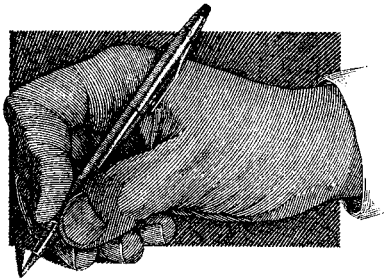


ALERT

NASD and Other SROs Launch Continuing Education Effort for Members



The NASD and five other securities industry self-regulatory organizations (SROs) have agreed to develop a single continuing education program for all securities industry registered representatives and principals.

The NASD Board of Governors, which originally authorized its Membership Committee to develop a continuing education program in July 1991, also agreed to calls from SROs to approach with an open mind any findings of an industry-wide task force recently formed to detail such a plan. In a resolution approved in early January of this year, the Board agreed to "be flexible with regard to an assessment component being a requirement of the continuing education program and that the NASD will reserve final judgment on this matter pending receipt of the recommendations of an industry task force to be formed."

"The NASD has always been open-minded about the eventual form and scope of the continuing education program," says Frank McAuliffe, Vice President, NASD Membership and Qualifications. "We do believe assessment is an important component of any continuing education program, but it doesn't mean we won't change this position when the task force reports back."

Continued, page 13

Continuing Education Task Force Responsibilities

By mid-year, an industry-wide task force is expected to:

- Review already-developed information by SROs on continuing education.
- Review the need for a continuing education program for securities industry professionals.
- Review information on continuing education programs already under study by state securities regulators and consider state requirements in the design and implementation of any such SRO program for the securities industry.
- Define the nature and scope of any such continuing education program for securities industry professionals.
- Determine the appropriateness of adding an assessment for such a program.
- Develop an action plan for designing and implementing such a program.

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Advertising

Disclosure Is Required for Communications Comparing CDs With Securities

Members are reminded to provide adequate disclosure in advertisements and sales literature that encourage investors to transfer funds from certificates of deposit (CDs) and other insured investments into riskier, non-insured products.

The current investment environment of low interest rates and strong stock market performance finds more and more investors transferring money from conservative investments such as CDs and money market accounts to securities including bonds or mutual funds. Of particular concern are unsophisticated or first-time investors unsure of the material differences between products with varying levels of risk. NASD members are required, therefore, to inform customers that while higher yields may be realized using certain securities, an investor's capital may be exposed to risk not present in CDs and other insured investments.

Generally, communications with the public must be based on principles of good faith and a sound evaluation of facts under Article III, Section 35(d)(1) of the NASD Rules of Fair Practice. Under the rule, no fact or qualification may be omitted from literature if it materially misleads investors. Members must also consider inherent risks, such as fluctuating prices and uncertain future performance, in any investment advertisement or literature.

Given its importance, the NASD has previously advised members as to their increased sales-practice and supervisory responsibility when encouraging an investor to move funds from CDs into

securities, longer-term bonds, and mutual funds. Investors should be made fully aware of differences between CDs and other fixed-income investments, especially the risk to their principal if interest rates should rise. Members have been encouraged to aggressively review and monitor their sales forces to safeguard against potential abuses, as well as establish supervisory procedures to review in-house activity.

The NASD is particularly concerned with sales of Collateralized Mortgage Obligations (CMOs) to individual CD investors seeking higher-yielding investments (see *CMO Advertising Guidelines Take Effect*, page 3). CMO advertisements and sales literature should not contain comparisons with other investment vehicles, including CDs.

Notice To Members 91-74 (November 1991) addresses specific NASD concerns about the need for disclosure when marketing bond mutual funds as substitutes for CDs. And while this Notice applies to bond-fund investing specifically, the NASD Advertising Regulation Department reminds members that the issues raised in the Notice and the specific rules cited above apply to the sale of all securities.

Any questions regarding adequate disclosure in advertising and sales literature may be directed to the NASD Advertising Regulation Department at (202) 728-8330. □

CMO Advertising Guidelines Take Effect

The NASD recently adopted and released Collateralized Mortgage Obligations (CMOs) advertising guidelines that discuss how to identify CMOs and address limitations to any claims regarding their safety, disclosure about government guarantees, and the predictability of their yield and average life.

Guidelines Regarding Communications with the Public About Collateralized Mortgage Obligations. (please see below) expand on already publicized rule amendments requiring that members file CMO advertisements with the NASD Advertising Regulation Department at least 10 days prior to use. The pre-filing requirement falls under Article III, Section 35 (c)(2) of the NASD Rules of Fair Practice and Section 8(c)(1)(B) of the NASD Government Securities Rules.

The pre-filing amendments reflect the

NASD's increasing concern over misleading CMO advertisements and an increase in the number of complaints associated with such advertisements. The NASD is particularly concerned that advertising CMOs as alternatives to certificates of deposit (CDs) falsely implies that CMOs offer the same level of safety and guarantee of interest and principal as CDs.

The *Guidelines* detail the information that should be included in CMO advertisements appearing in print, radio, or television. Additionally, the *Guidelines* provide a standard advertisement members may use that must only be filed once before initial use. If the NASD revises or expressly disapproves them, advertisements or sales literature may not be published or circulated until the member makes any specified changes. Disapproved items must be refiled with, and approved by, the NASD prior to

publication or circulation.

While the NASD believes that a pre-use filing requirement for CMO advertisements is appropriate, the NASD recognizes that it diminishes the flexibility of member firm advertising programs. Accordingly, the rule is effective through November 16, 1993. Until that date, the NASD's Fixed Income Committee will review the pre-filing requirement to determine its effectiveness in ensuring that CMO advertising is not misleading.

The NASD also intends to publish the *Guidelines* in the March 1993 *Notices To Members* and in the *NASD Manual*. For additional background on CMO filing requirements, see November *Notice To Members* 92-59. If you have questions about the *Guidelines*, contact the NASD Advertising Regulation Department at (202) 728-8330. □

Guidelines Regarding Communications with the Public About Collateralized Mortgage Obligations

1. General Considerations

In order to prevent a communication about CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following.

Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use proprietary names for CMOs as they do not adequately identify the product.

To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

Safety Claims

A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references

to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.

Claims About Government Guarantees

Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are "government guaranteed" securities. A government agency issue could instead be characterized as government agency backed. Of course, private-issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.

If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.

Simplicity Claims

CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication

should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.

Claims About Predictability

A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.

2. Print Advertising

Educational advertising, discussing generally the features of CMOs, can be a very useful and informative tool in explaining these securities to the investing public. However, such "generic" advertising should not contain anticipated yield or coupon rates.

Advertising relating to CMOs must be filed with the NASD's Advertising Regulation Department for review at least ten days prior to use, pursuant to requirements in Article III, Section 35 of the NASD Rules of Fair Practice and Section 8 of the NASD Government Securities Rules (NASD Rules).

The NASD has developed a standardized CMO yield advertisement that provides information deemed necessary to prevent the communication from being misleading. Members must file the standardized advertisement, ten days prior to its first use, with the NASD Advertising Regulation Department.

Members are not required to use the standardized advertisement. If firms do not elect to use the standardized advertisement, they should ensure that their advertising contains the same information and meets the same conditions as the standardized advertisement. Members using a non-standardized format must file the advertisement ten days prior to first use.

After an advertisement has been filed prior to initial use, subsequent use of the identical advertisement, changed only to reflect the updated information for the security being advertised, does not require re-filing with the NASD. Such advertisements must be approved by a principal (or designee) and maintained in the member firm's files as required by NASD Rules.

Standardized CMO Advertisement

The standardized advertisement contains four sections, each of which must be given an equal portion of space in the ad. The information in Sections 1 and 2 is required to be included in advertising for CMOs. The information suggested for Section 3 is optional; therefore, the member may elect to include any, all or none of this information in the advertisement. The information in Section 4 may be tailored to the member's preferred signature.

An example of the standardized format accompanies these Guidelines.

Section 1 Title - Collateralized Mortgage Obligations

Coupon Rate

Anticipated Yield/Average Life

Specific Tranche - Number & Class

Final Maturity Date

Underlying Collateral

Section 2 Disclosure Statement:

"The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions."

Section 3 Product Features (Optional):

Minimum Denominations

Rating Disclosure

Agency/Government Backing

Income Payment Structure

Generic Description of Tranche (e.g., PAC, Companion)

Section 4 Company Information:

Name, Address, Telephone Number, Representative's Name, Memberships

<p>Collateralized Mortgage Obligations</p> <p>8.50% Coupon 8.75% Anticipated Yield to 10-Year Average Life FNMA 9532X, Final Maturity March 2010 Collateral 100% FNMA 8.50%</p>	Section 1
<p><i>The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.</i></p>	Section 2
<p>\$5,000 Minimum Income Paid Monthly AAA (Implied Rating)/V-1 (Fitch Volatility Rating) U.S. Gov't Agency Backed Generic Description (e.g., PAC, Companion, Sequential Pay Bonds)</p>	Section 3
<p>Company Name Contact Person Address City, State, ZIP Code Phone Number</p> <p><i>Offered subject to prior sale and price change.</i></p> <p>Member SIPC</p>	Section 4

If this standardized advertisement is used, the following conditions must also be met:

1. All figures in Section 1 must be in equal type size.
2. The disclosure language in Section 2 may not be altered and must be given equal prominence with Section 1.
3. The prepayment assumption used to determine the advertised yield and average life must either be obtained from a nationally recognized service (e.g., Bloomberg, Telerate) or the member firm must be able to justify the assumption used. A copy of either the service's listing for the CMO or the firm's justification must be attached to the copy of the ad that is maintained in the firm's advertising files in order to verify that the prepayment scenario advertised is reasonable and to satisfy the conditions for waiving the pre-use filing requirement.
4. If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.
5. The advertisement must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.
6. If the bond advertised is an accrual bond, the following language should be included in Section 1:

"This is an accrual bond and may not currently pay principal and interest."

7. If the bond is being offered at par, the advertisement may include the yield to maturity in Section 1.

No additional information may be included in the standardized advertisement.

3. Radio/Television Advertising

Radio and television advertising alternatives are too varied to attempt to provide standardized formats for either medium. Such advertisements must be filed with the NASD at least ten days prior to first use. The storyboard or other description should accompany the filing of a television ad.

If an advertisement is filed with the NASD prior to its initial use, it is not necessary to subsequently refile the advertisement if the only changes are to update the information relating to the security being advertised. A copy of each advertisement should be approved by a principal (or designee) and should be maintained, along with a copy of the listing for the CMO or the firm's justification, in the member firm's files in accordance with NASD Rules.

The following guidelines should be followed when developing

radio and television advertisements:

1. The advertisements must be preceded by the following oral disclaimer:

"The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

2. The advertisements must disclose the information contained in the first section of the prototype print ads:

Coupon Rate, Anticipated Yield, Average Life, Final Maturity Date, Initial Issue Tranche (Number and Class), and Underlying Collateral.

3. The advertisements must contain the following oral disclosure statement:

"The yield and average life consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

4. The advertisements must state that the CMO is "offered subject to prior sale and price change."

5. If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.

6. If the bond advertised is an accrual bond, the following language should be included:

"This is an accrual bond and may not currently pay principal and interest."

7. If the bond is being offered at par, the advertisement may include the yield to maturity. □



“ASK THE ANALYST”

“Ask the Analyst” provides member firms a forum to pose questions to the NASD Advertising Regulation Department on a variety of topics. Please note that we cannot guarantee all questions will be published in this publication. However, we will respond to all questions either here or by directly contacting you. If you have any suggestions or comments, please do not hesitate to contact us. We look forward to hearing from you.

Q. My firm files material for review on an expedited basis. We have been provided with a fax cover sheet by the Advertising Regulation Department, which I understand helps speed up the filing process and is very convenient for us to use. Should this fax cover sheet take the place of our regular cover letter?

appears on your cover letter is important because it serves as authorization to debit appropriate filing fees from your firm’s filing fee account.

Q. Will you elaborate on your answer to the question (December 1992, NASD Regulatory & Compliance Alert) which asked whether registered

Section 35(c)(1).

Q. Are generic pieces that discuss mutual funds or variable annuities—explaining how they work, including dollar cost averaging, breakpoints, etc.—required to be filed with the Advertising Regulation Department?

A. Yes. Filing requirement under the NASD’s Rules of Fair Practice, i.e., Article III, Section 35(c)(1), apply to generic material on behalf of registered investment companies as well as fund-specific material.

Q. If a registered representative advertises himself as offering “insurance and investments,” does the use of the term “investments” require broker/dealer disclosure?

A. Yes. Assuming the “investments” are securities products, any offer must be accompanied by the name of the registered broker/dealer, according to Article III, Section 35(d)(2)(A) of the NASD’s Rules of Fair Practice.

Please send your comments, suggestions, and questions to:

**NASD Advertising
Regulation Department
1735 K Street, N.W.
Washington, DC 20006
Attn: “Ask the Analyst”** □

Advertising Department's Fax # (202) 728-6976

**ADVERTISING & SALES LITERATURE SUBMISSION
FAX & MAIL COVER SHEET**
CHECK ONE
 EXPEDITED OR REGULAR

B/D #: _____ FAX #: _____

BROKER/DEALER NAME: _____

CONTACT PERSON: _____

PAGES PER PIECE									
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TOTAL PIECES: _____ TOTAL PRICE: _____

SPECIAL INSTRUCTIONS:

* * * * *

NOTE:

To restate the service charges: The Filing Fee is based on the number of pages submitted per item. The charge is \$25.00 per item (including video or audio tapes), plus \$5.00 per page for each page in excess of the first 5 pages, or \$5.00 per minute of video or audio tape for each minute in excess of the first 5 minutes. If you wish to have your filing expedited—to be reviewed and returned to you within three business days after the date of receipt by the Advertising Department, an additional \$200.00 fee per item is required.

If you have any questions on this matter, please do not hesitate to call us at (202) 728-8330.

representatives could use independent rating services such as Morningstar when selling mutual funds? Several of our registered representatives have called in saying that since the published answer did not indicate so, it is not necessary for them to obtain the approval of their registered principal on the use of this material, or that this material does not need to be filed with the NASD Advertising Regulation Department.

A. We appreciate the opportunity to clarify this issue. Any item of advertising or sales literature must first be

A. No. Although the fax cover sheet is designed to aid our support staff in processing your filings, our analysts still rely on your detailed cover letter to provide additional information such as how the material will be used and under which rules you are requesting review. Additionally, the signature that

approved by a registered principal of your firm according to Article III, Section 35(b)(1) of the NASD’s Rules of Fair Practice. If the material is on behalf of mutual funds, then it must also be filed with the Advertising Regulation Department within 10 days of first use according to Article III,

SEC Approves Rules for Failure To Comply With Arbitration Awards

The NASD may suspend the membership or registration of a party that fails to comply with a valid arbitration award under an NASD amendment recently approved by the Securities and Exchange Commission.

The change to Article VI, Section 3 of the NASD By-Laws permits suspension when an arbitration award is not the subject of a motion to vacate or modify the award or when such a motion has been denied.

The amendment was initiated because of NASD concern about the failure of certain members or associated persons to comply with arbitration awards. Currently, failure to pay arbitration awards may be deemed conduct inconsistent with just and equitable principles

of trade and a violation of Article III, Section 1 of the NASD Rules of Fair Practice. The amendment permits more timely action by the NASD against those not paying arbitration awards rendered by the NASD, other self-regulatory organizations (SROs), or the American Arbitration Association (AAA).

The rule change allows the NASD, in addition to bringing a formal disciplinary action, to employ revocation proceedings for failure to pay an arbitration award rendered by an NASD arbitration panel. Members or associated persons that want to contest a revocation proceeding may request in writing that the matter be brought before a designated hearing panel. Within its own arbitration forum, the NASD need not initiate

a formal disciplinary action against a member or associated person for failure to pay an arbitration award.

The rule change also provides that the failure to submit a dispute to arbitration or failure to appear or to produce documents as directed may be a violation of Article III, Section 1 of the NASD Rules of Fair Practice.

The NASD Arbitration Department will continue to evaluate cases for referral for disciplinary action where a member or associated person has failed to submit a claim to arbitration as required or where a member or associated person has failed to appear or produce documents as required. □

Members Must Arbitrate Employment Contract, Other Agreement Disputes

Members are reminded to submit disputes for arbitration at the demand of a member or associated person, particularly in those instances where employment contracts or other similar agreements exist.

Arising from concerns regarding clauses in employment contracts, which required registered personnel to waive their right to arbitrate disputes, the NASD's Board of Governors has issued an addition to a July 1, 1987 Board Resolution.

The addendum to the *Failure to Act Under Provisions of the Code of Arbitration Procedure* resolution states that "action by members requiring associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure shall constitute conduct that is inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice."

This resolution remains effective and members should review their

agreements and actions to ensure that associated persons are not restricted from arbitrating their disputes with their member firms. During examinations conducted by its district offices, the NASD will evaluate adherence to the resolution and will present instances of non-compliance to District Business Conduct Committees for consideration of appropriate disciplinary action. □

COMPLIANCE SHORT TAKES

NASD Sanction Guidelines will be made available to members shortly.

The NASD will offer the *Guidelines* so that members may become more familiar with the type of securities industry violations that occur and the typical disciplinary sanctions that may result.

Originally disseminated by the NASD National Business Conduct Committee (NBCC) for use by the Market Surveillance Committee (MSC) and the various NASD District Business Conduct Committees (DBCCs) around the nation, the *Guidelines* help the Committees decide on appropriate remedial sanctions in NASD disciplinary proceedings. Not to be considered pre-determined, fixed penalties for particular violations, these *Guidelines* enable DBCCs and MSC efforts to achieve greater consistency, uniformity, and fairness when imposing sanctions.

□

The Securities and Exchange Commission (SEC) approved amendments that exclude class-action matters from NASD-conducted arbitration proceedings and require that pre-dispute arbitration agreements contain a notice that class-action matters may not be arbitrated.

The amendment adds a new subsection (d) to Section 12 of the Code of Arbitration Procedure providing that a claim filed by members of putative or certified class actions is ineligible for submission if the claim is part of the class action. A panel of one or three arbitrators, or the court with jurisdiction over the class action, will settle disputes over whether the claim is part of a class action. Under subsection (d)(3), no member or associated person can compel arbitration against a customer who is a member of a class action unless class certification is denied, the class is decer-

tified, the customer is excluded from the class, the customer either elects not to participate in the class action, or the customer has complied with court-imposed conditions for withdrawing from the class.

All new agreements signed by customers must contain a statement prohibiting persons from bringing class actions to arbitration and prohibiting persons from attempting to enforce an agreement to arbitrate against a member of a class action. The effective date of all pre-dispute arbitration agreements must be amended to conform to Article III, Section 21 of the NASD Rules of Fair Practice by October 28, 1993.

□

The SEC approved an amendment permitting the NASD to assess a \$50 fee for the registration of each member firm's branch office or a \$50 fee based on the number of registered persons associated with the member, whichever is lower.

Under Schedule A, Section 2 of the NASD By-Laws, the number of registered persons was not previously considered in calculating the annual fee. NASD members previously paid an annual fee for each registered branch office, assessed upon registration of the branch and annually thereafter. The NASD defines a branch office as "any location where a member conducts an investment banking or securities business or where a member performs any function of an Office of Supervisory Jurisdiction; publicly displays signage; operates from public areas or buildings, such as bank branches, even when such locations are temporarily staffed; or advertises an address in any public media."

Before the amendment, the NASD was concerned with inequity that could result from imposing branch-office fees

on a member with a disproportionately large number of branch-office locations relative to its number of registered representatives and principals. In the new amendment, the annual fee is calculated at year-end and based on either the number of the registered branch offices or the number of registered representatives and principals at that time. Thus, where the number of a member's registered branch offices exceeds the combined number of the member's registered persons, the member will not be assessed branch-office renewal fees on the difference between the two.

To take advantage of the new fee assessment structure, members need to determine which branch-office locations must be registered with the NASD under the definition of branch office. Any updates for the 1992 calendar, however, must have been received by March 15, 1993.

□

Members may use negative-response letters in certain bulk exchanges of money market mutual funds following the SEC's recent approval of an amendment to Article III, Section 15 of the NASD Rules of Fair Practice.

Members may use negative-response letters when effecting a bulk exchange at net asset value and only in situations involving mergers and acquisitions of money market mutual funds, a change of clearing members, or an exchange of money market mutual funds used in sweep accounts.

In amending Article III, Section 15, the NASD recognized the difficulty in notifying hundreds—and sometimes thousands—of money market mutual fund shareholders about exchanges. The NASD further noted the extreme difficulty of contacting each non-replier to solicit approval of a fund exchange. The

NASD determined that the new amendment eliminates an obstacle to the efficient execution of bulk exchanges, and, as a result, customers and NASD members would benefit .

To protect against abuse of discretion and overreaching, Article III, Section 15 requires written authority from a customer before a member or a registered representative can exercise discretion in a customer's account. Negative-response letters permit firms to execute automatically a recommendation to exchange mutual funds if a customer does not respond by a specific date.

Regulation

NASD Reaffirms Fair Pricing In DPP Secondary Market Transactions

The NASD reminds members that, pursuant to Article III, Section 4 of the NASD Rules of Fair Practice and related interpretations, the NASD markup/markdown policy fully applies to secondary market transactions in direct participation programs (DPPs).

The NASD Direct Participation Programs/Real Estate Committee initially completed a study of secondary market trading in DPP securities in December 1990 and reported the results and conclusions to members in *Notice to Members 91-69*. All aspects of this *Notice* are in effect and should be complied with by members engaged in this type of business.

Among other things, the study showed widespread differences in the manner members conducted DPP secondary trading, with certain practices failing to meet existing guidelines and regulations. At the time, the *Notice* reaffirmed the applicability of the NASD markup/markdown policy to retail purchases and sales of DPP securities and concluded that a markup or markdown of 5 percent or less would be acceptable

Members are reminded that they are prohibited from buying or selling an exchange-listed security for their own account at a price equal to or better than the price of an existing unexecuted customer limit order in the security. Schedule G of the NASD By-Laws require that there be an absolute requirement that customer limit orders must be given priority over proprietary transactions. There are no safe harbors nor exemptions from this obligation for transactions in listed securities.

in the vast majority of DPP trades. The NASD continues to believe that members must justify the fairness of a markup in excess of 5 percent.

The study indicated that secondary market transactions of DPP securities often involved fixed expenses, such as general partner fees, settlement charges, and state transfer charges. Where the general partner or state law requires such expenses, they may be directly passed on to customers as a separate charge or expense, provided the expenses are fully documented, not shared in by the member, and fully disclosed before the transaction. Passing along charges, either directly or indirectly, to defray the firm's overhead or internal administrative charges are clearly inappropriate. Furthermore, these internal costs may not be used to justify excessive markups or markdowns.

The *Notice* also addressed such issues as risk, suitability, and best execution. In the overwhelming majority of reviewed transactions, the member purchased for or sold from its own proprietary account to fill an existing customer order. In

The SEC approved an increase in maximum gratuities or related items that NASD members or their associated persons receive. The SEC found that increasing the allowable gifts or gratuities to \$100 from \$50 did not compromise the intent and ability of Article III, Section 10(a) of the NASD Rules of Fair Practice, which is designed to prevent fraudulent acts and practices that might arise from persons receiving valuable gifts or payments without an employer's knowledge.

such transactions, markups should be calculated based on the dealer's contemporaneous cost. Under similar circumstances, the dealer's most contemporaneous sale price to another dealer must be the basis of a markdown.

Similarly, the NASD Board has previously stated clearly that price provisions in the Markup Policy Interpretation under Article III, Section 4 apply to secondary trading in DPP securities executed on an agency basis. The 1990 study concluded that the proper methodology for calculating commissions was to compare the commission to the price of the security. Another important finding was the Board's view that it is irrelevant whether a customer believes that he or she is getting a fair price. This position is based on the long-recognized obligation of *the broker/dealer* to execute a customer order at the prevailing market price and to charge a customer fair and reasonable commissions or markups. Firms cannot shift the responsibility for making such fair dealing determinations to the customer. □

NASD Proposes Consumer Protection Rules for Partnership Rollups

The NASD filed a proposal with the Securities and Exchange Commission (SEC) in late January that requires members to meet specified criteria before participating in partnership rollups. The proposal also prevents companies from listing on the Nasdaq National Market® if they fail to comply with these criteria.

“Customers of NASD member firms will be protected by being given alternatives so that they are not automatically locked into a rollup of a partnership interest that they own,” said Joseph R. Hardiman, NASD President and Chief Executive Officer. “Customers will be further protected because NASD members will not be permitted to participate, and companies will not be permitted to list on Nasdaq, unless the rollup arrangements are fair and reasonable.”

Under the new proposals, general partners or sponsors must provide limited

partners with alternatives to rollup participation before NASD members may participate or before the company resulting from the rollup is listed on the Nasdaq National Market. Rollup alternatives would have to include: the right to receive compensation based on an appraisal of partnership assets; the right to receive or retain a security with rights, privileges, and preferences similar to the partnership units; or other comparable rights.

Rollups involve the combination or reorganization of one or more limited partnerships, directly or indirectly, whereby investors in the original partnership(s) receive new securities or securities in another entity in exchange for their partnership interests. Partnerships are unincorporated businesses based on contractual relationships between two or more persons who share risks and profits.

The proposed rules also prohibit listing on the Nasdaq National Market® or NASD members from participating in rollup transactions if the terms of the transaction unfairly reduce or abridge the investor voting rights; if investors are required to bear an unfair portion of rollup transaction costs; and if no appropriate restrictions on the conversion of general partner or sponsor compensation result from the rollup.

This is the third initiative taken by the NASD in the last 18 months to curb abuses in rollup transactions. In August 1991, the NASD enacted rules prohibiting members from receiving compensation for merely obtaining “yes” votes from limited partners in rollup approvals. In March 1992, the NASD filed a proposal with the SEC that would require compliance with corporate governance standards before partnerships are listed on the Nasdaq National Market . □

Members Must File Accurate and Complete Form U-5

The NASD reminds members of their obligations under the NASD’s By-Laws and Rules of Fair Practice to provide complete and accurate information on Form U-5 when terminating an individual.

While recognizing member concerns about the potential civil liabilities from Form U-5 disclosures, NASD and SEC rules require members to describe a termination in sufficient detail to inform the NASD and future employers. To improve the termination process, the NASD adopted rules that require a terminating member to provide a copy of Form U-5 to the terminated individual so he or she may verify the accuracy and completeness of the firm’s representations. The terminated individual then may express any disagreement with the

Form U-5 to the terminating employer and/or a subsequent NASD member employer.

Member firms, on the other hand, must obtain a copy of the Form U-5 filed by a person’s most recent employer to determine the character, business reputation, qualifications, and experience of any persons before hiring them.

Members can take other precautions to defend against any potential actions arising from these Form U-5 disclosures. An effective action is simply to tell the truth—it’s the best defense against any claims of defamation or libel by a terminated employee. Members should take care that the details of a termination are clearly set forth in Form U-5 and that any allega-

tions are factually based. Do not use Form U-5 for unsupported allegations or to expound opinions, interpretations, or beliefs of what may have occurred.

Failure to provide accurate and complete information on Form U-5 contributes to the problems caused by rogue representatives (i.e., representatives who move from firm to firm carrying a trail of customer complaints, sales practice arbitration claims, and other disciplinary incidents). Members who fail to provide full and accurate Form U-5 disclosures to the NASD—or who do not properly research a potential employee’s background before hiring—could be subject to NASD disciplinary action. □

SEC Significantly Amends Net Capital Rule

Other Proposals Released for Public Comment

The Securities and Exchange Commission (SEC) adopted several amendments to its Net Capital Rule including increased minimum net capital requirements for NASD member firms. The new net capital requirements will be phased in over an 18-month period beginning July 1, 1993.

The new minimum net capital changes to SEC Rule 15c3-1 affect all broker/dealer firms, categorized as follows:

Firms Carrying Customer Accounts.

A firm must maintain minimum net capital of \$250,000 if it either carries customer, broker, or dealer accounts; or if it receives or holds funds or securities for customers, brokers, or dealers. That figure drops to \$100,000 if the carrying firm does not hold customer funds or securities and is exempt from the SEC Customer Protection Rule (Rule 15c3-3) by virtue of paragraph (k)(2)(i).

Introducing Firms. Two new classes of introducing firms, with differing minimum requirements, were created as part of the adopted amendments. A firm must maintain a minimum of \$50,000 when it introduces transactions and accounts of customers, brokers, or dealers to another registered broker or dealer on a fully disclosed basis and receives but does not hold customer or other broker/dealer securities for delivery to a clearing broker or dealer. The introducing firm in this case could also participate in firm-commitment underwritings as a selling dealer but not as a statutory underwriter. Firms that introduce fully disclosed accounts and do not receive securities from or for customers, or owe funds or securities to customers, may maintain a lower net capital requirement of \$5,000. This requirement could rise, however, if the firm also engages in activities requiring higher minimum

capital, such as market making, wire-order mutual funds, or underwritings.

Dealers and Underwriters. Dealer and underwriting firms must maintain \$100,000 net capital if they endorse or write non-exchange or non-Nasdaq options or effect for their own investment account more than 10 transactions during a calendar year. However, dealers do not include those firms engaged solely in the sale of mutual funds, best-efforts, or all-or-none underwritings using a required Rule 15c2-4(b)(2) escrow account.

Brokers, Dealers Transacting Mutual Fund Share Business and Other Share Accounts.

These firms must maintain \$25,000 if they engage in mutual fund share business in ways other than on a subscription-way basis and if they do not engage in any other dealer activity (as permitted by the Rule). For firms that do not handle customer funds or securities—and are not wire-order firms—the SEC has proposed raising the minimum net capital requirement from \$5,000 to \$10,000.

Market Makers. Market-maker firms must maintain minimum net capital of \$100,000 if they compute under the basic method. However, that requirement rises to \$250,000 if the firm clears and carries customer accounts and is fully subject to Rule 15c3-3. Another change raises the requirement for securities priced at \$5 or less per share from \$500 to \$1,000, effective January 1, 1993. Requirements for securities priced over \$5 per share remain unchanged at \$2,500 per security, but a SEC proposal to standardize all securities at \$2,500 would eliminate the current two-tier system.

All Other Brokers. Firms that do not handle customer funds and securities,

i.e., sellers of direct participation programs or merger and acquisition firms, must maintain minimum net capital of \$5,000. This requirement may be raised to \$10,000 under a newer SEC proposal.

The SEC also identified two items of aggregated indebtedness, that reduce the normal 6 2/3 percent charge. In instances where a broker/dealer owes money to a mutual fund (offset by a receivable from another broker/dealer involved in the transaction), the amended rule excludes 85 percent of the liability from aggregate indebtedness. Also, when a broker/dealer borrows stock for money and then lends those securities to another broker for money, 85 percent of the liability is excluded from aggregate indebtedness.

With the increased capital requirements, the SEC is permitting the use of capital to offset initial haircuts (related to a firm-commitment underwriting) or any subsequent contractual commitment haircuts (on positions associated with underwriting). The amendment would not require a broker/dealer with more than \$250,000 of net capital to apply a contractual commitment haircut charge where the haircut would be \$150,000 or less.

Other Proposed Amendment

Despite the above changes, the SEC expects further action on three related matters. Two of the proposals involve an earlier SEC proposal of a three-tier capital structure for firms that introduce customer accounts to another broker/dealer firm on a fully disclosed basis.

Many commenters, including the NASD, opposed the three-tier framework citing the compliance and enforcement difficulties. The NASD

proposed a two-tier system whereby firms that receive but do not hold customer funds or securities must maintain minimum net capital of \$50,000. Firms that do not receive customer funds or securities would need \$25,000.

Following another NASD recommendation, the SEC is proposing an increase

from \$5,000 to \$10,000 in the requirement for firms that do not handle customer funds or securities, such as subscription-order mutual funds, direct participation programs, and merger and acquisition firms. The SEC is also attempting to eliminate the net capital distinctions between securities selling over or under \$5 per share by standard-

izing a market-maker capital requirement at \$2,500 per security, regardless of share price.

For more information on the Net Capital Rule changes and proposals, see December Notice to Members 92-72. □

Public Disclosure of Disciplinary Information Expanded

Expected Availability Late Spring or Early Summer

Pending Securities and Exchange Commission (SEC) approval, the NASD will soon expand the disciplinary information available to the public about members and their associated persons.

The NASD's Central Registration Depository (CRD) will expand a currently operational toll-free hotline to disclose civil judgments involving securities matters; pending formal disciplinary proceedings initiated by the SEC, the NASD, other self-regulatory organizations, and the states; and criminal indictments and related information. The hotline (800-289-9999) currently discloses final disciplinary actions and certain criminal convictions involving firms, brokers, and individuals registered with the NASD. Arbitration decisions, which are now made

available through a different disclosure program of the NASD, will also be disclosed through the CRD.

"This initiative will help investors gain a more thorough understanding of a securities firm or an individual representative with whom they are doing or are contemplating doing business," said Joseph R. Hardiman, NASD President and Chief Executive Officer. "We expect to have the expanded information available by the end of the second quarter of this year."

Developed jointly by the North American Securities Administrators Association (NASAA) and the NASD in 1981, the CRD is an on-line data base containing information about the employment, qualifications, and disci-

plinary history of the industry's 433,000 active securities industry professionals and their 5,200 member firms.

The CRD makes information available to the public on disciplinary violations and actions taken by the NASD, the SEC, New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), Commodity Futures Trading Commission (CFTC), National Futures Association (NFA), regional exchanges, and state regulatory bodies. It also discloses criminal convictions related to felonies and certain misdemeanors reported to the NASD by the securities industry and the U. S. Department of Justice. The NASD first offered the toll-free public service in October 1991. □

MARK YOUR CALENDAR

NASD 1993 SECURITIES CONFERENCE SCHEDULE

MAY 12-14
CHICAGO HILTON AND TOWERS
CHICAGO, ILLINOIS

OCTOBER 5
NEW YORK VISTA HOTEL
NEW YORK, NEW YORK

NOVEMBER 17-19
HOTEL DEL CORONADO
SAN DIEGO, CALIFORNIA

Please mark your calendar and plan to attend at least one of these compliance and market-related securities industry conferences. Registration information and program details will be mailed two months prior to each meeting date.

Education, continued from page 1

The 11-person industry task force met initially on March 15, 1993, in New York to review information gathered by the SROs and to develop the continuing education program. By working together, the SROs hope to avoid multiple state or SRO continuing education requirements, which might create an inefficient and unnecessary burden on members.

The task force, representing a cross section of the securities industry, is expected to submit an interim report to the SROs by mid-year. It will solicit input from a wide range of members and other interested persons—including state regulators—through the North American Securities Administrators Association.

Because of the complexity of today's products and markets, the NASD and other SROs—including the New York Stock Exchange, American Stock Exchange, Philadelphia Stock Exchange, Chicago Board Options Exchange, and the Municipal Securities Rulemaking Board—agreed that there may be a need for a formal, industry-wide continuing education program to keep industry professionals up to date on products, markets, and rules while ensuring investor confidence in the securities industry.

Original NASD Recommendations

The NASD Board of Governors in July 1991 originally authorized the NASD Membership Committee to develop a continuing education program for registered personnel that included either an in-house, NASD-approved assessment

capability at individual firms or a required periodic assessment by the NASD.

In August 1991, *Notice to Members 91-50* explained the NASD view that SROs should take the lead in increasing standards of professionalism as financial markets become increasingly complex. Traditional continuing education programs, according to the NASD Qualifications Standards Subcommittee, were rejected because they merely measure attendance rather than performance and fail to recognize the differing abilities needed within the securities industry.

The Membership Committee reported back to the Board of Governors in November 1991 its recommendations regarding the structure of the Continuing Education and Assessment Program. Besides determining that all representatives and principals should fall under the program, the Committee determined that any continuing education program should include some sort of assessment capability. "One of the weaknesses we found in other continuing education programs in other industries was that they encompassed attendance only," says McAuliffe. "We are interested in a measurement of the competence of industry personnel in minimum defined areas."

Members wishing to comment on any aspect of the continuing education programs may contact the NASD Qualifications & Membership Department at (301) 590-6693. □

Continuing Education Task Force Members

Mary Alice Brophy, First Vice President and Director of Compliance, Dain Bosworth Inc.

Ronald E. Buesinger, Corporate Secretary and Senior Vice President, A.G. Edwards & Sons, Inc.

Elena Dasaro, Compliance Official, H.C. Wainwright & Co., Inc.

Sheldon Goldfarb, Deputy General Counsel, Goldman, Sachs & Co.

John P. Gualtieri, Vice President and Insurance Counsel, Prudential Insurance Company of America

Therese Haberle, Vice President, Fidelity Investments

Stephen Hammerman, Vice Chairman, Merrill Lynch, Pierce, Fenner & Smith, Inc.

James Harrod, General Principal, Investment Representative—Training and Development, Edward D. Jones & Co.

Todd A. Robinson, Chairman and CEO, Linsco/Private Ledger Corp.

Richard C. Romano, President, Romano Brothers & Co.

William R. Simmons, Senior Vice President and Associate National Sales Director, Dean Witter Reynolds, Inc.

NASD Assists in New York Criminal Case Resulting in 12 Arrests

Acting on an initial investigation by the NASD District 10 office, the New York District Attorney announced the arrest of 12 persons at a Manhattan brokerage firm for participating in an alleged scheme to steal more than \$10 million, mainly from elderly or inexperienced investors.

The NASD District 10 office located in New York initially investigated Oxford Capital Securities Inc. following an investor complaint concerning mutual fund redemptions transacted by the firm. Because certain of the firm's activities went beyond NASD jurisdiction, the investigation was referred to the SEC for civil action and to the New York District Attorney's office for criminal prosecution.

"The victims were persons of limited financial sophistication who trusted the defendants to look after their investments. As a result, many of the victims have lost their life's savings,"

New York District Attorney Robert M. Morgenthau said. "The defendants engaged in a Ponzi scheme, using money taken from the most recent investors to make minimal payments to earlier investors, lulling their victims into a sense of security. [The defendants] purchased condos, jewelry and expensive cars. Some . . . renovated their homes while others paid rent from the stolen funds."

The twelve defendants worked for Oxford Capital Securities and related entities, Oxford Consolidated Corp., Forward Organization Inc., F.F. Designs Inc., and the 210 East 86th Street Restaurant Corp., all of which were located in an office on Broadway. Arrested on "enterprise corruption" felony charges were Samuel Forson, Yvonne Thomas, James Sehn, Heyward Mitchell, Grantley Hunte, David Greene, Garth Robinson and Sheryl Dowling. According to the District Attorney's office, four other persons

were arrested on lesser charges and another defendant—believed to be in the People's Republic of China—is also sought.

The defendants allegedly used much of the investor money to invest in high-risk capital ventures such as West African fisheries and Middle Eastern concrete contracts. A press release from the District Attorney's office reported that the defendants ". . . siphoned off some of the money to pay phony dividends to the victims to lull them into believing they were realizing returns on their investments."

"Even after [Oxford Capital] became aware of our investigation, they continued to operate their scheme," said Morgenthau. "We really do not yet know the full extent of thefts and the number of victims." □

Colorado Firm, Nine Employees Disciplined

Nine employees of Colorado-based National Securities Corporation were fined a total of \$790,000 as part of a NASD Market Surveillance Committee (MSC) disciplinary action that involved fraudulent sales and trading practices.

William Sheppard, Jeffrey J. Pritchard, Lynette M. LaRue, Robert F. Nagel, Andrew C. Berry, Bruce E. Mauer, Mark A. Anderson, Brian P. Gentry, and Richard L. Blackstock were disciplined for the rules violations. Except for Sheppard, all the respondents settled with the NASD and consented to findings and allegations of an MSC

complaint without admitting or denying those allegations.

Sheppard, who failed to file an answer to charges or appear at a hearing, was barred from association with any NASD member in any capacity and fined \$500,000. As part of the settlement submitted by the other respondents, National Securities Corporation agreed to significant supervisory and compliance initiatives as well as a fine of \$80,000. Each of the individuals submitted to suspensions and fines ranging from \$5,000 (Pritchard) to \$150,000 (LaRue). Mauer, Nagel, and LaRue

received the most severe suspensions at two, three, and five years, respectively.

From March to June 1990, Mauer, Nagel, LaRue, Sheppard, and Berry violated NASD Rules of Fair Practice that prohibit manipulative, deceptive, or other fraudulent practices in the purchase or sale of any security. Specifically, through a Colorado-based branch office of National Vintage that they owned, the five respondents purchased the common stock of Vintage Group, Inc., using funds from reselling the company's stock to retail customers. They also engaged in abusive, fraudu-

lent, and high-pressure sales practices designed to increase the demand and price of the security.

Furthermore, the eight individuals other than Pritchard engaged in various sales-practice violations, including unauthorized transactions, unsuitable recommendations, exercising discretion in customer accounts without written authority, providing guarantees against loss, failing to follow customer instructions, and making misrepresentations connected to the sale of Vintage Group stock. Sheppard also violated NASD Rules of Fair Practice that require transactions be conducted for or by persons associated with NASD members.

As a result of all the above infractions, National Vintage and Pritchard also violated NASD Rules of Fair Practice regarding failure to provide proper supervisory measures.

In a separate complaint, Gentry was charged with failure to provide requested information about trading Vintage Group securities. Among other things, he had initially failed to appear for on-the-record testimony before NASD staff. Gentry's settlement of this separate complaint is reflected in the overall sanctions imposed against him.

The suspensions of Pritchard, LaRue, Nagel, Berry, Gentry, and Blackstock

began January 18, 1993. Mauer, who is currently suspended until October 19, 1994 as a result of a prior MSC action, begins serving his new suspension on October 20, 1994.

The investigation leading to the disciplinary measures was conducted by NASD Market Surveillance analysts.

Disciplinary action was meted out by the MSC—consisting of 12 professionals from securities firms across the country—which disciplines NASD members and associated persons who fail to comply with trading and market-related rules and securities laws. □

NASD DISCIPLINARY ACTIONS

In November and December 1992, and January 1993, 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

November Actions

Linda Cline Chandler (Registered Principal, Fernandina Beach, Florida) was fined \$13,000, jointly and severally with a member firm and required to requalify by examination as principal. The National Business Conduct Committee (NBCC) imposed the sanctions following 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 Chandler, participated in sales of limited partnership interests of several best efforts, "all or none" offerings and received funds from investors without depositing the monies into an escrow account.

In addition, the firm, acting through Chandler, 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, acting through Chandler, 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, acting through Chandler, failed to file with the NASD copies of escrow agreements in connection with the offer and sale of limited partnership interests.

December Actions

None

January Actions

William Louis Morgan (Registered Principal, Danville, California) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following appeal of a District 1 DBCC decision. The sanction was based on findings that Morgan participated in private securities transactions without providing prior written notification to his member firm.

This action has been appealed to the Securities and Exchange Commission (SEC), and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Thomas F. White & Co., Inc. (San Francisco, California), John Warren Boudinot (Registered Representative, San Francisco, California), and Henry Walter Bineault (Registered Principal, Danielson, Connecticut) were fined \$10,000, jointly and severally. In addition, the firm was ordered to refund \$19,509 to the purchasers of securities for markups that exceeded 5 percent.

The NBCC imposed the sanctions following appeal of a District 1 DBCC decision. The sanctions were based on findings that the firm, acting through Boudinot and Bineault, failed to comply with the NASD's Mark-Up Policy in that it effected 34 corporate securities transactions as principal at unfair and unreasonable prices. The markups on these transactions ranged from 7.03 to 14.7 percent over the firm's contemporaneous cost.

Thomas F. White & Co. and Boudinot have 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)

November Actions

Dania Securities, Inc. (Newport Beach, California) and Allan Arthur Brent (Registered Principal, Newport

Beach, California) were fined \$76,100, jointly and severally. Brent can reduce the amount to \$28,000 if he pays \$23,100 in restitution to a public customer. In addition, Brent was barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 2. The sanctions were based on findings that the firm, acting through Brent, received from two public customers funds totaling \$32,170 for the purchase of securities. The firm and Brent failed to purchase such securities and, instead, converted the funds to their own use.

In addition, the firm, acting through Brent, participated in a contingent offering of common stock and failed to transmit the funds to a separate escrow account promptly. Instead, customers' funds were deposited into a checking account.

December Actions

American Business Securities, Inc. (Irvine, California) and Barry John Zimmermann (Registered Principal, Costa Mesa, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Zimmermann were fined \$10,000, jointly and severally. In addition, the firm was fined \$7,500, jointly and severally with another registered principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Zimmermann, participated in six contingent offerings of securities and represented to investors that a certain number of units would be sold by a designated closing date before investors' funds would be released to the issuer. However, the NASD determined that the investors' funds were withdrawn from separate bank escrow accounts before funds equal to, or in excess of, the specified level of sales cleared the banking system.

Osborne, Stern & Company, Inc. (Los Angeles, California) and Douglas W. Osborne, Sr. (Registered Principal, Venice, California) were fined \$270,454, jointly and severally. The firm was suspended from operating as a broker/dealer for 90 days, and Douglas Osborne was suspended from association with any NASD member in any capacity for 90 days. The Securities and Exchange Commission (SEC) affirmed the sanctions following an appeal of a November 1990 NBCC decision.

The sanctions were based on findings that the firm, acting through Osborne, charged retail customers unfair prices in contravention of the Board of Governors' Interpretation with respect to the NASD Mark-Up Policy. The fraudulently excessive markups ranged from 32.58 to 191.67 percent above the firm's contemporaneous cost. In addition, the firm violated its restrictive agreement with the NASD when it traded for its own account by effecting numerous principal transactions.

David Joseph Radzyminski (Registered Representative, Thousand Oaks, California) was fined \$35,872 and barred from association with any NASD member in any capacity. However, he can reduce the fine if he proves to the District 2 office that he has made restitution to the applicable party.

The sanctions were based on findings that Radzyminski asked a public customer to pay for commissions generated after executing an order to purchase securities in the customer's account. Radzyminski received an \$872 check from the customer and explained he would reimburse the customer when he received the commission payment from his member firm. Radzyminski cashed the check but did not repay the customer. Moreover, Radzyminski solicited the aforementioned purchase prior to requalifying in any capacity to associate with a broker/dealer.

Radzyminski also failed to respond to NASD requests for information.

Vernon Robinson (Associated Person, Culver City, California) was fined \$40,207.50 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Robinson accepted from an insurance customer \$249 to purchase an insurance policy. Robinson submitted only \$41.50 of the funds towards the purchase and converted the remaining \$207.50. Also, Robinson failed to respond to NASD requests for information.

Francis Eldon Willock (Registered Representative, Santa Ana, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Willock made material misrepresentations to foreign lending institutions to induce the purchase of annuity contracts by an insurance customer.

January Actions

Wayne Allen Deloney (Registered Representative, San Clemente, California) was fined \$15,780.60 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions after review of a District 2 DBCC decision. The sanctions were based on findings that Deloney accepted from insurance customers a \$604.35 check and \$176.25 in cash for the purchase of an insurance policy. Deloney cashed the check but failed to purchase the policy for the customers and converted the funds totaling \$780.60 to his personal use and benefit.

Tran Du Hong (Registered Representative, Orange, California) submitted an Offer of Settlement pursuant to which he was fined \$23,602.30 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hong consented to the described sanctions, and to the entry of findings that he accepted from 13 insurance customers cash or checks totaling \$3,628.30 intended for the payment of premiums and converted the funds to his own use.

Robert David Meerkreebs (Registered Representative, La Jolla, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 2 DBCC decision. The sanctions were based on findings that Meerkreebs participated in private securities transactions while failing to provide prior written notification to his member firm.

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

November Actions

Kim Harmon Johnson (Registered Principal, Sandy, Utah) was fined \$5,000, jointly and severally with a

member firm, suspended from association with any NASD member as a financial and operations principal for 30 days, and required to requalify by examination in that capacity. The sanctions were based on findings that a member firm, acting through Johnson, conducted a securities business while failing to maintain its minimum required net capital.

Charles A. Roth (Registered Representative, Denver, Colorado) was fined \$105,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a registered representative. The SEC affirmed the findings and modified the sanctions following appeal of a February 1990 NBCC decision. The sanctions were based on findings that Roth conducted business as a broker/dealer without being registered and effected private securities transactions without notifying his member firm properly.

Roth has appealed this action to the United States Court of Appeals, and the sanctions are not in effect pending consideration of the appeal.

Gordon Wesley Sodorff, Jr. (Registered Representative, Spokane, Washington) was fined \$86,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following an appeal of an August 1990 NBCC decision. The sanctions were based on findings that Sodorff participated in private securities transactions without providing prior written notice to his member firm. In addition, Sodorff engaged in deceptive sales practices by failing to disclose to investors material information that might have influenced their decision to purchase the common stock. In the aforementioned activity, Sodorff acted as a broker/dealer without the benefit of registration.

December Actions

Lori Ann Anderson (Registered Representative, Logan, Utah) was fined \$108,072 and barred from association with any NASD member in any capacity. The fine may be reduced by restitution made to a member firm or to clients involved. The sanctions were based on findings that after obtaining 21 checks totaling \$58,072.51 and made payable to 19 insurance customers, Anderson forged the customers' endorsements on the checks and converted the proceeds to her own use and benefit. Moreover, to obtain the aforementioned checks, Anderson changed the addresses on 11 of these customers' accounts to an address she controlled. In addition, Anderson sent false and misleading information to insurance customers regarding their accounts.

Raymond E. Blitstein (Registered Representative, Denver, Colorado) was fined \$5,000 and barred from association with any NASD member in all capacities. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Blitstein failed to pay a \$9,100 NASD arbitration award.

Robert A. Eames (Registered Representative, West Jordan, Utah) and David M. Eames (Associated Person, Salt Lake City, Utah) were each fined \$70,000 and barred from association with any NASD member in any capacity. In addition, they were fined \$74,454, jointly and severally; however, the fine may be reduced by any restitution made either to customers or to any organization that reimbursed any of these customers.

The sanctions were based on findings that Robert and David Eames obtained from public customers 31 checks totaling \$74,453.75 to purchase securities. The respondents failed to purchase the intended securities and, instead, deposited the funds to a bank account. In addition, they failed to respond to NASD requests for information.

Jay M. Fertman (Registered Principal, Castle Rock, Colorado) was fined \$76,964.62 and required to requalify before acting in any capacity with an NASD member firm. The sanctions were based on findings that Fertman failed to disclose to customers that they were charged unfair and unreasonable prices on principal sales of stock by his member firm. Furthermore, Fertman either solicited the customers to purchase the aforementioned stock, or otherwise caused customer orders to be received and

processed for purchases of these securities at unfair and unreasonable prices.

First Choice Securities Corp. (Englewood, Colorado) and Sheldon Owen Fertman (Registered Principal, Denver, Colorado) were fined \$10,000, jointly and severally and Fertman was barred from association with any NASD member in any principal capacity. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that the firm and Fertman allowed and assisted an unregistered individual to conduct securities transactions through the firm.

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

The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that the firm, acting through Walsh, opened four branch offices in violation of the terms of its restriction agreement with the NASD. Specifically, the firm, acting through Walsh, made markets in 15 securities and maintained a larger inventory than the agreement allowed.

Kessler Asher Clearing, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$2,000, jointly and severally with a registered representative, and fined an additional \$10,625, separately. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm violated the Board of Governors' Free-Riding and Withholding Interpretation by selling shares of a new issue that traded at a premium in the immediate aftermarket to a restricted account.

Thomas Garth Nauman (Registered Representative, Elma, Washington) was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Nauman wrongfully overtraded and failed to pay for multiple option transactions placed in his personal securities account.

Paulson Investment Company, Inc. (Portland, Oregon), Chester Leon Frederick Paulson (Registered Principal, Portland, Oregon), Thomas Elroy McChesney (Registered Principal, Gladstone, Oregon), and Richard Arthur Boege (Registered Principal, Portland, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$60,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Paulson and McChesney, held itself out as a market maker for a common stock in the National Quotation Bureau, Inc., "Pink Sheets" and the OTC Bulletin Board,* and acted as a market maker in the security while participating in an apparent distribution of its common stock in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-6 thereunder.

The findings also stated that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through McChesney, sold shares of a new issue that traded at a premium in the immediate aftermarket to restricted accounts. In connection with this sale, the NASD also found that the firm, acting through McChesney, submitted an inaccurate free-riding questionnaire to the NASD.

Furthermore, the findings stated that the firm, acting through Boege, failed to establish, maintain, or enforce written supervisory procedures or otherwise to supervise adequately certain sales activities in the firm, including compliance with the Board of Governors' Interpretation with respect to Free-Riding and Withholding. Moreover, the NASD determined that the firm, acting through Boege, failed to conduct an annual branch audit for 20 branch offices of which 7 were offices

of supervisory jurisdiction pursuant to the firm's own supervisory procedures, and failed to conduct an annual compliance meeting for its registered representatives in those 20 offices.

January Actions

Joseph Dennis Catten (Registered Principal, Magna, Utah) submitted an Offer of Settlement pursuant to which he was fined \$2,500, jointly and severally with a member firm, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Catten consented to the described sanctions and to the entry of findings that a member firm, acting through Catten, failed to prepare and maintain adequate written supervisory procedures for the types of business in which it engages.

Carolyn R. Delorraine (Registered Representative, Boulder, Colorado) was fined \$11,281, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination before acting in any capacity. The NBCC imposed the sanctions on review of a District 13 DBCC decision. The sanctions were based on findings that Delorraine sold stock in the joint account of public customers without their authorization.

Also, to circumvent the requirements of SEC Rule 15c2-6, Delorraine instructed a customer to sign an inaccurate document stating that his purchase of stock was unsolicited, when, in fact, Delorraine solicited the customer to purchase the stock.

Dillon Securities, Inc. (Spokane, Washington) and Conrad C. Lysiak (Registered Principal, Spokane, Washington). The firm was expelled from NASD membership and Lysiak was fined \$15,000 and suspended from association with any NASD member in any principal capacity for 10 days. In addition, Lysiak must requalify by examination as a general securities principal. The NBCC imposed the sanctions on Lysiak following an appeal of a District 3 DBCC decision.

The sanctions were based on findings that the firm participated in the illegal distribution of unregistered securities. In addition, a private company compensated the firm in exchange for becoming the first market maker in the company's stock. Furthermore, the firm submitted an application to the National Quotation Bureau containing false and intentionally misleading information.

Also, the firm and Lysiak failed to establish, implement, and enforce reasonable supervisory measures necessary to prevent and detect the violations for which they were sanctioned, and to otherwise supervise certain employees' conduct.

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

Sheldon O. Fertman (Registered Principal, Denver, Colorado) and John J. Cox (Associated Person, Denver, Colorado) submitted an Offer of Settlement pursuant to which Fertman was fined \$100,000 and barred from association with any NASD member in any capacity. Cox was fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, a former member firm, acting through Fertman, conducted a securities business while failing to maintain its minimum required net capital and filed an inaccurate FOCUS Part I report. The findings also stated that, in violation of SEC Rule 15c2-6, the firm, acting through Fertman, effected transactions in designated securities in 10 public customer accounts without obtaining required suitability statements before approving their accounts. The NASD also determined that the firm, acting through Fertman, failed to respond to NASD requests for information, falsified order tickets, and filed an inaccurate Form BD.

In addition, the NASD determined that the firm, acting through Fertman and Cox, allowed Cox, an unregistered person, to act as a principal of the firm and failed to disclose on the firm's Form BD that Cox was a control

person with the firm. Moreover, the firm, acting through Fertman and Cox, failed to make a bona fide "minimum-maximum" contingent offering of limited partnership interests.

Furthermore, the findings stated that the firm, acting through Fertman and Cox, violated SEC Rules 10b-5 and 10b-6 by trading securities while participating as an underwriter in the stock's distribution during its initial public offering. During the distribution, the firm, Fertman, and Cox induced customers to purchase these securities at excessive prices while failing to disclose that they were purchasing the securities at excessive prices compared to the prices in the initial public offering, according to the findings.

The NASD also determined that the firm, acting through Fertman and Cox, failed to establish, maintain, and enforce written supervisory procedures.

First Choice Securities Corporation (Englewood, Colorado), Sheldon O. Fertman (Registered Principal, Denver, Colorado), and Gregory F. Walsh (Registered Principal, Los Angeles, California). The firm was fined \$100,915.62, jointly and severally with Fertman and fined \$50,000, separately. In addition, the firm was suspended from all principal transactions for 30 days. Fertman was fined \$50,000, separately, and barred from association with any NASD member in any capacity. The NASD fined Walsh \$63,261.87 and ordered him to requalify by examination before acting in any capacity.

The sanctions were based on findings that the firm, acting through Fertman, effected principal sales or caused customer orders to be received and processed for purchases of securities at unfair and unreasonable prices. The markups on these trades ranged from 5.44 to 60 percent over the firm's contemporaneous cost for the securities, in violation of the NASD's Mark-Up Policy.

Furthermore, the firm and Fertman failed to disclose to customers that they were charged unfair and unreasonable prices.

Also, Walsh either solicited the customers to purchase the aforementioned stock, or otherwise caused customer orders to be received and processed for purchases of these securities at unfair and unreasonable prices. In addition, Walsh failed to disclose the excessive markups to his customers.

Michael George Gundzik (Registered Representative, Greenwood Village, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 180 days. Without admitting or denying the allegations, Gundzik consented to the described sanctions and to the entry of findings that he collected from two insurance customers premiums for disability insurance totaling \$2,360.22. According to the findings, Gundzik deposited the funds into his business account, thereby commingling the monies with other funds. The NASD determined that Gundzik, thereafter, sent checks to his member firm to pay for those policies, but the bank returned the checks for insufficient funds.

Lyle Reinhard Haas (Registered Principal, Veradale, Washington) was fined \$15,000, jointly and severally with a former member firm and required to requalify by examination as a financial and operations principal. The NBCC imposed the sanctions following an appeal of District 3 DBCC decision. The sanctions were based on findings that the firm, acting through Haas, conducted a securities business while failing to maintain its minimum required net capital.

Robert Harry Joyce (Registered Principal, Arvada, Colorado) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Joyce consented to the described sanction and to the entry of findings that he failed to execute sell orders for four customers and supplied three of those customers with false and misleading quotations.

The findings also stated that Joyce made price projections to a customer without having a reasonable basis for these projections and offered to reimburse another customer against loss.

Simmons and Bishop Co., Inc. (Scottsdale, Arizona) and Evelyn K. Simmons (Registered Principal, Scottsdale, Arizona) submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to supervise the activities of two registered representatives adequately. Specifically, as a result, these registered representatives improperly used customer funds, and another representative opened accounts at the firm before he was effectively registered with the firm.

Thomas Sparks (Registered Representative, Scottsdale, Arizona) submitted an Offer of Settlement pursuant to which he was fined \$1,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Sparks consented to the described sanctions and to the entry of findings that, while taking a qualification examination, he had in his possession unauthorized material in the testing center.

Lorin W. Surpluss (Registered Representative, Tucson, Arizona) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for nine months and required to requalify by examination before acting in any capacity. Without admitting or denying the allegations, Surpluss consented to the described sanctions and to the entry of findings that he solicited customers to buy securities by misrepresenting, and failing to disclose, material facts to them. These misrepresentations included statements regarding the proposed performance and lack of risk of the investment.

The NASD also determined that Surpluss recommended the purchase of the aforementioned securities to customers without having reasonable grounds for believing that such recommendations were suitable for the customers.

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

November Actions

Steven Arnold Braker (Registered Representative, Backus, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$4,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Braker consented to the described sanctions and to the entry of findings that he changed the Wisconsin addresses of public customers to an address in Minnesota, where none of the customers resided. According to the findings, Braker engaged in this activity to sell those customers securities that were neither registered nor exempt from registration in the state of Wisconsin.

John Lex Campbell (Registered Representative, Perry, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanctions and to the entry of findings that he endorsed and cashed an insurance refund check for \$169.50 made payable to a customer. According to the findings, Campbell converted these funds to his own use and benefit without the customer's knowledge or consent.

George Edward Clary (Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$133,312.74 in restitution to insurance customers. Without admitting or denying the allegations, Clary consented to the described sanctions and to the entry of findings that, through unauthorized withdrawals or failures to remit funds properly as instructed by seven insurance customers, he took \$133,312.74 intended for the purchase of insurance policies or annuities. According to the findings, Clary con-

verted these funds to his own use and benefit without the customers' knowledge or consent.

Gene Charles Lavine (Registered Representative, Kansas City, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$68,000 in restitution to insurance customers. Without admitting or denying the allegations, Lavine consented to the described sanctions and to the entry of findings that he took \$68,000 intended for the purchase of insurance policies, annuities, or mutual funds and converted the monies to his own use and benefit, without the customers' knowledge or consent.

Frederick Carl Pullmann (Registered Representative, Hays, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pullmann consented to the described sanctions and to the entry of findings that he obtained seven loans totaling \$32,900 from an insurance customer's annuity certificate, endorsed the checks from the loan proceeds, and converted the funds to his own use.

The NASD also found that Pullmann received a \$10,000 check from another insurance customer for an initial premium payment and, instead, applied only \$5,000 of the funds and retained the balance for his own use. In addition, the findings stated that Pullmann received from a different insurance customer a check intended as payment on a renewal premium and, instead, converted the monies to his own use.

Gregory Willis Radke (Registered Representative, Pierce, Nebraska) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radke consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Peter Randol Sargent (Registered Representative, Kansas City, Missouri) submitted an Offer of Settlement pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$8,467.32 in restitution to insurance customers. Without admitting or denying the allegations, Sargent consented to the described sanctions and to the entry of findings that he obtained loans totaling \$8,467.32 on the life insurance policies of six customers and converted those proceeds to his own use and benefit without the customers' knowledge or consent. In addition, Sargent failed to respond to NASD requests for information.

Jerome Stanford Stein (Registered Principal, St. Louis, Missouri) was fined \$117,660, barred from association with any NASD member in any capacity, and must demonstrate payment of restitution of any customer losses. The sanctions were based on findings that Stein executed transactions in the securities accounts of public customers without their knowledge or consent. In addition, Stein recommended numerous purchase and sale transactions to public customers without having reasonable grounds for believing that such recommendations were suitable, given the customers' financial situations and needs.

Michael Scott Wheelock (Registered Representative, Edina, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wheelock consented to the described sanction and to the entry of findings that he guaranteed a public customer against losses in the purchase of common stock. The NASD also found that, in contravention of the Policy of the Board of Governors concerning Fair Dealing With Customers, Wheelock executed securities transactions without the knowledge or consent of two public customers. In addition, the findings stated that Wheelock submitted a Form U-4 that failed to disclose the existence of customer complaints.

December Actions

Brian Thayer Baker (Registered Representative, St. Louis, Missouri) was fined \$26,700 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that, in contravention of the Policy of the Board of Governors concerning Fair Dealing with Customers, Baker executed unauthorized securities transactions in the account of a public customer's account.

Mark Victor Booth (Registered Representative, Minneapolis, Minnesota) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Booth failed to respond to NASD requests for information concerning his termination from a member firm.

David Joseph Fingerhut (Registered Representative, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Fingerhut consented to the described sanctions and to the entry of findings that he failed to disclose on a Uniform Application for Securities Industry Registration (Form U-4) that he had entered into a preliminary agreement with the Missouri Bar Committee to surrender voluntarily his license to practice law and accept a disbarment.

F. J. Garber & Co. (Sioux City, Iowa) and Frederick J. Garber (Registered Principal, Sioux City, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Garber, conducted a securities business while failing to maintain its required minimum net capital.

Elizabeth Ann Paetow (Registered Principal, Waverly, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$4,500 in restitution to entitled parties. Without admitting or denying the allegations, Paetow consented to the described sanctions and to the entry of findings that, without her firm's knowledge or consent, she converted \$4,500 from the firm's cash account to her own use and benefit.

Michael Clayton Saunders (Registered Representative, Kansas City, Missouri) was fined \$5,000 and suspended from association with any NASD member in any capacity. The suspension commenced November 9, 1992, and will continue until Saunders demonstrates to the NASD's District 4 staff that he has either fully paid the arbitration award or has been released from paying it. The sanctions were based on findings that Saunders failed to pay a \$36,196.18 arbitration award.

January Actions

B. C. Christopher Securities Company (Kansas City, Missouri) and Richard Coe Garton (Registered Representative, Kansas City, Kansas). The firm was fined \$50,000, and Garton was fined \$30,000 and suspended from association with any NASD member in any capacity for six months. The NBCC imposed the sanctions following an appeal of a District 4 DBCC decision. The sanctions were based on findings that the firm, acting through Garton, failed to maintain accurate supervisory procedures and to supervise properly a sales representative of the firm. In addition, the firm, acting through Garton, permitted the same individual to function as a general securities representative without proper registration with the NASD.

Robert Wright Morgan (Registered Representative, Casselberry, Florida) submitted an Offer of Settlement pursuant to which he was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay restitution to public customers.

Without admitting or denying the allegations, Morgan consented to the described sanctions and to the entry of findings that he received from two public cus-

tomers \$73,351.63 with instructions to purchase shares of common stocks. Instead, the findings stated that Morgan purchased only \$58,579.13 worth of the stocks, misused the remaining \$14,772.50, and failed to return the balance to the customers. The NASD also found that Morgan issued a series of fictitious client statements to these customers and misused their securities. In addition, the NASD determined that Morgan guaranteed the same customers against loss when buying common stocks.

Furthermore, the findings stated that Morgan opened a securities account at a member firm and failed to inform the firm that he was associated with another member firm. Also, according to the findings, Morgan participated in private securities transactions without providing his member firm with prior written notice. The findings also stated that Morgan executed the aforementioned securities transactions without being properly registered.

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

November Actions

Jack W. Pruitte (Registered Representative, Clarksville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Pruitte consented to the described sanctions and to the entry of findings that he prepared and delivered two fictitious account statements indicating that a public customer had \$5,000 invested in a bond.

December Actions

Kevin R. Curtis (Registered Principal, Dallas, Texas) and Catherine W. Yox (Registered Principal, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$7,500, jointly and severally. In addition, Curtis was suspended from association with any NASD member in any capacity for two weeks and required to requalify by examination as a direct participation programs principal. Yox was also suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in joint venture offerings, a member firm, acting through Curtis and Yox, failed to keep current books and records and violated various provisions of Regulation D of the Securities Act of 1933.

The NASD also found that the same firm, acting through Curtis, prepared inaccurate net capital computations and conducted a securities business without maintaining its required minimum net capital. In addition, the NASD determined that the firm, acting through Curtis, failed to handle customer escrowed funds properly and participated in three programs without disclosing a definite termination date to meet the contingency. Furthermore, the findings stated that the firm, acting through Curtis, accepted a subscription document for a joint venture from a public customer without having reasonable grounds for believing that the investment was suitable for the customer. Also according to the findings, Curtis, acting on behalf of the firm, failed to make appropriate disclosures of certain third-party ownership of a material interest in the offering memoranda for two joint ventures. The findings also stated that the firm, acting through Curtis, failed to evidence supervisory approval on subscription documents or any other document used in transactions with certain public customers in joint ventures. The NASD also found that the firm, acting through Curtis, prepared and submitted inaccurate quarterly FOCUS Part IIA reports.

The NASD further determined that the firm, acting through Yox, conducted a securities business while maintaining less than the minimum net capital and failed to file timely FOCUS Part IIA reports. The findings stated that Yox, acting for the firm, also failed to prepare and maintain written supervisory procedures and to prepare and maintain fingerprint records for the director and a stockholder of the firm. According to the findings, the firm, acting through Yox, failed to maintain fidelity bond cov-

erage and to ensure that the firm's president was qualified as principal.

Robert D. Cutchall (Registered Representative, Oklahoma City, Oklahoma) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cutchall induced a public customer to purchase stock by providing him with a written guarantee regarding a limited loss on an investment. In addition, Cutchall failed to respond to NASD requests for information.

Equitrade, Inc. (Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$5,000 and suspended from membership in the NASD for six months. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in a securities business without maintaining its required minimum net capital and failed to prepare an accurate computation of its net capital. In addition, the NASD determined that the firm failed to give immediate telegraphic notice to the NASD of its failure to comply with the minimum net capital requirements.

Mark M. Ferguson (Registered Representative, Metairie, Louisiana) was fined \$85,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ferguson received from a public customer a \$42,500 check for investment purposes, endorsed the check, and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, Ferguson failed to respond to NASD requests for information.

Joel E. Porter (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Porter consented to the described sanction and to the entry of findings, among other things, that without the knowledge or consent of two public customers, he caused \$10,418.68 to be withdrawn from their accounts by endorsing checks in their names, thereby converting the funds to his own use and benefit.

Bart G. Pouwels (Registered Representative, Marrero, Louisiana) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pouwels received from an insurance customer a \$399 check to pay automobile insurance. According to the findings, Pouwels failed to buy the insurance and, instead, cashed the check and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, Pouwels failed to respond to NASD requests for information.

Rodney Rigsby (Registered Principal, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rigsby consented to the described sanction and to the entry of findings that he allowed his member firm to engage in a securities business while its net capital was below the required minimum, and failed to prepare an accurate computation of the firm's net capital.

The NASD also found that Rigsby withdrew \$3,000 from his member firm's clearing account and directed that the funds be wired to his personal bank account, thereby converting the funds to his own use and benefit without the firm's knowledge or consent. In addition, the findings stated that Rigsby paid a representative of another member firm \$328.43 in connection with three transactions involving corporate securities.

David M. Vincent (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for one week, and suspended from association with any NASD member in any options-related activity for one year. Without admitting or denying the allegations, Vincent consented to the described sanctions and to the entry of findings that he exercised

discretion in the accounts of public customers without either their prior written authorization or his member firm's prior written acceptance of the accounts as discretionary.

The NASD also found that, in executing five transactions, Vincent traded beyond the approved option level in the public customer's account. In addition, the NASD determined that Vincent engaged in an options transaction in a public customer's account without having reasonable grounds for believing that the transaction was suitable for the customer.

Mark C. Zielberg (Associated Person, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zielberg consented to the described sanctions and to the entry of findings that he wrongfully caused five deposits totaling \$1,160 to be shown in his personal checking account at his member firm by falsely recording a transfer of funds from the cash portion of his account. The NASD found that Zielberg failed to submit the checks corresponding to the funds withdrawn until a later date.

January Actions

Christi Ann Edwards (Registered Representative, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$1,000. In addition, she completed a two-week suspension from association with any NASD member in any capacity. Without admitting or denying the allegations, Edwards consented to the described sanctions and to the entry of findings that she signed the names of two public customers to two separate subscription agreements.

Eddie L. McNeill (Registered Representative, Pasadena, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McNeill consented to the described sanctions and to the entry of findings that he received from two public customers \$42,246.12 to invest in corporate bonds and money market funds but failed to submit the monies to his member firm. Instead, the findings stated that McNeill converted the funds to his own use without the customers' knowledge or consent.

The NASD also found that McNeill used those funds to buy certificates of deposit through a non-registered brokerage entity and sent fraudulent confirmations and account statements to his two customers. In addition, the NASD determined that McNeill failed to provide his member firm with written notice of his affiliation with an outside business activity.

J. Speed Thomas (Registered Principal, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500. In addition, he has completed an eight-week suspension from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he signed the names of five public customers to five separate subscription agreements.

District 6—Texas

November Actions

Philip Jeffrey Brooks (Registered Representative, Dallas, Texas) was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Brooks used his member firm's stationery without authorization to send six persons or entities letters that overstated cash and securities in an account at Brooks' member firm. The amounts of such overstatements ranged from \$1 million to more than \$20 million.

December Actions

James Carroll Hale (Registered Principal, Richardson, Texas) was fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and suspended in any principal capacity until he requalifies as a principal. The sanctions were based on findings that a former member firm, acting through Hale, effected transactions in securities while failing to maintain its required minimum net capital. In addition, in violation of the NASD's Mark-Up Policy, the firm, acting through Hale, effected principal sales with retail customers at unfair and unreasonable prices.

Marc Peter Kopish (Registered Principal, Dallas, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without authority, Kopish co-signed a \$5,000 check drawn on the reserve account of a member firm with which he was neither registered nor associated. The check was sent to a public customer but was subsequently dishonored due to insufficient funds.

January Actions

Lake Securities, Inc. (Lewisville, Texas) and Huey B. Hicks (Registered Principal, Lewisville, Texas) were fined \$15,000, jointly and severally, and Hicks was required to requalify by examination as a general securities principal. The SEC imposed the sanctions following an appeal of an August 1990 NBCC decision. The sanctions were based on findings that the firm, acting through Hicks, purchased exempt securities with a face amount of \$4 million from an institutional customer and charged a price that included an excessive markdown of 7.4 percent, which generated more than \$90,000 in profit.

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

November Actions

Bernd Dieter Gruner (Registered Principal, Winston-Salem, North Carolina) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gruner failed to respond to NASD requests for information.

Kevin Francis Hauser (Registered Representative, Doraville, Georgia) was fined \$22,427 and suspended from association with any NASD member in any capacity for one business day. The fine may be reduced by any amounts Hauser repays to a public customer. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 7. The sanctions were based on findings that Hauser recommended the purchase of growth stocks on margin to a public customer without having reasonable grounds for believing that the recommendations were suitable for the customer.

Thomas Joseph Higgins (Registered Representative, Littleton, Colorado) was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, a member firm, acting through Higgins, effected as principal for its own account over-the-counter sales of common stock with public customers at unfair prices.

Jones & Ward Securities, Inc. f/k/a Akers & Jones Securities, Inc. (Wilmington, North Carolina) and Ivan D. Jones, Jr. (Registered Principal, Coral Springs, Florida) submitted an Offer of Settlement pursuant to which they were fined \$22,500, jointly and severally. In addition, the firm was suspended from membership in the NASD for three business days and required to comply with certain undertakings. Jones was also suspended from association with any NASD member in any capacity for three business days and required to requalify by examination as a general securities principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Jones, failed to file accurate FOCUS reports in a timely manner.

The NASD also found that the firm, acting through Jones, conducted a general securities business while failing to maintain its required minimum net capital, failed to maintain accurate books and records, and failed to establish and maintain written supervisory procedures.

According to the findings, the firm, acting through Jones, made misrepresentations in a private placement memorandum and failed to make certain disclosures to the investors. The NASD also determined that, in the same offering, the firm, acting through Jones, failed to deposit subscribers' funds into an escrow account and continued to sell the stock subsequent to the offering termination date. In addition, the findings stated that the respondents made misrepresentations in a partnership agreement for another offering of interests.

The NASD determined that the firm, acting through Jones, failed to register a financial and operations principal in a timely manner and paid mutual fund sales commissions to a registered representative who was associated with another member firm. Also, the NASD found that the firm, acting through Jones, failed to respond timely and accurately to NASD requests for information and failed to comply with the terms of its restrictive agreement with the NASD.

December Actions

Century Capital Corp. of South Carolina (Greenville, South Carolina) was fined \$10,000. The SEC affirmed the sanction following an appeal of a December 1990 NBCC decision. The sanction was based on findings that, in contravention of the NASD's Mark-Up Policy, the firm charged its customers unfair prices in the sales of five securities.

This action has been appealed to a United States Circuit Court of Appeals, and the sanction is not in effect pending consideration of the appeal.

January Actions

AIBC Investment Services Corp. (Miami, Florida), William Burdette (Registered Principal, Coral Gables, Florida), and Wifredo Gort (Registered Principal, Miami, Florida) 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 sanction and the entry of findings that the firm, acting through Burdette and Gort, conducted a securities business while failing to maintain its required minimum net capital. In addition, the NASD found that the firm, acting through Burdette and Gort, operated without a registered financial and operations principal, in violation of Schedule C of the NASD's By-Laws.

Angelisse Kay Athan (Registered Representative, Oldsmar, Florida) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$39,000 in restitution to a public customer. The sanctions were based on findings that Athan converted or misused customer funds totaling \$40,000. In addition, Athan failed to respond to an NASD request for information.

George H. Ellis, IV (Registered Representative, Cary, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of findings that he effected 34 securities transactions in the accounts of seven public customers without their knowledge or authorization.

Dennis W. Gaddy (Registered Representative, Raleigh, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gaddy consented to the described sanctions and to the entry of findings that he received a \$5,000 check from a public customer to purchase shares of a mutual fund and, instead, Gaddy negotiated the check and converted the proceeds to his own use and benefit.

Richard E. Garcia (Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$13,200 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Garcia consented to the described sanctions and to the entry of findings that he sold securities to public customers outside the scope of his association with his member firms and without the written authorization of those firms. The findings also stated that, in the above transactions, Garcia received \$32,000 from the customers to buy securities and processed those funds through the bank account of a corporation he owned before he forwarded the funds to the issuer.

In addition, the NASD found that Garcia sent a letter to public customers on the stationery of his member firm without prior approval of the letter by a principal. Also, according to the findings, Garcia provided a public customer with a letter guaranteeing the customer against loss on an investment.

Gary K. Kertzman (Registered Representative, Deerfield Beach, Florida) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kertzman effected a series of transactions for the joint securities account of two public customers without their knowledge or authorization. To avoid detection of the unauthorized transactions, Kertzman changed the account address to his personal address. In addition, Kertzman failed to respond to an NASD request for information.

Richard L. Larew (Registered Principal, Ft. Lauderdale, Florida) was fined \$25,000, suspended from association with any NASD member in any capacity for 15 business days, and required to pay \$4,386.09 in restitution to public customers. The sanctions were based on findings that Larew purchased common stocks for the accounts of public customers without their knowledge or authorization.

MLB Investments, Ltd. (Denver, Colorado), Fred A. Borries, Jr. (Registered Principal, Lakewood, Colorado), James W. Magner (Registered Representative, Denver, Colorado), Charles W. Day, Jr. (Registered Principal, Denver, Colorado), and Kenneth L. Lucas (Registered Principal, Englewood, Colorado). The firm was fined \$50,000, expelled from membership in the NASD, and required to pay \$132,928 in restitution to public customers. Borries was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, suspended from association with any NASD member in any principal capacity for one year, and required to requalify by examination as a general securities principal. Magner was fined \$10,000 and suspended from association with any NASD member in any capacity for three months, and Day was barred from association with any NASD member in any capacity.

Lucas submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 30 days, suspended from association with any NASD member in any principal capacity for one year, and required to requalify by examination as a principal. The sanctions were based on findings that, in violation of the NASD's Mark-Up Policy, the firm, acting through Magner, Borries, and Day, effected transactions in a common stock at prices that were not reasonably related to the prevailing market price, with markups ranging from 45 to 130 percent over the prevailing market price. Moreover, the findings stated that, in furtherance of the scheme, these respondents engaged in and induced others to engage in deceptive and fraudulent devices and contrivances in transactions in the stock. The firm, acting through Day, engaged in a distribution of the same common stock while no registration statement regarding such securities was in effect with the SEC.

The firm, acting through Day, also solicited its customers to purchase the same stock and executed purchases and sales of the stock for its own account while it was engaged in a distribution of the stock. Furthermore, the firm, acting through Day, manipulated the market price for the stock by effecting a series of transactions with the

intention and effect of creating actual and apparent trading activity in the same stock and raising and maintaining the price of the stock. The activity induced the purchase and sale of the stock by others. Without admitting or denying the allegations, Lucas consented to the described sanctions and to the entry of findings that Borries and Lucas failed to supervise properly the activities of the firm's associated persons.

Lucas' suspension commenced with the opening of business December 21, 1992.

Donald Harvey Norris (Registered Representative, Orange Park, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Norris solicited and received checks from public customers totaling \$176,816.66 for investment purposes and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, Norris failed to respond to NASD requests for information.

Anthony Lee Rick (Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Rick consented to the described sanctions and to the entry of findings that he converted customer funds totaling \$1,000 to his own use and benefit. In addition, Rick failed to respond to an NASD request for information.

Rodney Alan Ruzanic (Registered Representative, Palm Harbor, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, as principal for his own account, Ruzanic effected private securities transactions with public customers at an unfair price. Furthermore, he failed to provide prior written notice to his member firm of his intent to engage in these private transactions. In addition, Ruzanic failed to respond to an NASD request for information.

Kevin J. Sakser (Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Sakser consented to the described sanctions and to the entry of findings that he effected eight unauthorized securities transactions in the account of a public customer. The NASD also found that Sakser changed the account address to a fictitious one.

Roy Smith (Registered Principal, Jacksonville, Florida) was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed to pay a \$1,611 arbitration award.

Southeastern Capital Group, Inc. (Maitland, Florida) and Richard Tobitt Wagner (Registered Principal, Maitland, Florida). The firm was fined \$25,000 and suspended from NASD membership for 90 days. Wagner was fined \$25,000 and barred from association with any NASD member in a supervisory or principal capacity. The sanctions were based on findings that the firm, acting through Wagner, conducted a securities business while failing to maintain its required minimum net capital and filed materially inaccurate FOCUS Part I and IIA reports. Also, the firm, acting through Wagner, failed to maintain accurate books and records and to file its annual audited financial report in a timely manner.

Scott Allan Wilcox (Registered Representative, Plantation, Florida) was fined \$47,965 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wilcox converted customer funds totaling \$2,965 to his own use and benefit without the customer's knowledge or authorization. In addition, Wilcox failed to respond to an NASD request for information.

Bruce Martin Zipper (Registered Principal, Miami, Florida) was fined \$5,000 and barred from association

with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 7 DBCC decision. The sanctions were based on findings that Zipper failed to pay a \$418,000 arbitration award.

Zipper has appealed this action to the SEC, and the sanctions are not presently in effect pending consideration of a temporary interim stay pending review of stay request and the merits of the appeal.

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

November Actions

Chatfield Dean & Co., Inc. (Englewood, Colorado), Frank J. Custable, Jr. (Registered Representative, Glendale Heights, Illinois), and Kevin C. Grom (Registered Principal, Chicago, Illinois). The firm and Grom each were fined \$25,000. In addition, Grom was suspended from association with any NASD member in any capacity for 14 business days and required to requalify by examination as a general securities principal. Custable was fined \$20,000 and barred from association with any NASD member in any capacity.

The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 8. The sanctions were based on findings that Custable executed an unauthorized transaction in a customer's account. Furthermore, Custable deceptively and fraudulently induced another customer to purchase stock by guaranteeing the customer a return on his investment within two weeks. In addition, the firm, acting through Grom, failed to prevent the unauthorized transaction by properly supervising Custable's activities.

The respondents have appealed this action to the SEC, and the sanctions, other than the bar against Custable, are not in effect pending consideration of the appeal.

Patrick Raymond Kluck (Registered Representative, Chicago Heights, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kluck consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without obtaining prior written discretionary trading authority. The NASD also found that Kluck failed to respond to NASD requests for information.

December Actions

Michael A. Bakonyi (Registered Representative, Fairfield, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$70,000, barred from association with any member of the NASD in any capacity, and must pay \$10,340.25 in restitution to his member firm. Without admitting or denying the allegations, Bakonyi consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$10,340.82 which were designated for insurance premium payments. In addition, Bakonyi failed to respond to NASD requests for information.

Robert Billings (Registered Representative, Sheboygan, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$200,000, barred from association with any NASD member in any capacity, and required to pay \$169,648.64 in restitution. Without admitting or denying the allegations, Billings consented to the described sanctions and to the entry of findings that he obtained \$214,067.98 in insurance policy premiums from nine insurance customers. The NASD found that Billings failed to follow the customers' instructions and used \$169,648.64 of those funds for other purposes. Billings also failed to respond to NASD requests for information.

Ray T. Clancy (Registered Representative, Godfrey, Illinois) submitted a Letter of Acceptance, Waiver and

Consent pursuant to which he was fined \$75,000, barred from association with any NASD member in any capacity, and required to pay \$33,000 in restitution.

Without admitting or denying the allegations, Clancy consented to the described sanctions and to the entry of findings that, without his customers' knowledge or consent Clancy requested the withdrawal of dividends totaling \$33,000 from their insurance policies and had the proceeds checks sent to a post office box that was not the address of record for any of the customers. Furthermore, the NASD determined that Clancy endorsed the checks and used the proceeds for purposes other than to benefit the customers. The findings also stated that Clancy failed to respond to NASD requests for information.

Robert Stephen Ellis (Registered Representative, Sylvania Lake, Michigan) was suspended from association with any NASD member in any capacity for five business days. The sanction was based on findings that Ellis failed to pay a \$7,025 NASD arbitration award in a timely manner.

Peter Paul E. Gepuela (Registered Representative, Glendale Heights, Illinois) was fined \$21,500, barred from association with any NASD member in any capacity, and required to pay \$1,476.23 in restitution to his member firm. The sanctions were based on findings that Gepuela obtained a \$1,476.23 check made payable to an insurance customer. These funds represented a surrender of the customer's insurance policy. Gepuela failed to forward the check to the customer and, instead, used the funds for purposes other than for the benefit of the customer. Gepuela also failed to respond to NASD requests for information.

Toby Lynn Hickman (Registered Representative, Columbus, Ohio) was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hickman received from four insurance customers \$236.44 for payment of insurance premiums and, instead, used the funds to pay premiums on other customers' insurance policies. In addition, Hickman failed to respond to NASD requests for information.

John P. Karekos (Registered Principal, Fairport, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Karekos consented to the described sanctions and to the entry of findings that he failed to follow a public customer's instructions to open an Individual Retirement Account (IRA). In addition, the NASD determined that Karekos recommended to the same customer the purchase and sale of securities that were unsuitable for the customer.

Steven W. Kochensparger (Registered Principal, Upper Arlington, Ohio) was fined \$200,000, barred from association with any NASD member in any capacity, and required to pay restitution to a public customer.

The sanctions were based on findings that Kochensparger directly and indirectly, made false statements of material facts or omitted to state material facts, engaged in schemes to defraud and in acts, practices, or courses of business that defrauded lenders, insurers, and other institutions concerning purported bonds issued by the Government National Mortgage Association (GNMA). In each incident, Kochensparger made representations to a lender, seller, or insurance company that his member firm held certain GNMA bonds as collateral for particular transactions, such as loans or the sale of real estate when, in fact, the member firm never held any GNMA bonds for any customer. As a result of this activity, lenders lost millions of dollars.

In addition, Kochensparger received \$25,000 from a public customer to purchase shares in a fund that did not exist and, instead, purchased shares of Kochensparger's member firm without the customer's knowledge or consent. Kochensparger also effected two unauthorized transactions in a public customer's account.

Ricardo Lavadores (Registered Representative, Chicago, Illinois) was fined \$21,500, barred from association with any NASD member in any capacity, and

required to pay \$1,660.32 in restitution. The sanctions were based on findings that Lavadores obtained from insurance customers \$1,660.32 to pay insurance premiums but kept the funds for his personal use and benefit.

Bruce Edward Straughn (Registered Representative, Naperville, Illinois) was suspended from association with any NASD member in any capacity for five business days. The sanction was based on findings that Straughn failed to pay a \$15,000 NASD arbitration award.

Dana H. Taylor (Registered Representative, Washington Courthouse, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$4,700, barred from association with any NASD member in any capacity, and required to pay \$779.10 in restitution to his member firm. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use insurance-customer funds totaling \$779.10. According to the findings, these funds represented loan proceeds from insurance policies that were obtained without a customer's knowledge or consent and the cash surrender value of two other insurance policies that the same customer wanted used to pay for an additional insurance policy.

Troy Wetter (Registered Principal, Greenview, Illinois) was fined \$50,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 8. The sanctions were based on findings that a former member firm, acting through Wetter, failed to maintain its minimum required net capital and prepared inaccurate net capital computations. Furthermore, the firm, acting through Wetter, filed inaccurate FOCUS Parts I and II reports and failed to file its audit report in a timely manner. In addition, the firm, acting through Wetter, conducted a securities business when the firm was suspended from membership in the NASD.

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

Frank L. Wolff (Registered Representative, Farmington Hills, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wolff consented to the described sanctions, and to the entry of findings that he signed an insurance customer's name to an "Authorization to Terminate Insurance Form" without the customer's knowledge or consent, resulting in the issuance of a \$3,616 check. According to the findings, Wolff issued a stop payment on the check and requested that a replacement check be sent to his home address. The NASD determined that Wolff used the proceeds of the replacement check for purposes other than for the benefit of the customer.

The NASD also found that Wolff obtained four checks totaling \$5,332.66 made payable to public customers by either requesting that the checks be sent to his home address or to his business address without the customers' knowledge or consent. The findings stated that Wolff failed to forward the checks to the customers and used the funds for other purposes.

Wolff also failed to respond to NASD requests for information.

Dario A. Zgoznic (Registered Representative, Eastlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$70,000, barred from association with any NASD member in any capacity, and required to pay \$32,521.02 in restitution to his member firm. Without admitting or denying the allegations, Zgoznic consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$32,521.02. These funds represented the proceeds of the liquidation of a mutual fund and unauthorized distributions from the life insurance policies of customers.

January Actions

Anthony J. Amaradio (Registered Representative, Bloomfield Hills, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000, suspended from association with any NASD member firm in any capacity for 10 business days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Amaradio consented to the described sanctions and to the entry of findings that he participated in private securities transactions with public customers without having given prior written notice to his member firm.

Diann J. Bright (Registered Representative, Country Club Hills, Illinois) submitted an Offer of Settlement pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bright consented to the described sanctions and to the entry of findings that she received from insurance customers \$315.95 in cash with instructions to use the funds as payment for insurance policies. The NASD found that Bright failed to follow the customers' instructions and used the funds for purposes other than the benefit of the customers. The findings also stated that Bright failed to respond to NASD requests for information.

Roland K. Kaeser (Registered Principal, Barrington Hills, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, he must requalify by examination as a general securities representative. Without admitting or denying the allegations, Kaeser consented to the described sanctions and to the entry of findings that he participated in private securities transactions and outside business activities while failing to notify his member firm.

Paul C. Kettler (Registered Principal, Chicago, Illinois) was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, he must requalify by examination as a general securities principal. The SEC imposed the sanctions following an appeal of a June 1991 NBCC decision. The sanctions were based on findings that a former member firm, acting through Kettler, employed an individual and permitted him to be associated with the firm when Kettler knew or should have known that the individual was barred from such employment or association by the NASD.

Kenneth L. Koch (Registered Representative, Pinconning, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Koch consented to the described sanctions and to the entry of findings that he received from insurance customers \$165 in cash with instructions to use such funds to make an automobile insurance payment. The NASD found that Koch failed to follow the customers' instructions and used the funds for his personal benefit.

James H. Mara (Registered Representative, Michigan City, Indiana) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mara consented to the described sanctions and to the entry of findings that he received from an insurance customer \$4,859.69 in cash with instructions to pay for life insurance policies. The NASD determined that Mara applied \$1,020.30 to the payment and used the balance of \$3,839.39 for his personal benefit.

Roger Lee Parsons (Registered Principal, Baltimore, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$165,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Parsons consented to the described sanctions and to the entry of findings that a former member firm, acting through Parsons, effected securities transactions while failing to maintain its required

minimum net capital and failed to report its non-Nasdaq securities volume. The NASD also found that the firm, acting through Parsons, failed to prepare and maintain completed suitability statements and written agreements before the initial purchase of securities, in violation of SEC Rule 15c2-6.

In addition, the NASD determined that the same firm, acting through Parsons, effected transactions in a common stock at unfair and unreasonable prices, causing \$85,474 in excess markups. These markups ranged from 11.11 to 90.48 percent, in violation of NASD's Mark-Up Policy. Also, according to the findings, Parsons failed to maintain adequate written supervisory procedures designed to assure compliance with SEC Rule 15c2-6 and failed to supervise an employee of his member firm.

Michael S. Rohdenburg (Registered Representative, Elmhurst, Illinois) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rohdenburg filed with two member firms new account cards containing false and inaccurate information regarding a customer. Also, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Rohdenburg sold shares of a "hot issue" to a restricted person.

In addition, Rohdenburg transferred customer accounts from one member firm to another without the customers' knowledge or consent.

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

Brian Robert Subatich (Associated Person, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Subatich consented to the described sanctions and to the entry of findings that he submitted to his member firm a false Series 6 examination score sheet.

Peter J. Uttley (Registered Representative, Berkeley, California) submitted an Offer of Settlement pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Uttley consented to the described sanctions and to the entry of findings that he obtained from a public customer \$43,000 with instructions to use the funds for various investments. The NASD found that Uttley failed to follow the customer's instructions and retained the funds for his personal use and benefit. The findings also stated that Uttley failed to respond to NASD requests for information.

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

November Actions

None

December 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 NASD member in any capacity for one month and required to requalify by examination before acting in a registered capacity.

The NBCC imposed the sanctions 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, non-exchange 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. Also, the firm failed to execute two mutual fund subscriptions promptly.

January Actions

Daunice M. Bunn (Registered Representative, Johnstown, Pennsylvania) submitted an Offer of Settlement pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bunn consented to the described sanctions and to the entry of findings that she received cash payments for insurance premiums totaling \$4,803.46 and failed to remit the funds to her member firm.

Gordon T. Gould (Registered Principal, Washington, D.C.) was fined \$10,000 and barred from association with any NASD member as a financial and operations principal. The NBCC imposed the sanctions following an appeal of a District 9 DBCC decision. The sanctions were based on findings that a former member firm, acting through Gould, provided investors with an offering memorandum that failed to disclose certain material information.

In addition, the firm, acting through Gould, filed FOCUS Parts I and IIA reports with inaccurate net capital computations and filed a late annual audited report. Gould, acting for the firm, also conducted a securities business without maintaining the firm's minimum required net capital. Furthermore, Gould failed to provide telegraphic notice of material inadequacies in the firm's internal controls.

Anne T. Peters (Registered Representative, Scranton, Pennsylvania) was fined \$23,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Peters received from an insurance customer \$242.50 in cash as payment for a life insurance premium. Peters failed to submit the money with the application and subsequently submitted personal checks that were not honored when presented for payment due to insufficient funds. Peters also failed to respond to NASD requests for information.

David C. Thompson (Registered Representative, Muncy, Pennsylvania) 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, Thompson consented to the described sanctions and to the entry of findings that he received cash payments totaling \$164.68 for insurance premiums that he failed to remit timely to his member firm. The NASD also found that Thompson failed to respond to NASD requests for information.

Philip J. Tomko (Registered Representative, Bloomsburg, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tomko induced a public customer to issue a \$3,000 check to him to purchase stock for her. Thereafter, Tomko cashed the check for his own use and benefit.

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)

November Actions

Vincent D'Ambrosio (Registered Representative, Scarsdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, D'Ambrosio consented to the described

sanctions and to the entry of findings that, without a customer's knowledge or consent, he applied for a \$1,686 cash surrender check against the customer's insurance policy. The check was endorsed and deposited into an account in D'Ambrosio's name. Purchasing a money order on this account, D'Ambrosio used the funds to pay the premium on a new insurance policy in the name of another customer.

James D. Fischer (Registered Representative, Bayonne, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fischer consented to the described sanctions and to the entry of findings that he collected cash insurance premiums totaling \$4,000 from customers and used the funds for his own purpose without the customers' knowledge.

Thomas M. Hayes (Registered Representative, Howell, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that he withdrew insurance dividends totaling \$824.90 from the policies of customers to pay premiums on new life insurance policies without the customers' knowledge or consent.

David Kippins (Registered Representative, Brooklyn, New York) was fined \$10,000. The NBCC imposed the sanction following appeal of a decision by the DBCC for District 10. The sanction was based on findings that Kippins effected transactions in the accounts of public customers without their knowledge or consent. Kippins has appealed this action to the SEC; therefore, the sanction is not in effect pending consideration of the appeal.

Shawn J. McCafferty (Registered Representative, N. Babylon, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCafferty consented to the described sanctions and to the entry of findings that, without the knowledge or consent of two insurance customers, he submitted disbursement request forms on the customers' insurance policies that resulted in the issuance of cash surrender checks totaling \$7,473.65. McCafferty then forged the customers' signatures on the checks, second endorsed the checks, and deposited the funds into his personal checking account, thereby converting the funds to his own use.

Deborah Jean Plonski (Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Plonski consented to the described sanctions and to the entry of findings that she executed an unauthorized sale of securities in the customer's account. In addition, the findings stated that Plonski withdrew funds from the same customer's account, forged the customer's signature, and took control of the monies for her own use without the customer's approval or knowledge.

Sherman, Fitzpatrick & Co., Inc. (Mineola, New York), Sheldon Paul Prager (Registered Principal, Lynbrook, New York), and Jack Weinberg (Registered Principal, Flushing, New York) were fined \$15,000, jointly and severally. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 10. The sanctions were based on findings that the firm, acting through Prager and Weinberg, engaged in a securities business while failing to maintain appropriate reserves for customer deposits or credit balances, and failed to maintain its required minimum net capital. The firm, acting through Prager and Weinberg, sold shares of common stock to customers in principal transactions at unfair prices. The markups on these transactions ranged

from 10.53 to 18.75 percent above the prevailing market price, in violation of the NASD's Mark-Up Policy.

In contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Prager and Weinberg, sold shares of three "hot" issues to restricted accounts. In addition, the firm, acting through Prager and Weinberg, acted as an underwriter and engaged in the distribution of common stocks without complying with the requirements of SEC Rule 144. In this instance, the respondents did not establish that the subject distributions were exempt from registration nor was there a registration statement in effect for the transactions. Furthermore, the firm, acting through Prager and Weinberg, effected transactions in the accounts of two registered representatives of other member firms but failed to notify the firms in writing that the respondents intended to open or maintain accounts for these individuals. Also, prior to executing any transactions in these two accounts, the respondents failed to use reasonable diligence to ensure that the transactions would not adversely affect the interests of the member firms.

Jerry J. Turcan (Registered Representative, Rye, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 12 months. Without admitting or denying the allegations, Turcan consented to the described sanctions and to the entry of findings that he accepted from a public customer a sell order without proper registration with the NASD as a representative. The NASD also found that Turcan failed to submit the order for execution and, instead, held it for two months before informing the customer that he was unable to execute the order.

The findings also stated that Turcan gave the same customer a \$6,000 personal check that was returned due to insufficient funds and promised to give the customer an additional \$2,000 for losses suffered as a result of his failure to execute the customer's sell order. In addition, the findings stated that Turcan asked the same customer to write a letter to Turcan's employer withdrawing the complaint against Turcan, in order to stymie further investigation by the employer and potential disciplinary action by the NASD.

December Actions

David A. Gingras (Registered Representative, Wallingford, Pennsylvania) was fined \$45,000 and suspended from association with any NASD member in any capacity for six months. The SEC affirmed the sanctions following an appeal of a November 1990 NBCC decision. The sanctions were based on findings that Gingras executed transactions in two customer accounts that were speculative and excessive without having reasonable grounds for believing that the transactions were suitable considering the customers' financial situations and investment objectives. These transactions generated \$33,083 in commissions to Gingras and \$140,404 in losses to the two customers. Gingras also issued a guarantee against loss to one of these customers concerning the value of her account.

Hasan Growney Company, Inc. (New York, New York) was expelled from membership in the NASD for failing to pay a \$10,000 arbitration award. In a separate action, the firm was also expelled for failure to pay a \$368.75 arbitration award.

Peter Thompson Higgins (Registered Principal, Metuchen, New Jersey) was suspended from association with any NASD member in any capacity for three business days. The NBCC imposed the sanction following an appeal of a decision by the DBCC for District 10. The sanction was based on findings that Higgins failed to pay a \$13,015.63 arbitration award in a timely manner.

Higgins appealed this action to the SEC, and the sanction is not in effect pending consideration of the appeal.

Adam Stuart Levine (Registered Representative, Port Washington, New York) was fined \$40,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 10. The sanctions were

based on findings that Levine effected seven unauthorized transactions in public customer accounts. In addition, without the knowledge or consent of two public customers, Levine transferred their accounts from one member firm to another.

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

Gabriel Anthony Martinez (Registered Representative, Cypress Hills, New York) was fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$1,000 in restitution to his member firm. The sanctions were based on findings that, without the knowledge or consent of 24 public customers, Martinez submitted dividend/loan/cash surrender request forms for their accounts, causing checks totaling \$24,748.33 to be issued. Martinez then forged the customers' signatures on the checks, deposited the funds into his bank account, and converted the proceeds to his own use and benefit. In addition, Martinez failed to respond to NASD requests for information.

James Russen, Jr. (Registered Representative, Middle Island, New York) was fined \$50,000 and suspended from association with any NASD member in any capacity for 30 business days. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 10. The sanctions were based on findings that Russen executed unauthorized transactions in the accounts of four public customers at four different member firms.

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

Wayne Wheeler (Registered Principal, Florida, New York) was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, in various securities transactions, Wheeler engaged in fraudulent and manipulative practices including misrepresentations, unauthorized transactions, conversion of customer funds, private securities transactions, and forgery. In addition, Wheeler failed to respond to NASD requests for information.

January Actions

William Hilton Money, Jr. (Registered Representative, Ventnor, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Money consented to the described sanctions and to the entry of findings that he failed to pay a \$3,820.80 arbitration award in full.

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)

November Actions

William J. Degnan, Jr. (Registered Representative, Concord, Massachusetts) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that without a customer's knowledge or consent, Degnan withheld and misappropriated to his own use and benefit \$99,597.50, representing proceeds from the sale of shares of common stock for the customer's account. In addition, Degnan failed to respond to NASD requests for information.

Oshima & Associates, Inc. (Boston, Massachusetts) and Harold H. Oshima (Registered Principal, Boston, Massachusetts) submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the

entry of findings that the firm, acting through Oshima, paid \$70,000 to a registered representative of another member firm for referring investors to Oshima, without the knowledge or consent of the representative's member firm.

December Actions

Robert M. Celeste (Registered Representative, Kennebunkport, Maine) was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Celeste recommended and caused the execution of an investment that was unsuitable for a public customer. In connection with this transaction, Celeste also engaged in a private securities transaction without providing prior written notification to his member firms.

January Actions

Gateway Securities, Inc. (Greenwich, Connecticut), Holmer P. Gronager (Registered Principal, Amelia Island, Florida), and David E. Weston (Registered Representative, Miami Beach, Florida). The firm and Gronager were fined \$25,000, jointly and severally, and Gronager was barred from association with any NASD member in any capacity. Weston was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 11 DBCC decision. The sanctions were based on findings that the firm, Gronager, and Weston failed to pay a \$227,250 arbitration award.

Dean E. Walker (Registered Representative, Kezar Falls, Maine) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he issued bad personal checks to his member firm totaling \$59,789 to pay for transactions in his securities accounts. In addition, the NASD found that Walker executed unauthorized transactions in the account of two public customers.

Wayne D. Wheeler (Registered Representative, Florida, New York) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wheeler failed to respond to NASD requests for information concerning a customer complaint.

Market Surveillance Committee

November Actions

Rosenkrantz, Lyon & Ross, Inc. n/k/a Josephthal Lyon & Ross, Incorporated (New York, New York) and Dan D. Purjes (Registered Principal, Armonk, New York)

submitted an Offer of Settlement pursuant to which the firm was fined \$225,000 and agreed to comply with certain undertakings, and Purjes was fined \$75,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to maintain accurate books and records of customer accounts, operational procedures relating to the transfer of customer accounts or securities, and failed to maintain adequate separations of functions between the corporate finance and retail operations of the firm. Furthermore, the findings stated that the firm and Purjes failed to establish and maintain written supervisory procedures.

December Actions

Richard Barnett (Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Barnett consented to the described sanctions and to the entry of findings that he recommended to three public customers the purchase of securities based on price predictions and other misrepresentations. Based on this information, the NASD found that the customers purchased the stock. According to the findings, Barnett's subsequent failure to enter a stop order as promised for one of the three customers resulted in significant losses for that customer.

Samuel H. Galantz (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$6,500, required to pay \$13,968.75 in restitution to public customers, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Galantz consented to the described sanctions and to the entry of findings that, in purchasing and selling securities for public customers, Galantz effected these transactions at unfair and unreasonable prices. The excessive gross sales credit charges ranged from 14.3 to 21.4 percent of the total cost to the customers for the transaction. Furthermore, the findings stated that certain of the aforementioned purchase and sale transactions were unsuitable for the customers.

Stewart E. Holzkenner (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$9,645, required to pay \$5,274.68 to customers, and to qualify as a general securities representative. In addition, he was suspended from association with any NASD member in any capacity for five business days.

Without admitting or denying the allegations, Holzkenner consented to the described sanctions and to the entry of findings that he executed, for three public

customers, transactions with gross sales credits exceeding 5 percent of the total cost of the securities to the customers. The findings also stated that Holzkenner engaged in unsuitable transactions with two public customers. Furthermore, the NASD found that, in a sale to a public customer, Holzkenner incorrectly informed the customer that Holzkenner's member firm acted in an agency capacity when it had acted in a principal capacity, thereby giving the customer incorrect information as to Holzkenner's total remuneration for the trade.

Jack J. Illare (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,587.50, required to pay \$1,587.50 in restitution to public customers, and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Illare consented to the described sanctions and to the entry of findings that he executed transactions for public customers and charged them excessive sales credits ranging from 15 to 23 percent of the total cost for the transaction.

Richard C. Stoyeck (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, required to pay \$17,025 in restitution to public customers, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Stoyeck consented to the described sanctions and to the entry of findings that he executed trades for public customers and charged them excessive gross sales credits ranging from 18 to 20 percent of the total cost of the trade.

January Actions

York Securities, Inc. (New York, New York) and David J. Corcoran (Registered Principal, Manhasset, New York) submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally and each was suspended from conducting certain block trading activity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in an unregistered distribution of common stock and warrants of a blind pool. Specifically, the NASD found that York and Corcoran sold the stock and warrants and consequently acted as underwriters for the distribution. According to the findings, the respondents engaged in this activity when they knew, or should have known, that no registration statement had been filed with the SEC, and that no exemption from registration for such transactions was available.

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.

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