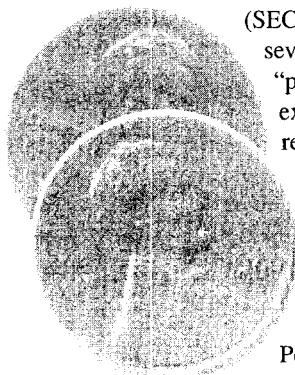


# ALERT

## New SEC Disclosure Rules Target Penny Stock Market



Following up on recent legislation, the Securities and Exchange Commission (SEC) has adopted a series of seven new rules that define "penny stocks," identify exempt transactions, and require broker/dealers to disclose orally and in writing specified information prior to and at the time of confirming certain penny stock transactions.

Penny stock trading dates back to the 1880s when speculation was fueled by gold mining expansion in the western United States. Even into the early 1980s, a large portion of penny stock activity occurred in the western U.S., although a greater volume of penny stock transactions and related abuses appeared in various areas around the country. Many such abuses have been directly attributed to the unavailability of relevant price and volume information and the lack of communication between broker/dealers and their customers.

### Targeting Areas of Concern

In an effort to curb abuses, the SEC, the NASD®, and other regulatory agencies have initiated investor education about penny stocks and expanded existing investigative, enforcement, and legislative activity to increase investor protection.

A House Committee on Energy and Commerce report regarding the 1990 Penny Stock Reform Act indicated the need for these expanded initiatives. The report targeted as the primary penny stock problems (1) the lack of public information available about penny stocks — a situation that contributes to price manipulation and deprives investors of the ability to make informed investment decisions — and (2) the great number of penny stock traders and issuers "who are repeat offenders of state or federal securities laws, convicted felons, and persons having strong ties to organized crime."

### Mandatory Risk Disclosure

These congressional concerns ultimately led to the SEC's adoption of new penny stock rules. The new SEC rules require that a standard, unalterable risk disclosure statement be provided to broker/dealer customers prior to a penny stock transaction. To assist members with this provision, which went into effect on July 15, 1992, the NASD published the *Penny Stock Risk Disclosure Document* on pages 282 to 285 of August *Notice To Members 92-42*, which members may copy.

Effective January 1, 1993, the disclosure statement must be expanded to inform customers of the broker/dealer's obligations to provide current bid and

*Continued, page 8*

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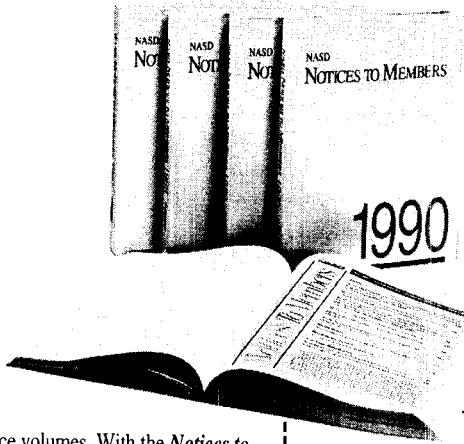
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## Advertising

### Members Must File Secondary Market UIT Literature

NASD rules require members to file with the Advertising Department (within 10 days of first use) any advertising or sales literature for unit investment trusts (UITs) sold or traded in the secondary market.

Such "advertising" and "sales literature" is defined under Article III, Section 35A of the NASD Rules of Fair Practice. Filing requirements under Article III, Section 35A apply to all

registered investment companies, but do not distinguish between primary offering or secondary market UIT literature. However, the NASD's Investment Companies Committee recently clarified that members must file both types of material with the Advertising Department for review.

Members with questions about this policy may contact the Advertising Department at (202) 728-8330. □

### NASD Requests Final Versions of TV Ads And Videos for Compliance Review

Members filing television ads and videotape presentations are requested to send final versions of such material to the NASD Advertising Department.

Currently some members file television ad storyboards and videotape presentation scripts. However, separate storyboards or typewritten scripts do not always provide the detail needed to judge their content and visual impact.

The Advertising Department believes that examining the final copies of audiovisual materials ensures that all applicable NASD standards are met in practice. The Advertising Department cites the following problematic example:

A viewer watching a television ad is temporarily diverted from important disclosure language that only briefly flashes on a TV screen. Without viewing the final audiovisual edition, the NASD staff might not be able to determine from only a typewritten script whether the placement or prominence of such disclosure language is adequate.

The Advertising Department appreciates your cooperation in this matter and reminds members that only one fee will be charged for filing these items. Members may direct questions about this policy to the Advertising Department at (202) 728-8330. □

## What Do You Think of Our New Look?

Readers will notice a new design to *NASD Regulatory and Compliance Alert* beginning with this issue. We hope you find it an easier read and more appealing. If you have any questions or comments, feel free to contact Michael Budzinski at (202) 728-8945.

## Amended Rules Encourage Violator Restitution

Aiming to encourage restitution by suspended members and persons who violate NASD rules, the SEC approved an amendment that allows the placement of contingencies on a suspension.

Effective July 15, 1992, the change to the NASD Rules of Fair Practice (Article V, Section 1) added language permitting the NASD to impose a suspension that has a duration contingent on the performance of a specific act. Previously, Article V stated that the NASD could only suspend violators for a definite period of time.

In addition to suspensions, the NASD often requires respondents in disciplinary actions to perform particular acts, e.g., make restitution to a customer or retake an appropriate qualification

examination. Article V, Section 1 now adds that a suspension may be "for a definite period, and/or for a period contingent on the performance of a particular act. . . ."

Contingent suspensions may, in cases involving customer losses, provide an incentive to respondents to make restitution to victims. Hence, customers who receive restitution can avoid a separate arbitration or court proceeding in order to obtain damages.

It should be noted, too, that the amendment does not preclude a suspension of specific duration. For example, an individual could be suspended for a period of three months, and thereafter, until he or she retakes and passes a qualifying examination.

For more complete information on the amendments, see *June Notice To Members 92-31*. □

## NASD Members Approve Rule Governing Client Statement Reporting

NASD members approved a proposed rule that would obligate them to meet minimum statement reporting requirements. The new rule is still pending approval by the Securities and Exchange Commission (SEC).

The NASD does not currently require members to send periodic account statements to customers, though SEC Rule 15c3-2 does require quarterly reporting of any free credit customer account balance. In cases where broker/dealers only meet these minimum SEC requirements, the NASD believes that customers are not sufficiently advised of the status of their accounts.

As a result, the NASD Board of Governors approved a new rule that requires broker/dealers to send periodic account statements (at least quarterly) to customers having securities positions, funds, or any account changes since a previous statement-reporting period. Such a statement would also include a description of all securities positions, money balances, and account activity in the account.

Exempt from the provisions of the rule are NASD members who do not carry accounts or hold customer funds or securities — such as sellers of mutual

## Markup/Markdown Disclosure Expanded To Nasdaq Small-Cap Market<sup>SM</sup> Trades

Recently approved NASD By-Law amendments will require NASD members to furnish specific markup and markdown disclosure to customers on Nasdaq Small-Cap Market<sup>SM</sup> trades.

The NASD believes that the the new disclosure rules will benefit investors as well as enhance the credibility and image of the Nasdaq Small-Cap Market. The NASD also notes that the new rules appear to place no undue burden on members, because members are currently required to make similar disclosures under SEC Rule 10b-10 for Nasdaq National Market<sup>SM</sup> securities, and many have already begun to supply customers with the additional disclosure.

As amended, Schedule D of the NASD

By-Laws now requires that NASD members who are market makers must disclose on the customer's confirmation any difference between the price of a transaction as reported to the tape and the price a customer pays. Furthermore, all broker/dealers that are not market makers must disclose markups and markdowns on riskless principal transactions.

The new NASD rule mirrors similar language in the SEC's confirmation disclosure requirements, SEC Rule 10b-10(a)(8). That rule, however, covers only Nasdaq National Market issues and not the Nasdaq Small-Cap Market.

For more complete information, see *July Notice To Members 92-39*. □

funds, unit investment trusts, or variable contract insurance products. The Board feels that customers of these members are adequately informed and protected under various statutory and regulatory mechanisms already present, such as the The Investment Company Act of 1940.

Certain account activity would also be exempt from the new rule. Account activity relating to funds or securities not in control of the member, such as direct participation program (DPP) securities, is usually handled by a partner rather than the distributing broker/dealer.

For more information on the new rule, see *June Notice To Members 92-30*. □

## Transfer Agents Adopt New Rules

Earlier this year, the SEC amended the Securities Exchange Act of 1934 by adopting Rule 17Ad-15 regarding signature guarantees. This rule requires transfer agents to develop written standards for the acceptance of signature guarantors that provide for equitable treatment of all classes of institutions.

Effective October 26, 1992, transfer agents will no longer accept the current "street practice" involving signature cards. Instead, only guarantees of firms enrolled in a recognized signature guarantee program will be accepted.

By joining a recognized program, guarantors will have a surety bond and receive from the program administrator

actual stamps manufactured specifically for the program. If a transfer agent receives a signature guaranteed transfer without this stamp, the transfer will be rejected. Using a unique ink and other special features, the stamp is expected to protect guarantors and agents against fraudulent guarantees.

The Securities Transfer Agent Medallion Program (STAMP) is a recognized program that is available to many NASD members. The STAMP program's administrator is Kemark Financial Services, which can be reached by calling (800) 348-2724.

Other questions concerning this program may be directed to any NASD District Office. □

## SEC Clarifies Proxy Voting Advice Conduct for Broker/Dealers

According to a letter released by the SEC, broker/dealers may initiate contact with customers to ensure that an investor is provided with accurate information concerning shareholder proxy voting.

On May 19, 1992, SEC Chief Counsel Abigail Arms responded to an NASD request for clarification of the SEC's "safe harbor provisions" under Rule 14a-2(b)(2). The NASD sought to establish whether broker/dealers may initiate contact with customers to advise them about proxy voting matters without becoming subject to proxy filing information requirements.

While broker/dealers traditionally had relied on the safe harbor provisions to protect them only when a customer asked their advice, the recent increase in partnership roll-ups that are appearing on shareholder proxy statements brought into question whether investors were being provided with proxy voting advice. The NASD's request for clarification — along with the efforts of the United States Congress, individual states, and the SEC — is part of a con-

certed effort to protect investors from the type of abuses that have occurred in the partnership industry in previous roll-up transactions.

### Conditions for Providing Voting Advice

In affirming the broker/dealer's right to initiate contact, Arms defined several conditions for broker conduct that would not be subject to proxy filing requirements. Under the terms of anti-fraud provisions in SEC Rule 14a-9, a broker/dealer:

- Must already have provided customers with financial advice as a part of the ordinary course of business and have a business relationship with the customer at the time he or she provides proxy voting advice.
- Must disclose to the customer any significant relationship it has with the issuer, its affiliates, or any shareholder with a stated position on the particular proxy matter. This disclosure must include any material interest the broker/dealer has regarding the proxy voting matter.

• May not receive special compensation for furnishing the advice from any person other than the customer and may not rely on the safe harbor provision if the advice is being furnished on behalf of anyone actively soliciting proxies, or on behalf of anyone who is a participant in an election contest subject to SEC Rule 14a-11.

If a broker/dealer is considered to be a participant in a proxy solicitation as defined by the above instances, he or she must meet all proxy filing requirements. In her letter, Arms further warned brokers, "No amount of disclosure would allow a broker/dealer to rely on the [safe harbor provision] to furnish proxy voting advice voluntarily to a securityholder customer if he or she is acting on behalf of a person soliciting proxies, or receives compensation related, directly or indirectly, to the furnishing of advice on the matter subject to the solicitation . . . ."

For more complete information concerning the proxy issue and the no-action letter, see *June Notice To Members 92-33*. □

# COMPLIANCE SHORT TAKES

**Members who act as deposit brokers to federally insured depository institutions** must now notify the Federal Deposit Insurance Corporation (FDIC) of such actions.

The new FDIC regulation defines a deposit broker as: "(a) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and (b) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a pre-arranged loan."

Under this new regulation, a deposit broker must register with the FDIC before it may solicit or place deposits with an insured depository institution. In addition, a deposit broker must keep certain records and file written reports on request with the FDIC.

The new regulation is published in the June 5, 1992 *Federal Register*, Volume 57, Number 109, pages 23933-44. For more information, contact William G. Hrindac, FDIC Division of Supervision at (202) 898-6892, or Valerie Jean Best, FDIC Legal Division at (202) 898-3812. Any written correspondence can be sent to FDIC, 550 17th Street, NW, Washington, DC 20429.

□  
**Class actions will be ineligible for submission to NASD arbitration** to ensure investor access to the U.S. court system, according to a recent NASD amendment proposal.

Scheduled to take effect one year after SEC approval, the amendment alters Article III, Section 21 of the Rules of Fair Practice and requires pre-dispute arbitration agreements to now contain a statement to the effect that class actions may not be arbitrated before the NASD. The delay in enacting the proposed rule amendment is expected to allow members time to redraft and reprint their current arbitration agreements.

The NASD's Code of Arbitration Procedure already allows arbitrators and the Director of Arbitration to defer certain arbitration proceedings to the court system, but the NASD Board of Governors decided that redress for all class action suits should be deferred to the court system.

To review these amendments, see *July Notice To Members 92-37*.

□  
**Broker/dealer firms must establish a "risk assessment recordkeeping and reporting system,"** according to a temporarily adopted SEC rule amendment.

Focusing on the segment of the securities industry most likely to have a significant impact on investors or on the operations of financial markets, the

SEC plans to direct efforts at the largest 50 to 75 broker/dealers that carry and clear customer accounts. However, in the event of a problem with a firm that carries or holds customer accounts, the SEC will be able to monitor the risks associated with any clearing firm.

The new system — covered under SEC Rules 17h-1T and 17h-2T — will require information reporting on the financial and securities activities of holding companies, affiliates, or associated persons of major broker/dealers. This information would only be required of persons identified as "material associated persons" whose "business activities are reasonably likely to have a major impact on the financial and operational condition" of the broker/dealer's "net capital, its liquidity, or its ability to finance its operations."

The rules become fully effective on December 31, 1992. However, firms covered by the rules must maintain an organizational chart, risk management policy, and disclosure of litigation information effective September 30, 1992.

The new SEC rules will be evaluated after two years for any necessary changes or modifications.

For more complete information on the new SEC rules, see August *Notice To Members 92-45*.

## Municipal Underwriters Must File Statements Within 10 Days

The Municipal Securities Rulemaking Board (MSRB) has expressed concern that underwriters of Municipal Securities are not filing final official statements within the ten-day time frame required by MSRB Rule G-36(b)(i).

The rule reads as follows: Each broker, dealer or municipal securities dealer that acts as an underwriter

in a primary offering of municipal securities subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day after receipt of the final official statement from the issuer or its designated agent, but **no later than 10 business days** (*emphasis added*) after any final

agreement to purchase, offer, or sell the municipal securities, the following documents and written information: two copies of the final official statement; and two copies of completed Form G-36 prescribed by the Board, including the CUSIP number or numbers for the issue.

Compliance with all MSRB Rules is reviewed during examinations. □

## Violations

# Investigation Leads to Fraud Charges Against TV Personality

Uncovering a scheme that swindled investors of more than \$3 million during a five-year period, the NASD's New York District Office contributed to the conviction of a local New York television personality who defrauded members of the city's Asian-Indian and Pakistani communities.

Manhattan broker/dealer Deepak Gulati, host of an investment segment entitled "You and Your Money" on the local New York program "Vision of Asia," pleaded guilty to securities fraud charges brought by the U.S. Attorney's Office in New York and also settled a separate civil fraud action brought by the SEC.

According to statements obtained by the NASD, Gulati specifically targeted fellow Asian-Indian or Pakistani Americans in what is sometimes called an "affinity scheme." In such cases, a particular ethnic or immigrant community is solicited in a fraud scheme by a fellow member of that community.

Gulati used his television appearances to encourage potential investors of Indian or Pakistani origin to attend seminars that he sponsored. Investors were urged to contact either of two investment firms Gulati ran, DTI Financial Inc. and D. Gulati and Associates. Once investors contacted the firms, they were offered securities that purportedly would pay a 12 percent annual interest rate. Much like

a typical "Ponzi scheme," Gulati paid off initial investors with the money received from later investors.

After investigating preliminarily, NASD District 10 handed the case to a New York SEC office, which eventually proceeded against Gulati.

According to his settlement with the SEC, Gulati agreed to give up more than \$3 million in personal profit and pay more than \$5 million in penalties. He has also been barred from all securities industry practices, while the licenses of both of his companies have been revoked. Gulati could also face up to five years in prison when he is sentenced in October. □

# NASD Suspends Datek Securities and Its Head Trader for SOES<sup>SM</sup> Rules Violations

After the appeal of a decision rendered in an expedited remedial proceeding, the NASD announced new restrictions against Brooklyn, N.Y.-based Datek Securities Corporation and its head trader Sheldon Maschler for exceeding maximum order-size limits on the NASD's Small Order Execution System (SOES).<sup>SM</sup>

Datek may continue to act as a market maker, but is prohibited from entering orders in any execution facility operated by the NASD or its subsidiary corporations for six months through February 11, 1993. Datek's Staten Island office, where Maschler operated from, is also suspended until February 11, 1993.

In addition, Maschler was suspended in any capacity until February 11, 1993 and must requalify by examination before associating with Datek or any other NASD member firm.

Acting through Maschler, Datek violated the SOES rules and NASD Rules of Fair Practice in 690 instances involving 21 discretionary accounts. The NASD found the orders to be based on a single investment decision in each instance, and when aggregated, exceeded the maximum SOES size limit of 1,000 shares. SOES was designed by the NASD to serve public customers by providing automated execution facilities for small customer orders in Nasdaq securities.

Because the SOES trading violations in this instance were substantially similar to those found in a previous disciplinary action against Datek and Maschler, the NASD engaged in an expedited remedial proceeding.

"The expedited remedial proceeding gives the NASD the authority — when it is in the public interest — to take immediate action and impose suspen-

sions or conditions upon the operation of a firm or individual that has engaged in previous serious misconduct, and is likely to continue to do so if not stopped," said John E. Pinto, NASD Executive Vice President of Compliance. "It is a very effective tool in protecting the investing public from improper practices." □

ask quotations, disclose the broker/dealer's and salesperson's compensation, and provide a monthly account statement showing the market value of each penny stock held in a customer's account.

Transactions listed in SEC Rule 15g-1 are exempt from the new disclosure rules. Specifically, a "limited-activity" exemption is allowed assuming the broker/dealer is not acting as a market maker in the penny stock that is the subject of the transaction, and if less than 5 percent of the broker/dealer's revenues are derived from penny stock purchases or sales during a specified period. Also exempt are institutional accredited investor transactions and private offering transactions that meet the requirements of Regulation D or Section 4(2) of the Securities Act. Transactions are also exempt from the new rules where the investor is the issuer, or is a director, officer, general partner, or direct or indirect beneficial owner of more than 5 percent of any class of security of the issuer that is the subject of the penny stock transactions. Finally, consistent with Rule 15c2-6 (the "cold call" rule), the SEC determined to exempt non-recommended transactions in penny stocks from the disclosure provisions.

For more information on the new SEC penny stock disclosure rules, see the July and August *Notices to Members* 92-38 and 92-42. You may also contact Daniel M. Sibears or Gary A. Carleton at (202) 728-8959. □

## Penny Stock Defined

The new disclosure rules apply only to those securities defined as "penny stocks." SEC Rule 3a51-1 defines a penny stock as any equity security other than the following:

a) Reported securities—those for which last-sale reports are collected and made available pursuant to an effective transaction reporting plan. Included are Nasdaq/NMS securities, securities listed on the New York Stock Exchange (NYSE) and the American Stock Exchange (Amex) (including securities listed on the Amex Emerging Company Marketplace), and securities meeting NYSE and Amex listing standards that are listed on other national stock exchanges.

b) Securities registered, or approved for registration upon notice of issuance, on a national securities exchange provided that price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors pursuant to the exchange's rules, and that the security is bought or sold in a transaction effected on or through the facilities of the exchange, or is part of the distribution of the security. Currently qualifying for this exclusion are equity securities listed on the NYSE, Amex, the Boston Stock Exchange, the Cincinnati Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the Chicago Board Options Exchange.

c) Securities authorized or approved for authorization upon notice of issuance for quotation in the Regular Nasdaq market (known as "Nasdaq Small-Cap Market<sup>SM</sup>"), provided that price and volume information about transactions in the security is reported on a current and continuing basis and made available to vendors pursuant to NASD rules. This exclusion for Nasdaq Small-Cap issues was based in part on the recent commencement of last-sale price and volume reporting for those securities.

d) Securities priced at \$5 per share or more, excluding any broker-dealer commission, commission equivalent, markup, or markdown.

e) Securities of an issuer having either:

1) More than \$2 million of net tangible assets (total assets less intangible assets less liabilities), if the issuer has operated continuously for at least three years; or at least \$5 million of net tangible assets, if the issuer has operated continuously for less than three years; or

2) Average revenue of at least \$6 million for the last three years.

f) Securities issued by an investment company registered under the Investment Company Act of 1940.

g) Put and call options issued by the Options Clearing Corporation.



## NASD Disciplines Individuals for Penny Stock Scheme

The NASD disciplined four former associates of member firm Dillon Securities, Inc. for numerous violations related to an elaborate scheme whereby investors were illegally sold unregistered, over-the-counter "penny stock" securities.

William J. Riggs II, Michael L. Goldman, Thomas J. Dillon, and Mark J. Dillon of the Spokane, Washington-based firm agreed to an arrangement whereby they neither admitted or denied the allegations made against them, but submitted to NASD disciplinary actions.

Riggs and Goldman were each censured and permanently barred from associating with any member firm in any capacity. In addition, Riggs was fined \$1.3 million and Goldman \$200,000. Thomas Dillon agreed to a censure, a fine of \$60,000, a six-month suspension in all capacities, and was barred from acting in certain specified capacities. Mark Dillon agreed to a censure, a fine of \$10,000, and a 30-day suspension in all capacities.

Riggs' and Goldman's suspensions are effective immediately, while Mark and Thomas Dillon's begin on September 21, 1992 and October 30, 1992, respectively.

### Targeting the Penny Stock Market

With assistance from the SEC and the Arizona Corporation Commission, the NASD's Washington D.C.-based Anti-Fraud Department and its District Business Conduct Committee in Seattle (District 3) carried out the case as part of an intensive nationwide effort to eliminate abuses in the penny stock market.

A complaint issued by the District 3 Committee alleged that the respondents

defrauded investors through the illegal sale of unregistered securities — a violation of the Securities Act of 1933 (Section 5) and the NASD's Rules of Fair Practice (Article III, Section 1). Specifically, the NASD found that two over-the-counter securities, Smarty Pants, Inc. and Cancer Quest, Inc. were effectively controlled by a promoter who was also Riggs' and Goldman's father-in-law.

In accepting the respondents' settlement offers, the NASD found that Riggs and Goldman engaged in numerous private securities transactions without prior written notification to Dillon Securities. Many of these transactions were effected on behalf of the promoter and were executed through an "boiler room" Goldman operated in Scottsdale, Arizona. In one instance, Riggs and Goldman travelled to Taipei, at the behest of the promoter, to privately sell unregistered shares of Cancer Quest to a group of Taiwanese investors for \$1.1 million. As direct compensation from the promoter, Riggs and Goldman were given free or sharply discounted stock, plus additional cash payments.

Riggs and Goldman also employed various fraudulent and deceptive sales practices, including misrepresentations, baseless price predictions, and guarantees against losses. Riggs and Goldman also required that some of their customers agree not to sell shares for a certain period and, to prevent the selling of shares through other broker/dealers, refused to provide customers with original stock certificates. Such conduct was deemed to be fraudulent and a violation of NASD Rules (Article III,

Sections 1 and 18) and the Securities Exchange Act of 1934 (Section 10-b).

### Promoter Controlled Firm

The NASD found that Thomas and Mark Dillon entered into an agreement with the promoter to submit certain "pink sheet" price quotations and for Dillon Securities to become the leading market maker in Cancer Quest. For their firm's participation in marketing Cancer Quest, the two Dillons each received 100,000 free shares of Cancer Quest and Thomas Dillon received cash payments totalling \$59,400. This receipt of compensation for market making was found to have violated NASD Rules (Article III, Section 1). The NASD also determined that the promoter — through his involvement with all four respondents in the scheme — effectively controlled Dillon Securities. As such, certain disclosures to clients required by NASD By-Laws (Schedule E) and the Rules of Fair Practice (Article III, Sections 1 and 13) were violated by Riggs and Goldman in their relationship with Smarty Pants and Cancer Quest customers.

Thomas Dillon, as part of an agreement reached with the promoter, was also found to have initiated quotations in Cancer Quest using improper information, a violation of NASD Rules (Article III, Section 1), the 1934 Act under Section 15(c), and SEC Rule 15c2-11. Dillon also failed to supervise adequately the conduct of Riggs and Goldman in the Scottsdale branch office, another violation of NASD Rules (Article III, Sections 1 and 27). In its decision, the NASD also found that Riggs and Goldman had, in several instances, provided false and intentionally misleading information during the NASD investigation. □

## Members Offset Costs With Phone Discounts

### NASD/MCI Program Exceeds Participation Projection

NASD member firms collectively saved over a half million dollars in only one month using the NASD/MCI Value Program, a service available only to NASD members. Seven hundred firms using the service saved an average of \$972 each for the 30-day period ended June 30, 1992. Original June projections had expected only 470 NASD member firms' participation.

"NASD firms, large and small, are able to help offset the costs of their NASD assessments through this program," said NASD Executive Vice President John T. Wall. "The credits in revenue are monthly and in proportion to both the size of the firm and its daily activity."

Members can save up to 30 percent on a wide range of voice and data telecommunications services provided by MCI, a Nasdaq National Market company. The services available include several long-distance voice options customized to each firm's size and needs, 800-

number and facsimile options, data digital networking applications, and conference calling.

Another product, the Nasdaq Card, offers 24-hour real-time stock quotations and information for all major North American markets via a touch-tone phone call. Using special, low-cost calling rates, the Nasdaq Card lets a broker/dealer set up two personalized portfolios of up to 30 stocks each and allows real-time information access to prices, numbers of shares, and total value.

A cooperative venture between the NASD and MCI, the Value Program develops customized products that better serve the needs of broker/dealer firms, their customers, and thereby the entire securities industry.

For more information about the NASD/MCI Value Program, contact your local MCI account representative at (800) 627-3276.

## NASD DISCIPLINARY ACTIONS

*In May, June, and July 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

### May Actions

**Garret Brian Auld (Registered Representative, Anderson, California)** was fined \$5,000 and suspended from association with any member of the NASD in any capacity for one year. In addition, Auld must requalify by examination prior to becoming associated with any member firm and ordered to obtain the permission of the Statutory Disqualification Subcommittee of the NASD's National Business Conduct Committee (NBCC) prior to any future employment in the securities industry.

The sanctions were based on findings that Auld received from two public customers funds totaling \$35,131.72 for investment purposes and misappropriated the funds for other purposes. Auld also participated in private securities transactions with investors without providing prior written notification to his member firm.

**DWS Securities Corporation (Sonora, California), Stephen Michael Rangel (Registered Principal, Sonora, California), and Hugh Scott Liddle, Jr. (Registered Principal, Modesto, California)** were fined \$425,000, jointly and severally, and required to make written offers of rescission to investors. Any amounts that the respondents can demonstrate have been paid to the customers will be applied against the fine. In addition, the firm was expelled from membership in the NASD, and Rangel and Liddle were barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 1. The sanctions were based on findings that the firm, acting through Rangel and Liddle, made

fraudulent misrepresentations and omissions in connection with two private offerings.

The respondents have appealed this action to the Securities and Exchange Commission (SEC), and the sanctions, other than the expulsion and bars, are not in effect pending consideration of the appeal.

**Eagan & Company, Inc. (San Francisco, California) and James Robinson Eagan (Registered Principal, San Francisco, California)**. The firm was fined \$60,000 and expelled from membership in the NASD. James Eagan was fined \$110,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Eagan, failed to maintain accurate books and records, filed false and inaccurate FOCUS Parts I and IIA reports, and engaged in a securities business while failing to maintain its minimum required net capital.

Moreover, the firm, acting through Eagan, failed to file FOCUS Part I reports on a timely basis and to file FOCUS Part IIA reports for certain months.

In addition, the firm, acting through Eagan, failed to transmit investors' funds received from a contingent offering of limited partnership interests into a separate escrow account and to return investors' subscriptions when the contingency was not met. Eagan also acted as principal of the firm without requalifying as a principal in contravention of a previous order imposed by the DBCC for District 1.

### June Actions

**Pacific Integrated Group, Inc. (Santa Clara, California)** was fined \$13,000, jointly and severally with an individual. The sanction was based on findings that the firm participated in sales of limited partnership interests of several best efforts "all or none" offerings and received funds from investors without depositing the funds into an escrow account.

In addition, the firm represented to investors that limited partnership interests were being offered on an all-or-none basis and the consideration paid by the investors would be refunded if all units were not sold by a specified date when, in fact, funds were disbursed before all units were sold. Furthermore, the firm failed to prepare net capital computations for certain months and engaged in a securities business without maintaining its minimum required net capital.

Also, in contravention of the terms of a voluntary restriction agreement with the NASD, the firm failed to file with the NASD copies of escrow agreements in the offer and sale of limited partnership interests.

### July Actions

**Lanaco Securities Corporation (Burlingame, California) and Joseph Anthony Atencio (Registered Principal, Burlingame, California)** were fined \$10,000, jointly and severally. In addition, Atencio was barred from association with any member of the NASD in any principal capacity. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 1. The sanctions were based on findings that the firm, acting through Atencio, filed false and inaccurate FOCUS Parts I and IIA reports and failed to maintain its required minimum net capital.

Furthermore, the firm, acting through Atencio, failed to give telegraphic notice to the NASD regarding its net capital deficiency and failed to file its FOCUS Part IIA reports. Lanaco, acting through Atencio, also solicited public customers to purchase restricted stock in contravention of SEC Rule 144 and failed to establish written supervisory procedures to prevent this activity. In addition, the firm, acting through Atencio, failed to carry a blanket fidelity bond.

**Timothy Lane Burkes (Registered Representative, Pleasanton, California)** was fined \$16,200 and suspended from association with any member of the NASD in any capacity for 180 days. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 1. The sanctions were based on findings that Burkes caused funds totaling \$16,500.54 to be transferred from his member firm's account to his commission account. As a result, Burkes received credit for funds to which he was not entitled.

Burkes has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Dale M. Russell (Registered Principal, La Verne, California)** was fined \$53,287.45 and suspended from association with any member of the NASD in any capacity for seven days. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 2. The sanctions were based on findings that Russell engaged in private securities transactions without giving

prior written notification of such activity to his member firm.

Russell has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

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)

### May Actions

**Whitehall Investment Securities, Ltd. (San Diego, California) and Melvin Lloyd Richards (Associated Person, San Diego, California).** The firm was expelled from membership in the NASD, and Richards was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 2. The sanctions were based on findings that the firm allowed Richards, a statutorily disqualified individual, to associate with the firm when the firm knew he was ineligible to be an associated person.

### June Actions

**Bekhor Securities Corp. (d/b/a First Affiliated Securities, Inc. (La Jolla, California) and Jonathan Elia Sassoon Bekhor (Associated Person, La Jolla, California)** submitted an Offer of Settlement pursuant to which the firm was fined \$42,000. The fine may be reduced up to \$35,000 if the firm can show that it paid that amount toward arbitration awards it has failed to honor. In addition, Jonathan Bekhor was fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Jonathan Bekhor engaged in various acts and omissions to avoid payment of certain debts or liabilities incurred by the firm. The NASD also found that Jonathan Bekhor managed a securities business without registering with the NASD.

**Thomas Melford Conley, III (Registered Representative, Newport Beach, 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 Conley failed to respond to NASD requests for information concerning an investigation of his termination from a member firm.

**Kae Alfred Ewing (Registered Principal, Irvine, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Ewing consented to the fine and to the entry of findings that he purchased shares of securities in the account of a public customer without the customer's knowledge or consent. Moreover, the NASD found that Ewing told the customer that he would cover any losses in the customer's account without the consent of Ewing's member firm. The findings also stated that Ewing failed to pay the customer the difference between the purchase price and the sale price of the securities in a timely manner and, thereafter, issued a \$2,000 check to the customer that was returned due to insufficient funds.

**New Century Securities, Inc. (Oceanside, California) and Stephen James Jones (Registered Principal, Oceanside, California)** were fined \$15,000, jointly and severally. The sanction was based on findings that, in a contingent offering of limited partnership interests, the firm, acting through Jones, failed to promptly transfer investors' funds to a separate escrow account.

Moreover, the firm, acting through Jones, represented to the investors that the funds would not be released to the issuer if a certain number of subscriptions were not sold by a specified date. However, funds were released to the issuer before that date and after only a portion of the units had been sold. The issuer, in turn, immediately used the investors' funds to pay expenses associated with the offering.

**Christopher Procopis (Registered Principal, Katonah, 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, Procopis consented to the described sanctions and to the entry of findings that he converted travelers checks from his member firm for his own benefit.

**Marc Barry Resnick (Registered Representative, Bell Canyon, California)** was fined \$11,650. The sanction was based on findings that Resnick executed purchase transactions for public customers but overcharged them by failing to give them the benefit of reduced sales charges associated with the execution of a letter of intent.

### July Actions

**Stephen Russell Boadt (Registered Principal, Pacific Palisades, California)** was fined \$10,000 and ordered to requalify by examination as a financial and operations principal within 120 days or he will be barred in any principal capacity. The sanctions were based on findings that Boadt continued to act as a financial and operations principal for his member firm even though the NASD had ordered him to requalify in that capacity in a previous disciplinary action.

**Mark Alan Helsing (Registered Representative, Tustin, California)** was suspended from association with any member of the NASD in any capacity for 30 days and required to requalify by examination before associating with any member of the NASD in any capacity. The sanctions were based on findings that Helsing overcharged a customer in the sale of mutual funds. Specifically, he failed to give the customer the benefit of reduced sales charges associated with the combined purchases of securities, the execution of a letter of intent, and the rights of accumulation.

**Anastasia Marie Lew (Associated Person, San Diego, California)** was fined \$78,520.78 and barred from association with any member of the NASD in any capacity. This fine can be reduced by \$13,520.73, representing the amount of restitution Lew makes to her member firm. The sanctions were based on findings that Lew misused firm funds by causing six checks totaling \$8,411 to be issued to her from her member firm's bank account without the firm's knowledge or consent.

In addition, Lew caused the issuance of a \$2,000 check from her member firm's checking account made payable to an affiliated company and intercepted two other checks totaling \$2,992.42 representing mutual funds concessions earned by her member firm. Lew cashed these checks and converted the proceeds. She also failed to respond to NASD requests for information.

**Richard Robert Whatley (Registered Representative, Rancho Palos Verdes, California)** was fined \$17,500. The sanction was based on findings that Whatley failed to pay a \$2,234 arbitration award in a timely manner and failed to respond to NASD requests for information.

**Blake William Wilson (Registered Principal, Ojai, California)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Wilson failed to respond to NASD requests for information.

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

### May Actions

**Stanley Kim Hodges (Registered Representative, Provo, Utah)** submitted an Offer of Settlement pursuant to which he was fined \$12,500. Without admitting or denying the allegations, Hodges consented to the described sanction and to the entry of findings that he recommended and executed the purchase of securities in the accounts of two public customers without having reasonable grounds for believing such recommendations were suitable for the customers considering their investment objectives. The NASD also found that Hodges exe-

cuted seven unauthorized transactions in one of the two aforementioned customers' accounts.

**James Michael Hudson (Registered Representative, Everett, Washington)** 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, Hudson consented to the described sanctions and to the entry of findings that he executed unauthorized transactions on behalf of a public customer. According to the findings, these transactions were unsuitable for the customer based on her financial status, stated investment objectives, and personal circumstances and needs.

The NASD also found that Hudson filled out for the same customer a new account form that contained false information. Moreover, the NASD determined that Hudson guaranteed this customer against loss and/or shared in losses in the customer's account.

**Thomas Dale Kienlen (Registered Principal, Jasper, Oregon)** was fined \$10,500 and required to requalify by examination in any capacity for which he seeks to register with the NASD. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Kienlen recommended to a public customer an investment in a mutual fund that was managed and controlled by Kienlen. This recommendation was made without having reasonable grounds for believing such transaction was suitable for the customer considering his financial situation and investment needs.

**Les Thomas Livingston (Registered Principal, Portland, Oregon) and Cletus Herman Niebur (Registered Principal, Beaverton, Oregon)** were suspended from association with any member of the NASD as general securities principals. The May 1992 Disciplinary Actions section of Notices to Members erroneously stated that Livingston and Niebur were suspended from association with any member of the NASD in any principal capacities.

**William F. Pemble (Registered Representative, Tucson, Arizona)** submitted an Offer of Settlement 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, Pemble consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without providing written notice to his member firm.

**Richard R. Perkins (Registered Representative, Denver, Colorado) and Michael D. Pittman (Registered Representative, Aurora, Colorado).** Perkins was fined \$97,500 and Pittman was fined \$44,500. In addition, Perkins and Pittman were suspended from association with any member of the NASD in any capacity for two years. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 3.

The sanctions were based on findings that Perkins and Pittman caused securities transactions to be effected with retail customers at prices that were unfair, including markups ranging from 13.3 to 400 percent above the prevailing market price for these securities. In addition, Perkins caused the distribution of sales literature regarding such securities that contained misleading information or failed to contain material information. Specifically, the literature failed to discuss the risks involved, contained promissory statements, and failed to disclose that Perkins' firm was a market maker in the securities. Furthermore, Perkins failed to have this literature approved for use by his member firm prior to its distribution.

Perkins and Pittman have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Stephen J. Porter (Registered Representative, Salt Lake City, Utah)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Porter failed to provide information requested by the NASD's Market Surveillance Department in connection with its investigation into trading of a security.

**William R. Sheppard (Registered Principal, Parker, Colorado)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sheppard failed to provide information requested by the NASD's Market Surveillance Department in connection with its investigation into the trading of a security.

**Wasatch Stock Trading, Inc. (Salt Lake City, Utah) and Matthew Ralph White (Registered Principal, Salt Lake City, Utah)** submitted an Offer of Settlement pursuant to which the firm was fined \$12,500, jointly and severally with other individuals. In addition, the firm agreed that it would require a registered principal, other than the firm's trader, to review trades entered in the trader's personal accounts and in the firm's trading accounts by any firm trader. Furthermore, the firm shall not take down inventory positions for registered representatives for six months. White was fined \$12,500 and suspended from association with any member of the NASD in any capacity for five business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through White, engaged in a fraudulent scheme of "parking" securities at the end of the month in three accounts and repurchasing those securities into inventory at the beginning of the next month. The NASD determined that the respondents engaged in this scheme in order to generate capital for the firm, to conceal the firm's true financial condition, and to circumvent the net capital requirements.

The NASD also found that the firm failed to maintain sufficient funds in its Special Reserve Account for the Exclusive Benefit of Customers and conducted a securities business while failing to maintain its minimum required net capital. Moreover, the findings stated that the firm failed to supervise White's activities adequately in order to prevent the aforementioned parking scheme and failed to abide by the terms of its restriction agreement with the NASD to limit the number of customer securities positions.

#### June Actions

**Don Arbal (Registered Representative, Hauppauge, New York), Todd Clark (Registered Representative, Englewood, Colorado), and Eugene Hunter (Registered Representative, Los Angeles, California)** submitted an Offer of Settlement pursuant to which Arbal and Clark each were fined \$2,500 and suspended from association with any member of the NASD in any capacity for five business days. Hunter was fined \$15,000 and suspended from association with any member of the NASD in any capacity for five business days. In addition, Arbal, Clark, and Hunter must requalify by examination as general securities representatives.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Arbal, Clark, and Hunter effected transactions with customers at prices they knew or should have known, were unfair and excessive. Moreover, the NASD determined that the respondents failed to disclose to their customers that the prices were unfair and unreasonable.

**Gabriel A. Arcuri, Jr. (Registered Representative, Stuyvesant Falls, New York)** was fined \$2,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination as a general securities representative. The SEC affirmed the sanctions following an appeal of a decision by the NBCC. The sanctions were based on findings that Arcuri induced a customer to purchase securities by fraudulently misrepresenting that the customer could expect a 15 percent return over the next three months in an investment.

**Anthony James Beshara (Registered Representative, Littleton, Colorado)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Beshara provided two public customers with misleading documentation regarding their purchases of securities and executed transactions in their accounts without prior authorization and consent.

**Russell S. Brandt (Registered Representative, Blandon, Pennsylvania) and Igor Paransky (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which Brandt was fined \$2,500 and suspended from association with any member of the NASD in any capacity for five business days. Paransky was fined \$1,000 and suspended from association with any member of the NASD in any capacity for one business day. In addition, Brandt and Paransky must requalify by examination as general securities representatives.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brandt and Paransky effected transactions with customers at prices that they knew or should have known were unfair and excessive. Moreover, the NASD determined that the respondents failed to disclose to their customers that the prices were unfair and unreasonable.

**Robert J. Cargeeg (Registered Representative, Centerville, Utah)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cargeeg forged a customer's name on checks drawn on the customer's account and used the proceeds for his own benefit. In addition, Cargeeg received from another customer a \$1,500 check intended for the purchase of securities. He failed to follow the customer's instructions and, instead, deposited the funds into his personal account and used the funds for his own benefit.

Cargeeg also received from a different customer a certificate for 12,000 shares of securities for sale in the customer's account. Instead, he deposited the shares in his personal securities account, sold the shares, and used the proceeds of the sale for his personal benefit. Moreover, Cargeeg misrepresented material facts to these customers and guaranteed the price at which securities would be sold to induce the customers to tender assets and to purchase securities.

Cargeeg also engaged in private securities transactions while failing to provide prior written notification of such transactions to his member firm and failed to respond fully to NASD requests for information.

**Dillon Securities, Inc. (Spokane, Washington) and Troy Dean Moe (Registered Principal, Spokane, Washington)**. The firm was fined \$20,000, jointly and severally with a registered representative and fined an additional \$112,000, jointly and severally with Moe. In addition, Moe was suspended from association with any member of the NASD in any capacity for 30 business days.

The sanctions were based on findings that the firm, acting through Moe, failed to maintain its minimum required net capital. Furthermore, in contravention of the Interpretation of the Board of Governors Concerning NASD Mark-Up Policy, the firm, acting through Moe, effected principal transactions for retail customers in common stock that included markups and markdowns greater than 10 percent. The respondents also failed to disclose the markups to their customers.

Moreover, Moe issued two checks that were returned due to insufficient funds. One was a \$50,000 personal check to his member firm as an addition to capital and the other was a \$99,137.71 check to his clearing broker/dealer for the purchase of securities.

**Brian Gregory DiJulio (Registered Representative, Kirkland, Washington)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and suspended from association with any member of the NASD as a general securities representative for 10 business days. In addition, DiJulio must requalify by examination as a general securities representative.

Without admitting or denying the allegations, DiJulio consented to the sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers. The NASD also found that DiJulio made unauthorized use of margin to purchase securities in a customer's account without having reasonable grounds for believing that such use of margin was suitable for the customer considering her investment objective, financial situation, and needs.

**Jay Michael Fertman (Registered Representative, Englewood, Colorado)** was fined \$1,902,075 and barred from association with any member of the NASD in any capacity. However, Fertman's fine may be reduced by any amount of restitution he makes to customers. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3.

The sanctions were based on findings that Fertman implemented and directed a fraudulent scheme to manipulate stock prices. Pursuant to this scheme, he sold shares of stock between accounts he controlled to give the appearance of an active trading market in the securities. This way he could disguise the arbitrary price increases and induce investors to purchase the stock thereby raising the price of the securities. As a result, the stock, owned and controlled by Fertman at nominal cost, could be sold at substantial profits.

In addition, to facilitate the aforementioned manipulation, Fertman used advertisements, "scripts," and other sales literature that contained exaggerated, unwarranted, and promissory claims, but failed to disclose the risks involved in the recommended investments and omitted material facts. Fertman also maintained securities accounts at two broker/dealers other than his member firm without first notifying such broker/dealers of his association with a member firm.

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

**Reed Armand Hatkoff (Registered Principal, Denver, Colorado)** was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 12 months. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Hatkoff failed to respond to an NASD request for information pertaining to an investigation conducted by the NASD staff.

Hatkoff has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**William Todd Knowles (Registered Representative, Layton, Utah)** submitted an Offer of Settlement 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, Knowles consented to the described sanctions and to the entry of findings that he received from public customers funds totaling \$5,500 intended for the purchase of securities. The NASD found that Knowles failed to purchase the intended securities and, instead, deposited \$4,900 of these funds into his personal account. The findings also stated that Knowles made misrepresentations to customers regarding the status of their securities accounts.

**Ronald James Lasek (Registered Representative, Phoenix, Arizona)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Lasek executed unauthorized transactions in the accounts of public customers.

**Robert Lopez (Registered Principal, Bountiful, Utah)** was fined \$25,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination as a general securities principal. The sanctions were based on findings that Lopez failed to adequately supervise the activities of a registered representative.

**David Stephen Markzon (Registered Representative, Tucson, Arizona)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions on review of a decision by the DBCC for District 3. The sanctions were based on findings that Markzon sold limited partnership interests to three public customers without providing prior written notice of the transactions to his member firm. Markzon also failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to reflect that he was the subject of a customer complaint. In addition, Markzon failed to respond to NASD requests for information.

**Victor Theodore Nostas (Registered Representative, Wheat Ridge, Colorado)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for two years. The sanctions were based on findings that Nostas agreed to cover the profits and losses in a customer's account. Nostas entered into this agreement without obtaining prior written authorization from his member firm.

**John Lawrence Schultz (Registered Representative, Aurora, Colorado)** 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, Schultz consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers without providing prior written notice to his member firm.

**Scot Eugene Sengelman (Registered Principal, Aurora, Colorado)** was suspended from association with any member of the NASD in any principal capacity for one year and required to requalify by examination before acting again in any principal capacity. The NBCC imposed the sanctions on review of a decision by the DBCC for District 3. The sanctions were based on findings that a former member firm, acting through Sengelman, failed to prepare current and accurate books and records, and filed inaccurate FOCUS I reports. In addition, the firm, acting through Sengelman, conducted a securities business while failing to maintain its minimum net capital, and Sengelman failed to adequately supervise a statutorily disqualified individual.

**Thomas Marlow Waller (Registered Principal, Aurora, Colorado)** and **John Rich Frye, Jr. (Registered Principal, Littleton, Colorado)** were fined \$150,000 and barred from association with any member of the NASD in any capacity. Frye submitted an Offer of Settlement pursuant to which he was fined \$150,000 and barred from association with any member of the NASD in any capacity. However, Frye may reapply for association with a member firm after five years. Without admitting or denying the allegations, Frye consented to the described sanctions and to the NASD's entry of findings. The sanctions were based on findings that Frye and Waller misused customer funds. Specifically, the NASD found that they sold units in a private offering totaling \$2,791,000 to investors and used \$788,968 of the funds for purposes not disclosed in the private placement memorandum.

#### July Actions

**Roger Darnell Alvey (Registered Representative, Portland, Oregon)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 10 business days. In addition, Alvey must requalify by examination as a general securities representative. The sanctions were based on findings that Alvey effected unauthorized transactions in the accounts of public customers. Furthermore, Alvey recommended these transactions without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the size, frequency, and nature of the recommended transactions, and the customers' financial situations, circumstances, needs, and investment objectives.

**James C. Dunlap (Registered Representative, Scottsdale, Arizona)** submitted an Offer of Settlement pursuant to which he was fined \$35,000 and barred from association with any member of the NASD in any capacity. In addition, Dunlap must pay \$15,000 in restitution to a public customer before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Dunlap consented to the described sanctions and to the entry of findings that he received from a public customer a \$15,000 check intended for the purchase of securities. According to the findings, Dunlap endorsed the check and deposited the money into his personal bank account.

**Alvey Joseph Jeanfreau (Registered Representative, Lake Oswego, Oregon)** was fined \$5,000 and barred from association with any member of the NASD in any capacity until he pays a total of \$6,340 in arbitration

awards. The sanctions were based on findings that Jeanfreau failed to pay a \$6,140 NASD arbitration award and the remaining \$200 balance of a \$10,200 arbitration award.

**Craig Stanton Norton (Registered Representative, Castle Rock, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,500. Without admitting or denying the allegations, Norton consented to the described sanction and to the entry of findings that a former member firm, acting through Norton, charged excessive markups to retail customers in the sale of securities.

**Stephen Alan Roche (Registered Representative, Redmond, Washington)** was fined \$5,600 and suspended from association with any member of the NASD in any capacity for one business day. In addition, Roche must requalify by examination as a general securities representative. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Roche recommended securities transactions in the account of a public customer without having reasonable grounds for believing such recommendations were suitable for the customer.

**David Lloyd Schumock (Registered Representative, Summer, Washington)** was fined \$50,000, suspended from association with any member of the NASD in any capacity for six months, and required to requalify by examination as a general securities representative.

The fine can be reduced by \$15,000, provided Schumock makes that amount of restitution to the customer's estate or beneficiaries.

The sanctions were based on findings that Schumock recommended the purchase and sale of securities in a public customer's account. These recommendations were made without having reasonable grounds for believing that such transactions were suitable for the customer.

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

#### May Actions

**Larry Dean Brockway (Registered Principal, Willowick, Ohio)** 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, Brockway consented to the described sanction and to the entry of findings that he converted customer funds totaling \$305,836.68 to his own use and benefit by forging endorsements on checks and obtaining policy loans without the knowledge or consent of the public customers.

**Stephen Allen Hersh (Registered Principal, Howell, New Jersey)** was fined \$20,000. The sanction was based on findings that a former member firm, acting through Hersh, utilized instrumentalities of interstate commerce to conduct a securities business while failing to maintain its required minimum net capital. In addition, Hersh was associated and functioned as a financial and operations principal of the same firm without proper registration with the NASD in that capacity.

**Lars Dean Omlid (Registered Representative, Manchester, Missouri)** was fined \$5,000, suspended from association with any member of the NASD in any capacity for 90 days, and required to make restitution to his member firm. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 4. The sanctions were based on findings that, without the knowledge or consent of his member firm, Omlid received checks totaling \$138,651 that were issued by another representative. The checks were endorsed, deposited in their joint bank account, and converted to personal expenses.

**Robert Alan Pertzborn (Registered Representative, Ankeny, Iowa)** 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, Pertzborn consented to the described sanctions and

to the entry of findings that, without the knowledge or consent of public customers, Pertzborn forged the customers' names on applications for additional life insurance coverage and submitted the applications to his member firm. As a result, the customers' accounts were charged for additional life insurance premiums.

**Robert Morton Russell (Registered Representative, West Des Moines, Iowa)** 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, Russell must demonstrate that he has paid \$42,600 in restitution to all parties entitled should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that, through unauthorized address and ownership changes, and subsequent partial-surrender withdrawals from public customers' life insurance policies, he converted \$42,600 without the knowledge or consent of the customers.

#### July Actions

**James Patrick Connaughton, Jr. (Registered Representative, St. Louis, Missouri)** 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. In addition, Connaughton must pay \$74,751.18 in restitution to a public customer before seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Connaughton consented to the described sanctions and to the entry of findings that he converted customer funds totaling \$74,751.18 to his own use and benefit, without the customer's knowledge or consent. Specifically, the findings stated that Connaughton withdrew drafts from the customer's securities account and deposited the proceeds to his personal bank account. In addition, Connaughton failed to respond to NASD requests for information in a timely manner.

**James Patrick Connaughton, Sr. (Registered Principal, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any member of the NASD in a principal capacity for 90 days and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Connaughton consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative adequately and properly to assure compliance with applicable rules and regulations.

**Anthony Stanley King (Registered Representative, Washington, District of Columbia)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that King 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

#### May Actions

**Atlanta-One, Inc. (Irvine, California), Kevin Michael McCarthy (Registered Principal, Newport Beach, California), and Thomas William Blodgett (Registered Principal, Irvine, California)** were fined \$100,000 and suspended from membership in the NASD for 30 days. McCarthy was fined \$75,000 and suspended from association with any member of the NASD in any capacity for 30 days. Blodgett was fined \$50,000 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, McCarthy and Blodgett must requalify by examination before acting in any capacity requiring qualification. Furthermore, the fines will be reduced by any amounts of restitution that the respondents have paid to customers.

The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 2. The sanctions were based on findings that the

firm, acting through McCarthy and Blodgett, charged unfair commissions in 353 foreign-currency options transactions. Specifically, the respondents charged commissions ranging from \$50 to \$89 per options contract, which represented between 16 and 89 percent of the customers' investments.

The firm, McCarthy, and Blodgett have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Earl Stanley Foster (Registered Principal, Covington, Kentucky)** was fined \$7,500, jointly and severally with a member firm, and suspended from association with any member of the NASD in any capacity for one week. The sanctions were based on findings that a member firm, acting through Foster, engaged in a securities business while failing to maintain its required minimum net capital. Foster, acting on behalf of the same firm, also failed to register an individual with the NASD as a principal and allowed the person to serve as an officer of the firm. In addition, the firm, acting through Foster, failed to comply with its restriction agreement in that it changed its exemptive status without having obtained prior written approval from the NASD.

**PaineWebber Incorporated (New York, New York), John A. Day (Registered Representative, Birmingham, Alabama), Jerry W. Payne (Registered Principal, Germantown, Tennessee), David L. Arnold (Registered Representative, Birmingham, Alabama), and William D. East (Registered Representative, Birmingham, Alabama)** submitted an Offer of Settlement pursuant to which the firm was fined \$75,000. Day was fined \$100,000 and barred from association with any member of the NASD in any capacity. Payne was fined \$10,000, barred from association with any member of the NASD as a compliance registered options principal and senior registered options principal, and required to requalify by examination as a general securities principal. Arnold was fined \$5,000 and suspended from association with any member of the NASD in any capacity for six months, and East was fined \$15,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Day exercised discretionary power in the accounts of a public customer without obtaining prior written authorization from the trustees of the accounts and prior written acceptance of the accounts as discretionary by PaineWebber. The NASD also determined that Day executed six unauthorized options transactions in the same customer accounts. In addition, the NASD found that Day recommended and engaged in options purchase and sale transactions in the same customer accounts without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers based on their financial situations, objectives, and needs.

The findings also stated that Day failed to execute trades in a timely fashion in certain public-customer accounts. Specifically, he entered block transactions but failed to promptly provide PaineWebber's branch office with order allocation tickets, thereby preventing the firm from accurately determining the sequence of the block transactions. The NASD further determined that Arnold and East obtained personal loans from two public customers, and Day, Arnold, and East used the monies to finance certain block-order option transactions in their own accounts. Day and East failed to disclose to PaineWebber these activities and the fact that East was sharing the profits in his account with Day.

Furthermore, Day, Payne, and Arnold failed to respond to NASD requests for information. Also, the firm, acting through Payne, failed to establish, maintain, and enforce written supervisory procedures and failed to supervise Day, Arnold, and East reasonably and properly, according to the findings.

**Charles E. Reeves, Jr. (Registered Representative, Covington, Louisiana)** 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, Reeves consented to the described sanctions and to the entry of findings that, while registered

with a member firm, he sold certificates of deposit or deposit notes to public customers through another firm and accepted \$4,265 in compensation without providing written notice to his member firm.

**The Riverview Corporation (Knoxville, Tennessee), Andrew E. Cafferky, Jr. (Registered Principal, Knoxville, Tennessee), and John M. Hancock (Associated Person, Knoxville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was expelled from membership in the NASD. Cafferky and Hancock were each fined \$150,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cafferky and Hancock, received \$68,278.50 from public customers for investment purposes. However, the NASD found that the funds were deposited in the firm's general operating account, commingled with the firm's own funds, and used, in part, to pay normal operating expenses of the firm without the knowledge or consent of the customers.

The NASD also found that the firm, acting through Cafferky and Hancock, failed to prepare accurate books and records, and engaged in a general securities business with public customers while failing to maintain its required minimum net capital. In connection with this activity, the NASD determined that the respondents also failed to give telegraphic notice of the firm's failure to maintain its books and records and of its net capital deficiency. The findings also stated that the firm, acting through Cafferky and Hancock, engaged in a general securities business with public customers without proper registration as a broker/dealer with the SEC. According to the findings, the firm, acting through Cafferky and Hancock, failed to comply with the provisions of Article II, Section 3(b) of the NASD's By-Laws in that Hancock, an individual convicted of a felony, was associated with the firm.

In addition, the firm, acting through Cafferky and Hancock, conducted a general securities business with public customers residing in the state of Tennessee but failed to renew its registration with the Tennessee Securities Division, according to the findings. Also, the NASD found that Riverview, acting through Cafferky and Hancock, failed to file an audited financial statement, to pay its general assessment fees to the Securities Investor Protection Corporation in a timely manner, and to keep current and accurate its Uniform Application for Broker-Dealer Registration. Furthermore, the firm, acting through Cafferky and Hancock, failed to respond to NASD requests for information.

The findings also stated that Cafferky effected transactions in the accounts of public customers without the authorization, knowledge, or consent of the customers. Furthermore, in contravention of Schedule C of the NASD's By-Laws, the NASD determined that Hancock acted in the capacity of a general securities principal without being qualified and failed to be fingerprinted.

#### June Actions

**Michael K. Johnson (Registered Representative, Clarksville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any member of the NASD in any capacity. In addition, Johnson must pay \$2,000 in restitution to a public customer if he seeks re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he made a false and unauthorized application on a disbursement request form for a \$2,000 loan against a public customer's insurance policy. According to the findings, he also requested that the address and name on the policy be changed to his. As a result, the NASD determined that Johnson received the requested check and deposited it in his personal checking account.

**Charles R. Moore, Jr. (Registered Principal, Douglas, Georgia)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Moore engaged in a

private securities transaction with public customers that was outside the regular course or scope of his association with a member firm. He also failed to provide written notification to his firm of his intention to engage in such transaction. In addition, Moore failed to respond to NASD requests for information.

**Samuel F. Polo (Registered Representative, Gretna, Louisiana)** was fined \$30,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination as a general securities representative. The sanctions were based on findings that Polo exercised discretionary power in the account of a public customer without obtaining prior written authorization from the customer and without prior written acceptance of the account as discretionary by his member firm.

**Kenneth R. Shelton (Registered Representative, Birmingham, Alabama)** 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. In addition, Shelton must pay \$385 in restitution to a public customer if he seeks to re-enter the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Shelton consented to the described sanctions and to the entry of findings that he received \$385 from a public customer for automobile insurance. He converted the funds to his own use without the customer's knowledge or consent. In addition, Shelton failed to respond to NASD requests for information.

**Ronald G. Stone (Registered Representative, Bardonia, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any member of the NASD in any capacity for one week. Without admitting or denying the allegations, Stone consented to the described sanctions and to the entry of findings that he caused five public customers to sign documents requesting the sale of a portion of their mutual fund investments. However, the findings stated that Stone failed to inform the customers that the proceeds would be used to purchase financial analysis proposals which they had neither requested nor authorized.

**Derwin L. Vandergriff (Registered Representative, Ooltewah, Tennessee)** 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. In addition, Vandergriff must pay \$569,500 in restitution to public customers if he seeks to re-enter the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Vandergriff consented to the described sanctions and to the entry of findings that he exercised discretion in the joint account of public customers without their prior written authorization and without prior written acceptance of the account as discretionary by his member firm.

The findings also stated that Vandergriff received \$31,000 from a public customer for investment in municipal bonds that he deposited into a bank account he controlled, thereby converting the funds to his own personal use. Furthermore, the NASD found that Vandergriff obtained \$538,500 from public customers by representing that he would purchase suitable investments for the customers and that such purchases would take place outside of his association with his member firms. Instead, Vandergriff converted the funds to his own use without the customers' knowledge or consent. In addition, Vandergriff failed to respond to NASD requests for information.

#### July Actions

**Gary P. Adams (Registered Representative, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000, suspended from association with any member of the NASD in any capacity for two months, and required to requalify by examination as a general securities representative.

Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he exercised discretion in the

account of a public customer without prior written authorization from the customer or written acceptance of the account as discretionary by his member firm. Furthermore, the findings stated that Adams executed trades in the account causing the margin debit balance to exceed \$500,000, in contravention of the customer's written instructions.

**Richard D. Collins (Registered Representative, Tulsa, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Collins consented to the described sanctions and to the entry of findings that he sold unregistered securities. In addition, the findings stated that Collins engaged in private securities transactions without prior written notice to and approval from his member firm.

**Robin C. Collins (Registered Representative, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Collins consented to the described sanctions and to the entry of findings that he received \$387 from public customers for the purchase of insurance. The findings stated that he failed to promptly transmit the monies to his member firm and, instead, converted the funds to his own use and benefit without the knowledge or consent of the customers.

**William S. Flournoy (Registered Representative, Lawton, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,000 and barred from association with any member of the NASD in any capacity. In addition, Flournoy must pay \$10,054.54 in restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Flournoy consented to the described sanctions and to the entry of findings that he caused checks totaling \$10,054.54 to be issued against the life insurance policies of public customers. According to the findings, Flournoy then endorsed and cashed the checks, thereby converting the monies to his own use and benefit without the customers' knowledge or consent.

**Ralph R. Grant (Registered Representative, Oklahoma City, Oklahoma)** 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, Grant consented to the described sanctions and to the entry of findings that he guaranteed a public customer reimbursement for any losses incurred in his account.

**Nazmi C. Hassanieh (Registered Representative, Memphis, Tennessee)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Hassanieh exercised discretionary power in the accounts of public customers without prior written authorization from the customers and written acceptance of the accounts as discretionary by his member firm. In addition, Hassanieh failed to respond fully to NASD requests for information.

**Danny W. Jackson (Registered Representative, Paducah, Kentucky)** 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, Jackson consented to the described sanctions and to the entry of findings that he received \$1,118.88 from public customers for payment of insurance premiums and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent.

**John G. Miller, Jr. (Registered Representative, Brandon, Mississippi)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any member of the NASD in any capacity for two weeks. Without admitting or denying the allegations, Miller consented to

the described sanctions and to the entry of findings that he engaged in options spread transactions in the account of a public customer without having reasonable grounds for believing that the account had been cleared for this level of options trading by his member firm.

The NASD also found that Miller engaged in an options strategy in the account of another customer without having reasonable grounds for believing that such strategy and the resultant transactions were suitable for that customer. In addition, the findings stated that Miller exercised discretion in the customer's account without the customer's prior written authorization or the member firm's written acceptance of the account as discretionary.

**Gary S. Smith (Registered Principal, Knoxville, Tennessee)** 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, Smith consented to the described sanctions and to the entry of findings that he misappropriated \$17,591.84 of his member firm's funds without the firm's knowledge or consent.

**William D. Wade (Registered Representative, Paducah, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any member of the NASD in any capacity for one month. Without admitting or denying the allegations, Wade consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss and thereafter reimbursed the customer for losses he incurred.

**Mickey W. Watkins (Registered Representative, Jackson, Mississippi)** 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 six months. Without admitting or denying the allegations, Watkins consented to the described sanctions and to the entry of findings that he recommended and caused a series of unsuitable purchase and sale transactions involving mutual funds to be executed in the account of a public customer. These transactions had similar investment objectives and cost the customer \$6,782.42 in sales charges.

District 6—Texas

## May Actions

**Trevor Derek Ling (Registered Representative, Houston, Texas)** and **Gregory Labadie Feste (Registered Representative, Houston, Texas)** were fined \$7,000, jointly and severally, and suspended from association with any member of the NASD in any capacity for one business day. The sanctions were based on findings that Ling and Feste exercised effective control over the accounts of a public customer. Furthermore, they recommended to this customer securities transactions that were unsuitable in view of the size and frequency of the transactions, the type of securities, and the customer's security holdings, financial situation, and needs.

**Charles E. Raley (Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Raley consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without advising his member firm in writing or receiving written authorization to engage in such activity from his member firm.

## June Actions

**Darrell Renard Williams (Registered Representative, San Antonio, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity until he pays a \$4,000 arbitration award plus interest. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he failed to pay the arbitration award.

## July Actions

**Martha Jane Adams (Registered Representative, Dallas, Texas)** was fined \$110,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Adams misappropriated and converted to her own use customer funds totaling \$83,404.36. In addition, Adams failed to respond to NASD requests for information.

**Michael Anthony Durham (Registered Principal, Houston, Texas)** was fined \$515,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Durham withdrew checks totaling \$465,190 from the accounts of public customers without their knowledge or consent, and converted the funds to his own use and benefit. In addition, Durham failed to respond to NASD requests for information.

**Mohammad Forouzmand (Registered Representative, Plano, Texas)** was fined \$81,000 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, Forouzmand converted to his own use and benefit customer funds totaling \$31,000 that were intended for the purchase of securities and to open an IRA account.

**Terri Lynn Lane (Associated Person, Houston, Texas)** was fined \$1,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Lane possessed and used unauthorized reference material during a qualifications examination.

**Texas Independent Securities, Inc. (Arlington, Texas)** and **Jimmy Ray Carter (Registered Principal, Arlington, Texas)** were fined \$300,000, jointly and severally. Carter was also barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Carter, sold to public customers shares of common stocks that were neither registered under the Securities Act of 1933 nor exempt from registration.

In contravention of the NASD's Mark-Up Policy, the firm, acting through Carter, effected corporate securities transactions as principal with retail customers at prices that were unfair and unreasonable. In addition, the firm, acting through Carter, effected transactions in securities without maintaining its required minimum net capital.

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

## May Actions

**Century Capital Corp. of South Carolina (Greenville, South Carolina)** and **John W. Brown, III (Registered Principal, Travelers Rest, South Carolina)** were fined \$10,000, jointly and severally, and Brown was suspended from association with any member of the NASD in any capacity for 30 days. In addition, the firm was suspended from effecting principal transactions with retail customers for 30 days and required to pay \$23,514 in restitution to public customers. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Brown, effected principal transactions in common stocks with public customers at prices that were unfair. The markups on these transactions ranged from 5.63 to 133.33 percent above the prevailing market price.

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

**Kimbridge & Co., Inc. (Boca Raton, Florida)** and **C. Joseph Marino (Registered Principal, Boca Raton, Florida)** were fined \$5,000, jointly and severally. In addition, the firm was expelled from membership in the NASD, and Marino was barred from association with any

member of the NASD in any capacity. The sanctions were based on findings that the firm and Marino failed, jointly and severally, to pay a \$3,064 arbitration award and a \$100 filing fee.

**Morgan Gladstone & Co., Inc. (Boca Raton, Florida)** and **Richard J. Gladstone (Registered Principal, Boca Raton, Florida)**. The firm was expelled from membership in the NASD. Gladstone was fined \$100,000 and barred from association with any member of the NASD in any capacity. In addition, the respondents must demonstrate that they have paid \$155,876 in restitution, jointly and severally, to public customers should they seek re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 7.

The sanctions were based on findings that the firm, acting through Gladstone, effected principal transactions in over-the-counter corporate securities with public customers at prices that were unfair and unreasonable. The markups on these transactions ranged from 25 to 150 percent above the prevailing market price in contravention of the NASD's Mark-Up Policy. In addition, Gladstone failed to adequately supervise the activities of the firm's representatives to assure compliance with the NASD's rules and policies with respect to fair pricing.

**O.R. Securities, Inc. (Chesterfield, Missouri)** was expelled from membership in the NASD. The sanction was imposed by the NBCC on review of a decision by the DBCC for District 7. The expulsion was based on findings that the firm failed to pay an \$81,998 arbitration award and diverted the funds to another member firm.

#### July Actions

**John Harold Ashley (Registered Representative, Boca Raton, Florida)** 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 30 days. Without admitting or denying the allegations, Ashley consented to the described sanctions and to the entry of findings that he remitted personal checks totaling \$5,600 to his member firm to cover transactions in his personal securities account, and then withdrew monies from his bank account so that the account would not have sufficient funds to cover the checks.

**Evan Jay Beren (Registered Representative, Chatsworth, California)** was fined \$68,509.54 and barred from association with any member of the NASD in any capacity. The fine may be reduced by \$3,509.54, should Beren make restitution of that amount to his member firm. The sanctions were based on findings that, without a customer's knowledge or consent, Beren received four checks totaling \$3,509.54 representing loan proceeds and dividends on insurance policies purchased by the customer. Beren caused these checks to be cashed and converted the proceeds. Beren also failed to respond to NASD requests for information.

**Frank Ronald Camara (Registered Representative, Miami, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. In addition, Camara must pay \$13,273.31 in restitution to his member firm before seeking re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Camara effected the purchase and sale of shares of common stocks for the accounts of public customers without their knowledge or consent.

**George O. Cherry (Registered Representative, Mebane, North Carolina)** was fined \$30,000 and barred from association with any member of the NASD in any capacity. In addition, Cherry must pay \$7,000 in restitution to his member firm within 45 days. The sanctions were based on findings that Cherry solicited and accepted checks from a public customer but, instead of using the checks as specified by the customer, Cherry deposited the funds in a bank account that he controlled and applied the proceeds to his own use and benefit. Cherry also failed to respond to NASD requests for information.

**Michael Ehrlich (Registered Representative, Coral Springs, 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 Ehrlich failed to respond to an NASD request for information concerning a customer complaint.

**Enrico Joseph Giordano (Registered Representative, Deerfield 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 Giordano failed to pay a \$21,977.18 arbitration award.

In its findings, the NASD determined that Giordano could re-enter the securities industry upon demonstration that the arbitration award was paid. Giordano's bar commenced June 5, 1992 and was lifted June 26, 1992.

**Guardian International Securities Corp. (Miramar, Florida)** was fined \$20,000 and expelled from membership in the NASD. The sanctions were based on findings that the firm failed to pay a \$1,579 arbitration award.

**Michael P. Harris (Registered Representative, Bradenton, 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, Harris must pay \$5,500 in restitution to his member firm before seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he received a \$5,500 check from a public customer intended for the purchase of unspecified investments and, instead, Harris negotiated the check and converted the proceeds to his own use and benefit.

**Lyle Robert Howie (Registered Representative, Palm Harbor, 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 Howie failed to pay a \$10,000 arbitration award.

**Fred Herman Jones, Jr. (Registered Representative, Atlanta, Georgia)** was fined \$22,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Jones effected the purchase and sale of shares of common stocks for the securities account of a public customer without his knowledge or consent. Jones also misrepresented to the same customer that the trades had been reversed and that a certificate for the sale of common stock was in transfer to him. In addition, Jones failed to respond to an NASD request for information.

**Andrew L. Marcus (Registered Representative, Summit, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Marcus consented to the described sanction and to the entry of findings that he effected the purchase and sale of municipal bonds in the accounts of public customers without their knowledge or authorization. The NASD also found that Marcus effected the purchase and sale of common stocks in the joint account of public customers without their prior written authorization to act on a discretionary basis.

**Cameron Garth Miller (Registered Representative, Ft. Lauderdale, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$12,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without providing prior written notification to his member firm. In addition, Miller failed to respond to an NASD request for information.

**Philip L. Mosley (Registered Representative, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 15 days. In addition, Mosley must pay \$17,000 in restitution to public customers within 90 days. Without admitting or denying the allegations, Mosley consented to the described sanctions and to the entry of findings that he sold units of four separate limited partnerships to public customers outside the scope of his associa-

tion with a member firm and without the knowledge or approval of the firm.

**Palm Beach Financial, Inc. (North Palm Beach, Florida), Peter Scott Smith (Registered Principal, Anchorage, Alaska) and Mark Rocco Conboy (Registered Principal, Jupiter, Florida)** submitted an Offer of Settlement pursuant to which they were fined \$5,000, jointly and severally and must pay \$6,654 in restitution, jointly and severally to public 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 Smith, conducted a securities business without maintaining its required minimum net capital and failed to make and keep its net capital calculations accurate.

The NASD also found that the firm, acting through Smith, filed materially inaccurate FOCUS Reports Parts I and IIA and effected over-the-counter corporate securities transactions as principal with public customers at prices that were unfair.

**Timothy Daniel Peck (Registered Representative, Tampa, 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 Peck failed to respond to NASD requests for information concerning a customer complaint.

**John L. Wintermeier (Registered Representative, Indian Rocks Beach, Florida)** 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, Wintermeier consented to the described sanction and to the entry of findings that through the use of falsified letters of authorization, he withdrew \$25,000 from the mutual fund account of a public customer and converted \$15,000 of the funds to his own use and benefit without the customer's knowledge or consent.

**John A. Wolf (Registered Principal, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Wolf consented to the described sanction and to the entry of findings that he effected an order to sell 500 shares of a common stock for the account of a public customer without the customer's prior authorization. According to the findings, Wolf engaged in this activity to facilitate a short sale placed by an institutional customer that would generate \$7,800 in commissions for Wolf.

**Emily Maria Wu (Registered Representative, Hilton Head, South Carolina)** submitted an Offer of Settlement pursuant to which she was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Wu consented to the described sanctions and to the entry of findings that she recommended opening sales of uncovered put and call option contracts to public customers without having reasonable grounds for believing that such transactions were suitable for the customers. In addition, the NASD found that Wu failed to disclose or misrepresented the risks of selling uncovered option contracts to public customers.

**Felix M. Zuniga (Registered Representative, Coral Gables, Florida)** submitted an Offer of Settlement 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, Zuniga consented to the described sanctions and to the entry of findings that he caused his member firm to issue checks totaling \$257,697.50 drawn on the accounts of two public customers without their knowledge or approval and applied the proceeds to his own use and benefit.

The findings also stated the Zuniga created and furnished his member firm with false letters of authorization containing forged signatures of these customers authorizing the aforementioned withdrawals. In addition, the NASD determined that in an attempt to conceal the conversion of funds, Zuniga created and furnished one customer with a false account statement that purported to show the purchase of a common stock when no such pur-



chase had been made. Furthermore, Zuniga failed to respond to an NASD request for information.

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

### May Actions

**Gail Frances Aird (Registered Representative, Delray Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$75,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Aird consented to the described sanctions and to the entry of findings that she engaged in private securities transactions and failed to give written notice to her member firm of her intention to engage in such activities. The findings also stated that Aird failed to respond to NASD requests for information.

**James C. Boerkoel (Registered Representative, Fennville, Michigan)** 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. In addition, Boerkoel must submit proof of restitution totaling \$7,040.10 with any future application for association with a member firm.

Without admitting or denying the allegations, Boerkoel consented to the described sanctions and to the entry of findings that he submitted Disbursement Request Forms to his member firm requesting cash surrender checks from a public customer's life insurance policy. The NASD found that, without the customer's knowledge or consent, Boerkoel received two checks totaling \$7,040.10 made payable to the customer. According to the findings, Boerkoel endorsed these checks, deposited the monies into an account in which he had a beneficial interest, and used the proceeds for his personal benefit. The NASD also found that Boerkoel failed to disclose the aforementioned activities on a Uniform Application for Securities Industry Registration (Form U-4).

**John J. Cody (Registered Representative, Glen Ellyn, Illinois)** submitted an Offer of Settlement 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, Cody consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, seven transactions in the account of a public customer in the absence of written or oral authorization to exercise discretion in the account.

The findings also stated that Cody gave the same customer an account statement and confirmations that contained false information concerning certain purported transactions in the customer's account. In addition, the NASD found that Cody failed to follow a customer's instructions to purchase 5,400 shares of stock, and, instead, bought only 1,700 shares. Moreover, the NASD determined that Cody delivered, or caused to be delivered, to this customer three confirmations representing that a total of 5,400 shares had been purchased when, in fact, only 1,700 shares had been purchased.

**Guy A. Imbrogno (Registered Representative, Ashtabula, Ohio)** 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. In addition, Imbrogno must demonstrate that he has made restitution to his member firm should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Imbrogno consented to the described sanctions and to the entry of findings that he submitted to his member firm a payroll deduction form and enrollment forms, purportedly signed by public customers, for the purchase of annuities without the knowledge, authorization, or consent of the customers. In addition, Imbrogno failed to respond to NASD requests for information.

**Kevin R. Janisko (Registered Representative, Suffield, Ohio)** submitted an Offer of Settlement pursuant to which

he was fined \$35,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Janisko consented to the described sanctions and to the entry of findings that he executed payroll deduction forms authorizing his member firm to receive funds from the paychecks of public customers without the authorization, knowledge, or approval of the customers. In addition, Janisko failed to respond to NASD requests for information.

**Carole J. Leavell (Registered Representative, Huber Heights, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Leavell must demonstrate that she has paid \$3,905.25 in restitution to a public customer should she seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Leavell consented to the described sanctions and to the entry of findings that she received a \$3,905.25 check from a public customer for an annual premium payment on a variable life policy. Instead, Leavell deposited the check into her bank account, according to the findings.

**Charles David Murray (Registered Representative, Middletown, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. In addition, Murray must demonstrate that he has made restitution should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Murray consented to the described sanctions and to the entry of findings that he guaranteed to repay public customers the difference between the value of their combined accounts and \$210,000. Murray also exercised discretion in the account of a public customer without obtaining written discretionary authorization from the customer and without written acceptance of the account as discretionary by his member firm, according to the findings.

**Eric F. Schiros (Registered Representative, Cleveland, Ohio)** was fined \$46,000 and barred from association with any member of the NASD in any capacity. In addition, Schiros must demonstrate that he has paid \$10,000 in restitution to a public customer should he seek re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Schiros directed the transfer of funds totaling \$10,000 from the securities account of a public customer to the bank account of another representative and thereafter converted the funds to his own use. In addition, Schiros failed to respond to NASD requests for information.

**James Paul Stroth (Registered Representative, Greensburg, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000 and barred from association with any member of the NASD in any capacity. In addition, Stroth must demonstrate that he has paid \$55,000 in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Stroth consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$55,000.

**Cyrus Veval (Registered Representative, Troy, Michigan)** 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 three business days. Without admitting or denying the allegations, Veval consented to the described sanctions and to the entry of findings that he prepared and delivered sales literature to the public without obtaining prior approval by a registered principal.

According to the findings, the literature contained exaggerated, promissory, and misleading statements. Specifically, it implied that the investment offered earnings of 16 percent or more and failed to reflect any risks of fluctuating prices and the uncertainty of yield. The NASD also found that the sales literature implied that a

prospectus was available, when one did not exist, and failed to identify the name of Veval's broker/dealer.

### June Actions

**William T. Bales (Registered Principal, Whitehouse, Ohio)** and **David A. Bondy (Registered Representative, Maumee, Ohio)** were each fined \$5,000 and suspended from association with any member of the NASD in any capacity for 30 days. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that Bales and Bondy engaged in private securities transactions with public customers without providing prior written notice to or obtaining written consent from their member firm.

**Frank J. Custable, Jr. (Registered Representative, Glendale Heights, Illinois)** was fined \$100,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that Custable executed unauthorized transactions in the accounts of public customers.

In addition, Custable used deceptive or fraudulent practices to induce customers to pay for securities. Specifically, Custable guaranteed the customers a profit and informed them that they could get a quick return on their money when, in fact, the company had suffered financial hardships and its stock had been delisted.

Custable has appealed this action to the SEC. The sanctions, other than the bar, are not in effect pending consideration of the appeal. The SEC refused to grant Custable's request for a stay of the bar.

**Eric William Hermanson (Registered Representative, Green Bay, Wisconsin)** 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, Hermanson consented to the described sanctions and to the entry of findings that he obtained a \$15,262.80 check from a public customer for the purchase of an insurance policy. The NASD found that, without the customer's knowledge or consent, Hermanson used only \$2,446 of the funds for the purchase of the policy and retained the remaining \$12,816.80 for his own use and benefit.

The NASD also determined that Hermanson obtained a \$15,000 check from two public customers and two additional checks totaling \$5,000 issued by his member firm payable to these customers representing proceeds of an insurance product owned by the customers. According to the findings, the customers instructed Hermanson to transfer these funds to another insurance product. Without their knowledge or consent, Hermanson failed to transfer the funds and, instead, retained them for his own use and benefit.

In addition, the NASD found that Hermanson failed to respond to NASD requests for information.

**John David Maines (Registered Representative, Indianapolis, Indiana)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Maines obtained from a public customer a \$25,000 check intended for investment purposes. Maines deposited only \$20,000 into the investment and retained the remaining \$5,000 for his personal use and benefit.

**Freddie T. Powell (Registered Representative, Milford, Indiana)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Powell signed customers' names to seven checks totaling \$5,650.44 that he caused to be issued from customers' insurance policies. Powell then used the funds for his own benefit or to pay premiums on other persons' policies without the customers' knowledge or consent.

In addition, Powell received a \$5,451.18 check from a public customer with instructions to deposit the check to a variable appreciable life insurance policy. Instead, he deposited only \$4,000 of the funds to the policy and used the remaining \$1,451.18 for his personal ben-

efit. Powell also failed to respond to NASD requests for information.

**Charles Spencer Schibilla (Registered Representative, Country Club Hill, Illinois)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. In addition, Schibilla must submit proof of restitution totaling \$45,194 with any future application for association with a member firm. The sanctions were based on findings that Schibilla obtained checks totaling \$45,194 from policy loans, cash surrender values, and dividend withdrawals from insurance policies owned by public customers. Without the customers' knowledge and consent, Schibilla signed their names to the checks and deposited the checks in an account he controlled. Schibilla also failed to respond to NASD requests for information.

**Philip Bernard Tasselmyer (Registered Representative, Lockport, New York)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. In addition, Tasselmyer must pay \$8,000 in restitution to a public customer if he seeks to re-enter the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Tasselmyer misappropriated and converted to his own benefit \$8,000 in customer funds. In addition, Tasselmyer failed to respond to NASD requests for information.

### July Actions

**Baring & Brown, Inc. (Chicago, Illinois)** David G. Pisciarino (Registered Principal, Chicago, Illinois), and Brett S. Briggs (Registered Principal, Chicago, Illinois) submitted an Offer of Settlement pursuant to which the firm was fined \$25,000. Pisciarino was fined \$50,000, barred from association with any member of the NASD in any capacity, and required to pay \$50,000 in restitution to a customer before seeking re-entry to the securities industry through the NASD's eligibility proceedings. Briggs was fined \$10,000 and suspended from association with any member of the NASD in any capacity for six months.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pisciarino and Briggs, failed to maintain its required minimum net capital. In addition, the NASD found that the firm, acting through Pisciarino, prepared inaccurate net capital computations and filed inaccurate FOCUS Parts I and IIA reports. The finding also stated that the firm, acting through Pisciarino, failed to file FOCUS Part IIA reports, to file FOCUS Part IIA reports in a timely manner, and to file mid-month financial reports promptly.

Furthermore, the NASD determined that Pisciarino accepted \$50,000 from a public customer for investment purposes and failed to follow the customer's instruction. Instead, he used the funds for his personal benefit and the benefit of Baring & Brown, according to the findings. Pisciarino also failed to respond to NASD requests for information.

**Howard N. Barlow (Registered Representative, Glendale Heights, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Barlow consented to the described sanctions and to the entry of findings that he engaged in securities transactions for the account of a public customer without the customer's knowledge or consent to exercise discretion in the account.

**James R. Baron (Registered Representative, Park Forest, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$3,000 and barred from association with any member of the NASD in any capacity. In addition, Baron must pay \$549.70 in restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Baron consented to the described sanctions and to the entry of findings that he received from public customers cash totaling \$549.70 intended as payment for their insur-

ance policies. However, the NASD found that Baron used the funds for other purposes.

**Thomas Eugene Felty (Registered Representative, Frankfort, Indiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,600 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Felty consented to the described sanctions and to the entry of findings that he cashed six checks totaling \$310.64 issued to public customers representing repayments of premiums. The NASD found that, without the knowledge or consent of the customers, Felty retained the money for six months before returning it to the customers.

**Michael D. Huwe (Registered Representative, East Peoria, Illinois)** was fined \$41,200 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Huwe received from a public customer \$3,423.92 in cash for life insurance policy payments. Huwe used only \$2,167.42 as instructed and used \$1,256.50 for other purposes. In addition, Huwe failed to respond to NASD requests for information.

**Lonnie Hyde, Jr. (Registered Representative, Woodridge, Illinois)** was fined \$87,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hyde obtained two checks totaling \$17,118.17 representing a request for a loan against a customer's life insurance policy and the cash surrender of another customer's life insurance policy. Hyde failed to forward the checks to the customers and, instead, deposited the funds in a checking account for which the beneficial owner was another individual. Hyde also failed to respond to NASD requests for information.

**James Robert Linneweber (Registered Representative, Linton, Indiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Linneweber consented to the described sanctions and to the entry of findings that he received \$75 in cash from public customers for the purchase of an insurance product. The NASD found that Linneweber misappropriated the \$75 and retained the funds for his own use and benefit.

**Steve M. Long (Registered Representative, Fort Wayne, Indiana)** 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, Long consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers without providing prior written notice to his member firm.

**Matthew Andrew Look (Registered Representative, Milwaukee, Wisconsin)** 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. In addition, Look must pay \$1,242 in restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Look consented to the described sanctions and to the entry of findings that he obtained from two public customers funds totaling \$1,242 intended for payments of insurance premiums on policies owned by the customers. The NASD found that Look, without the customers' knowledge or consent, misappropriated the funds and retained the monies for his own use and benefit.

**Richard W. McFayden, Jr. (Registered Representative, Cheektowaga, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$125,000 and barred from association with any member of the NASD in any capacity. In addition, McFayden must pay \$63,633 in restitution to his member firm before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, McFayden consented to the described sanctions and to the entry of findings that he misappropriated \$63,633 in customers' funds without their knowledge or consent. Specifically, the NASD found that McFayden submitted false loan application forms on the customers' insurance policies, obtained possession of the loan proceeds checks, endorsed the checks, and deposited the funds into a bank account over which McFayden had signatory authority. The NASD also found that McFayden failed to respond to an NASD request for information.

**Eugene F. Shareef (Registered Principal, Livonia, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity.

Without admitting or denying the allegations, Shareef consented to the described sanctions and to the entry of findings that he received a \$1,000 check from a public customer with instructions to invest in a bond fund. The NASD found that Shareef failed to follow the customer's instructions, cashed the check, and used the funds for his personal benefit until six months later when he invested the \$1,000 as previously requested by the customer.

**Roger H. Simmons (Registered Representative, Gurnee, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,000 and barred from association with any member of the NASD in any capacity. In addition, Simmons must pay \$13,729 in restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Simmons consented to the described sanctions and to the entry of findings that he signed a customer's name to disbursement request forms without the customer's knowledge or consent. This activity resulted in a surrender of the customer's paid-up additions to his insurance policy totaling \$10,524.96. Moreover, the NASD determined that Simmons obtained checks on the aforementioned amount made payable to his half-sister, deposited the checks in an account in which he had a beneficial interest, and used the monies to pay premiums on other insurance policies.

In addition, the findings stated that Simmons signed the same customer's name to disbursement request forms without the customer's knowledge or consent resulting in loans against the customer's insurance policy totaling \$2,954.04. The NASD found that Simmons applied these funds to pay premiums on two other insurance policies.

The findings also stated that Simmons received a \$250 check made payable to his mother as a result of a loan from another customer's life insurance policy that was procured without the customer's knowledge or consent. The NASD determined that Simmons deposited the funds into an account in which he had a beneficial interest and used the monies to pay premiums on other insurance policies without the customer's knowledge or consent.

**Daniel J. Steffen (Registered Representative, Wauwatosa, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$300,000 and barred from association with any member of the NASD in any capacity. In addition, Steffen must pay restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Steffen consented to the described sanctions and to the entry of findings that he accepted personal checks totaling \$187,600 from two public customers with instructions to use the funds as payment for single premium annuities. The NASD found that Steffen failed to follow the customers' instructions and used the funds for other purposes.

The findings also stated that Steffen received \$167,322.20 in personal checks from two other customers with instructions to deposit the funds into a guaranteed fund. According to the findings, Steffen instead deposited the funds into insurance service accounts for the customers and purchased insurance policies in the cus-

tomers' names. Furthermore, the NASD determined that Steffen made withdrawals totaling \$77,710 from the accounts for purposes other than for the benefit of the customers.

**James F. Turner, Jr. (Registered Representative, Milwaukee, Wisconsin)** 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. In addition, Turner must pay restitution to a public customer before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Turner consented to the described sanctions and to the entry of findings that he received \$4,235.72 from a public customer for the purchase of a life insurance policy. The NASD found that Turner failed to follow the customer's instructions promptly and made only 11 monthly payments on the policy totaling \$2,338.80.

**Mark Fitzgerald Verr (Registered Representative, Brookfield, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$200,000 and barred from association with any member of the NASD in any capacity. In addition, Verr must pay \$160,407 in restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Verr consented to the described sanctions and to the entry of findings that he obtained a total of \$160,407 from three customer accounts without the customers' knowledge or consent. Specifically, the findings stated that Verr submitted to his member firm requests to withdraw funds from the customers' accounts and retained the monies for his own use and benefit. Verr also failed to respond to NASD requests for information.

**John A. Zdanecis (Registered Representative, Rochester, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$27,500 and barred from association with any member of the NASD in any capacity. In addition, Zdanecis must pay \$1,350 in restitution to a public customer before seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Zdanecis consented to the described sanctions and to the entry of findings that he misappropriated and converted customer funds totaling \$1,350 to his own use. In addition, Zdanecis failed to respond to NASD requests for information.

**Gary D. Barton (Registered Principal, Englewood, Colorado)** was fined \$10,000 and required to requalify by examination as a general securities principal. The sanctions were based on findings that Barton recommended and effected the purchase of securities for the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers.

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

### May Actions

**Escalator Securities, Inc. (Palm Harbor, Florida)** and **Howard A. Scala (Registered Principal, Tarpon Springs, Florida)** were fined \$50,000, jointly and severally. In addition, Scala was suspended from association with any member of the NASD in any capacity for one month and required to requalify by examination before acting in a registered capacity.

The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 9. The sanctions were based on findings that the firm, acting through Scala, effected principal sales of a non-Nasdaq, over-the-counter security to public customers at unfair prices, including markups ranging

from 68.2 to 147.5 percent above the firm's contemporaneous costs.

Furthermore, the firm, acting through Scala, charged its customers \$33 per transaction in addition to the price of the securities disclosed in the prospectuses. In addition, the firm, acting through Scala, effected options transactions for public customers while failing to obtain required option-account information. The firm also failed to execute two mutual fund subscriptions promptly.

Escalator Securities and Scala have appealed this case to the SEC, and the sanctions are not in effect pending consideration of the appeal.

### June Actions

**Christopher J. DiBenedetto (Registered Representative, Sebastian, Florida)** was fined \$25,000 and suspended from association with any member of the NASD in any capacity for three months. The sanctions were based on findings that DiBenedetto engaged in the offer and sale of securities outside the normal course of business with a member of the NASD and failed to give his member firm prior written notice of such activities. Furthermore, in the offer and sale of securities, DiBenedetto failed to exercise reasonable diligence to ascertain the financial soundness and operating history of the issuer and engaged in the offer and sale while a registration statement had not been filed for such securities.

### July Actions

**Floyd A. Cardwell, Jr. (Registered Representative, Edgewood, 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 Cardwell falsified insurance applications and submitted initial premiums for 11 fictitious persons to his member firm to generate commissions. Cardwell also failed to respond to NASD requests for information.

**Anthony J. Falcone (Registered Representative, Annandale, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Falcone consented to the described sanctions and to the entry of findings that he forged customers' signatures on insurance forms and submitted these forms to his member firm.

**Manuel D. Gana, Sr. (Registered Representative, Vienna, 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 Gana failed to respond to NASD requests for information regarding transactions he effected for the accounts of public customers.

**Timothy M. Hodgins (Registered Representative, Alexandria, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$42,000 (less any amount of restitution he has paid to customers) and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hodgins consented to the described sanctions and to the entry of findings that he recommended to a public customer the redemption of recently purchased shares of a mutual fund. According to the findings, he made this recommendation without having reasonable grounds for believing the transaction was suitable for the customer.

In addition, the NASD found that Hodgins induced the same customer to sign forms requesting the redemption of the mutual funds shares, and directed that the checks be made payable to him and sent to his personal residence. The findings also stated that Hodgins converted the funds to his own use and benefit.

**Daniel W. Holmes (Registered Representative, Aurora, Colorado)** was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Holmes received from public customers \$1,500 in cash intended for payment of insurance premiums. Holmes failed to turn the payments over to the insurance company and, instead, retained the funds for his own use and benefit. In addition, Holmes failed to respond to NASD requests for information.

**Samuel P. Jesselson (Registered Representative, Jacksonville, Florida)** submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for three months. Without admitting or denying the allegations, Jesselson consented to the described sanction and to the entry of findings that he recommended the purchase and sale of mutual funds in the account of a public customer. According to the findings, these recommendations were made without having reasonable grounds for believing such transactions were suitable for the customer.

**Barry A. Kittoe, Sr. (Registered Representative, Stephens City, Virginia)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kittoe made improper use of an insurance customer's funds by depositing a \$1,497.76 cash surrender check intended for the purchase of a life insurance policy to his own account and using the proceeds for his own use and benefit.

**Manchester Rhone Securities Corporation, Norwell, Massachusetts**, was suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the request for information, the listing also includes the date the suspension concluded.

**Clement W. McLaughlin, Jr. (Registered Representative, Yardley, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2 million and barred from association with any member of the NASD in any capacity. In addition, McLaughlin must pay restitution to investors before seeking re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, McLaughlin consented to the described sanctions and to the entry of findings that he solicited members of the public, including his customers, to invest funds through an unregistered and fictitious entity. Moreover, the NASD found that McLaughlin represented to the individuals that their funds would be invested in tax-free municipal and other securities. According to the findings, McLaughlin received more than \$1.7 million from the investors and converted most of it to his personal use and benefit.

**William W. Peterman (Registered Principal, Fairfax, Virginia)** was fined \$10,000 and barred from association with any member of the NASD in any principal capacity. The sanctions were based on findings that a former member firm, acting through Peterman, disseminated an offering memorandum to investors that failed to disclose certain material information. In addition, the firm, acting through Peterman, filed FOCUS Parts I and IIA reports for certain months that contained inaccurate net capital computations and filed a late annual audited report. Peterman, acting on behalf of the firm, also conducted a securities business without maintaining its minimum required net capital.

Further, Peterman failed to maintain accurate books and records in that the firm's general ledger and trial balance did not include, or inaccurately reflected, various balances and liabilities. Moreover, Peterman inaccurately computed the firm's net capital and aggregate indebtedness and failed to provide telegraphic notice of the existence of material inadequacies in the firm's internal controls.

**Keith D. Renner (Registered Representative, West Mifflin, Pennsylvania)** 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, Renner consented to the described sanctions and to the entry of findings that he received from two public customers funds totaling \$4,650 intended for the purchase of a common stock. The NASD determined that Renner used the funds to purchase the stock in his own name, sold shares of the stock, and used the sales proceeds for his own benefit. The findings also stated that Renner engaged in private

securities transactions while failing to provide prior written notice to his member firm.

**Mark D. Ritacco (Registered Representative, Broomall, Pennsylvania)** 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, Ritacco consented to the described sanctions and to the entry of findings that he forged a public customer's signature on a life insurance policy application and submitted the form to his member firm without the authorization or consent of the customer.

**Thomas M. Rodes (Registered Representative, Garrett Park, Maryland)** submitted an Offer of Settlement pursuant to which he was fined \$3,000 and suspended from association with any member of the NASD in any capacity for 90 days. Without admitting or denying the allegations, Rodes consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice to his member firms.

**Ronald Earl Smits (Registered Representative, Grandville, Michigan)** was fined \$5,000 and barred from association with any member of the NASD in any capacity. The SEC affirmed the sanctions following an appeal of a decision by the NBCC.

The sanctions were based on findings that Smits received a \$100,000 check from a public customer to purchase a certificate of deposit. Smits failed to follow the customer's instructions and, instead, engaged in a fraudulent scheme to obtain the customer's signature to purchase interests in a limited partnership without the customer's knowledge or consent. Moreover, Smits attempted to conceal the unauthorized investment from the customer through a series of deceptive and misleading letters.

**Mark R. Theobald (Registered Principal, Silver Spring, Maryland)** 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, Theobald consented to the described sanctions and to the entry of findings that he opened a money market account in the name of a firm by forging the signature of the firm's president on the new account form. According to the findings, Theobald subsequently came into possession of a \$23,450.72 check issued by a life insurance company payable to the aforementioned firm. The NASD found that Theobald forged the president's endorsement on the check, deposited it to the newly opened money market account, and converted those funds to his own use by signing the president's name on 16 redemption drafts.

**Bradley L. Uhlfelder (Registered Representative, Owings Mills, Maryland)** was fined \$5,000 and barred from association with any member of the NASD in any capacity with the proviso that he may apply to remove the bar after he satisfies a \$17,480 arbitration award. The sanctions were based on findings that he failed to pay the 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)

### May Actions

**Christopher John Boeckhaus (Registered Representative, Glendale, New York)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Boeckhaus must demonstrate he has paid \$12,510 plus interest in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Boeckhaus effected purchase transactions in the accounts

of public customers without the knowledge or consent of the customers.

**Educators Financial Management, Inc. (Port Jefferson, New York)** and **Matthew R. Leo (Registered Principal, Mt. Sinai, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Leo, processed customer funds through the firm's operating account rather than through a Special Account for the Exclusive Benefit of Customers.

The NASD also found that the firm, acting through Leo, conducted a securities business while failing to maintain its required minimum net capital. In addition, the findings stated that the firm, acting through Leo, obtained a signature guarantee stamp of a commercial bank and utilized it to forge the required guarantee on customer mutual fund liquidation requests.

**First Independence Group, Inc. (Garden City, New York)**, **John Joseph Gremmo, III (Registered Principal, Babylon, New York)**, **Frank Paul Giraldi (Registered Principal, East Norwich, New York)**, and **Mark Steven Milana (Registered Representative, Dix Hills, New York)**. The firm was fined \$308,677.40, and Gremmo was fined \$10,000. Giraldi was fined \$62,000 and barred from association with any member of the NASD in a supervisory or principal capacity; Milana was fined \$40,000 and also barred from association with any member of the NASD in a supervisory or principal capacity. Both Giraldi and Milana are required to requalify by examination if they desire to function in a registered representative capacity. In addition, Giraldi and Milana are prohibited from maintaining a proprietary interest in any member of the NASD other than a noncontrolling interest in a member whose shares are publicly traded and subject to the reporting requirements of Section 12 of the Securities Exchange Act of 1934.

The sanctions against the firm, Giraldi, and Milana were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 10. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Gremmo, Giraldi, and Milana, engaged in a course of conduct that operated as a fraud on customers. The firm was not a market maker in any of the securities it sold to customers, and all transactions were effected on a riskless principal basis.

The prices at which the securities were sold included excessive and fraudulent markups ranging from 11.11 to 188.46 percent above the firm's contemporaneous cost for the securities. The NASD also found that the firm, acting through Giraldi, failed to disclose on customer confirmations the amount of the markups charged by the firm as required by SEC Rule 10b-10. In addition, the firm, acting through Giraldi, failed to establish and implement supervisory procedures to detect and prevent the aforementioned violations.

Furthermore, the firm, acting through Giraldi, failed to report through the non-Nasdaq reporting system the highest price at which it sold and the lowest price at which it purchased a common stock, as well as the total volume of purchases and sales executed in the stock. The firm, acting through Giraldi, also failed to report whether the trades establishing the highest price at which the firm sold and the lowest price at which the firm purchased the same common stock represented an execution with a customer or with another broker/dealer, as required by Schedule H of the NASD's By-Laws.

The firm, Giraldi, and Milana have appealed this action to the SEC, and their sanctions, other than the bars in a supervisory or principal capacity, are not in effect pending consideration of the appeal. The sanctions against Gremmo are final.

**Robert Ralph Frega (Registered Representative, Wayne, New Jersey)** 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. In addition, Frega must demonstrate that he has paid \$5,000 in restitution to public customers should he seek re-entry to the securities

industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Frega consented to the described sanctions and to the entry of findings that he received \$5,000 from three public customers for the purchase of various insurance policies. According to the findings, Frega failed to apply the monies as instructed and to return the funds to the customers.

**John Charles Maucere (Registered Principal, Scotch Plains, New Jersey)** was fined \$50,000, suspended from association with any member of the NASD in any capacity for six months, and barred from association with any member of the NASD in any principal capacity. In addition, Maucere was barred from holding an equity or debt interest in a broker/dealer. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 10.

The sanctions were based on findings that Maucere, acting on behalf of a former member firm, engaged in two separate acts of parking securities to hide the firm's ownership of the securities and to enhance the net capital position of the firm, with the fraudulent intent of circumventing SEC Rule 15c3-1. Furthermore, the firm, acting through Maucere, effected securities transactions while failing to maintain its required minimum net capital. In addition, Maucere failed to disclose on his Uniform Application for Securities Industry Registration (Form U-4) that he had filed for personal bankruptcy. Maucere also failed to pay a \$1,615.72 arbitration award.

Maucere has appealed this action to the SEC, and the sanctions, other than the bars, are not in effect pending consideration of the appeal.

**Alexander Geils Minella (Registered Principal, White Plains, New York)**, **Parsons Eng (Registered Principal, Jackson Heights, New York)**, **Michael Joseph Carber (Registered Representative, Carmel, New York)**, **Joseph Charles Zaborowski (Registered Representative, Staten Island, New York)**, and **Darren Leon Katz (Registered Representative, Staten Island, New York)**. Minella was fined \$1,795,000 and barred from association with any member of the NASD in any capacity, and Eng was fined \$1,365,000 and barred from association with any member of the NASD in any capacity. Carber was fined \$1,395,000 and barred from association with any member of the NASD in any capacity, and Zaborowski was fined \$230,000 and barred from association with any member of the NASD in any capacity. Katz was fined \$20,000, suspended from association with any member of the NASD in any capacity for five business days, and required to requalify by examination as a registered representative. In addition, Katz was required to make restitution to a public customer.

The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 10. They were based on findings that Minella and Eng instructed Carber, Zaborowski, and Katz to effect numerous transactions in the accounts of public customers without the knowledge, authorization, or consent of the customers. In order to make it appear that their firm was in better financial condition, Minella and Eng instructed representatives of their member firm to "park" securities in the accounts of public customers without the knowledge, authorization, or consent of the customers.

Carber and Zaborowski also failed to execute customer sell orders in that Minella directed them not to accept sell orders from customers unless they could find another customer to purchase the securities that were being sold. In addition, Minella, acting on behalf of a former member firm, effected securities transactions while failing to maintain its required minimum net capital. Furthermore, Carber and Zaborowski failed to file amended Form U-4 applications for securities industry registration to disclose that they were the subject of investment-related, consumer-initiated complaints. Moreover, Minella failed to respond to NASD requests for information.

**Vincent Michael Varano (Registered Representative, Lake Hiawatha, New Jersey)** 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. In addition, Varano 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 proceedings. Without admitting or denying the allegations, Varano consented to the described sanctions and to the entry of findings that he received \$80,000 from public customers to purchase municipal bonds. The findings stated that Varano failed to invest the funds as instructed and to return the monies to the customers.

#### June Actions

**Loren H. Belford (Registered Representative, East Northport, New York)** was fined \$45,000 and barred from association with any member of the NASD in any capacity. In addition, Belford must pay \$5,000 in restitution to a public customer before seeking re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Belford received \$5,000 from a public customer for the purchase of commercial paper and converted the funds to his own use and benefit. In addition, Belford failed to respond to NASD requests for information.

**John Twomey Booth (Registered Principal, Glen Rock, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and suspended from association with any member of the NASD as a general securities representative or principal for 180 days. Without admitting or denying the allegations, Booth consented to the described sanctions and to the entry of findings that a former member firm, acting through Booth, permitted a statutorily disqualified individual to be associated with the firm and to act in capacities requiring registration without having applied for membership continuance.

**Joseph DelValle (Registered Representative, Wall Township, New Jersey)** was fined \$60,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that DelValle executed transactions in the accounts of public customers without their authorization, knowledge, or consent. In addition, DelValle failed to respond to NASD requests for information.

**Aloysius James Falussy (Registered Representative, Dix Hills, 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. In addition, Falussy must make restitution to public customers if he seeks re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Falussy consented to the described sanctions and to the entry of findings that he caused stock transactions to be executed in the account of a public customer without the knowledge, authorization, or consent of the customer. In addition, Falussy failed to respond timely to NASD requests for information.

**William Eugene Flower (Registered Representative, Yonkers, New York)** submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination as a general securities representative. In addition, Flower must pay \$2,500 in restitution to public customers if he seeks re-entry to the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Flower consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers. The NASD also found that certain of the aforementioned unauthorized transactions were unsuitable for one of the customers given the customer's financial situation and needs. In addition, Flower failed to respond to NASD requests for information.

**Sean Antony Gathercole (Registered Representative, Brooklyn, 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 Gathercole failed to respond to NASD requests for information concerning a customer complaint.

**Gregg L. Gordon (Registered Representative, Hot Springs, Arkansas)** was fined \$1,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gordon brought written materials with him into the test area to assist him on the Series 7 examination.

**Walter Leroy Harrah, III (Registered Representative, Sound Beach, New York)** was fined \$75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Harrah solicited and received from a public customer \$700 for investment in a company that Harrah operated and subsequently sent statements to the customer reflecting the purported investment. Consequently, Harrah did not send further statements, nor did he return the customer's original investment, or the purported investment earnings, thereby constituting conversion of the customer funds by Harrah.

Harrah also engaged in private securities transactions without providing his member firms with prior written notification. In addition, Harrah fraudulently indicated on monthly statements to the same public customer that the company he operated was a member of the NASD when, in fact, it was not. Moreover, Harrah failed to respond to NASD requests for information.

**Andrew William Hongach (Registered Representative, Irvington, New York)** was fined \$75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hongach engaged in fraudulent activities. Specifically, he caused the address on the joint account of two public customers to be changed to his sister's address, forged one of the customer's signature on an Internal Revenue Service Form W-9, and effected transactions in the same account and in the account of another customer without the knowledge or consent of the customers. In addition, Hongach caused a \$14,441.76 check to be drawn on the aforementioned joint account and directed that the funds be sent to his sister's address. Hongach also failed to respond timely to NASD requests for information, according to the findings.

**Joseph Jenkins, Jr. (Registered Representative, Brooklyn, New York)** was fined \$150,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Jenkins executed transactions in the accounts of public customers without the customers' prior authorization, knowledge, or consent. Jenkins also failed to execute a public customer's order to sell shares of a common stock, failed to respond to NASD requests for information, and failed to pay a \$10,000 arbitration award.

In addition, Jenkins engaged in the investment banking and securities business as an associated person when subject to statutory disqualification and without proper registration with the NASD. Furthermore, Jenkins made fraudulent misrepresentations to a public customer in the purchase of a common stock.

**Michael Vincent Jones (Registered Representative, Carlstadt, New Jersey)** was fined \$95,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Jones effected transactions in the accounts of public customers without their knowledge, authorization, or consent. Jones also failed to pay an arbitration award and failed to respond to NASD requests for information.

**Miro Robert Kamenik (Registered Representative, Hoboken, New Jersey)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kamenik presented a \$3,750 check to his member firm to pay the unsecured debit balance in his personal securities account but the check was returned due to insufficient funds. In addition, Kamenik failed to respond to NASD requests for information.

**James Warren Kindberg, Jr. (Registered Representative, Brooklyn, New York)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kindberg purchased shares of a common

stock in the accounts of public customers without their knowledge or consent. In addition, Kindberg failed to respond to NASD requests for information.

**Thomas Malone (Registered Representative, Westhampton, New York)** was fined \$75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Malone caused numerous unauthorized transactions to be executed in the accounts of public customers. Malone also failed to execute a public customer's sell orders in a timely manner and failed to respond to NASD requests for information.

**Paul Delafield Penvenne (Registered Representative, New York, New York)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Penvenne profited at the expense of his customers by interposing his personal securities account between his customers and the best available market. As a result, he overcharged them \$5,130.63.

**Michael Nicholas Pizzo (Registered Representative, Medford, New York)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Pizzo failed to execute a public customer's sell order. In addition, Pizzo failed to respond to NASD requests for information.

**William Anthony Reis (Registered Representative, Amston, Connecticut)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Reis effected unauthorized transactions in the account of a public customer. In addition, Reis failed to respond fully to NASD requests for information in a timely manner.

**Michael D. Risley (Registered Representative, New York, 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 Risley caused transactions to be executed in a customer's account without the customers' authorization, knowledge, or consent. Risley also failed to disclose on his Form U-4 in a timely manner that he was the subject of an internal investigation at his member firm. In addition, Risley failed to respond to NASD requests for information.

**William Some (Registered Representative, Hackensack, New Jersey)** 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. In addition, Some must make restitution to a public customer if he seeks to re-enter the securities industry through the NASD's eligibility proceedings.

Without admitting or denying the allegations, Some consented to the described sanctions and to the entry of findings that he caused stock and option trades to be executed in the account of a public customer without the customer's knowledge or consent. The NASD also found that Some failed to execute the same customer's sell order in a timely manner. In addition, the findings stated that Some promised to personally refund losses sustained in the same customer's account. Furthermore, Some failed to respond to NASD requests for information.

**Joseph William Swint (Registered Representative, Brooklyn, New York)** was fined \$60,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Swint failed to execute sell orders for public customers. Swint also received a \$2,000 check from a public customer for investment purposes, endorsed the check, and converted the proceeds to his own use and benefit. In addition, Swint opened a securities account with a member firm and failed to notify the firm of his association with another member firm. Swint also failed to respond to NASD requests for information.

**Robert Wunderlich (Registered Representative, Coral Springs, Florida)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Wunderlich purchased securities for a public customer without the customer's prior authorization, knowledge, or consent.

Wunderlich also failed to respond to NASD requests for information.

**Wilbur August Zosche, Jr. (Registered Representative, Cedar Grove, New Jersey)** was fined \$5,000, suspended from association with any member of the NASD in any capacity for two years, and required to requalify by examination as a registered representative. The sanctions were based on findings that Zosche engaged in private securities transactions without providing prior written notice to his member firm. Without the knowledge or authorization of a public customer, Zosche also forged the customer's signature on a form requesting a \$20,000 loan against the customer's variable life insurance policy. Zosche took possession of the \$25,264.08 loan check and forged the customer's endorsement on the check, thereby misappropriating the funds.

#### July Actions

**Bruce Nissim Binler (Registered Representative, East Northport, New York)** was fined \$75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Binler effected unauthorized purchase and sales transactions in the account of a public customer. Binler also sent fictitious documents to the same customer reflecting that the unauthorized transactions had been canceled or that the positions had been sold at a profit. In addition, Binler failed to respond to NASD requests for information.

**Ron Keith Harrison (Registered Representative, Greenwood Lake, New York)** was fined \$75,000 and barred from association with any member of the NASD in any capacity. In addition, Harrison is required to pay \$57,000 in restitution to customers. The sanctions were based on findings that Harrison received \$62,500 from public customers for investment purposes, failed to follow the customers' instructions and, instead, converted \$57,000 of the funds to his own use and benefit. Harrison also effected the purchase of shares of a common stock in the joint account of public customers without their knowledge or consent. In addition, Harrison failed to respond to NASD requests for information.

**Thomas Charles Martin (Registered Representative, Fair Haven, New Jersey)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Martin acted as a general securities representative and principal without becoming registered with the NASD or seeking relief from a previous bar imposed by the NASD.

**William Joseph Mueger (Registered Principal, East Meadow, New York), Jay M. Vermonty (Associated Person, Flushing, New York) and Kenneth Lee Lucas (Registered Principal, Englewood, Colorado)** were fined \$75,000 and barred from association with any member of the NASD in any capacity. Vermonty was fined \$95,000 and barred from association with any member of the NASD in any capacity. Lucas submitted an Offer of Settlement pursuant to which he was suspended

from association with any member of the NASD in any principal capacity for 10 business days.

The sanctions were based on findings that Mueger managed a former member firm's investment banking or securities business while suspended as a general securities principal. In addition, Mueger and Vermonty were subject to statutory disqualification when they became associated with the same firm after the NASD revoked their registrations. Further, the NASD found that Lucas continued the association of Mueger with this firm after revocation of his registration. Vermonty also failed to pay a \$13,644 arbitration award and failed to respond to NASD requests for information.

**James Charles Popken (Registered Representative, New York, New York)** was fined \$50,000 and suspended from association with any member of the NASD in any capacity for 30 business days. The sanctions were based on findings that Popken made unauthorized transactions in public customers' accounts.

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)

#### July Actions

**James F. Chase (Registered Principal, Rutland, Vermont)** 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, Chase consented to the described sanctions and to the entry of findings that he engaged in a course of conduct involving unauthorized transfers of customer positions in three accounts to hide customer losses.

**Dean Witter Reynolds Inc. (Rutland, Vermont)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to adequately supervise a registered representative and to enforce its written supervisory procedures in a branch office.

**Eric E. Goodwin (Registered Representative, Derry, 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, Goodwin consented to the described sanctions and to the entry of findings that he forged the signatures of two employees of his member firm on payroll checks totaling \$940 and deposited the checks into his personal checking account.

**Daniel E. McLaughlin (Registered Representative, Portsmouth, New Hampshire)** 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, McLaughlin consented to the described sanctions and to the entry of findings that he submitted to his member firm applications for life insurance policies on fictitious persons. In addition, McLaughlin failed to respond to NASD requests for information.

**William K. Murphy (Registered Representative, Providence, Rhode Island)** 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, Murphy consented to the described sanctions and to the entry of findings that he issued two personal checks totaling \$28,227 to his member firm as payment for two call options that he purchased in his account. However, the checks were subsequently returned for insufficient funds.

Market Surveillance Committee

#### May Actions

**Michael Markowski (Registered Principal, New York, New York)** was fined \$50,000 and barred from association with any member of the NASD in any principal capacity and from maintaining a debt or equity interest in any member firm. In addition, he was suspended from association with any member of the NASD in any capacity for two years. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the Market Surveillance Committee.

The sanctions were based on findings that Markowski failed to respond to repeated written and oral requests for information made by the NASD concerning access to his member firm's books and records. Markowski also failed to provide the NASD with his current address.

#### July Actions

**Kenneth L. Walker (Registered Representative, Akron, Ohio)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Walker must pay \$4,602.36 in restitution to his member firm prior to seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$4,602.36. Specifically, the findings stated that Walker submitted false loan applications on a customer's variable annuity policy and changed the customer's address to Walker's home address.

Please direct your comments or suggestions about this publication to Michael Budzinski, Editor, NASD Regulatory & Compliance Alert, 1735 K Street, NW, Washington, DC 20006-1506, or call (202) 728-8945.

To update your mailing address, please forward any changes in writing (preferably on corporate letterhead) to Mary Barnes, NASD Operations Center, 9513 Key West Avenue, Rockville, MD 20850-3389.

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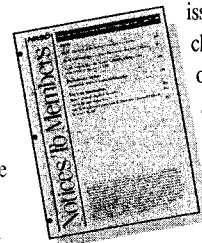
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