a member firm, acting through McKinney, failed to establish, maintain, and enforce written supervisory procedures and to reasonably and properly supervise a registered representative. In addition, the findings stated that the firm, acting through McKinney, failed to adequately monitor the suitability of trades recommended by a registered representative in light of the representative's prior misconduct.

Cecil G. Murdock (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000, barred from association with any member of the NASD in any capacity, and required to pay $22,000 in restitution to customers. Without admitting or denying the allegations, Murdock consented to the described sanctions and to the entry of findings that he forged the names of public customers on checks totaling $22,000. According to the findings, Murdock deposited the monies into his personal bank account and converted the funds to his own use without the knowledge or consent of the customers.

The findings also stated that Murdock exercised discretion in the accounts of public customers without having obtained prior written authori- zation from the customers and prior written acceptance of the accounts as discretionary by his member firm. In addition, the NASD determined that Murdock executed unauthorized purchase and sale transactions in the account of a public customer and withheld customer confirmations.

Patrick W. O'Malley, Jr. (Registered Representative, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any capacity for one week. Without admitting or denying the allegations, O'Malley consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on mutual fund disclosure forms in an attempt to purchase shares in a company.

Randy K. Pittman (Registered Principal, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any capacity for one week. Without admitting or denying the allegations, Pittman consented to the described sanctions and to the entry of findings that he signed a public customer's name to applications for purchases of annuities without the prior consent or approval of the customer. In addition, Pittman guaranteed the same public customer's account against loss, according to the findings.

District 6 - Texas

James Nicklaus Bennett (Registered Representative, Gun Barrel City, Texas) was fined $5,000, suspended from association with any member of the NASD in any capacity for six months, and required to requalify by examination as an investment company and variable contracts product representative. 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 Bennett received from a public customer a $3,470.83 check intended for investment in life insurance. Without the knowledge or consent of the customer, Bennett endorsed the check, deposited it in his checking account, and converted the funds to his own use and benefit.

Primary Funding Corporation (San Antonio, Texas) and **Douglas Jerome Hellie (Registered Principal, San Antonio, Texas)** were fined $150,000, jointly and severally. In addition, the firm was expelled from membership with the NASD, and Hellie was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hellie recommended the purchase of securities to public customers without having reasonable grounds for believing that such transactions were suitable for the customers based on their financial situations, needs, and stated investment objectives.

In connection with the offer and sale of securities to public customers, Hellie utilized fraudulent and deceptive devices, along with misstatements and omissions of material facts. Furthermore, in connection with the offer and sale of debentures and warrants, Hellie failed to comply with SEC Rule 10b-9. Specifically, he represented to public customers that subscription funds would be refunded and that the offering would be amended in the event that 20 units were not sold by the termination date when, in fact, the investors never were refunded their monies. The firm, acting through Hellie, failed to maintain its required minimum net capital and a fidelity bond. In addition, the firm, acting through Hellie, hired a statutorily disqualified individual as a registered representative who was not qualified or registered with the NASD.

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

Jerrie Dean Allen (Registered Representative, Miami, Florida) submitted an Offer of Settlement pursuant to which she was fined $20,000 and barred from association with any member of the NASD in any capacity. In addition, Allen must demonstrate that she has paid $13,000 in restitution to a public customer should she seek re-entry to the securities industry through NASD eligibility proceedings. Without admitting or denying the allegations, Allen consented to the described sanctions and to the entry of findings that she converted to her own use and benefit customer funds totaling $13,000 without the knowledge or authorization of the customer.

Richard C. Avon (Registered Representative, Pompano Beach, 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 Avon failed to pay a $1,335 arbitration award.

B C Financial Corporation (Dunwoody, Georgia) was fined $25,000 and expelled from membership in the NASD. The sanctions were based on findings that the firm failed to pay a $2,563.82 arbitration award.

Kenneth Patrick Bell (Registered Representative, Warsaw, North Carolina) 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, Bell consented to the described sanctions and to the entry of findings that he effected securities transactions in the accounts of public customers without the knowledge or authorization of the customers.

William Allen Beson (Registered Representative, Tamarac, 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 Beson failed to pay a $2,507.78 arbitration award.

Richard E. Blanks, Jr. (Registered Representative, St. Petersburg, Florida) was fined $7,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Blanks solicited and accepted a $30,000 check from a public customer for the purchase of Treasury bonds. Instead, Blanks deposited the check in the account of a company he owned and applied the proceeds to his own use and

benefit. In addition, Blanks sent letters to the same customer confirming that the purchase of the Treasury bonds had been made, without having a factual basis for making such representation.

Thomas G. Bromante (Registered Representative, Sarasota, Florida) was fined $10,000 and suspended from association with any member of the NASD in any capacity for three months. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 7. The sanctions were based on findings that Bromante altered the commission portion of certain customer application agreements in order to obtain excess commission payments to which he was not entitled.

John P. Callinan (Registered Representative, Los Angeles, California) submitted an Offer of Settlement pursuant to which he was fined $20,000, suspended from association with any member of the NASD in any capacity for six months, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Callinan consented to the described sanctions and to the entry of findings that he effected transactions for the account of a public customer pursuant to verbal discretionary authority. This authority was not put in writing nor was the account accepted on a discretionary basis by his member firm.

The findings stated that Callinan sent a letter to the same customer advising him that shares of a common stock had been sold in his account when, in fact, these sales had not been effected. The NASD also found that Callinan sent a $10,000 check to the same customer to partially reimburse him for losses sustained in his account. In addition, Callinan provided false information concerning this customer's complaint to an NASD examiner, according to the findings.

Ayman Ahmed Difrawi (Registered Representative, Groveland, Florida) was fined $10,000, suspended from association with any member of the NASD in any capacity for five days, and ordered to pay $1,977.62 in restitution to his member firm. The sanctions were based on findings that Difrawi effected unauthorized purchase and sale transactions in the accounts of public customers without the knowledge or consent of the customers.

Gregory Allen Gast (Registered Principal, West Palm Beach, Florida) was fined $10,000, barred from association with any member of the NASD in any capacity, and required to pay $3,533 in restitution to public customers. The sanctions were based on findings that Gast effected purchases of shares of common stock for the accounts of public customers without the knowledge or consent of the customers.

Leonard Greenstein (Registered Representative, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was fined $100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Greenstein consented to the described sanctions and to the entry of findings that he made recommendations to public customers without having reasonable grounds for believing such transactions were suitable for the customers based on their financial situations and investment objectives.

The NASD found that Greenstein made numerous misrepresentations and omissions of material facts to his customers relating to the offer and sale of several highly speculative, manipulated securities. In addition, the NASD found that Greenstein exercised discretionary power in the accounts of public customers without prior approval or discretionary authority. Greenstein also guaranteed a public customer's account against losses, according to the findings.

Robert A. Hendrix (Registered Representative, St. Simons Island, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any capacity for five days. Without admitting or denying the allegations, Hendrix consented to the described sanctions and to the entry of findings that he provided periodic verbal portfolio valuations to a public customer that were false and greater than the actual market value of the customer's portfolio.

Dwight D. Holloway (Registered Representative, Orlando, Florida) 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 30 days. Without admitting or denying the allegations, Holloway consented to the described sanctions and to the entry of findings that, in connection with the sale of limited partnership interests to five investors, Holloway failed to provide prior written notification of such sales to his member firm.

Randolph H. Kahl-Winter (Registered Representative, Palm Harbor, Florida) was fined $10,000, barred from association with any member of the NASD in any capacity and required to pay $18,015 in restitution to a public customer and $2,343.25 to his member firm. The sanctions were based on findings that Kahl-Winter effected securities transactions for the accounts of public customers without the knowledge or consent of the customers.

Lawrence Ralph Kelner (Registered Principal, Lakeland, Florida) and **Glenn Bruce Shane (Registered Principal, Palm Harbor, Florida)** were each fined $7,500 and suspended from association with any member of the NASD in any capacity for five business days. The sanctions were based on findings that Kelner and Shane engaged in private securities transactions with public customers without providing prior written notice to their member firms.

Martin R. Kenealy (Registered Representative, Sarasota, Florida) was fined $20,000 and barred from association with any member of the NASD in any capacity. In addition, Kenealy must pay $121,000 in restitution to his member firm should he seek re-entry to the securities industry through NASD eligibility proceedings. The sanctions were based on findings that Kenealy effected unauthorized options transactions in the accounts of public customers. In addition, Kenealy failed to adhere to an agreed-upon investment strategy when servicing the accounts of public customers, resulting in unauthorized risk exposure to the customers.

Key Biscayne Securities, Inc. (Key Biscayne, Florida) and **Kingsley Charles Barham (Registered Representative, Key Biscayne, Florida)** were each fined $5,000. The firm also was suspended from membership in the NASD for 30 days, and Barham was suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that the firm, acting through Barham, failed to keep current books and records and to carry a blanket fidelity bond. The firm, acting through Barham, also effected securities transactions while failing to maintain its required minimum net capital. In addition, the firm, acting through Barham, filed a materially inaccurate FOCUS Part I report.

Kenneth M. Masaid (Registered Representative, Anderson, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $2,843.50 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Masaid consented to the described sanctions and to the entry of findings that he received from a public customer $568.70 as payment of an annual insurance premium and converted the funds to his own use and benefit without the knowledge or authorization of the customer.

Morgan Gladstone & Co., Inc. (Boca Raton, Florida) was fined $10,000 and expelled from membership in the NASD. The sanctions were based on findings that the firm failed to pay an $8,994 arbitration award and $800 in forum fees.

Eric Donald Needler (Registered Representative, Boca Raton, Florida) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Needler effected purchase transactions for the accounts of public customers without the knowledge or consent of the customers.

Neil Alfred Nelson (Registered Representative, Indialantic, 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 Nelson effected purchases of shares of common stock for the accounts of public customers without the knowledge or consent of the customers. In addition, Nelson failed to respond to an NASD request for information.

Frank G. Pinizzotto (Registered Principal, Tierra Verde, Florida) 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 five business days. Without admitting or denying the allegations, Pinizzotto consented to the described sanction and to the entry of findings that he made misrepresentations to public customers in connection with their purchase of securities.

Timothy J. Ribadeneyra (Registered Representative, Charlotte, North Carolina) 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, Ribadeneyra consented to the described sanctions and to the entry of findings that he directed the transfer of funds totaling $10,870.23 from a municipal securities transaction suspense account of a financial institution affiliated with his member firm to his personal checking account without the knowledge or consent of either firm.

Richfield Securities, Inc. (Littleton, Colorado) was fined $5,000 and expelled from membership in the NASD. The sanctions were based on findings that the firm failed to pay an $8,946 arbitration award.

Steve Edward Scheuffele (Registered Representative, Cocoa Beach, Florida) was fined $20,000 and barred from association with any member of the NASD in any capacity. In addition, Scheuffele must demonstrate that he has paid $4,640 in restitution to public customers should he seek re-entry to the securities industry through the NASD eligibility proceedings. The sanctions were based on findings that Scheuffele effected purchase transactions for the accounts of public customers without the knowledge or consent of the customers. In addition, Scheuffele failed to respond to an NASD request for information.

Michael A. Smithhisler (Registered Representative, Titusville, Florida) 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. In addition, Smithhisler must pay $38,219 in restitution to his member firm should he seek re-entry to the securities industry through NASD eligibility proceedings. Without admitting or denying the allegations, Smithhisler consented to the described sanctions and to the entry of findings that he received from a public customer a $35,219 check to be deposited into an insurance/investment program. Instead, the NASD found that Smithhisler deposited the check in his personal checking account and used the proceeds for his own use and benefit. In addition, Smithhisler became associated with another company without the knowledge or approval of his member firm, according to the findings.

Kevin J. Stafford (Registered Representative, Tampa, Florida) was fined $15,000 and suspended from association with any member of the NASD in any capacity for 15 business days. The sanctions were based on findings that Stafford placed numerous telephone calls to a public customer during which he was abusive, used obscene language, and made personal threats against the customer and his wife.

William Timothy Tackett (Registered Representative, Inman, South Carolina) 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, Tackett consented to the described sanctions and to the entry of findings that he converted to his own use and benefit customer funds totaling $4,507.50 without the knowledge or authorization of the customers.

Lynn Edward Thomas (Registered Representative, Birmingham, Alabama) was fined $50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, in connection with the sale of a security, Thomas misrepresented and omitted material facts to public customers. This activity was found to be fraudulent in nature. Thomas also failed to provide prior written notification of the aforementioned sale to his member firm. In addition, Thomas recommended the purchase of the security to these public customers without having reasonable grounds for believing that such transactions were suitable for the customers based on their other security holdings, investment objectives, and their financial situations and needs.

Zack Kendall Thomason (Registered Representative, Greenville, South Carolina) submitted an Offer of Settlement pursuant to which he was fined $6,000 and barred from association with any member of the NASD in any capacity. In addition, Thomason must demonstrate that he has repaid $44,726.73 to a public customer, should he seek reentry to the securities industry through NASD eligibility proceedings. Without admitting or denying the allegations, Thomason consented to the described sanctions and to the entry of findings that he received $44,726.73 from a public customer in private securities transactions without providing prior written notice of such transactions to his member firm.

George J. Trovato (Registered Representative, Brooklyn, New York) was fined $7,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Trovato took an examination on behalf of another individual who was registered for the exam.

Dan Lewis Weinberg (Registered Principal, Doraville, Georgia) was fined $7,500, jointly and severally with a member firm and suspended from association with any member of the NASD as a financial and operations principal for 10 business days. The sanctions were based on findings that a member firm, acting through Weinberg, conducted a securities business while failing to maintain its required minimum net capital. The same firm, acting through Weinberg, also failed to maintain accurate books and records. In addition, in contravention of the NASD's Mark-Up Policy, the firm, acting through Weinberg, effected principal securities transactions with public customers at prices that were unfair. The markups ranged from 14 to 45 percent over the firm's cost for the securities.

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

Alfred W. Collier (Registered Representative, Seymour, Indiana) was fined $5,000, barred from association with any member of the NASD in any capacity, and required to pay $1,000 in restitution to a customer. The sanctions were based on findings that Collier obtained from a public customer $1,000 intended for the repayment of a loan against his insurance policy. Contrary to the customer's instructions and without his knowledge or consent, Collier failed to deposit the funds and, instead, converted the monies to his own use.

Roderick E. Day (Registered Representative, East Grand Rapids, Michigan) 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, Day consented to the described sanctions and to the entry of findings that he transferred shares of common stock from one customer account to another without the customers' knowledge or consent. The findings also stated that Day deposited personal funds into the account of public customers to prevent margin-call sales of securities in their account.

In addition, the NASD determined that Day induced customers to maintain their account with him and to permit him to purchase and sell securities for their account by a deception or fraudulent practice. In furtherance of this fraudulent activity and according to the findings, Day mailed to the customers correspondence that overstated the value of their account when he knew, or should have known, that the value of said account was less than represented on the correspondence.

Jeffrey Haehle (Registered Principal, Menomonee Falls, Wisconsin) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Haehle failed to respond to NASD requests for information regarding customer loans.

Daniel Richard Hajduk (Registered Representative, Mt. Prospect, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and required to requalify by examination as a general securities representative or cease acting in that capacity. Without admitting or denying the allegations, Hajduk consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions for the account of a public customer. According to the findings, these recommendations were made without having reasonable grounds for believing that the transactions were suitable for the customer considering the customer's financial situation, investment objective, and needs.

Dennis R. Hargreaves (Registered Representative, West Chicago, Illinois) was fined $92,600, barred from association with any member of the NASD in any capacity, and required to pay restitution to customers. The sanctions were based on findings that Hargreaves signed a customer's name on a $2,335.17 check representing an overpayment of insurance premiums and used the funds for his own benefit. Furthermore, Hargreaves obtained from two public customers two checks totaling $50,746.70 intended for investment purposes and for the purchase of an insurance product. He deposited only $43,346.70 of the funds for the purchases requested by the customers and used the remaining $7,400 for his own benefit. On another occasion, Hargreaves, without a customer's knowledge or consent, signed the customer's name on a $5,868.03 check representing the proceeds of a withdrawal from an insurance product and used the funds for his own benefit.

In addition, Hargreaves obtained $7,990.25 representing the proceeds from three unauthorized mutual fund liquidations held by a customer. He used $912.02 of the funds to pay two different premiums and to make a loan repayment on insurance products owned by the customer and converted the remaining $7,078.23 to his own use and benefit without the customer's consent. Hargreaves also failed to respond to NASD requests for information.

Steven T. Jackson (Registered Representative, Columbus, Ohio) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Jackson failed to follow the instructions of a public customer. Specifically, he purchased shares of a common stock for the customer's account without authorization and, thereafter, failed to honor the customer's request to sell the stock and pay the proceeds to her. In addition, Jackson failed to respond to NASD requests for information.

Dale Drake Johnson (Registered Representative, Albion, Michigan) 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, Johnson consented to the described sanctions and to the entry of findings that he obtained from three insurance customers checks totaling $2,679 in the form of premium overpayments or policy withdrawals. According to the findings, Johnson deposited the checks in his own bank account and retained the funds for his personal use and benefit.

Kirk A. Knapp (Registered Principal, Grand Rapids, Michigan) was fined $150,000, jointly and severally with a former member firm, and barred from association with any member of the NASD in any capacity. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors.

The sanctions were based on findings that a former member firm, aided and abetted by Knapp, effected transactions in and induced the purchase of securities by means of deceptive and fraudulent devices. Specifically, they failed to convey materially adverse information about a public offering of securities to the firm's customers while continuing to solicit customers and recommending the purchase of the securities.

Joseph Losiak (Registered Representative, Berwyn, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $22,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Losiak consented to the described sanctions and to the entry of findings that he obtained from three insurance customers $1,059.69 in cash intended for payment of various insurance premiums. According to the findings, Losiak misappropriated the funds for his own use and benefit without the customers' knowledge or consent.

Christopher James Mondello (Registered Representative, Lockport, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined and barred from association with any member of the NASD in any capacitiy. In addition, Mondello must demonstrate that he has paid $590.09 in restitution to a public customer should he seek re-entry to the securities industry through NASD eligibility proceedings. Without admitting or denying the allegations, Mondello consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use and benefit customer funds totaling $590.09 intended for payment of insurance premiums.

Omni Capital Markets, Inc. (Columbus, Ohio) and **Mark A. Cyphers (Registered Principal, Worthington, Ohio)** submitted an Offer of Settlement pursuant to which the firm was fined $100,000 and expelled from membership in the NASD. Cyphers was fined $125,000 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, through a series of non-bona fide transactions, the firm, acting through Cyphers, parked shares of a common stock in three accounts controlled by Cyphers.

The NASD also found that the firm, acting through Cyphers, conducted a securities business while failing to maintain its required minimum net capital. In addition, the NASD determined that the firm, acting through Cyphers, effected transactions in a common stock with public customers at prices that were unfair and unreasonable. These transactions resulted in markups ranging from 14 to 156 percent above the prevailing market price for the securities in contravention of the NASD's Mark-Up Policy. Cyphers also failed to respond to NASD requests for information, according to the findings.

Kevin Michael Short (Registered Principal, Pacific Palisades, California) was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Short failed to respond to NASD requests for information concerning certain financial records of his member firm.

Gary James Todryk (Registered Representative, Greendale, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined $100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Todryk consented to the described sanctions and to the entry of findings that he obtained from a public customer funds totaling $76,568.37 for investment purposes. According to the findings, Todryk failed to follow the customers' instructions and, instead, converted the funds to his own use. In addition, Todryk failed to respond to NASD requests for information.

Henry James Wiley, III (Registered Representative, Chicago, Illinois) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Wiley failed to respond to NASD requests for information concerning a customer complaint.

Ralph John Yankee (Registered Representative, Grosse Pointe Park, Michigan) was fined $30,000, barred from association with any member of the NASD in any capacity, and required to pay $14,599.75 in restitution to a customer. The sanctions were based on findings that Yankee orally and in writing guaranteed a customer against loss in connection with the customer's purchase of stock.

Pursuant to this guarantee, the customer provided a stock certificate to Yankee and, in exchange, received from Yankee a $14,599.75 check. Yankee deposited the stock into his personal account and subsequently sold the stock for $6,745.87. The check was returned to the customer due to insufficient funds, and the proceeds of the stock sale never were provided to the customer. Yankee also failed to respond to NASD requests for information.

Nizar A. Yaqub (Registered Principal, Oakbrook, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000. Without admitting or denying the allegations, Yaqub consented to the described sanction and to the entry of findings that, in contravention of NASD rules that prohibit a registered person from guaranteeing customers against losses, he prepared documents confirming that he would repurchase a customer's stock portfolio for a guaranteed amount of money.

Clifford Joseph Zimbler (Registered Representative, Chicago, Illinois) was fined $80,000, barred from association with any member of the NASD in any capacity, and required to pay $10,013.90 in restitution to customers. The sanctions were based on findings that Zimbler obtained a $5,513.90 check made out to a public customer that represented the cash surrender value of the customer's insurance policy. Zimbler also received a $4,500 check made out to another customer representing the withdrawal of dividends on the customer's life insurance policy. Without the customers' knowledge or consent, Zimbler endorsed the checks and deposited the proceeds into an account that he controlled. In addition, Zimbler failed to respond to NASD requests for information.

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

Louis Apsokardu (Registered Representative, Reading, Pennsylvania) was fined $5,000 and suspended from association with any member of the NASD in any capacity for six months. In addition, Apsokardu must requalify by examination for any capacity in which he wishes to function, and he is precluded from acting in any registered capacity until he has requalified. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 9.

The sanctions were based on findings that Apsokardu effected mutual fund transactions in the accounts of public customers and omitted material facts, thereby subjecting the customers to additional sales charges. Specifically, Apsokardu failed to advise the customers to utilize available rights of accumulation and to inform the customers that transfers between funds could be effected without a sales charge.

Apsokardu has completed his six-month suspension.

Frank X. Ashdale (Registered Representative, Philadelphia, Pennsylvania) was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ashdale failed to respond to NASD requests for information regarding a customer complaint.

William T. Davies (Registered Representative, Greenville, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $1,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Davies consented to the described sanctions and to the entry of findings that he received from public customers $239.60 in cash intended for insurance premium payments. According to the findings, Davies retained such monies and failed to remit them to his member firm.

Dolf M. Davis (Registered Representative, Harrisonburg, Virginia) 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, Davis consented to the described sanctions and to the entry of findings that he misappropriated $404.60 given to him by an insurance customer for premium payments. The NASD also found that Davis failed to respond to NASD requests for information.

Kenneth J. Fuller (Registered Representative, Baltimore, Maryland) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Fuller consented to the described sanctions and to the entry of findings that he received from a public customer five checks totaling $8,000 intended as a mutual fund investment and as life insurance premiums. The NASD determined that Fuller used these funds for his own personal benefit.

The findings also stated that Fuller came into possession of a $9,113.92 check payable to an insurance customer representing a refund on a single-premium endowment policy that had been declined. Instead of forwarding the check to the customer, the NASD found that Fuller used the funds for his own benefit.

Joseph A. Ganim (Registered Representative, Charleston, West Virginia) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ganim affixed a signature purporting to be that of an insurance customer to a policy application without the customer's authorization or consent. As a result of such conduct, Ganim's member firm became obligated to provide insurance to the proposed customer. Ganim also failed to respond to NASD requests for information.

Carla E. Havard (Registered Principal, Twin Rivers, New Jersey) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Havard failed to respond to NASD requests for information regarding her termination from a member firm and five customer complaints.

Howard W. Jameson (Registered Representative, Pittsburgh, Pennsylvania) was fined $15,000 and barred from association with any mem-

ber of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 9. The sanctions were based on findings that Jameson failed to respond to NASD requests for information regarding alleged securities transactions in a customer account.

Glenn P. Legg (Registered Representative, Turtle Creek, Pennsylvania) was fined $75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Legg, on 14 separate occasions, converted policyholders' funds totaling $38,598.82 to his own use and benefit without the policyholders' authorization or consent.

Hernando J. Mejia (Registered Representative, Baltimore, Maryland) was fined $50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Mejia submitted to his member firm applications for life insurance policies on three fictitious individuals in order to earn commissions. In addition, Mejia engaged in private securities transactions with public customers while failing to provide prior written notification to his member firms.

Timothy A. Miles (Associated Person, Haymarket, Virginia) was fined $1,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Miles made improper use of information written on the cover of his calculator while taking the general securities registered representative examination.

Thomas J. Motley (Registered Representative, Swarthmore, Pennsylvania) 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 30 days. Without admitting or denying the allegations, Motley consented to the described sanctions and to the entry of findings that he forged a document purporting to be a customer's account statement and presented such statement to the customer as genuine.

Talmadge Roberts (Registered Representative, Washington, D.C.) was fined $5,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination. The sanctions were based on findings that Roberts made unauthorized use of his member firm's stationery in which he falsely stated in a letter to a customer that an escrow account had been established.

Terrence L. Salters (Associated Person, Washington, D.C.) was fined $7,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Salters falsified his Series 6 exam results by creating a fraudulent printout reflecting that he passed the exam. Thereafter, he submitted the forged printout to his member firm. Salters also failed to respond to NASD requests for information in a timely manner.

David F. Swiderski (Registered Representative, Tyrone, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined $30,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Swiderski consented to the described sanctions and to the entry of findings that he received from public customers monies totaling $6,208.53 intended for premium payments and/or loan repayments. The NASD found that Swiderski failed to remit all of the monies to his member firm and/or caused $3,086.43 of such funds to be improperly credited to other policyholders' accounts.

Richard T. Warren (Registered Representative, Baltimore, Maryland) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Warren failed to pay a $1,865 arbitration award.

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)

David Augustine (Registered Representative, Park Ridge, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for three business days. Without admitting or denying the allegations, Augustine consented to the described sanction and to the entry of findings that he failed to pay a $2,000 arbitration award on a timely basis.

Camille Chafic Cotran (Registered Representative, London, England) submitted an Offer of Settlement pursuant to which he was fined $10,000. Without admitting or denying the allegations, Cotran consented to the described sanction and to the entry of findings that he maintained an inactive personal account with his member firm and entered into numerous securities transactions in the account without the knowledge, authorization, or consent of his member firm.

According to the findings, Cotran also failed to advise his member firm in writing of his intention to assume control of the account and to maintain it as a personal account. In addition, Cotran failed to respond to NASD requests for information.

Norton Morgenthal (Registered Representative, North Bellmore, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for three business days. Without admitting or denying the allegations, Morgenthal consented to the described sanction and to the entry of findings that he failed to pay a $2,396.24 arbitration award on a timely basis.

Edwin Anthony Ramos (Registered Representative, New York, New York) was fined $50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ramos received from public customers $669.97 for insurance premiums and failed to deposit the funds with his member firm. Ramos also failed to respond to NASD requests for information.

Jeffrey Eric Rosen (Registered Representative, Fort Lee, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any member of the NASD in any capacity for 30 business days. Without admitting or denying the allegations, Rosen consented to the described sanctions and to the entry of findings that he executed securities transactions for the account of a public customer without the knowledge, consent, or authorization of the customer.

Rosen's suspension began January 7, 1992 and concluded February 18, 1992.

Edward Thomas Rush (Registered Representative, Hampton Bays, New York) submitted an Offer of Settlement pursuant to which he was fined $1,000 and suspended from association with any member of the NASD in any capacity for one business day. Without admitting or denying the allegations, Rush consented to the described sanctions and to the entry of findings that he failed to pay a $13,745.72 arbitration award.

Schonfeld Securities, Inc. (Great Neck, New York) and **Robert Lipsky (Registered Principal, Bellmore, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Lipsky, failed to make the required deposit into its Special Reserve Bank Account.

Robert A. Singagliese (Registered Representative, South River, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Singagliese consented to the described sanctions and to the entry of findings that he misappropriated customer funds totaling $4,000 and forged customer names to 20 documents without the knowledge of the customers.

Kenneth Steven Soule (Registered Representative, East Northport, 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 Soule failed to respond to NASD requests for information concerning customer complaints.

Hugh Randolph Sylvester (Registered Representative, Korb, Germany) was fined $60,000, barred from association with any member of the NASD in any capacity, and required to pay $2,417.57 in restitution to a public customer. The sanctions were based on findings that Sylvester received from a public customer a $2,417.57 check for the purchase of shares in a mutual fund. Instead, Sylvester endorsed the check and converted the funds to his own use and benefit. He also solicited the same public customer to purchase the mutual fund shares without appropriate registration. In addition, Sylvester failed to respond to NASD requests for information.

V.P. Securities, Inc. (Island Heights, New Jersey) and **Nicholas Ferrara (Registered Representative, Ronkonkoma, New York)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. Ferrara was fined $15,000 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 they failed to respond to NASD requests for information concerning a change in ownership and control of the firm. The findings also stated that the firm, acting through Ferrara, failed to establish and maintain written supervisory procedures.

In addition, the NASD determined that Ferrara actively engaged in the management of the firm's securities business without being registered with the NASD as a general securities principal. Furthermore, the firm, acting through Ferrara, failed to hire at least two qualified general securi-

ties principals, according to the findings.

Gordon Scott Venters (Registered Representative, Tampa, Florida) was fined $2,500, suspended from association with any member of the NASD in any capacity for one day, and required to requalify by examination as a registered representative on completion of the suspension. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 10. The sanctions were based on findings that Venters recommended and caused shares of a common stock to be purchased in the account of a public customer without having reasonable grounds for believing such recommendations were suitable for the customer.

Venters appealed this case to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Michael E. Vogel (Registered Representative, West Hampton, New York) was fined $50,000, barred from association with any member of the NASD in any capacity, and required to pay $600 in restitution to a public customer. The sanctions were based on findings that Vogel received from a public customer $600 for investment purposes and converted the funds to his own use and benefit. In addition, Vogel failed to respond to NASD requests for information.

Marlowe Robert Walker, III (Registered Representative, Hauppauge, New York) was fined $45,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Walker failed to pay an $8,750 arbitration award. In addition, Walker failed to respond to NASD requests for information.

Carl Martell Wild, II (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined $7,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Wild consented to the described sanctions and to the entry of findings that a former member firm, acting through Wild, violated its restriction agreement with the NASD by filing incomplete monthly financial reports.

The NASD determined that Wild, acting on behalf of the same firm, filed inaccurate FOCUS Part IIA reports that overstated the firm's cash position and failed to file its FOCUS Part IIA reports on a timely basis. In addition, the NASD found that Wild, acting on behalf of the firm, failed to file its FOCUS Part IIA reports on a monthly basis when its net capital fell below its minimum requirement.

The findings also stated that the firm's annual audited financial statements were not audited by an independent public accountant and failed to include a Statement of Changes in Stockholder Equity, a net capital computation, and an oath or affirmation by a duly authorized officer of the firm certifying the accuracy of the financial statements. Furthermore, Wild, acting on behalf of the firm, failed to maintain its books and records, according to the findings.

Roger L. Wilkins (Registered Representative, Irvington, New Jersey) was fined $20,000, barred from association with any member of the NASD in any capacity, and required to pay $3,892 in restitution to public customers. The sanctions were based on findings that Wilkins received from public customers $7,784 for the purchase of an insurance policy. Wilkins failed to remit the funds to his member firm and did not return $3,892 of the funds to the customers. In addition, Wilkins failed to respond to NASD requests for information.

District 11 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, 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)

William K. Callahan (Registered Representative, Elmira, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Callahan consented to the described sanctions and to the entry of findings that, while acting as a branch supervisor, he recorded 35 fictitious sales to customers that totaled $522,464. The findings stated that Callahan engaged in this activity for the purpose of misleading his member firm regarding the firm's profitability.

Robert W. Cole, Jr. (Registered Representative, Lincoln, Rhode Island) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Cole consented to the described sanctions and to the entry of findings that he obtained five blank checks from his member firm's commission account. The NASD found that Cole forged the name of the payee and the amount and attempted to cash one $2,973.27 check for his own use and benefit.

Robert A. Costello (Registered Representative, Germantown, Maryland) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Costello failed to respond to NASD requests for information concerning his termination from a member firm.

Garry J. Daniels (Registered Representative, Williamstown, Vermont) submitted an Offer of Settlement pursuant to which he was fined $200,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling $135,469.50 intended for investment in mutual funds. In addition, Daniels failed to respond to NASD requests for information.

Robert W. Delorey (Registered Representative, Waltham, Massachusetts) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Delorey failed to respond to NASD requests for information concerning his termination from a member firm.

Marcelo H. DeRada (Registered Representative, Wellesley, Massachusetts) was fined $50,000 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 a public customer, DeRada initiated a $6,000 loan against the customer's insurance policy and misappropriated the funds to his own use and benefit. In addition, DeRada failed to respond to NASD requests for information.

Michael B. Doyle (Registered Representative, Medway, Massachusetts) submitted an Offer of Settlement pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Doyle consented to the described sanction and to the entry of findings that, without the knowledge or consent of a public customer or his member firm, he forged a loan application and disbursement check and misappropriated funds totaling $600 to his own use and benefit. The NASD also found that Doyle withheld and misappropriated to his own use and benefit customer funds totaling $4,692 intended for the purchase of insurance policies.

Stephen V. Duniec (Registered Representative, Jamesville, 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, Duniec consented to the described sanctions and to the entry of findings that he forged the names of 14 policyholders on documents that allowed him to withdraw funds totaling $21,242.98 from the customers' policies. The NASD also found that Duniec misappropriated the monies to his own use and benefit without the knowledge or consent of his member firm or the customers.

Peter M. Fiore (Registered Representative, Clifton Park, New York) 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, Fiore consented to the described sanctions and to the entry of findings that, without the knowledge or consent of 33 public customers, he forged their signatures on transfer forms. As a result of this activity, the NASD found that Fiore authorized Individual Retirement Account (IRA) transfers from a bank money-market fund to a closed-end investment company.

Donald A. Fredrick (Registered Representative, North Providence, Rhode Island) submitted an Offer of Settlement pursuant to which he was fined $75,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Fredrick consented to the described sanctions and to the entry of findings that he received from public customers six checks totaling $43,814.74 intended for investment in mutual funds. The NASD found that Fredrick withheld and misappropriated the funds to his own use and benefit without the knowledge or consent of the customers or his member firm. In addition, Fredrick failed to respond to NASD requests for information.

Joseph P. Law (Registered Representative, Hudson, New Hampshire) 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, Law consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling $3,689.90 intended for investment in mutual funds.

Jeffrey M. Moran (Registered Representative, Jamestown, New York) 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, Moran consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling $14,075.27 in-

tended for investment purposes. In addition, Moran failed to respond to NASD requests for information.

Thomas W. Patterson (Registered Representative, Buffalo, New York) was fined $50,000 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 a public customer, Patterson withheld and misappropriated to his own use and benefit $2,000 intended for investment in an IRA. In addition, Patterson failed to respond to NASD requests for information.

Stanley E. Piknick (Registered Representative, Centerville, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Piknick consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling $27,655.13, intended for investment purposes, without the knowledge or consent of his member firms and/or customers.

Michael A. Previte (Registered Representative, Niagara Falls, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Previte consented to the described sanctions and to the entry of findings that he misused customer funds totaling $3,000 intended for the purchase of an insurance policy.

Van Ridgeway (Registered Representative, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent under which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ridgeway consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling $3,114.86 intended for insurance premium payments.

Woodrow Sanders, Jr. (Registered Representative, East Hartford, Connecticut) was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sanders failed to respond to NASD requests for information concerning his termination from a member firm.

Floyd J. Sharpe, Jr. (Registered Representative, Salt Point, 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 Sharpe failed to respond to NASD requests for information concerning his termination from a member firm.

Paul J. Stock (Registered Representative, Roscoe, New York) submitted a Letter of Acceptance, Waiver and Consent under which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stock consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling $13,994.82 intended for payment of insurance premiums.

Market Surveillance Committee

Bonnie Nelson Kantrowitz (Registered Principal, Short Hills, New Jersey), Richard Buonocore (Registered Principal, Lincoln Park, New Jersey), and **Valerie Kantrowitz Saperstein (Registered Representative, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which Kantrowitz was fined $34,000, suspended from association with any member of the NASD in any capacity for 30 business days, and suspended in any supervisory or principal capacity for six months. Buonocore was fined $3,000 and suspended from association with any member of the NASD in any capacity for five business days. In addition, Saperstein was fined $1,000 and suspended from association with any member of the NASD in any capacity for three business 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, Kantrowitz, Buonocore, and Saperstein sold securities to customers at prices that were fraudulently excessive with markups ranging from 10.8 to 66.2 percent above the prevailing market price. Moreover, the NASD found that Kantrowitz and Buonocore failed to adequately supervise business activities to ensure that markups were fair and reasonable.

Jay S. Orvin (Registered Principal, Summerville, South Carolina) and **Steven C. Dahl (Registered Representative, Miami, Florida)** submitted an Offer of Settlement pursuant to which Orvin was fined $15,000 and barred from association with any member of the NASD in any capacity. Dahl was fined $2,500 and suspended from association with any member of the NASD in any capacity for 10 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through Orvin, engaged in manipulative, deceptive, and other fraudulent devices in connection with the purchase and sale of units in an initial public offering and aftermarket trading. Furthermore, the findings stated that the firm, acting through Orvin, dominated and controlled the market in the units, and raised and supported the price at artificially high levels despite having a substantial long position in the units during the aftermarket.

In addition, the NASD found that Orvin and Dahl made false and misleading statements and omissions in order to induce retail customers to purchase or retain units in the same security. The NASD also determined that Orvin sold units to its retail customers at unfair prices with markups ranging from 18 to 121 percent above the prevailing market price. Moreover, Orvin failed to establish, maintain, and enforce written supervisory procedures.

Joseph S. Ranieri (Registered Representative, Clifton, New Jersey) was fined $5,000 and suspended from association with any member of the NASD in any capacity for one year. The sanctions were based on findings that Ranieri reported 130 fictitious and substantive transactions in 26 Nasdaq National Market securities for which he was responsible. Furthermore, 122 of the transactions closed at a price higher than the previous reported transactions. This activity, commonly referred to as "marking the close of the market," was found to have been fraudulent in nature.

Alan L. Tiegman (Registered Representative, Forest Hills, New York) was fined $5,000, suspended from association with any member of the NASD in any capacity for five business days, and required to requalify as a general securities representative. The sanctions were based on findings that Tiegman made misrepresentations and omissions of material facts to customers during the underwriting and aftermarket trading of a security. Specifically, Tiegman informed a public customer that the issuer of the security would be bringing out a new product, that the security would be a hot issue, and that the price would double or triple, all at a time when the issuer remained a blind pool with no known business enterprise.

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