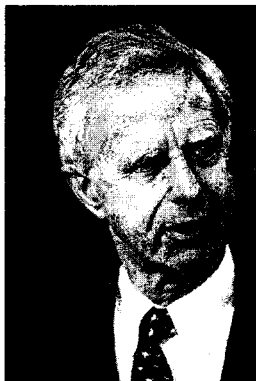


# ALERT



SEC Chairman Arthur Levitt Jr. speaks to attendees at NASD Spring Securities Conference in Washington, DC.

## Relatively Few Rogue Brokers Found

### SEC Releases Large Firm Report; Calls For Better Broker/Dealer Compliance

On May 18, the Securities and Exchange Commission (SEC) released its "Large Firm Project Report," a review of the hiring, retention, and supervisory practices of nine major broker/dealers that account for nearly half of all public brokerage firm

accounts. The SEC undertook the review in conjunction with the NASD and the New York Stock Exchange (NYSE) because of concerns about reports of ongoing, frequent, (Continued on page 3)

## Investigators Find Minimal Evidence Of Wrongdoing

### Enforcement Sweep Of Penny Stock Firms Finds Major Decline In Activity

A joint enforcement sweep by federal, state, and SROs finds that penny stock fraud, aggressively attacked by the NASD and securities regulators in the late 1980s, has been significantly reduced, indicating that regulator efforts to eliminate abusive practices in this segment of the market have been largely successful. While concerns about penny stocks continue to be a priority for regulators, they account for less than two percent of broker/dealer revenues in firms examined by the joint enforcement team. These were among the key findings of the 1993 Penny Stock Examination Sweep recently released by the SEC, the NASD, the NYSE, and the North American Securities Administrators Association.

The sweep was the largest cooperative effort ever undertaken by regulators and included securities officials from 40 states. Some 225 examiners and others participated in the nine-month sweep covering 129 broker/deal-

ers identified as conducting current or past business in markets for penny stocks.

The sweep was designed to:

- Measure compliance with SEC rules targeting penny stock fraud.
- Gauge the extent of penny stock activity in the United States.
- Examine other products sold by broker/dealers subject to the sweep.

## Conclusions Of The Study

The 1993 Penny Stock Fraud Examination Sweep concludes that:

(1) Penny stock activity in the U.S. is minimal. The sweep reveals that the combined impact of focused NASD and SEC investigative and enforcement initiatives, federal legislation, SEC regulations, state efforts, (Continued on page 2)

# CONTENTS

## 1 Cover Stories

SEC Releases Large Firm Report; Calls For Better Broker/Dealer Compliance

Enforcement Sweep Of Penny Stock Firms Finds Major Decline in Activity

## 4 Regulation

Investment Advisory Activities Of Registered Representatives Receives NASD Clarification

NASD Solicits Member Comment On Trading Activity Ahead Of Research Reports

SEC Issues Interpretation On Municipal Securities Disclosures

NASD Reiterates Members' Firm-Quote Obligation

SEC Approves MSRB Rule G-37 Affecting Political Contributions By Municipal Securities Firms

Investment Advisers Must Disclose More Information About Wrap Fee Programs

Proposal Amends NASD Short-Sale Rule

Members Urged To Watch For Firms That Incorporate To Avoid Securities Laws

## 11 Advertising

Mutual Fund And CMO Filing Requirement Changes Get SEC Nod

"Ask the Analyst"

## 13 Rule Interpretations

NASD Encourages Member Firms To Review Passive Market-Making Compliance

Members Urged To Avoid Settlement Agreements That Impede NASD Investigations

Members Will Have To Affirm That Customers Can Deliver On Short Sales

## 17 Violations

Member Sanctioned For Accepting Customer Payments Before IPO Effective Date

Federal And State Authorities Gain NASD Cooperation In Criminal Cases

## 19 Legislation

Functional Regulation Of Bank Securities Activities Receives NASD Support

## 20 Compliance Short Takes

## 21 NASD Disciplinary Actions

*(Penny Stock, continued from page 1)* and general SRO oversight has had a profound effect on penny stock activity. Only 1.9 percent of the targeted broker/dealer firm revenues, dramatically below previous levels, stemmed from penny stock activity.

(2) Penny stock volume is severely depressed and concentrated in just a few firms. Twelve broker/dealers, less than 10 percent of those examined, accounted for 60 percent of the total revenue produced by penny stock activity. Only eight firms reviewed in the sweep relied on penny stock business for 50 percent or more of their revenues.

(3) Most penny stock activity occurs at the wholesale level. The 12 firms that accounted for 60 percent of penny stock activity deal exclusively on a wholesale basis with other broker/dealers, and don't do business with retail investors.

(4) SEC penny stock rules governing "cold calls" and other retail promotional

activities were not applicable to about half of the examined broker/dealers because the firms engage in little or no penny stock activity.

(5) Fewer than one in nine examinations uncovered serious problems, with indications of violative conduct in only 14 broker/dealers that was sufficiently serious to warrant formal disciplinary action, according to those involved in the sweep.

"Eliminating penny stock fraud and abuse has been a major priority for the NASD during the past several years. I am proud that the regulatory and enforcement efforts of the NASD, working on its own and in cooperation with others, has caused many penny stock dealers who made their livelihoods taking advantage of their customers to go out of business or has led them to change the way they conduct their business," says John E. Pinto, NASD Executive Vice President, Regulation.

"The Penny Stock Fraud Examination Sweep is only the latest example of joint cooperation among securities regulators," Pinto adds. "By working together over the years, we have made significant progress to clean up the penny stock arena, reduce fraud and abuse, and add to overall investor confidence in securities markets."

### Legislative Remedies

Concerns about widespread abuses in penny stocks led to passage of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990. Subsequently, the SEC enacted two major rules governing "cold calls" and other promotional activities regarding penny stocks. The NASD and SEC play a major role in penny stock rules enforcement, as have the states and other SROs.

To receive the executive summary of the Penny Stock Examination Sweep report, call the SEC Office of Consumer Affairs at (202) 942-7040. □

*(Large Firms, continued from page 1)* serious sales-practice abuses by some registered representatives doing business with the public.

The joint Project staff conducted 170 examinations in 32 states, involving the nine firms' home offices, 161 branch offices, and 268 registered representatives who were the subject of sales-practice-related customer complaints or who were involved in a disciplinary action by a state or self-regulatory organization (SRO). These 268 representatives accounted for only one-half of one percent of the more than 50,000 brokers employed by the nine firms involved in the Project. Some preliminary findings include:

(1) More than one third, 97, of the examined registered representatives no longer work in the securities industry. An additional 31 have been barred by the SEC or an SRO, or are in prison. Another 52 are now under regulatory review or the subject of enforcement action.

(2) About one quarter of the 170 examinations produced enforcement referrals that include 14 of the 268 selected registered representatives. Typical problems uncovered were excessive trading, unsuitable recommendations, unauthorized trading, improper mutual fund switching, and failure to supervise.

(3) Some branch office managers do not adequately enforce supervisory and compliance systems.

(4) Registered representatives can too easily change firms after customers complain. Frequency of employment changes among a small percentage of individuals with multiple customer complaints indicates that some firms are ready to employ persons with a poor record.

(5) A significant finding of the study showed that large revenue producing

brokers generally are not the subject of investor complaints.

### **Project Recommendations**

The Project's findings indicate that more resources should be spent at the firm, SRO, and SEC levels to detect and take action against registered representatives with sales-practice problems and violations, referred to in the Report as "rogue brokers." Specifically, the SEC wants more member compliance with SRO reporting requirements, better systems for SRO investigations regarding Form U-4 and U-5 filings, and enhanced disclosure by firms on Form U-5. Furthermore, the SEC staff believes that even stronger SRO-imposed sanctions would better deter wrongdoing.

The Project's conclusions are:

- Increase examination efforts and sanctions in all sales practice matters. Examples of such would be permanent bars without right of re-entry, increased fines, longer suspensions, and better retraining and probationary programs.
- Improve broker/dealer compliance systems to identify problem representatives. Improvements would include greater ability to identify individuals who have a disciplinary history before they are hired or who develop problems after employment. Additionally, firms should step up their main office account reviews for suitability.
- Enhance compliance by firms and registered representatives with SRO reporting requirements. This includes timely required filings of Forms U-4, U-5, and RE-3, an NYSE information report pursuant to its Rule 351. (In this regard, the NASD already had underway an initiative to adopt an NASD rule to track NYSE Rule 351, a recommendation the SEC supported in its Report.)

- Establish qualified immunity from civil liability for firms completing Form U-5 on terminated individuals, through rulemaking or legislative changes.
- Increase the role of broker/dealer legal and compliance personnel in hiring registered representatives.
- Continue emphasis on education for securities industry personnel to help avoid customer complaints and raise ethical and regulatory standards.
- Develop and implement better tracking systems for SROs to handle Form U-4 and U-5 filings.
- Disclose through SROs the disciplinary history of registered representatives when customers open new accounts.

Finally, the SEC is considering the need for additional regulatory action to address the problem of registered representatives with a history of customer complaints, arbitration awards, judgments in private litigation, and disciplinary actions and fines. The SEC recommends that firms should designate, above the branch office manager level, someone to approve hiring registered representatives with a compliance problem record.

Copies of the SEC's Large Firm Project Report are available from the SEC Office of Consumer Affairs at (202) 942-7040. Members are urged to review the complete Report carefully and to consider how its observations and recommendations apply to their own firm. □

## Investment Advisory Activities Of Registered Representatives Receives NASD Clarification

In May 1994, the NASD issued *Special Notice to Members 94-44* that clarified the applicability of Article III, Section 40 of the NASD Rules of Fair Practice to certain activities of persons registered as representatives with an NASD member and as an investment adviser (RR/RIA) with the SEC, and who conduct their advisory activities "away from" their employer/member. This was the long-awaited follow up to *Notice to Members 91-32* (June 1991).

Notice 91-32 generated more than 150 comments and questions on the implications of applying Section 40 to wrap fees and other compensation arrangements used by member firms. As a result, a subcommittee of the National Business Conduct Committee (NBCC) was formed to study the issue. After extensive discussions and deliberations, the subcommittee formulated a clarification that the NASD Board of Governors considered and approved, relative to the scope of transactions that would be deemed to be "for compensation" under Schedule III, Section 40.

### Mark Your Calendar

As part of its effort to educate member firms about compliance and regulatory matters, NASD District 10 in New York City will host a seminar especially for the smaller broker/dealer.

The program will provide detailed information about how the NASD functions, and will include practical advice for the smaller firm regarding compliance and regulatory issues.

Location: New York Marriott Financial Center Hotel

Date: July 12th, from 1 to 6 p.m.

For more information, call Rosalie Tardi, NASD District 10, New York, at (212) 858-4178.

### Clarification Of Position

In clarifying its previous position in *Notice to Members 91-32*, the Board focused primarily on the RR/RIA's involvement in the execution of the transaction beyond a mere recommendation. Section 40 therefore applies to any transactions in which an RR/RIA participates in the *execution* of a trade.

Activities that would fall under either Section 40 or 43 (disclosure of outside business activities) of the Rules of Fair Practice include the following:

- Those transactions executed with RR/RIA participation for the customer and subject to the full "for compensation" provisions of Section 40, thereby requiring the member to record and supervise the transactions. This requirement applies whether the RR/RIA received transactionally related commission-type compensation, asset-based management fees, or wrap, hourly, yearly, or per-plan fees. Also included are situations where the dually registered person has an arrangement with a third-party money manager to handle the customer's account and the RR/RIA makes individual investment decisions for the client based on recommendations or alternatives furnished by the third-party manager.
- Only transactions executed on the customer's behalf without any form of compensation would be subject to the "non-compensation" provisions of Section 40. It is unlikely that this activity would

occur in any degree outside a familial relationship.

- All other investment advisory activity not involving transactions where the RR/RIA participates in the execution would be subject to the notification provisions of Article III, Section 43. These activities would include securities transactions independently executed by the customer through another broker/dealer or directly with a fund or other entity based on specific recommendations of the dually registered person, timing services that make the investment decision, the utilization of unaffiliated third-party advisers where the RR/RIA doesn't participate in investment decisions for the client, financial plan creation, and similar activities.

Members and RR/RIAs not already operating in accordance with the NASD Board Interpretation originally set forth in *Notice to Members 91-32* and clarified in *Notice to Members 94-44* **must take immediate action to do so.** NASD district examiners will review for compliance with this Interpretation in field examinations, and DBCCs will consider disciplinary action where appropriate. Members should design internal policies and procedures to protect customers that deal with dually registered persons to prevent possible violations of NASD rules and regulations.

For questions concerning the applicability of Article III, Section 40 to RR/RIAs, call Craig Landauer, Associate General Counsel, at (202) 728-8291. Call Daniel Sibears, Director, Regulatory Policy, at (202) 728-6911, about member compliance and record-keeping responsibilities under Article III, Section 40. □

# NASD Solicits Member Comment On Trading Activity Ahead Of Research Reports

The NASD Board of Governors is asking members to comment on a proposed Interpretation under Article III, Section 1 of its Rules of Fair Practice whereby it would be a violation of just and equitable principles of trade for members to purposefully establish, increase, or liquidate a position in a security listed on The Nasdaq Stock Market<sup>SM</sup> before a member issues a research report on that stock. The Board is also soliciting comment on a policy recommendation that encourages member firms to develop and implement "Chinese Wall" procedures to restrict the flow of information between a firm's departments.

## Policy Description

In 1991, the NYSE released a memorandum on stock accumulation in advance of issuing research reports. The notice said that where an NYSE member intended to purposefully acquire a position in an NYSE-listed security in contemplation of the issuance of a favorable research report, that conduct would be inconsistent with just and equitable principles of trade. The NYSE interpretation applied only to NYSE-listed securities. At that time, the NASD did not take a formal position on such practice regarding Nasdaq issues or third-market trading of exchange-listed securities.

Since then, the NASD has received inquiries from member firms about NASD policy regarding accumulating inventory positions in Nasdaq-listed securities in contemplation of research reports recommending purchase of those securities. For example, a firm's research department might prepare research reports that recommend certain Nasdaq-listed securities to its customers. Before publication of the reports however, the member firm's trading department might accumulate a position in those securities to meet anticipated customer demand for the stocks. Once the stock accumulation took place, the

firm would issue recommendations and begin soliciting orders for the stocks, planning to fill customer orders from the firm's inventory.

In response to inquiries for guidance on the NASD's position regarding Nasdaq-listed companies, the NASD Market Surveillance Committee (MSC) and Trading Committee reviewed the recommendation of a task force appointed by the MSC to study and develop proposals addressing this issue. Both committees supported a proposal that is consistent with the NYSE position that the NASD Board considered, approved, and authorized for member comment.

## Proposed Board Policy

The proposed NASD Board policy states that trading activity purposefully establishing, increasing, or liquidating a position in a Nasdaq security before issuance of a research report in that security is inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice.

In addition, the Board recommended that firms establish Chinese Wall procedures to control the information flow between research and trading departments. Chinese Wall procedures are risk management controls adopted by securities firms that include physical and informational barriers between different departments, so that knowledge of upcoming events will be isolated within a single group and not disclosed to others that might trade on or otherwise benefit from the information. Because many firms already use Chinese Wall restrictions between their research and trading departments, the Board approved use of the walls as the preferred method to comply with its new policy.

## Walls Not Required

While the Board's action would not require a member to develop Chinese Wall procedures, the method is endorsed as the most effective way for a member firm to demonstrate that any trading activity that may have occurred before the member issued a research report was not in violation of the policy. Accordingly, if a member decides not to implement Chinese Wall restrictions, it would carry a significantly greater burden of proving that stock accumulations or liquidations prior to issuance of a research report had not been purposeful if an NASD investigation into the firm's buying or selling activity became necessary. This approach makes Chinese Walls the preferred choice but allows members to analyze their own circumstances and decide whether Chinese Wall procedures are appropriate. Consequently, the Board does not believe that a mandatory requirement is appropriate.

The Board is soliciting comment from member firms on adoption of the new policy, anticipating that the policy would be an Interpretation of Article III, Section 1 of the Rules of Fair Practice governing just and equitable principles of trade. The Board also requested comment on these collateral issues: (1) whether the policy should also apply to third-market trading of exchange-listed securities (i.e., apply the policy to non-exchange member firms trading exchange-listed securities); and (2) whether the policy should apply to securities not listed on Nasdaq (i.e., issues quoted on the OTC Bulletin Board or in the "pink sheets"). Comments were due by June 15.

Call the Market Surveillance Department at (301) 590-6410 if you have questions about this subject. □

## SEC Issues Interpretation On Municipal Securities Disclosures

The SEC seeks comments by July 15 on its interpretive statement regarding the disclosure obligations of participants in municipal securities. In a companion release, the SEC published for comment proposed changes to Rule 15c2-12 under the Securities Exchange Act of 1934 (Act) that would prohibit broker/dealers from underwriting and recommending municipal securities when adequate information is not available.

In September 1993, the SEC Division of Market Regulation staff reported to Congress on several aspects of the municipal securities market, including the disclosure requirements of various market participants. According to the report, investors need enough timely information about issuers to:

- Protect themselves from fraud and manipulation.
- Evaluate offering prices.
- Decide which municipal securities to buy, and to decide when to sell.

In addition, the report found that, with the growing number of individual investors buying municipal securities, the need for more current and accessible information about an issuer municipality was necessary if a broker/dealer were to meet its suitability responsibilities to have a reasonable basis for its recommendations. As a result, the SEC issued interpretive guidance about disclosure under anti-fraud provisions of the federal securities laws.

In a companion release, the SEC proposed rule amendments to existing Rule 15c2-12 that would prohibit a broker/dealer from underwriting a municipal securities issue unless the issuer or a designated agent undertakes in a written agreement to provide certain informa-

tion to a nationally recognized municipal securities information repository. The proposed changes would prohibit a broker/dealer from recommending the purchase or sale of a municipal security without having reviewed the information furnished by the issuer.

### SEC Interpretative Statement

The SEC statement, issued March 9, 1994, focuses largely on municipal securities issuers' disclosure obligations. The statement points out that disclosure by municipal issuers has significantly improved for primary offerings; however, concerns still exist for those of non-general obligation bonds and smaller issues. The SEC notes that secondary market disclosure practices present greater concerns.

In its statement, the SEC discusses the application of the anti-fraud provisions of the federal securities laws to disclosure in the primary offering and secondary markets. The statement also addresses voluntary guidelines issued by the Government Finance Officers Association that are accepted among a number of larger issuers.

For the obligations of municipal securities broker/dealers, the statement reaffirms SEC interpretations made during the proposal and adoption of Rule 15c2-12 in 1989. According to the SEC, underwriters must show a reasonable basis for recommending securities and, in fulfilling that obligation, they must review the issuer's statements made with the offering in a professional manner.

The SEC also emphasizes the responsibilities of broker/dealers trading securities in the secondary market who, unlike an underwriter, ordinarily are not obligated to contact the issuer to verify information. If a broker/dealer discovers factors that indicate an inaccurate or

## NASD Cautions Members About Using Bulletin Boards

The NASD, SEC, and state securities administrators are intensifying their surveillance of electronic bulletin board systems such as Prodigy, CompuServ, GENie, America Online, and Internet because of their growing popularity and increasing use by securities industry personnel to recommend and promote sales of securities. Registered representatives should not make statements through an electronic system that otherwise would be prohibited under securities rules and regulations using any other medium, including day-to-day dealings with customers.

This activity may include violations of state blue-sky laws, NASD advertising rules, or the anti-fraud provisions of federal securities laws. Similarly, member firms' supervisory efforts should be adequate to monitor how their RRs are using electronic bulletin board systems to be sure that there is no ensuing violative activity.

incomplete disclosure, or indicate need for further inquiry, the broker/dealer may have to secure additional information or verify existing information.

The SEC adopted Rule 15c2-12 to prevent fraud by enhancing the quality, timing, and dissemination of disclosure in the municipal securities market. Details of proposed changes to the rule are in *Notice to Members 94-37* (May 1994) and in the March 17, 1994, *Federal Register*, Release No. 34-33741, Interpretive Statement About Disclosure, and Release No. 34-33742, Proposed Changes to Rule 15c2-12.

If you have questions about this subject, call Brad Darfler, District Coordinator, NASD Compliance Department, at (202) 728-8946. □

# NASD Reiterates Members' Firm-Quote Obligation

SelectNet<sup>SM</sup> has experienced a marked increase in preferenced orders priced at the inside along with an increase in backing away complaints. The reliability of market makers' disseminated quotes and the assurance to market participants that they can trade at these quotes is a fundamental operating principle of The Nasdaq Stock Market<sup>SM</sup> that ensures the fair, efficient, and orderly operation of Nasdaq and the protection of investors.

Under the SEC's "firm-quote rule," Rule 11Ac1-1, a market maker is obligated to execute an order "presented" to it at its displayed quotation up to its displayed size. Additionally, Article III, Section 6 of the NASD Rules of Fair Practice and Part V, Section 2(b) and Part VI, Section 2 of Schedule D to the NASD By-Laws require market makers to honor their quotes up to their displayed size. A market maker is relieved from its firm-quote obligation only if:

- the market maker sends a quote change to the NASD before an order is presented, or
- the market maker has effected or is effecting a transaction when an order sought to be executed is presented and immediately upon completion of the transaction communicates a revised quotation to the NASD.

Thus, a market maker's firm-quote obligation for a particular order is triggered when that market maker becomes aware of, or should reasonably be aware of, the pendency of that order. The policy accompanying Article III, Section 6 of the NASD Rules of Fair Practice also imposes on market makers an obligation to monitor orders being received.

The NASD takes seriously its regulatory obligation to ensure that its members fully comply with the firm-quote rule. When presented with a backing away

complaint, the NASD conducts a preliminary facts and circumstances analysis to determine when an order was presented to the market maker and whether the market maker could rely on an exemption from the firm-quote rule. Thereafter, the NASD thoroughly investigates all valid backing away complaints and takes prompt and appropriate disciplinary action when warranted.

These are some guidelines that market makers should follow when simultaneously handling orders from multiple sources:

- Once a market maker becomes aware of the receipt of an order, regardless of how the order is transmitted to the market maker, it is obligated under the firm-quote rule to process and execute that order at its disseminated quote up to its displayed size, absent an exemption from the firm-quote rule.
- Preferenced orders received through SelectNet should be monitored with the same degree of diligence afforded other means of traditional order communication.
- If a market maker failed to act on a preferenced SelectNet order before it "timed out" and did not execute any other order during the time that SelectNet order was pending, the NASD will infer, absent convincing contrary evidence, that the market maker saw the SelectNet order and backed away from its quote. The NASD also will draw the same inference if the market maker changed its quote while the order was pending and did no trades during the pendency of the SelectNet order.

In addition, to facilitate the aggressive review of all backing away complaints in a prompt manner, and, when backing away is established, to permit resolution that benefits the complainant, the NASD believes it is incumbent on members alleging back-

ing away to raise their complaints in a timely manner. Moreover, the NASD believes that it is inappropriate for a firm to defer pursuing a backing away complaint, particularly in instances where the firm has an opportunity to determine if the market is moving in an advantageous direction for its order.

- Members complaining of backing away should contact, or take reasonable steps to contact, the relevant market maker as soon as possible after the alleged backing away. While it is difficult to establish a hard and fast rule governing when backing away complaints should be lodged with the relevant market maker, the NASD notes that the Intermarket Trading System Plan entered into and followed by the NASD and every national securities exchange provides that trade-through complaints must be lodged within five minutes of the alleged trade-through. Thus, a member's failure to take reasonable steps to contact the relevant market maker within five minutes after the alleged backing away will be a very important factor that the NASD will consider when evaluating what action, if any, may be appropriate in response to a backing away complaint. The market maker also should ensure that it has the ability to receive and respond timely to potential backing away complaints.
- If contact with the relevant market maker does not resolve the alleged backing away, the complaining member should notify the NASD Market Surveillance Department within 15 minutes after the alleged backing away occurs, either by calling (301) 590-6080 or by fax at (301) 590-6671. A member's failure to take reasonable steps to notify the NASD within 15 minutes of the alleged backing away will be a very important factor that the NASD will consid-

## NAIC's "Own Your Share of America" Campaign Gets Underway

To increase direct individual investment, the National Association of Investors Corporation (NAIC) is conducting its third annual "Own Your Share of America"



campaign. This month-long promotional effort is intended to encourage people to become direct owners of the common stock of publicly traded companies. The last two campaigns have proven quite successful with corporate participants reporting increases of as much as 20 percent in their employee stock purchase and investment programs during that period.

The NASD supports NAIC's efforts because The Nasdaq Stock Market<sup>SM</sup> is the market of individual investors—they own 60 percent of Nasdaq<sup>®</sup> securities by market value, and their participation in this market is growing. According to recent survey data, between 1985 and 1990 the number of individual investors in Nasdaq securities jumped from 8.3 to 11.1 million, an increase of 33.7 percent.

If you or your firm would like more information on the program, call NAIC at (810) 543-0612 ext. 323, or write NAIC, P.O. Box 220, Royal Oak, MI 48068.

er when evaluating what action, if any, may be appropriate in response to a backing away complaint. Thereafter, the complaint also must be filed on an official backing away complaint form

within 24 hours of the alleged backing away. Copies of the form are available by contacting Market Surveillance at (301) 590-6080.

- Recently, some order-entry firms

## SEC Approves MSRB Rule G-37 Affecting Political Contributions By Municipal Securities Firms

On April 13, 1994, the SEC approved Municipal Securities Rulemaking Board (MSRB) Rule G-37 regarding political contributions and prohibitions on municipal securities business. Related amendments to Rules G-8 and G-9 on recordkeeping and record retention were also approved. The limitations and requirements under Rule G-37 and changes to Rules G-8 and G-9 went into effect April 25, 1994.

MSRB Rule G-37 establishes several requirements affecting municipal securities broker/dealers, including limitations on business activities brought about by political contributions, limitations on soliciting or coordinating political con-

tributions, and broker/dealer recordkeeping and disclosure.

The rule addresses practices known as "pay to play." These typically involve payments of political contributions to help finance election campaigns for state and local officials. The NASD shares MSRB and SEC concerns about these practices because they:

- Increase costs borne by issuers, dealers, and investors.
- Create artificial barriers to competition.
- Undermine the integrity of the municipal securities market.

have been canceling their preferred SelectNet orders within the minimum three-minute period that the order is pending without having received a "decline" from the relevant market maker and, thereafter, alleging backing away. The NASD notes that the cancellation of preferred SelectNet orders that have not been declined effectively precludes market makers from satisfying their firm-quote obligations. Thus, members should be aware that their cancellation of preferred SelectNet orders before a market maker has declined the order or before the order "times out" will generally be considered conduct evidencing a lack of an intent to trade, thus precluding the member from raising a valid backing away complaint.

If you have questions about this issue, call Bernard Thompson, Assistant Director, Market Surveillance, at (301) 590-6436; Robert Aber, Vice President & General Counsel, at (202) 728-8290; or Thomas Gira, Assistant General Counsel, at (202) 728-8957. □

Members are urged to review Rule G-37 in its entirety, as well as the amendments to Rules G-8 and G-9. All of this information, along with background data and a detailed discussion of industry comments, are in SEC Release No. 34-33868, published in the April 13, 1994, *Federal Register*. In addition, a *Special Notice To Selected Members* on this subject was sent on April 18.

If you have questions about MSRB Rule G-37 or other municipal securities issues, call Walter J. Robertson, Director, Compliance Department, at (202) 728-8236, or Brad Darfler, District Coordinator, at (202) 728-8946. □



# Investment Advisers Must Disclose More Information About Wrap Fee Programs

Effective October 1, 1994, SEC amendments to Rules 204-1, 204-3, and Form ADV of the Investment Advisers Act of 1940 will require investment advisers that sponsor wrap fee programs to furnish current and prospective clients a brochure with information about program costs and services. Sponsors must file the brochure, which must be updated periodically, with the SEC as part of Form ADV.

The aim of the wrap fee brochure is to address the special disclosure needs of clients when they participate in

programs that offer single-fee investment advice, regardless of whether information about portfolio managers is furnished. This definition excludes managed account programs and mutual fund asset allocation programs.

A new Schedule H to Form ADV contains specific information to be covered in the brochure, which must be delivered initially to prospective wrap fee clients and annually to existing clients. Furthermore, advisers must supply the brochure to all clients on a one-

time basis when it is filed with the SEC. The brochure must be updated promptly to reflect material changes or within 90 days after the end of the sponsor's fiscal year to reflect other changes.

See Release No. 1A-1411 in the April 26, 1994, *Federal Register* for complete details, or call Walter J. Robertson, Director, Compliance Department, at (202) 728-8236. □

## Proposal Amends NASD Short-Sale Rule

The NASD submitted two proposals to the SEC that amend the NASD's proposed short-sale rule or "bid test" applicable to stocks traded on the Nasdaq National Market\*. The first amendment expands the options market-maker exemption from the rule to include certain short sales made by index options market makers. If approved, the proposal will allow an NASD member to execute a short sale for the account of an index options market maker that would otherwise violate the rule if:

- The short sale hedges an existing or contemporaneously established index options position, and
- The dollar value of all stock sold short to hedge the offsetting stock index options position(s) does not exceed the aggregate current index value of the offsetting index options position(s).

The first NASD proposal also contains four other amendments that:

- Provide that all market-maker exemptions from the rule will be uniform in

duration. Under the proposal, qualified Nasdaq market-maker, Nasdaq warrant market-maker, and qualified options market-maker exemptions will expire 18 months after the effective date of the NASD short-sale rule. Before the end of the 18 months, the NASD will evaluate if these exemptions should be extended, modified, approved permanently, or terminated.

- Clarify that options and warrant market-maker transactions unrelated to normal options/warrant market-making activity will not be considered hedging transactions and, therefore, cannot be the basis for an exemption from the NASD short-sale rule. This includes index arbitrage or risk arbitrage that, in either case, is independent of an option or warrant market makers' market-making functions.
- Expand the exemption from the NASD short-sale rule for certain transactions in special arbitrage accounts and special international arbitrage accounts to include short sales made by nonmembers, so that the exemptions for these accounts

## Midwest Compliance and Regulation Seminar Planned For September

NASD District 4 is sponsoring a membership conference. Major topics will include T+3 settlement; MSRB Rule G-37; continuing education; advertising reviews and mutual fund disclosure requirements; regulatory and supervisory issues affecting RR/RIAs; and the limit-order and short-sale rules. The luncheon speaker will be Craig A. Goettsch, Iowa Superintendent of Securities and President, North American Securities Administrators Association, Inc.

Date: September 13th, from 8:30 a.m. to 4:30 p.m.

Location: The Hyatt Regency Crown Center Hotel, Kansas City, Missouri. A limited number of rooms are available at \$99 per night if reserved by August 22.

Cost: \$125 for the first registered person and \$95 per additional attendee from the same firm.

For more information, call Cheryl Hackathorn, NASD District 4, Kansas City, at (816) 421-5700.

are identical to those under SEC Rule 10a-1.

- Provide that an NASD member will not violate the NASD short-sale rule if it executes an order for the account of an option or warrant market maker in the good faith belief that the order complies with the NASD short-sale rule, but subsequently finds that the order was not exempt or it was incorrectly marked long.

### Mergers And Acquisitions

The second amendment deals with the application of the short-sale rule to situations involving the merger or acquisi-

tion (M&A) of a Nasdaq National Market security.

First, the NASD proposes to amend the rule to provide that a member may immediately become a qualified market maker in either or both of the stocks involved in a merger or acquisition, even if the member was not previously a market maker in either stock. However, if a market maker withdraws on an unexcused basis from any such M&A stock within 20 days of so registering, it shall not be designated as a qualified market maker for any subsequent merger or acquisition announced within three months subsequent to the

unexcused withdrawal.

Second, the NASD proposes to amend Interpretation A under the rule to clarify that the short sales made by a qualified market maker in one M&A stock will be considered bona fide market-making activity if it hedges purchases in the other M&A stock made by the market maker during the course of bona fide market-making activity.

If you have any questions about this proposal, call Thomas R. Gira, Assistant General Counsel, at (202) 728-8957. □

## Members Urged To Watch For Firms That Incorporate To Avoid Securities Laws

Based on recent actions by federal and state securities regulators taken against some business promoters, members are urged to be alert for small businesses that incorporate as limited liability companies (LLCs) to avoid compliance with securities laws. LLCs offer traditional corporate liability protection, coupled with the tax advantages of a partnership.

Although LLCs are a legitimate type of corporate entity, regulators see growing evidence of promoters that abuse LLC-type formations. State regulators have found several LLCs that offer investment opportunities in wireless cable and related communications technologies. In March, the SEC sued a Pennsylvania-based LLC that had a

wireless cable system under development.

Certain business promoters abuse the LLC corporate form by claiming exemption from securities statutes despite having several hundred customers throughout the U.S. Among the techniques used by LLC promoters are high pressure sales tactics, false statements of facts, and unrealistic promises of returns on investment. In many instances, LLCs are sold to unsophisticated investors who use retirement funds to finance their purchases. State and federal regulators believe that persons soliciting small investors for a project so complex and difficult to understand are really promoting a security, regardless of how the corporation is structured.

Members should review any involvement with LLCs and consider the concerns raised by state regulators and the SEC that certain LLCs truly are securities and must comply with registration requirements. □

### An Important Reminder

Back by popular demand, this year's NASD Advertising Regulation seminar, led by NASD and industry speakers, will include practical "how to" information about compliance with advertising regulations focusing on mutual fund and variable product advertising, mutual fund sales through banks, and other compliance issues.

As a special "Ask the Analyst" feature, all Advertising Regulation analysts will be available throughout the seminar to answer your questions.

Dates: September 27th and 28th.

Location: ANA Hotel, 2401 M Street, NW, Washington, DC 20037.

Don't miss this educational and informative event. To make sure you receive a conference brochure, call Carolyn Thrower, NASD Advertising Regulation, at (202) 728-6977.

## Mutual Fund And CMO Filing Requirement Changes Get SEC Nod

Effective June 1, the SEC approved amendments to the NASD Rules of Fair Practice to require submissions to the Advertising Regulation Department of investment company advertisements and sales literature that incorporate mutual fund rankings to:

- Include a copy of the basis for the ranking or comparison used in the advertisement or sales literature.
- Require submission prior to use of material that incorporates mutual fund rankings not generally published or that are the creation of the investment company, its underwriter, or an affiliate and to include a copy of the data on which the created ranking or comparison is based.

The amendments also make permanent the prefiling requirement for advertisements concerning collateralized mortgage obligations (CMOs) under the Rules of Fair Practice and the Government Securities Rules.

### Rankings Background

The number of mutual fund ranking entities (REs) is growing rapidly along with the fund industry itself. REs generally rank or compare funds' performance (either yields or total returns), although they may include other factors such as relative risk. REs also may provide rankings within a special category of funds. Categories may be based on common objective, type, size, or a variety of factors.

Rankings may be published by REs directly or through media, such as newspapers or magazines. References to such rankings in mutual fund advertisements and sales literature have increased substantially as members attempt to boost sales and promote the

performance of various funds. To prevent their misleading use, the NASD believes it is important to review and regulate ranking materials and the development of customized rankings.

### Amendment's Description

The NASD amended Article III, Section 35(c)(1), of the Rules of Fair Practice, to require members that file any advertising or sales literature for review that uses or incorporates mutual fund rankings or comparisons of the investment company with other investment companies, to include in the filing a copy of the ranking or comparison used in the advertising or sales literature. The amendment to the subsection will permit the NASD to determine immediately whether the use of a ranking complies with the advertising rules, thus avoiding the need to research rankings or obtain a copy of the source information to verify its accuracy.

(In a separate SEC filing, the NASD has proposed its own guidelines to be used for rankings in mutual fund advertisements and sales literature. These guidelines were published for comment in Securities Exchange Act Release No. 33606, February 8, 1994; 59 FR 7276, February 15, 1994.)

### Pre-Use Filing Requirements

The NASD also amended Subsection 35(c)(2) to require that all investment company advertising or sales literature that incorporates investment company rankings or comparisons with other investment companies, where the ranking or comparison is not generally published or is the creation of the investment company, its underwriter, or an affiliate, be filed with the Advertising Regulation Department 10 days prior to use. Although the NASD is concerned about permitting ranking categories to

be created by investment companies and affiliates, rather than by an RE, it recognizes that a customized ranking may provide investors with meaningful information. These filings must include a copy of the data, ranking, or comparison on which the ranking is based.

### CMOs

The SEC also approved amendments to Article III, Subsection 35(c)(2) of the Rules of Fair Practice, and Subsection 8(c)(1)(B) of the Government Securities Rules that eliminate sunset provisions relating to CMOs. This action makes the prefiling requirement for CMO advertisements permanent.

If you have any questions about this subject, see *Notice to Members 94-25* (April 1994), or call Elliott R. Curzon, Senior Attorney, (202) 728-8451; Robert J. Smith, Attorney, (202) 728-8176, Office of General Counsel; or R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, (202) 728-8329. □

# “ASK THE ANALYST”

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

## Broker/Dealer Activities

**Q.** *Can a member firm's registered representative file with the NASD Advertising Regulation Department advertising and sales literature that has not been reviewed and approved by the firm's registered principal for advertising compliance?*

**A.** No. The NASD Advertising Regulation Department only will accept regular filings of advertising and sales literature that have been authorized by a firm's compliance department. According to Article III, Section 35(b)(1) of the Rules of Fair Practice, a registered principal (or his or her designee) of the member has to approve by signature or initial, prior to use, each advertising and sales literature item.

**Q.** *May unregistered personnel in a financial institution discuss with customers securities products offered by an NASD member firm networking with the financial institution?*

**A.** Unregistered persons may not discuss general or specific investment products offered by the NASD member, nor may they prequalify prospective customers regarding financial status and investment history and objectives, or solicit new accounts or orders. Members should see *Notice to Members 88-50* for more information.

**Q.** *Assume that a member broker/dealer wants to use advertising and sales literature of mutual fund sponsors, and experiences episodes where a fund sponsor has neglected to respond, or inadequately responded, to NASD comments on the fund sponsor's material. What should the broker/dealer do?*

**A.** According to Article III, Section 35(b)(1) of the Rules of Fair Practice, the broker/dealer is responsible for approving all advertising and sales literature used in its business, including finished pieces produced by a fund sponsor and previously filed with the NASD. Materials that do not meet the broker/dealer's compliance standards should not be used. A broker/dealer may bring to the attention of the NASD Advertising Regulation Department cases in which a fund sponsor has not responded to NASD comments regarding materials made available to the broker/dealer. The Department will resolve such situations directly with the fund sponsor.

**Q.** *Why did the Advertising Regulation Department raise its filing fees?*

**A.** The related costs of reviewing advertising and sales literature have risen as the number and complexity of products and advertising regulations have increased. The NASD also recognizes that only 10 percent of its members use the Advertising Regulation Department's services. Consequently, fees were raised to incorporate the rising costs of more time consuming reviews and to ensure that those members using the services are assessed a fair and proportionate fee.

Each specific fee has been increased, including the expedited service charge. However, the charge for expedited service is no longer added to the base service charge. In addition, the number of pages or minutes of video that triggers an additional fee has been stepped up from 5 to 10 pages and from 5 to 10 minutes. Please see *Notice to Members 94-27* (April 1994) for details about fee adjustments.

## Promotional Materials For Bonds

**Q.** *What disclosure standards apply to the quotation of yield in advertising and sales literature for bonds?*

**A.** In general, yield quotations in bond advertising and sales literature must include the lower of yield-to-call or yield-to-maturity, equally prominent to any other yield information, and a description of the basis of the yields.

## Mutual Funds

**Q.** *Does a seminar invitation, either published in the media or mailed to clients, for a presentation co-hosted by a mutual fund company representative have to offer the prospectuses for the representative's products?*

**A.** Such an invitation would be considered an offer of the representative's products and must be filed with the NASD Advertising Regulation Department pursuant to Article III, Section 35(c)(1) of the Rules of Fair Practice. The invitation must comply with the applicable SEC advertising regulations and include an offer of the prospectuses for the representative's products.

**Q.** *Can you advertise a mutual fund, variable annuity product, or unit investment trust for which a registration statement has been filed but is not yet effective?*

**A.** Yes. Provided the material complies with the provisions of either SEC Rule 134 or SEC Rule 482. It must include the pre-effective legend referred to in SEC Rule 134(b)(1) or SEC Rule 482(a)(4). The piece must be filed with the NASD Advertising Regulation Department.

## Rule Interpretations

# NASD Encourages Member Firms To Review Passive Market-Making Compliance

The NASD Market Surveillance Committee (MSC) urges all members to review their compliance procedures and take adequate measures to educate all personnel when engaged in passive market making according to SEC Rule 10b-6A. In several disciplinary actions, the MSC imposed sanctions on firms for patterns of passive market-making violations. While the MSC recognizes the complexity of the rule, it also sees the need for improved member-firm compliance.

The most common trading problems include violations involving purchases by a passive market maker at prices above the highest independent bid and improper passive market-maker bids. The rule, with certain exceptions, limits purchases to a price no higher than the highest independent bid and restricts passive market-maker bids to a level no higher than the highest independent bid.

Members should take these precautions during the trading day:

(1) When entering quotes on the first day of passive market making, be sure displayed size on the bid side is the lesser of the Small Order Execution System (SOES<sup>SM</sup>) minimum exposure limit or 30 percent of the member's average daily trading volume (ADTV) net purchase limit.

(2) If a market maker exceeds its 30 percent ADTV net purchase limit, it must, within 90 seconds, withdraw its quotes from the Nasdaq Workstation<sup>®</sup>, or execute a sale that brings its position under the 30 percent ADTV. **Note:** In both instances, a trader must respond within 90 seconds of the executed trade.

(3) At the open, a market maker may not quote a bid higher than the highest inde-

pendent bid. Firms should periodically review their quote level before the market opens.

(4) Do not initiate a bid during trading hours that is above the highest independent bid. When only passive market makers are at the inside bid, do not raise your bid to join other passive market makers at the inside.

(5) Do not purchase stock on a principal basis at a higher price than the highest independent bid, including purchases made through SelectNet<sup>SM</sup> and Instinet.

(6) Remember that the price provision of Rule 10b-6A does not apply if your firm buys the stock and reports the transaction on an unsolicited agency basis. You should consult with your Compliance Department to confirm that the transaction is allowable under Rule 10b-6, paragraph (a)(4)(V)(A). Furthermore, transactions reported and executed on an unsolicited agency basis are not calculated into the firm's net total.

(7) If you are left at the inside bid, without an independent market maker, you may purchase up to five times the SOES mandatory exposure limit (5x500=2,500 shares) at that bid. This is not a net rule, and once you have exceeded 2,500 shares, you must drop your bid to a level not higher than the highest independent bid. *This includes all SOES purchases made at this level even if you elected to exclude SOES from the 30 percent ADTV limit.* In addition, the total shares you can buy at this level, usually 2,500, always is limited by the remaining 30 percent ADTV limit.

**\*Note:** If you prefer not to use this purchase provision and decide to lower your bid, you must drop that bid to a

level not higher than the highest independent bid.

(8) Because members' automatic execution systems can execute trades that are unknown to the trader, firms should disable "preferences" on their internal systems or the Advanced Computerized Execution System (ACES<sup>®</sup>). Each firm can disable preferences for individual stocks. Nasdaq Market Operations cannot disable individual stocks, although it

## Revised NASD Guide To Rule Interpretations Now Available

The 1994 *NASD Guide To Rule Interpretations* contains the latest SEC-approved interpretations to Rule 15c3-1, the Net Capital Rule, and Rule 15c3-3, the Customer Protection Rule. This valuable summary compiles updated individual correspondences to help you better understand the current regulatory environment. The *Guide* includes letters from the SEC Division of Market Regulation to the NASD; letters from the SEC to attorneys, accountants, members, and others; and discussions between SROs. A helpful table of contents and index are part of the publication.

To place credit card orders for the *Guide*, call NASD MediaSource<sup>SM</sup> at (301) 590-6578. Other orders must be prepaid by check or money order made out to National Association of Securities Dealers, Inc. and sent to NASD Inc., NASD MediaSource, P.O. Box 9403, MD 20898-9403.

can remove a firm from ACES, thus disabling all of the firm's stocks in that system.

### Market-Maker Obligations

Member firms' syndicate departments need to be aware of several facets of passive market making that will alter their normal business practices. These relate to a passive market maker's affirmative obligation to notify the NASD that it will engage in passive market making. Adhering to the notice requirements helps the NASD provide a crucial service to the syndicate community—issuing the *Passive Market Making Eligibility Report*. The NASD Corporate Financing Department sends the syndicate manager this *Eligibility Report*, which contains a list of market makers in the security for the two calendar months before the filing date.

The managing underwriter must review the *Passive Market Making Eligibility Report*, indicate who will be making passive markets or withdrawing under SEC Rule 10b-6, add any market makers who are syndicate participants but not on the *Eligibility Report*, and fax it to Nasdaq at (203) 385-6381. Nasdaq then can properly code all distribution participants during that time called the

“cooling-off” period.

The syndicate manager must ensure the underwriting prospectus properly discloses the use of passive market making. Regulation S-K describes these disclosure requirements. Members' syndicate departments need to observe the following procedures when using the rule:

(1) To use passive market making, notify Nasdaq Market Operations by 12 noon, Eastern Time (ET), on the business day before the cooling-off period begins.

(2) Notification involves returning, by fax, a completed copy of the eligibility report showing which market makers in the syndicate will be participants in passive market making and those excused “out of the box”.

(3) To qualify for passive market making, a firm must have 30 percent ADTV volume of at least 100 shares.

(4) A market maker that is identified as a member of a distribution, but that does not want to participate as a passive market maker in the distribution, must notify Nasdaq Market Operations by 4 p.m.,

ET, on the business day before the beginning of the cooling-off period to avoid designation as a passive market maker.

(5) If an underwriting firm wants to initiate a stabilizing bid in a secondary offering, it must call Nasdaq Market Operations at (203) 375-9609 and the Corporate Offerings Section of Market Surveillance at the number listed below.

(6) Check the Nasdaq Workstation screen for market makers that are not on the eligibility report but are participants in the distribution. List these firms on the eligibility report so that Nasdaq Market Operations can remove their quotes.

The MSC regards SEC Rule 10b-6A violations as serious and will continue to examine closely the adequacy of firms' compliance and supervisory systems to prevent violations. *Notices to Members 93-29* and *93-41* have more information on passive market-making rules. If you have any questions, please call the Corporate Offerings Section, Market Surveillance, at (301) 590-6486, or fax (301) 590-6911. □

## Members Urged To Avoid Settlement Agreements That Impede NASD Investigations

NASD District Offices report that some members settle customer complaints through agreements that impede NASD violation investigations. In such situations, District Offices encounter difficulty conducting examinations because customers are reluctant or refuse to cooperate after executing settlement agreements with members that condition settlement on an agreement not to cooperate in self-regulatory organization investigations.

Members using such agreements that

could hinder an NASD investigation are acting in a manner that is inconsistent with Article III, Section 1 of the NASD Rules of Fair Practice, and contrary to the principles in *Notice to Members 86-36* (May 14, 1986). In addition, agreements, directly or indirectly, precluding customers or any party from cooperating with an NASD investigation could violate Article IV, Section 5 of its Rules of Fair Practice, as a failure to make information available in an investigation.

In view of the foregoing, members

should not execute agreements that could prevent a customer or other party from furnishing information, documents, testimony, or otherwise cooperating in NASD investigations. Furthermore, members should not place any conditions on a customer's cooperation, or request customers to withdraw complaints filed with regulatory bodies as a condition of negotiating and finalizing a claim settlement.

A copy of *Notice to Members 86-36* is attached. □

# NASD<sup>®</sup>

National Association of Securities Dealers, Inc.  
1735 K St., N.W., Washington, D.C. 20006 (202) 728-8000

## *notice to members 86-36*

May 14, 1986

TO: All NASD Members and Other Interested Persons

RE: Firm Agreements With Customers Not To Testify In NASD Proceedings

It has come to the NASD's attention that some members are engaging in a practice with regard to settling customer complaints that may involve violations of Article III, Section 1 and Article IV, Section 5 of the NASD Rules of Fair Practice. The staffs of several NASD district offices have encountered difficulties in investigating potential violations by members because of the reluctance of customers to cooperate with NASD investigations after they have executed settlement agreements with members. The situation apparently occurs most frequently when a customer complains to a firm, and the firm offers the customer a monetary settlement in exchange for executing a written agreement that the customer will neither bring suit against the firm nor testify against it in connection with the incident in question.

This problem has occurred in a significant number of instances and may or may not be the result of deliberate efforts on the part of certain members to undermine NASD investigations. In some cases, the agreements that customers are asked to sign are drafted to be all-encompassing but do not specifically refer to NASD proceedings. When questioned, however, the firms apparently do not disagree with customers who interpret the agreements as precluding their cooperation with the NASD. In other cases, NASD staff members have been concerned that some firms obtain settlement agreements from customers that are specifically designed to have the effect of precluding NASD investigations. In either case, NASD enforcement action is hampered.

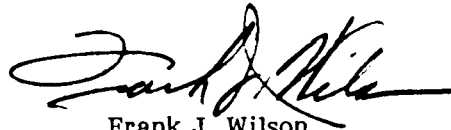
It is not the NASD's intent to impede members from obtaining general releases from customers in grievance matters, except insofar as such agreements can be construed as precluding customers from cooperating in NASD investigations. In the NASD's view, a member's use of any agreement that impedes an NASD investigation of possible rule violations may in itself constitute a rule violation.

As a general matter, the practice could be viewed as unethical and therefore a violation of Article III, Section 1 of the NASD Rules of Fair Practice. More specifically, a member's execution of an agreement that precludes any party from

cooperating with an NASD investigation could be found to constitute a violation of Article IV, Section 5 of the NASD Rules of Fair Practice\* as a failure to make information available to the NASD in connection with an investigation. Members are therefore cautioned against executing agreements that may prevent any customer or other party from providing information, documents or testimony, or otherwise cooperating with the NASD in its investigations of alleged violations.

Questions or comments regarding this notice may be directed to either Dennis C. Hensley or Eugene Bleier, NASD Office of the General Counsel, (202) 728-8287.

Sincerely,



Frank J. Wilson  
Executive Vice President  
and General Counsel

---

\* The text of Article IV, Section 5 appears in the NASD Manual at ¶2205.



## Members Will Have To Affirm That Customers Can Deliver On Short Sales

The NASD recently filed with the SEC a proposed rule amendment to require members to annotate the affirmative determinations that they are already required to make in connection with short sales by customers. Under existing procedures regarding customer short sales, members must affirmatively determine that they will receive delivery of the stock from the selling customer or that the stock can be borrowed for delivery by settlement date. However, members currently are not required to annotate details reflecting this determination process. Thus, the proposed rule change requires members to annotate their *compliance* with the existing affirmative determination obligations that already exist under the present rule.

Specifically, the amendment would require members to annotate on the trade ticket or other record the following:

- (1) If a customer assures delivery, the member must annotate the present location of the securities, whether the securities are in good deliverable form, and the customer's ability to deliver the securities to the member within five business days for settlement.
- (2) If the member locates the stock, the member must annotate the identity of the individual and firm contacted that offered assurances that the shares would be delivered or were available for borrowing by settlement date, and the num-

ber of shares needed to cover the short sale.

Requiring such annotations may eliminate the practice of firms that rely inappropriately on daily fax sheets of "borrowable stocks" rather than making an affirmative determination on each short sale, as now required by the rule. Firms currently following such a practice must change so as to comply with the existing rule. Further, the new annotation requirement would preclude this practice as members would have to note the name of the person contacted and number of shares for each short sale. □

### Violations

## Member Sanctioned For Accepting Customer Payments Before IPO Effective Date

The NASD imposed significant sanctions against Paragon Capital Corporation, New York, NY, and its President, Danny Jay Levine (Levine), of West Caldwell, NJ, for their failure to comply with the registration requirements of Section 5 of the Securities Act of 1933, in the initial public offering of Club-Theatre Network, Inc. (HDTV). The complaint also charged the firm and Levine with violations of the NASD's markup provisions and supervisory requirements. The sanctions, imposed through an Offer of Settlement, include a fine of \$65,000 against the firm and Levine, and an order to make a \$98,000 restitution to customers, including prejudgment interest. Under the terms of the settlement, the respondents did not admit or deny the allegations in the complaint.

The NASD found that Paragon and Levine failed to comply with the registration requirements of Section 5 of the Securities Act by accepting the purchase price and effectively making securities sales before the effective date of the offering. Specifically, the complaint alleged that Paragon received payments from 146 customers for purchases of HDTV securities before the date the SEC declared the HDTV registration statement effective. The NASD found that 119 customers sent check or wire-purchase payments and 27 other customers sold other securities to generate funds to purchase HDTV in the offering before the effective date.

### NASD Decides To Accept Offer

The NASD decision accepting the Offer of Settlement emphasizes the importance of the registration provisions

of the Securities Act and notes a recent SEC case, First Heritage Investment Company, SEC Release No. 34-33484 (January 14, 1994), as well as SEC releases describing the importance of the "waiting period":

It is a principal purpose of the so-called 'waiting period' between the filing date and the effective date to enable dealers and, through them, investors to become acquainted with the information contained in the registration statement and to arrive at an unhurried decision concerning the merits of the securities. Consistently with this purpose, no contracts of sale can be made during this period, the purchase price may not be paid or received and offers to buy may be canceled. SEC Release No. 33-4697 (May 28, 1964).

The Securities Act contemplates that an independent affirmative investment commitment must be made by each purchaser of shares publicly offered and registered with the Commission after the registration statement has become effective ... This purpose is thwarted by arrangements under which monies are deposited by purchasers in advance of effectiveness, and the burden is thereby placed on such persons to secure a return of

their funds. SEC Release No. 33-5071 (June 29, 1970).

"The NASD reminds all members that compliance with Section 5 of the Securities Act of 1933 is the responsibility of each member firm and those who conduct and supervise these activities within the firm," says John E. Pinto, NASD Executive Vice President, Regulation. "After the registration statement has been filed and before it has

been declared effective," he continues, "members may solicit indications of interest from their customers, but may not make actual sales or receive funds for the purchase of the offered shares."

The NASD's Enforcement Department conducted this investigation, after which it was presented to the NASD's New York District Business Conduct Committee. □

## Federal And State Authorities Gain NASD Cooperation In Criminal Cases

As part of its aggressive efforts to weed out securities laws violators, the NASD, in addition to carrying out its own regulatory and disciplinary programs, actively participates in joint regulatory, investigative, and enforcement initiatives with federal and state criminal authorities. The NASD's role in these cooperative regulatory efforts varies with the nature and scope of the project. For example, the NASD has significantly assisted in the prosecution of criminal cases by having numerous Regulation Department staff members apply their expertise to investigative efforts, evidence development, and trial strategy.

NASD staff members also support criminal prosecutions of securities laws violators by serving as grand jury and trial witnesses. Separately, the NASD administers programs that call for the referral of actual or potential misappropriation, conversion, or embezzlement matters to state and federal criminal prosecutorial authorities. These referrals may be made in lieu of, or in addition to, an independent NASD disciplinary action.

### Corna's Violative Conduct

A federal grand jury for the Southern District of Ohio recently returned an indictment against David Corna and two others. Corna had been president and chief executive officer of Corna and

Co., Inc., a former NASD member. Among other things, Corna was charged with submitting false documents to the NASD, in response to an NASD request for information. Corna allegedly altered customer account statements to hide non-bona fide trades that would have affected his authority to conduct business.

This conduct was alleged to be in violation of *15 USC Section 78ff* that provides, in part, that any person willfully and knowingly making any materially false or misleading statement in any application, report, or document required to be filed by any self-regulatory organization in applying for membership or participation in the organization, may be fined up to \$1 million or imprisoned for up to 10 years, or both.

Corna also was charged with two counts of using false Social Security numbers for two aliases he created, and one count of computer fraud relating to his misappropriation of confidential client information of other broker/dealers from a computer operated by his clearing firm.

Finally, Corna and two others were charged with a conspiracy to defraud the IRS by conducting a sham stock transaction. According to the indictment, Corna parked over 50,000 shares of stock in his personal account, at a price

approximately \$4 below the market. Several months later, the shares were reacquired by the transferor at the same price, less the commission. The purpose of the transaction, as alleged in the indictment, was to create a false tax loss on the transferor's federal income tax return.

### Corna Expelled by NASD

In 1990, the NASD expelled Corna and Co., Inc., fined the firm \$100,000, barred Corna and fined him \$150,000. The sanctions were pursuant to an Offer of Settlement in which Corna was charged with parking securities, unauthorized trading, creating fictitious customer accounts, and falsifying books and records. Thereafter, the NASD referred the matter to the U.S. attorney's office and cooperated in the federal investigation that also included the Ohio Division of Securities, IRS, the Federal Bureau of Investigation (FBI), U.S. Secret Service, and the Department of Health and Human Services.

### Bertoli Case Closed

Capping a four-year commitment to the U.S. attorney's office in Newark, NJ, the NASD helped prosecute Richard Bertoli, former president of a defunct brokerage firm. An NASD examiner was a witness for the government in the criminal trial and substantially helped analyze, organize, and prepare numer-

ous exhibits. Following the trial, Bertoli was convicted of a scheme to obstruct five separate investigations, and was fined \$7 million and sentenced to 100 months in prison without parole. The investigation also resulted in guilty pleas by several other individuals formerly in the securities industry, including Richard Cannistraro and Leo Eisenberg.

Separately, Barry Davis, a nationally known penny-stock promoter, pleaded guilty to a five-count federal felony, admitting his role in five over-the-counter (OTC) stock manipulations. Davis faces a maximum 25 years in federal prison. In addition to the NASD, the cooperative effort included investigators with the SEC, FBI, and U.S. Postal Inspection Service.

#### Further Cooperation By NASD

Another example of the NASD's cooperation is the case involving *Wakefield Securities*, in which the Office of the District Attorney for New York County

attained indictments of, and guilty pleas from, three securities firms and 21 registered representatives. Described by District Attorney Robert M. Morgenthau as a massive stock-rigging scheme that defrauded thousands of investors, the Wakefield matter was developed, in significant part, through the NASD's efforts using its expertise in securities laws and technical guidance.

In another recent case, Charles Bazarian pleaded guilty to five felony counts in federal district court in the Western District of Oklahoma for charges including securities fraud, wire fraud, and money laundering. According to the indictment, the defendant devised a scheme to defraud investors into purchasing an OTC security by causing material misrepresentations to appear on financial statements submitted to the NASD under SEC Rule 15c2-11. Specifically, the financial statements indicated that the company had received \$50,000 in cash when in fact those funds had not been received. The SEC Rule

15c2-11 information was used to initiate quotations for the security on the OTC Bulletin Board (OTCBB®). In addition, Bazarian caused broker/dealers to maintain false records regarding the beneficial owner of various securities accounts. The NASD and other authorities provided assistance in the investigation.

Finally, the NASD recently cooperated with the state of South Dakota that prosecuted four individuals for selling unregistered securities. These individuals received sentences of up to 10 years in the state penitentiary and were ordered to make restitution to customers who purchased the securities.

According to John E. Pinto, Executive Vice President, Regulation, "The NASD's cooperative efforts with law enforcement and other regulatory authorities reflect the commitment of the NASD, particularly through its Regulation Department staff, to protect the investing public and remove securities laws violators from the industry." □

#### Legislation

## Functional Regulation Of Bank Securities Activities Receives NASD Support

"All interstate securities activities should be conducted through a broker/dealer registered with the Securities and Exchange Commission and subject to federal securities laws," said NASD President and Chief Executive Officer Joseph R. Hardiman on April 14 before the House Telecommunications and Finance Subcommittee of the Energy and Commerce Committee. In addition, he believes that even in cases where bank securities activities are conducted through a broker/dealer, the growing duplication and overlap of activities of the securities regulators and banking regulators must be eliminated.

Hardiman's testimony supports H.R.

3447, the Securities Regulatory Equality Act, a bill that would apply functional regulation to banks' securities activities. This approach would:

- Extend to consumers the benefits of broker/dealer qualifications, testing as well as suitability, and other sales-practice rules that are an integral part of securities regulation.
- Increase the formal avenues of redress for these investors by providing private rights of actions and arbitration.
- Enhance investor protection by exposing serious violations by those engaged in bank-related securities activities through broad disclosure of

enforcement actions under the securities laws.

- Clarify the roles of the various regulators in bank securities regulation and thereby reduce regulatory overlap.

The NASD strongly backs H.R. 3447 because it brings functional regulation to banks, eliminates their broker/dealer exemption, and requires that most bank securities activities be shifted to affiliates covered under current broker/dealer regulations. Banks doing a securities business would then fall under SEC and SRO governance, fostering consistent regulation and the equal protection of the investing public so essential to the country's securities markets. □

# COMPLIANCE SHORT TAKES

**Money market mutual funds with asset-based sales charges equal to or less than .25 of one percent (25 basis points) are now exempt** from disclosing that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charge" permitted under Article III, Section 26 of the Rules of Fair Practice. A description of the amendment creating the exemption and more detail appears in *Notice to Members 94-13* (March 1994).

□

**On April 7, the SEC approved amendments to MSRB Rule G-19 that eliminate two exemptions from the rule.** The changes clarify that a broker/dealer that lacks specific information about a customer's financial status or investment objective may not make an investment recommendation to that customer. The amendments also clarify that broker/dealers may no longer recommend specific municipal securities to investors who insist on investing even though they've been told the securities are not suitable for them. Finally, the changes make clear what information broker/dealers must obtain from customers and when it must be obtained. The definition of "institutional account" in Municipal Securities Rulemaking Board (MSRB) Rule G-8 is also revised. For detailed information, see *Notice to Members 94-33* (May 1994).

□

**Members and their associated persons must ensure that their communications with customers regarding mutual fund sales practices are accurate and complete** regarding disclosure of relevant information, SIPC coverage, breakpoints, and switching. Furthermore, members must ensure that suitability requirements are addressed; that they have comprehensive superviso-

ry and compliance controls over sales practices; and that their advertising and marketing materials and programs are accurate, fair and balanced, and comply with all applicable rules. For information about these requirements, see *Notice to Members 94-16* (March 1994), or call Elliott R. Curzon, Senior Attorney, Office of General Counsel, (202) 728-8451.

□

**The SEC published for comment amendments to Rule 10b-10 and a proposed new Rule 15c2-13, under the Securities Exchange Act of 1934.**

The amendments to Rule 10b-10 specify additional information that must be disclosed on customer confirmations of debt securities transactions. Rule 15c2-13 would furnish municipal securities customers with disclosure concerning markup/markdown information in riskless principal transactions and whether the security is unrated by a nationally recognized statistical rating organization. Comments were due on or before June 15. For more details and background, see *Notice to Members 94-38* (May 1994).

□

**On March 7, 1994, the SEC approved changes to the Corporate Financing Rule** that requires members to file with the NASD Corporate Financing Department a detailed explanation of, and any documents related to, any change in previously approved underwriting compensation arrangements for a public offering. The SEC-sanctioned amendment adds new Subsection (b)(6)(G) to Article III, Section 44 of the Rules of Fair Practice.

The SEC also approved amendments to clarify that the calculation of the additional fee required as a result of

additional securities being offered under an amendment to the initially filed documents will equal .01 percent of the result of the number of new shares being offered multiplied by the offering price of the new shares. Finally, the SEC sanctioned a change to Schedule E to the By-Laws that removes the phrase "without limitation as to the amount of securities to be distributed by the member." For more information, see page 172, *Notice to Members* (April 1994).

□

**In Notice to Members 94-9 (February 1994), the NASD announced SEC approval of a new Section 46, Article III, of the Rules of Fair Practice, effective May 15,** that would require a member holding an open order to adjust that order by the amount of any dividend, payment, or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. The effective date of the new Section 46 is delayed until September 15, 1994.

□

**Effective July 1, under an SEC-approved amendment to MSRB Rule G-15(d)(ii), broker/dealers with institutional customers must have access to a confirmation/acknowledgment system** and ensure that their customers receiving Delivery Versus Payment/Receipt Versus Payment (DVP/RVP) also have access to such systems.

□

**Effective April 29, the U.S. Treasury Department issued regulations under amendments to the 1986 Government Securities Act to implement a buy-in**

**requirement for mortgage-backed securities** that are in a fail-to-receive status for more than 60 calendar days. Also included in the mandate are government securities needed to complete a customer sell order (other than a short sale) if the securities are not received from the customer within 30 calendar days after the settlement date for all government securities except those mortgage-backed securities that must be bought in 60 calendar days after the settlement date. More details are in *Notice to Members 94-39* (May 1994).

□

**On March 21, the SEC approved NASD guidelines to govern members' communications with the public about variable life and annuity products.** The standards, in addition to those already in Article III, Section 35 of the Rules of Fair Practice, provide general and specific guidance in areas such as product identification, liquidity, claims

about guarantees, performance, comparisons, and rankings. The guidelines also cover hypothetical illustrations used to promote variable life insurance. For more information, see *Notice to Members 94-36* (May 1994).

□

**The NASD recently issued *Notice to Members 94-14* (May 1994) to help members comply with disclosure requirements of Section 26 (1)(1)(C), Article III of the Rules of Fair Practice.** The Notice prohibits members from accepting compensation from an underwriter when selling its mutual fund unless such compensation is disclosed in the fund prospectus. The NASD reminds members of their disclosure obligations under this provision and urges that they review and, where necessary, modify *current* disclosure in fund prospectuses. Any questions about disclosure obligations should be directed to R. Clark Hooper, Vice President,

Investment Companies Regulation Department, at (202) 728-8329.

□

**On March 14, the SEC approved an amendment to Section 4 of the OTCBB that requires its market makers to indicate, by a fifth-character geographic indicator next to their market-maker identifier (MMID), that the firm's trading desk is located away from the firm's primary trading office.** In addition, on March 4, the SEC approved a new Subsection 2(c) of Schedule H to the By-Laws that eliminates member firms' Schedule H reporting obligations for OTC equities that, beginning December 20, 1993, became subject to real-time reporting under Schedule D, Part XII.

□

## NASD DISCIPLINARY ACTIONS

*In February, March, and April 1994, 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 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

### February Actions

**Martin Rodriguez (Registered Representative, Salinas, California)** was fined \$8,390 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Rodriguez misappropriated \$1,678 from insurance customers and converted those funds to other uses.

### March Actions

**Douglas Paul Behl (Registered Principal, Loomis, California)** was fined \$4,199 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Behl, in connection with the sales of mutual funds to 11 customers, permitted an individual to act as a representative of a member firm and receive commissions without being registered with the NASD.

**Gregory Moncur Cozzens (Registered Representative, Fremont, California)** was fined \$162,375.79 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cozzens received from four public customers funds totaling \$62,375.79 and misappropriated and converted the funds to his own use and benefit.

**DWS Securities Corporation (Sonora, California), Stephen Michael Rangel (Registered Principal, Sonora, California), and Hugh Scott Liddle, Jr. (Registered Principal, Modesto, California)** were fined \$394,550.16, jointly and severally, and required to make written offers of rescission to investors. Any amounts the respondents pay to the customers will be applied against the fine. In addition, the firm was expelled from NASD membership, and Rangel and Liddle were barred from association with any NASD member in any capacity. The SEC imposed the sanctions following its review of a February 1992 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Rangel and Liddle, made fraudulent misrepresentations and omissions about the use of offering proceeds in two private offerings.

**Joseph Stephen Fisher (Registered Representative, San Ramon, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fisher failed to respond to NASD requests for information addressing allegations made by public customers.

**Richfield Securities, Inc. (Englewood, Colorado) and Philip James Davis (Registered Principal, Littleton, Colorado).** The firm was fined \$30,133.97 and suspended

from NASD membership for one year. Davis was fined \$30,133.97, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination before becoming associated with any NASD member. The SEC affirmed the sanctions following appeal of a June 1992 NBCC decision. The sanctions were based on findings that the firm, acting through Davis, charged its customers unfair and unreasonable prices on the sale of common stock, which it dominated and controlled, and failed to disclose the markups to the customers. The markup on these transactions ranged from 11.43 to 300 percent above the firm's contemporaneous cost for the securities, in violation of Article III, Sections 1, 4, and 18 of the NASD Rules of Fair Practice and the Interpretation of the Board of Governors concerning NASD Mark-Up Policy. Also, the firm, acting through Davis, failed to establish and implement adequate written supervisory procedures to detect and prevent the above activity.

**Martin Conway Smith (Registered Principal, Moraga, California)** was suspended from association with any NASD member in any capacity for 30 business days. The sanction was based on findings that Smith recommended to a public customer the purchase of securities without having reasonable grounds for believing that the recommendation was suitable for the customer considering her financial situation and needs.

### April Actions

**Brian D. Carpenter (Registered Representative, Stockton, California)** was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. If, at the end of the suspension, Carpenter

wishes to re-enter the securities industry, he may do so by requalifying by examination, rather than going through the process required by statutorily disqualified persons. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Carpenter forged the endorsements of two public customers on two checks.

**Darrell Steven Dalton (Registered Representative, Las Vegas, Nevada)** was fined \$1,000 and suspended from association with any NASD member in any capacity for 90 days. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Dalton submitted to a member firm, and filed with the NASD, a Form U-4 falsely representing that an individual had not been convicted of any felony. Dalton has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**Expansion Capital Securities, Inc. (San Francisco, California)** and **Michael Josef Meyer (Registered Principal, San Francisco, California)**. The firm and Meyer were fined \$145,000, jointly and severally, and ordered to pay \$3,275, jointly and severally in restitution to a customer. In addition, the firm was expelled from NASD membership and Meyer was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Meyer, failed to prepare and maintain accurate books and records.

In addition, the firm, acting through Meyer, engaged in the securities business while failing to maintain its required minimum net capital, filed a false and inaccurate FOCUS Part IIA report, and failed to respond, or to timely respond, to a NASD request for information. Furthermore, the firm, acting through Meyer, purchased securities from a public customer at an unfair and unreasonable price and failed to disclose the fraudulent mark-down of 25 percent to the customer. Moreover, the respondents ran the securities through the accounts of seven other customers and the firm's trading account, and then sold them to a market maker in the securities.

Also, in response to a customer who complained to the NASD alleging unauthorized trading in his account, the respondents falsely represented to the customer that both the NASD and the firm had reviewed the allegations and found the claims to be without merit. The firm, acting through Meyer, also effected transactions in Nasdaq National Market® securities but failed to report them to Nasdaq. Furthermore, the respondents engaged in stock transactions with customers without disclosing to them that the firm made a market in the security and without disclosing the difference between the price that should have been reported to Nasdaq and the customer's price. This action has been appealed to the Securities and Exchange Commission (SEC) and the sanctions, other than the expulsion and bar, are not in effect pending consideration of the appeal.

**Wayne Darrell Ingbritson (Registered Principal, Walnut Creek, California)** was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following appeal of a San Francisco DBCC decision. The sanction was based on findings that a former member firm, acting through Ingbritson, engaged in a securities business while failing to maintain minimum required net capital and filed false and inaccurate FOCUS Parts I and IIA reports. In addition, Ingbritson failed to respond to NASD requests for information. Ingbritson has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Nelson Eric Roseland (Registered Representative, Oakland, California)** submitted an Offer of Settlement pursuant to which he was fined \$20,000. Without admitting or denying the allegations, Roseland consented to the described sanction and to the entry of findings that he effected the purchase and sale of securities in the accounts

of public customers without their prior knowledge or consent. The findings also stated that Roseland recommended and effected the purchases and sales of securities in the account of a public customer that were unsuitable in light of the circumstances disclosed concerning his other securities holdings, and his financial situation and needs.

**David Ritchie Smith (Registered Principal, Sausalito, California)** was fined \$35,000, jointly and severally with other respondents, and barred from association with any NASD member in any principal or supervisory capacity. In addition, Smith was suspended for 90 days from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that a member firm, acting through Smith, failed to comply with the SEC Customer Protection Rule 15c3-3 in that it received and accepted customer funds in contravention of its claimed exemption from the rule and did not otherwise comply with the full provisions of the rule. In addition, the firm, acting through Smith, failed to file its FOCUS Part II reports on a timely basis, to establish adequate written supervisory procedures, or to implement a supervisory system to prevent violations and achieve compliance with securities rules and regulations.

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)

## February Actions

**Daniel Bruce Perry (Registered Principal, Henderson, Nevada)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$21,554.50 in restitution to customers. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Perry engaged in sales to public customers of shares of stock in the secondary market at unfair prices, in violation of the Board of Governors' Interpretation of the "NASD Mark-Up Policy." Such sales resulted in markups ranging from approximately 5.017 to over 100 percent.

## March Actions

**PaineWebber, Incorporated (Riverside, California)**, **John L. Sherman (Registered Principal, Riverside, California)**, and **John K. Coolidge (Registered Representative, Riverside, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$50,000. Sherman was fined \$20,000 and required to requalify as a principal before associating with any NASD member in that capacity. Coolidge was fined \$10,000 and required to requalify as a general securities sales supervisor (Series 8). If Coolidge fails to requalify within 90 days, he will be suspended in that capacity until such time as he passes the examination. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sherman and Coolidge, failed to supervise properly the activities of two of its registered representatives.

**William Frederick Rember (Registered Representative, Torrance, California)** was fined \$10,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a May 1993 NBCC decision. The sanctions were based on findings that Rember submitted to his member firm falsified records relating to the purchase by 55 customers of tax-sheltered annuities. Specifically, the documents reported inflated total annual payments to be made by the customers resulting in commission overpayments to Rember totaling \$24,502.01.

## April Actions

None

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

## February Actions

**Consolidated Investment Services, Inc. (Littleton, Colorado)**, **James Fainter (Registered Principal, Bellevue, Washington)**, and **Norman Rounds (Registered Principal, Littleton, Colorado)** were fined \$15,000, jointly and severally. The NBCC affirmed the sanction after review of a Denver DBCC decision. The sanction was based on findings that the firm, acting through Fainter and Rounds, failed to supervise the activities of a registered representative adequately in the sale of stock.

**Robert M. Kaplan (Registered Representative, Paradise Valley, Arizona)** submitted an Offer of Settlement 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, Kaplan consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of six public customers that were excessive in size and frequency in view of the financial resources and character of the accounts.

**Larry William Kennaugh (Registered Representative, Mount Vernon, Washington)** was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Kennaugh participated in outside business activities and failed to provide prompt written notice to his member firm of such activities.

**Joseph L. Lachermeier (Registered Representative, Northglenn, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lachermeier engaged in private securities transactions while failing to provide prior written notice of such transactions to his member firm and failed to respond to NASD requests for information.

**Klaus Langheinrich (Registered Representative, Murray, Utah)** was fined \$10,000. The NBCC affirmed the sanction following an SEC remand of a Denver DBCC decision. The sanction was based on findings that Langheinrich accepted from public customers four checks totaling \$27,000 to purchase securities without providing prior written notification of these transactions to his member firm. Langheinrich has appealed this action to the SEC and the sanction is not in effect pending consideration of the appeal.

**Stephen Lentz (Registered Representative, Peabody, Massachusetts)** submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Lentz is required to pay restitution totaling \$25,820 plus interest to a member firm. Without admitting or denying the allegations, Lentz consented to the described sanctions and to the entry of findings that he induced two public customers to wire \$25,000 to another customer account by representing that this account was an investment offered by his member firm. However, the NASD found that the funds were instead used to pay a debit balance in that account. The NASD also found that Lentz caused a customer account to be opened at his member firm using a mailing address and other information which he knew belonged to another customer.

**Princeton American Equities Corporation (Phoenix, Arizona)**, **Robert E. Holbert (Registered Principal, Phoenix, Arizona)**, and **Cary W. DePriest (Registered Principal, Phoenix, Arizona)**. The firm and Holbert were fined \$22,500, jointly and severally and the firm and DePriest were fined \$7,500, jointly and severally. In addition, the firm was suspended from NASD membership in any capacity for 20 days. Holbert was also suspended from association with any NASD member in any capacity for 15 business days and must requalify by examination as a financial and operations principal. Furthermore, DePriest was suspended from association with any NASD member in any capacity for 15 business days and must requalify by examination as a general securities principal.

The National Business Conduct Committee (NBCC) modified the sanctions following appeal of a Denver District Business Conduct Committee (DBCC) decision.

The sanctions were based on findings that the firm, acting through Holbert, conducted a securities business while failing to maintain its minimum required net capital, failed to maintain accurate books and records, and filed inaccurate FOCUS Parts I and II reports. In addition, the firm, acting through DePriest, sold shares of securities on a principal basis without a current registration statement in effect for these securities and without an available exemption from registration.

#### March Actions

**Conrad C. Lysiak (Registered Principal, Spokane, Washington)** was fined \$15,000 and suspended from association with any NASD member in any principal capacity for 10 days. In addition, Lysiak must qualify by examination as a general securities principal. The SEC affirmed the sanctions following an appeal of a November 1992 NBCC decision. The sanctions were based on findings that Lysiak failed to establish, implement, and enforce reasonable supervisory measures necessary to prevent and detect violations by other persons associated with his member firm or to otherwise supervise certain employees' conduct. This action has been appealed to a United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

**Princeton American Equities Corp. (Phoenix, Arizona)** was fined \$45,000, jointly and severally with two individuals, required to pay \$42,446.75 in restitution to customers, jointly and severally with an individual, and expelled from NASD membership. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and failed to maintain accurate books and records. Moreover, the firm filed inaccurate FOCUS Part I reports and failed to respond to NASD requests for information.

Furthermore, the firm effected transactions in common stock with public customers at prices that were not reasonably related to the prevailing market price for these securities and with markdowns that ranged from 7.1 to 54.2 percent. Also, the firm failed to disclose to customers the amount of markup, markdown, or similar remuneration received in certain riskless principal transactions. The firm also purchased restricted securities from customers and failed to comply with the provisions of Rule 144(f) and (g) promulgated pursuant to the Securities Act of 1933.

#### April Actions

**Larry Wayne Phelps (Registered Representative, Albuquerque, New Mexico)** submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$31,739.25 in restitution to customers. Without admitting or denying the allegations, Phelps consented to the described sanctions and to the entry of findings that he obtained checks totaling \$31,739.25 by preparing and submitting falsified loan applications on insurance policies held by four policyholders. According to the findings, Phelps obtained the checks and caused the endorsements of the policyholder payees to be placed on the checks without their knowledge or consent, caused his own endorsement to be placed on the checks, negotiated the checks, and used the proceeds for his own benefit.

**Hans J.A. Schmidt (Registered Representative, Edmonds, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$67,000 plus interest in restitution to a customer. Without admitting or denying the allegations, Schmidt consented to the described sanctions and to the entry of findings that he received from a public customer \$67,000 to purchase securities. According to the findings, Schmidt failed to remit the funds for their intended purpose.

**Charles R. Stedman (Registered Representative, Tucson, Arizona)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on

findings that Stedman failed to respond to NASD requests for information regarding a customer complaint. Stedman has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

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

#### February Actions

**AAM Securities, Inc. (St. Louis Park, Minnesota)** and **Michael Gerardy Awes (Registered Principal, St. Louis Park, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$13,000, jointly and severally. Awes was also suspended from association with any NASD member in a principal capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Awes, recommended and consummated the purchases of securities for the accounts of public customers without having reasonable grounds for believing that the recommendations were suitable for the customers on the basis of the facts disclosed by the customers as to their other security holdings, financial situations, and needs.

**Dennis Michael Depping (Registered Representative, Springfield, Missouri)** submitted an Offer of Settlement 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, Depping consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information. In addition, the NASD found that Depping misused \$431.38 in customer funds by signing a customer's name to the reverse side of two checks made payable to the customer and thereafter negotiated both checks.

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

**Curtis Lester Thomas (Registered Representative, Burnsville, Minnesota)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomas failed to respond to NASD requests for information concerning his termination from a member firm. In addition, Thomas utilized an old insurance application that a public customer had signed in blank for adjustable life insurance. Thomas then submitted a customer service request to his member firm requesting that dividends be surrendered from the customer's other policy to serve as a binder on the unauthorized insurance application without the customer's knowledge or consent.

**Glenda Zoe Tolliver (née Vobornik) (Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tolliver consented to the described sanctions and to the entry of findings that without the knowledge or consent of her member firm or public customers, she converted and/or misused funds totaling \$23,773.95 by transferring the funds via journal entries from company and customers accounts to the accounts of her husband and another customer.

#### March Actions

None

#### April Actions

**Protective Group Securities Corporation (Eden Prairie, Minnesota), Richard James Cochrane (Registered Principal, Edina, Minnesota), Michael Frederick Flannigan (Registered Principal, Excelsior, Minnesota), and Deborah Rae Davidson (Registered**

**Principal, Plymouth, Minnesota)** were fined \$5,000, jointly and severally, and required to pay \$7,643.73 in restitution to public customers. The sanctions were based on findings that the firm, acting through Cochrane, Flannigan, and Davidson, charged more than fair commissions in 124 dual-agency transactions.

**Roger Anthony Sexter (Registered Representative, Minneapolis, Minnesota)** was fined \$2,000 and suspended from association with any NASD member in any capacity for three business days. The NBCC affirmed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Sexter failed to honor a \$25,000 arbitration award plus \$13,000 in interest and \$7,500 in attorneys' fees in a timely manner.

**Daniel Thomas Taffe (Registered Representative, Minnetonka, Minnesota)** 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, Taffe consented to the described sanctions and to the entry of findings that he forged the signatures of two public customers to a Financial Analysis - Base and Base Plus Agreement and charged \$375 to the customers' credit card in payment for this plan without the knowledge or consent of the customers.

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

#### February Actions

**Matthew R. Arnott, II (Registered Representative, Mobile, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Arnott was fined \$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Arnott consented to the described sanctions and to the entry of findings that he recommended and engaged in a stock purchase in the account of a public customer without having reasonable grounds for believing that the recommendation and resulting transaction were suitable for the customer based on the customer's financial situation, investment objectives, and needs.

**Robert L. Bootes (Registered Principal, Louisville, Kentucky)** submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bootes consented to the described sanctions and to the entry of findings that he made recommendations to public customers concerning public limited partnership programs which were unsuitable based on the investors' age and financial ability to sustain the risks involved in the programs. The findings also stated that Bootes recommended and sold to a public customer five different public limited partnership programs for which the customer did not meet the suitability standards disclosed in the offering documents of each program.

The NASD also determined that Bootes made representations to public customers regarding the current rates of return and tax consequences of the investments in public limited partnership programs that were not disclosed in the offering documents of such programs.

Furthermore, the NASD found that Bootes solicited and sold five public limited partnership programs to a public customer and failed to provide the customer with complete offering documents for each program. In addition, the findings stated that Bootes completed and submitted new account forms for public customers when he knew or should have known that the forms contained false and misleading information. The NASD also found that Bootes sent to public customers correspondence that contained false and misleading information and which did not disclose the identity and address of his member firm. According to the NASD, Bootes also recommended that public customers convert \$206,728.48 from their existing portfolio and reinvest \$191,101.85 of the proceeds in seven limited partnership programs that were unsuitable given the customers' financial situation, investment objectives, and needs. In connection with the purchase of interests in the aforementioned limited partnerships, the

NASD found that Bootes made misleading statements to the same public customers regarding the payment of his sales commissions.

**Steve A. Goddard (Registered Principal, Haleyville, Alabama)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that, after receiving two letters from a public customer concerned about conversion of funds by a registered representative, Goddard neither notified his member firm of the letters nor maintained a proper file for them. Instead, Goddard submitted the correspondence to the registered representative for him to handle. In the aforementioned activity, Goddard failed to exercise reasonable and proper supervision over the registered representative.

**Richard T. Greenfield (Registered Representative, Hermitage, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Greenfield consented to the described sanctions and to the entry of findings that he misused insurance customer funds by causing \$5,053.95 to be loaned against a customer's whole life insurance policy to pay premiums on the customer's variable life insurance policy. Furthermore, the findings stated that Greenfield forged the customer's signature to six loan applications without the customer's knowledge or consent.

**Ida M. Jantz (Registered Representative, Oklahoma City, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jantz consented to the described sanction and to the entry of findings that she brought written study material into the testing area when she took the Series 63 examination.

**Steven W. Marzett (Registered Representative, Broken Arrow, Oklahoma)** 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, Marzett consented to the described sanctions and to the entry of findings that he accepted two \$5,000 checks from public customers for investment purposes, failed to execute the customers' purchases, and, instead, converted the funds to his own use and benefit without the knowledge or consent of the customers. In addition, the NASD found that to conceal the conversion of funds from the aforementioned customers, Marzett created a false, undated account statement for the customers to reflect that the funds had been invested.

**Powell & Satterfield, Inc. (Little Rock, Arkansas)** and **Scott A. Welch (Registered Principal, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was expelled from NASD membership and Welch was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Welch, engaged in a securities business when its net capital was below the required minimum. The findings also stated that the firm, acting through Welch, failed to prepare an accurate general ledger and an accurate computation of its net capital, and failed to maintain its general ledger, trial balances, or net capital computations. In addition, the NASD found that the firm, acting through Welch, failed to prepare accurate FOCUS Part I and II reports.

### March Actions

**Kimberley E. Gorum (Registered Representative, Mobile, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and must pay \$857.13 in restitution to the appropriate party. Without admitting or denying the allegations, Gorum consented to the described sanctions and to the entry of findings that he caused two rebate checks

totaling \$857.13 made payable to two public customers to be deposited into his bank account and converted to his own use and benefit without the knowledge or consent of the customers. In addition, the NASD found that Gorum failed to respond to NASD requests for information.

**Sandra F. Long (Registered Representative, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that she signed the name of a public customer to an application for a variable annuity policy.

**Masters Financial Group, Inc. (Little Rock, Arkansas), Richard E. Torres (Registered Principal, N. Little Rock, Arkansas), Gandy L. Baugh (Registered Principal, Maumelle, Arkansas), and Hale Spiegelberg (Associated Person, Duluth, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Torres and Baugh, conducted a securities business while failing to maintain its required minimum net capital and failed to file prompt telegraphic notice of its net capital deficiency. The findings also stated that the firm, acting through Baugh, failed to prepare an accurate general ledger, trial balance, and net capital computations and filed inaccurate FOCUS Part I reports.

Furthermore, the NASD found that Spiegelberg functioned as a controlling person of the firm without registering properly as a general securities principal. In addition, the NASD determined that the firm, acting through Torres, failed to supervise properly the registration status of Spiegelberg.

**James Y. Palmer (Registered Principal, Jackson, Mississippi)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for two weeks. Without admitting or denying the allegations, Palmer consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce a proper supervisory system as required by the written supervisory procedures of his member firm.

**Rod M. Solow (Registered Representative, New Orleans, Louisiana)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Solow consented to the described sanction and to the entry of findings that, during a Series 6 examination, he violated testing procedures by bringing written materials with him into the test area.

**Carl A. Torelli (Registered Principal, Fayetteville, Arkansas)** submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$80,000 in restitution to his former member firm. Without admitting or denying the allegations, Torelli consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, he caused funds totaling \$80,000 to be disbursed from the firm's payroll department to himself when he knew that he did not have proper authorization to do so.

**Richard A. Torti (Registered Principal, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from serving in the capacity as owner or principal stockholder of any NASD member firm for two years. Without admitting or denying the allegations, Torti consented to the described sanctions and to the entry of findings that he failed to properly supervise the activities of a registered financial and operations principal for his member firm.

### April Actions

**Robert Lee Boyd (Registered Principal, Jackson, Mississippi)** 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, Boyd consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prior written notice to his member firm. The NASD also found that Boyd engaged in private securities transactions outside the regular course or scope of his employment without notifying his member firm in writing.

In addition, the findings stated that Boyd received from public customers, without their knowledge or consent, funds totaling \$774,485 for investment purposes that he commingled with personal funds and used certain funds to pay for personal and other expenses not associated with the intended investments of the individuals.

**Manuel H. Godwin, Jr. (Registered Representative, West Bloomfield, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$5,135.65 in restitution to a public customer. Without admitting or denying the allegations, Godwin consented to the described sanctions and to the entry of findings that he received \$28,353.16 from a public customer for investment in an IRA account. According to the findings, Godwin failed to execute the purchase in a timely manner and, instead, held the check for two months before submitting it to his member firm without the customer's knowledge or consent.

The NASD also found that Godwin received a \$5,135.65 check from the same customer to establish a Keogh account but, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. Furthermore, in an effort to conceal the conversion of funds from the same customer, the NASD found that Godwin created a false account statement to indicate that funds had been invested.

**Gregory L. Greenway (Registered Representative, Tulsa, Oklahoma)** was fined \$65,000, barred from association with any NASD member in any capacity, and required to pay \$9,077 in restitution to the appropriate parties. The sanctions were based on findings that Greenway misappropriated insurance customer funds totaling \$9,077 by failing to submit timely such funds to his member firm. In addition, Greenway failed to respond to NASD requests for information.

**Michael Lincicome (Registered Representative, Ardmore, Oklahoma)** and **James T. Nealy (Registered Representative, Ardmore, Oklahoma)** submitted an Offer of Settlement pursuant to which Lincicome and Nealy were each fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Lincicome and Nealy engaged in the sale of unregistered securities in violation of Section 5 of the Securities Act of 1933. In addition, the findings stated the Lincicome and Nealy failed to respond to NASD requests for information.

**John H. Romfh (Registered Principal, Jackson, Mississippi)** 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 four months. Without admitting or denying the allegations, Romfh consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prior written notice to his member firm. The NASD also found that Romfh engaged in private securities transactions outside the regular course or scope of his employment without notifying his member firm in writing. In addition, the findings stated that Romfh received funds totaling \$73,000 from public customers for investment purposes and that he commingled these with funds from other sources. The findings also stated that Romfh failed to exercise proper oversight of the funds, thereby allowing certain funds to be used, without the customers' knowledge or consent, to pay expenses not associated with the intended investments.



**Ronald D. Swayze (Associated Person, Malvern, Arkansas)** was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$4,976 in restitution to the appropriate parties. The sanctions were based on findings that Swayze received from 23 public customers \$4,976 intended for insurance premium payments and failed to remit the funds to his member firm.

District 6—Texas

## February Actions

None

## March Actions

None

## April Actions

**James Sherman Jackson (Registered Representative, Irving, Texas)** was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of a Dallas DBCC decision. The sanctions were based on findings that Jackson effected the purchase of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances by giving false account information to a registered representative of a member firm.

**Scott Reed Warren (Registered Representative, Corpus Christi, Texas)** was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by examination. The NBCC affirmed the sanctions following review of a Dallas DBCC decision. The sanctions were based on findings that Warren failed to respond to NASD requests for information concerning the alleged misuse and conversion of customer funds.

**D.E. Wine Investments, Inc. (Houston, Texas), Duncan Eric Wine (Registered Principal, Houston, Texas), William Randal Miller (Registered Principal, Spring, Texas), and Kenneth Browning Karpf (Registered Principal, Spring, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$5,000, jointly and severally, and required to pay \$11,429 in restitution to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that in violation of the NASD's Mark-Up Policy, the firm, acting through Wine, Miller, and Karpf, bought securities from and sold securities to customers of the firm at prices that were not fair with markups or markdowns ranging from 5.02 to 35.38 percent.

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

## February Actions

**Bey Securities Corporation (Atlanta, Georgia) and George Beylouni, Jr. (Registered Principal, Atlanta, Georgia)** were fined \$10,000, jointly and severally. The sanctions were based on findings that the firm, acting through Beylouni, conducted a securities business while failing to maintain its required minimum net capital. In addition, the firm, acting through Beylouni, failed to file telegraphic notices of its net capital deficiencies promptly.

**William Jackson Blalock (Registered Representative, Atlanta, Georgia), Charles Lee Bradley (Registered Principal, Duluth, Georgia), and John Wilson Ringo (Registered Principal, Marietta, Georgia).** Blalock was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay, jointly and severally with a member firm, \$118,300 in restitution to public customers. Bradley and Ringo were each fined \$10,000 and required to requalify by examination in any principal capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that a member firm, acting through Ringo, conducted a securities business while failing to maintain sufficient net capital and failed to make a record of customer funds received and forwarded. The

firm, acting through Blalock and Bradley, also sold shares of common stocks, as principal, to its public customers at unfair prices with markups exceeding 128 percent. Blalock also recommended and promoted the purchase of a common stock without disclosing that this member firm was filling its customers' orders with stock from his personal account.

Furthermore, the firm, acting through Blalock, Bradley, and Ringo, permitted Blalock to function as president and sales representative of the firm without proper registration with the NASD as a general securities principal or registered representative. Also, Blalock acted in violation of Securities and Exchange Commission (SEC) Rule 10b-9. Moreover, Bradley and Ringo failed to establish, maintain, and enforce their firm's written supervisory procedures. Blalock, Bradley, and Ringo have appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**John William Brosemer (Registered Representative, Winter Springs, Florida)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brosemer received from insurance customers \$6,947.46 intended for deposit in an IRA account and as premium payments. Instead of using the funds as instructed, Brosemer converted the funds to his own use and benefit by depositing the monies into his personal bank account without the customers' knowledge or authorization. In addition, Brosemer failed to respond to an NASD request for information.

**George F. Cerwin, III (Registered Representative, Palm Harbor, Florida) and Darryll W. Rathburn (Registered Principal, Palm Harbor, Florida)** submitted an Offer of Settlement pursuant to which Cerwin was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 days. Rathburn was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. In addition, Cerwin and Rathburn are required to jointly and severally pay \$34,000 in restitution to public customers.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Cerwin acted as president and then vice president of a firm but failed to notify his member firm of such association. In addition, the NASD found that Cerwin and Rathburn engaged in private securities transactions outside the scope of their regular employment with a member firm without providing written notice and obtaining written approval from the firm.

**Kenneth David Freeman (Registered Representative, Swansea, South Carolina)** submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Freeman consented to the described sanctions and to the entry of findings that he solicited and accepted from a public customer a \$34,614.80 check for investment purposes and, instead, deposited the check in his insurance agency's bank account and applied the proceeds to his own use and benefit. In addition, the NASD found that Freeman failed to respond to an NASD request for information.

**Vincent John Higgins (Registered Representative, Cape Coral, Florida) and George Cable Kelley (Registered Sales Supervisor, Fort Myers, Florida).** Higgins was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$57,568.37 in restitution to public customers. Kelley submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Kelley consented to the described sanctions and to the entry of findings that he failed to ensure that "switch" letters were obtained from Higgins' customers as required by their member firm's written supervisory procedures. In addition, the findings stated that Kelley failed to adequately supervise trading in the accounts of public customers to prevent and detect suitability violations by Higgins.

The NASD also found that Higgins recommended mutual fund and/or unit investment trust "swaps" to public customers without having reasonable grounds for believing that said transactions were suitable for the customers. Furthermore, Higgins sent a letter to public customers purporting to reflect the current value of the securities positions in their joint account, which overstated the value of two of the securities positions listed. In addition, Higgins failed to respond to NASD requests for information.

**Francis A. Jacob (Registered Representative, Lakeland, Florida)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jacob withdrew from the life insurance policies of six public customers \$13,683.12 and converted the funds to his own use and benefit without the knowledge or authorization of the customers. In addition, Jacob failed to respond to an NASD request for information.

**Robert A. Lacey (Registered Principal, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and required to pay \$547.10 in restitution to his member firm. Without admitting or denying the allegations, Lacey consented to the described sanctions to the entry of findings that he exercised discretion in the accounts of a public customer without having that discretionary authority reduced to writing and without having the customer's accounts approved by his member firm as discretionary. In addition, the NASD found that Lacey effected six transactions in the account of a public customer without the knowledge or authorization of the customer.

**George Locklear (Registered Representative, Pembroke, North Carolina)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Locklear solicited and accepted from a public customer \$50,000 for investment in mutual funds and instead of investing the entire amount, he invested only \$35,000 and kept the remaining \$15,000 of the funds.

**Masters Financial Group, Inc. (Little Rock, Arkansas) and Hale Ray Spiegelberg (Registered Principal, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which they were fined \$35,000, jointly and severally. The firm was also required to pay \$12,131 in restitution to public customers. Spiegelberg was suspended from association with any NASD member in any principal capacity for five years and required to pay \$129,166 in restitution to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Spiegelberg, effected transactions as principal with public customers in common stocks at prices that were not fair. The findings also stated that the firm, acting through Spiegelberg, acted as an underwriter for the unregistered distribution of shares of a common stock, in violation of Section 5 of the Securities Act of 1933 and violated its restriction agreement with the NASD.

Furthermore, the NASD found that the firm, acting through Spiegelberg, failed to have a qualified registered financial and operations principal (FINOP), permitted an individual to perform the functions of a FINOP without proper registration, and effected options transactions for public customers without having a qualified registered options principal. In addition, the NASD determined that the firm, acting through Spiegelberg, failed to notify the NASD of the resignation of its sole registered options principal and permitted individuals to perform functions requiring registration in various capacities without being registered with the NASD in those capacities. The NASD also found that the firm, acting through Spiegelberg, conducted a securities business while failing to maintain its required minimum net capital and filed inaccurate FOCUS Parts I and II reports.

Also, the findings stated that the firm, acting through Spiegelberg, failed to maintain complete, accurate, and current books and records and failed to file monthly financial reports with the NASD concerning its net capital deficiency. In addition, the firm, acting through

Spiegelberg, failed to give telegraphic notice of its failure to make and keep current books and records.

**Chris G. Padgett (Registered Representative, Aiken, South Carolina)** was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$60,000 in restitution to his member firm. The sanctions were based on findings that Padgett solicited and accepted from an insurance customer a \$60,000 check for the purchase of a variable life insurance policy but, instead, deposited the check in his personal bank account and applied the proceeds to his own use and benefit. In addition, Padgett failed to respond to NASD requests for information.

**Joel Eugene Shaw (Registered Representative, Greenville, South Carolina)** was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Shaw solicited and accepted two checks drawn on the cash management account of a public customer totaling \$21,142.67 for investment purposes and, instead, deposited the checks in his personal bank account and applied the proceeds to his own use and benefit. In addition, Shaw made representations to the same public customer concerning her purported investments without having a factual basis for making such representations. This action has been appealed to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

#### March Actions

**Bachus & Stratton Securities, Inc. (Pompano Beach, Florida), Wasatch Stock Trading, Inc. (Salt Lake City, Utah), Salvator Anthony Lanza (Registered Principal, Boca Raton, Florida), Dan Lawrence Mauss (Registered Principal, Salt Lake City, Utah), Thomas Eugene Russo (Registered Representative, Nanuet, New York), Edward Norman LaMarca (Registered Representative, Brooklyn, New York), and Salvatore Dominic Romano (Registered Representative, Staten Island, New York).** Bachus and Lanza were fined \$200,000, jointly and severally and ordered to disgorge \$815,259.71, jointly and severally. Wasatch and Mauss were fined \$250,000, jointly and severally, and ordered to disgorge \$106,945.76, jointly and severally. Bachus and Wasatch were each expelled from NASD membership. Lanza and Mauss were each barred from association with any NASD member in any capacity. Russo was fined \$40,000, ordered to disgorge \$28,175.19, and barred from association with any NASD member in any capacity. LaMarca was fined \$35,000, ordered to disgorge \$13,725.39, and barred from association with any NASD member in any capacity. Romano was fined \$20,000, ordered to disgorge \$29,506.30, and barred from association with any NASD member in any capacity.

The sanctions were based on findings that Bachus sold shares of a common stock that it had purchased directly or indirectly from another entity to its customers through principal transactions. In so doing, Lanza knowingly or recklessly failed to disclose, and failed to cause the registered representatives of Bachus to disclose, to customers the material fact that they were purchasing the common stock indirectly from an entity controlled by Lanza, resulting in profits to Bachus of \$276,678.75. In addition, Lanza knowingly and recklessly failed to disclose certain material information to customers concerning warrants including the fact that a registration statement for the warrants was not declared effective by the Securities and Exchange Commission (SEC), thus preventing the purchasers from exercising the warrants and obtaining free-trading stock. Furthermore, Bachus, Wasatch, Lanza, Mauss, Russo, LaMarca and Romano effected a series of transactions with the intention of and effect of creating actual and apparent trading activity in a common stock, and raising and maintaining the price of the stock for the purpose of inducing the purchase and sale of the stock by others, thereby manipulating the market for the common stock.

Also, Wasatch, acting through Mauss, Bachus, Lanza, Russo, LaMarca, and Romano, while participating in the distribution of a common stock as underwriters,

brokers, dealers, or in concert with such participants, directly and indirectly, bid for and/or purchased such securities for their own account, or accounts they controlled, and induced others to purchase such securities before the completion of the distribution, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-6, promulgated thereunder. In addition, Wasatch, acting through Mauss, transferred a common stock from various personal and nominee accounts without the authorization of the account holder and opened various accounts for persons associated with other members when they should have known that the account record maintained for each account was false. Russo and LaMarca also failed to respond to an NASD request for information.

**Barron Chase Securities, Inc. (Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to entry of findings that, after receiving notice from the NASD Advertising Department that certain misleading promotional materials should no longer be used, the firm continued to effect sales in common stock without ensuring that customers were not basing their investment decisions on the misleading statements contained in the promotional materials.

#### April Actions

**Alfred Abdo, Jr. (Registered Principal, Winston-Salem, North Carolina)** was fined \$25,000, suspended from association with any NASD member in any capacity for 30 days and thereafter until he requalifies by examination as a registered representative, and ordered to amend his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to disclose a civil lawsuit filed by public customers. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Abdo recommended the purchase of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers based on their other security holdings, financial situations, and needs. In addition, Abdo guaranteed public customers against losses in their purchase of a limited partnership unit.

**Bernard Berger (Registered Representative, Hollywood, Florida)** was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Berger prepared and provided public customers with written account valuations that materially overstated the value of the securities positions in the accounts. In addition, Berger failed to respond to NASD requests for information.

**Bob Hedges Financial Services, Inc. (Delray Beach, Florida), Robert D. Hedges (Registered Principal, Deerfield Beach, Florida), and Donald C. Alger, Sr. (Associated Person, Fort Lauderdale, Florida).** The firm and Hedges were fined \$60,000, jointly and severally. The firm was also prohibited from using any form of advertising or sales literature as defined in NASD rules for one year, and for two years thereafter, required to file or obtain prior written approval for all advertisements and sales literature from the NASD Advertising Department. Hedges was suspended from association with any NASD member as a general securities principal for 30 days and thereafter until he requalifies as a general securities principal by taking and passing the Series 24 examination. Alger was fined \$25,836 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that the firm, acting through Hedges, permitted Alger and another individual to engage in the solicitation or conduct of business in securities for the firm without being qualified and/or registered as representatives of the firm. The firm, acting through Hedges, also failed to file an amendment to a Uniform Termination Notice for Securities Industry Registration (Form U-5) in a timely manner for a former registered representative to disclose customer complaints

and litigation. The firm, acting through Hedges, failed to keep current its purchase and sales blotter and failed to establish and maintain adequate written supervisory procedures. In addition, the firm, acting through Hedges, prepared and disseminated written sales communications that failed to comply with applicable rules and regulations of the NASD, SEC, and Municipal Securities Rulemaking Board (MSRB), and sold unregistered securities in violation of Section 5 of the Securities Act of 1933.

**Nathan M. Margolin (Registered Representative, Ft. Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$55,845 in restitution to his member firm. Without admitting or denying the allegations, Margolin consented to the described sanctions and to the entry of findings that he transferred funds between the accounts of at least 12 customers. Specifically, the NASD found that Margolin falsified letters of authorization, subsequently gained access to the funds, and converted to his own use and benefit \$407,845 of the customers' funds. The NASD also found that Margolin received securities from two public customers valued at \$148,000 that he converted to his own use and benefit.

**Frank W. McLaughlin, Jr. (Registered Representative, Vero Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$20,000 in restitution to his former member firm. Without admitting or denying the allegation, McLaughlin consented to the described sanctions and to the entry of findings that he received a \$20,000 check from a public customer made payable to a subsidiary of his member firm, negotiated the check, and subsequently converted the proceeds to his own use and benefit.

**Kevin A. Murphy (Registered Representative, Elfers, Florida)** submitted an Offer of Settlement 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, Murphy consented to the described sanctions and to the entry of findings that he obtained \$455.15 from public customers for the purchase of investment company securities and, instead, converted the funds to his own use and benefit without the knowledge or authorization of the customers.

**Hugh William Roach, Sr. (Registered Representative, Spartanburg, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$90,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roach consented to the described sanctions and to the entry of findings that he secured an \$18,000 loan from the life insurance policy of a public customer without the customer's knowledge or authorization and converted the funds to his own use and benefit. In addition, the NASD found that Roach changed the address of record for the same customer to a post office box over which he exercised control to prevent the customer from receiving information concerning the loan.

**Robert T. Roberts (Registered Representative, Lawrenceville, Georgia)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roberts consented to the described sanction and to the entry of findings that he withdrew \$7,718.51 from the life insurance policies of six public customers without their knowledge or authorization and converted the funds to his own use and benefit.

**James L. Smith (Registered Representative, Montgomery, Alabama)** submitted an Offer of Settlement pursuant to which he was fined \$42,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he received \$23,500 from public customers intended for the purchase of shares in a mutual fund and an annuity, but converted \$8,500 of the funds to

his own use and benefit without the customers' knowledge or authorization.

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

## February Actions

**Joseph S. Baba (Registered Representative, Cary, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$20,000, suspended from association with any NASD member in any capacity for 45 days, and suspended from association with any NASD member in any principal capacity for two years. In addition, Baba was required to requalify by examination as a general securities representative. Baba was also prohibited from participation in any manner in any sales of securities not registered under the Securities Act of 1933 (except exempted securities as defined in Section 3(a) of the Securities Exchange Act of 1934) for two years. Without admitting or denying the allegations, Baba consented to the described sanctions and to the entry of findings that he participated in the sales of stock in private transactions while failing to provide prior written notice of his activities to his member firm. The NASD also determined that in connection with such sales, Baba made misrepresentations of material facts or omitted to state material facts to public customers.

**Chatfield Dean & Co., Inc. (Greenwood Village, Colorado)** and **Kevin C. Grom (Registered Principal, Littleton, Colorado)** submitted an Offer of Settlement pursuant to which the firm and Grom were fined \$50,000, jointly and severally. Grom was also suspended for 90 days from association with any NASD member in any capacity and suspended for an additional 270 days immediately thereafter from association with any NASD member in a principal capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grom, failed to execute 175 customer orders for shares of stock promptly and failed to reflect on order tickets for two public customers at the time when the firm received the orders.

The findings also stated that the firm, acting through Grom, permitted an unregistered person associated with the firm to effect at least one securities transaction for the account of a public customer before the individual's effective registration with the NASD. In addition, the NASD found that the firm, acting through Grom, failed to establish, maintain, or enforce written supervisory procedures or to otherwise supervise certain individuals to prevent unauthorized securities transactions. Grom's suspension in any capacity commenced January 24, 1994, and concluded April 23, 1994. His suspension as a principal will commence April 24, 1994, and will conclude January 19, 1995.

**John Lyle Clements (Registered Representative, Novi, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Clements consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers.

**H. Barry Goodman (Registered Representative, Deerfield, Illinois)** 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, Goodman consented to the described sanction and to the entry of findings that he participated in private securities transactions while failing to give written notice of his intention to engage in such activities to his member firm. The findings also stated that Goodman failed to update his Uniform Application for Securities Industry Registration or Transfer Form (Form U-4) to disclose an investigation by the State of Illinois Securities Department.

**Brian Gerard Krause (Registered Representative, St. Clair Shores, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Krause consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice to, and before receiving prior written approval from, his member firm to participate in such transactions.

**David T. Nadell (Registered Principal, Clair Shores, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$2,500, suspended from association with any NASD member in any principal capacity for 60 days, and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Nadell consented to the described sanctions and to the entry of findings that a former member firm, acting through Nadell, conducted a securities business while failing to maintain its minimum required net capital and failed to prepare and/or maintain accurate net capital computations.

In addition, the findings stated that the firm, acting through Nadell, filed with the NASD inaccurate FOCUS Part I and II reports, and failed to maintain order tickets for certain periods. Furthermore, the NASD determined that the firm, acting through Nadell, failed to comply with the terms of its restrictive agreement when it engaged in more than an occasional proprietary trade during certain periods.

**Michael W. Overly (Registered Representative, Dayton, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Overly consented to the described sanctions and to the entry of findings that he operated as an unregistered financial adviser without first notifying his member firm in writing of this outside business activity. In addition, the NASD found that Overly offered and sold securities to public customers without first notifying or receiving permission to engage in such private securities transactions from his member firm.

**David James Pompo (Registered Representative, Romeo, 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, Pompo consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice to, and before receiving prior written approval from his member firm to participate in such transactions.

**Anthony I. Putman (Registered Representative, Detroit, Michigan)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Putman consented to the described sanction and to the entry of findings that without a public customer's knowledge or consent, he submitted a surrender of life insurance policy form to his member firm to request cash from the customer's policy. According to the findings, Putman obtained a check made payable to the customer for \$7,395.45, endorsed the check, and deposited the proceeds in a business account he maintained. Furthermore, the NASD found that Putman used \$2,515.15 of the funds for a mutual life insurance policy for the customer and used the remainder for some purpose other than for the benefit of the customer.

**Michael K. Roglen (Registered Representative, Xenia, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roglen consented to the described sanctions and to the entry of findings that he misappropriated and converted to

his own use insurance customers' funds totaling \$4,831.93.

**Troy A. Wetter (Registered Principal, Greenview, Illinois)** was fined \$20,000 and barred from association with any NASD member in any capacity. The SEC modified the sanctions following appeal of an October 1992 NBCC decision. 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 reports in a timely manner. In addition, the firm, acting through Wetter, conducted a securities business when the firm was suspended from NASD membership.

## March Actions

**Nicholas A. Chambos (Registered Representative, Utica, Michigan)** was fined \$20,000 and barred from association with any NASD member in any capacity. In addition, he must pay \$1,132.85 in restitution to a member firm. The sanctions were based on findings that Chambos obtained from public customers \$1,132.85 through the cash surrender of a life insurance policy with instructions to use such funds to purchase shares of stock. Chambos failed to follow said instructions and used the funds for some purpose other than for the benefit of the customers. Chambos also failed to respond to NASD requests for information.

**Keith Darnell Greene (Registered Representative, Dayton, Ohio)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Greene misappropriated and converted from an insurance customer \$90.54 which had been designated for the payment of insurance premiums.

**Roland Infeanyi Ihejiro (Registered Representative, Chicago, Illinois)** was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$3,620.50 in restitution to the appropriate parties. The sanctions were based on findings that Ihejiro obtained a \$2,096.50 check payable to a customer representing the proceeds from the sale of stock held in the customer's account. Without the knowledge or consent of the customer, Ihejiro endorsed the check and retained the proceeds for his own use and benefit. Ihejiro also received from another customer two checks totaling \$1,524 for the purchase of stock but retained the funds for his own use and benefit. In addition, Ihejiro failed to respond to NASD requests for information.

**Christian John Randle (Registered Representative, Mount Prospect, Illinois)** was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative within 90 days of the date of this decision or cease acting in such capacity until requalified. The sanctions were based on findings that Randle received an order from his member firm's branch office to purchase 1,000 shares of stock at \$12.50 for a public customer's account. Randle obtained 1,000 shares at that price, but reported to his firm that he could only fill 600 shares of the order. Randle then placed the remaining 400 shares in his own account and thereafter sold the 400 shares later that day at \$14.25. Randle's suspension commenced with the opening of business February 28, 1994 and concluded March 29, 1994.

## April Actions

**Scott L. Bolzan (Registered Representative, Aurora, Illinois)** 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, Bolzan consented to the described sanctions and to the entry of findings that he submitted an annuity financial-transaction form requesting a partial withdrawal from an annuity owned by a customer without the customer's knowledge or consent. According to the findings, Bolzan thereafter received a check for \$25,000, payable to the customer, and deposited the funds in an account in which he had a beneficial interest.

**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 within 90 days or he is barred from acting as a principal until he requalifies. Custable was fined \$20,000 and barred from association with any NASD member in any capacity.

The SEC affirmed the sanctions following appeal of a September 1992 NBCC decision. 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 not supervising Custable's activities properly.

**Douglas Donald DeRose (Registered Representative, Buffalo, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeRose consented to the described sanctions and to the entry of findings that he obtained \$2,835.47 of loan proceeds on a whole life insurance policy owned by a public customer without the knowledge or consent of the customer.

**Louis Feldman (Registered Principal, Coral Springs, Florida)** was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination in any registered capacity that he might function. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Feldman submitted letters on a member firm's letterhead but with his home address to six mutual fund companies. Feldman engaged in this activity for the purpose of changing the broker/dealer of record for 584 customer accounts without having authority to approve bulk transfers of accounts and without obtaining prior authorization from the firm or from the customers. Feldman has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**Gregory J. Kuczora (Registered Representative, Rockford, Illinois)** submitted an Offer of Settlement 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, Kuczora consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give written notice of his intention to engage in such activities to his member firm.

**Andrea LaRusso (Registered Representative, La Grange, Illinois)** submitted an Offer of Settlement pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LaRusso consented to the described sanction and to the entry of findings that she signed and submitted to the NASD a Form U-4 that failed to disclose a misdemeanor conviction for theft.

**Tracey L. Lingle (Registered Representative, Mokena, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lingle consented to the described sanctions and to the entry of findings that he signed customer names to mutual fund purchase forms and submitted the forms to his member firm while failing to inform the firm that he, not the customers, had signed the forms and that the purchases to which the forms related were solicited.

**Jeffrey Scott Lipperer (Registered Representative, Jefferson, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD mem-

ber in any capacity, and required to pay \$39,323 in restitution to a member firm. Without admitting or denying the allegations, Lipperer consented to the described sanctions and to the entry of findings that he obtained a total of \$39,323 from two insurance customers in payment on their insurance policies. Instead of depositing the funds for the customers' benefit, and without their knowledge or consent, the NASD found that Lipperer deposited the funds in an account that he controlled and retained the funds for his own use and benefit.

The findings also stated that Lipperer signed the name of one of the customers to an account registration form for the purpose of establishing an account without the customer's knowledge or consent. Furthermore, the NASD determined that Lipperer opened a securities account at a member firm and purchased shares of stock without giving prior written notice to the firm of his association with another member.

**Ronnie L. Powell (Registered Representative, Hemlock, New York)** 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, Powell consented to the described sanctions and to the entry of findings that he misappropriated, and converted to his own use, an insurance customer's funds totaling \$709.26.

**Stephen T. Strabala (Registered Representative, Salem, Ohio)** 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, Strabala consented to the described sanctions and to the entry of findings that he submitted new account forms to his member firm that were purportedly signed by public customers when, in fact, the forms had been signed by Strabala without the customers' knowledge or consent.

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

#### February Actions

**Donald C. Alaimo (Registered Representative, Mt. Laurel, New Jersey)** 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, Alaimo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning allegations that he falsified insurance policies and related documents.

**Joseph K. Barbara (Registered Representative, Yardley, Pennsylvania)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Barbara failed to respond to NASD requests for information regarding the alleged misappropriation of customer funds.

**Alan G. Bingaman (Registered Representative, Seabrook, Maryland)** submitted an Offer of Settlement pursuant to which he was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to customers of the funds converted. Without admitting or denying the allegations, Bingaman consented to the described sanctions and to the entry of findings that he forged the signatures of insurance customers on disbursement request forms, on two proceeds checks totaling \$7,624.12, and on a \$2,000 loan proceeds check. According to the findings, Bingaman negotiated all the checks and converted the proceeds totaling \$9,624.12 to his personal use and benefit. The findings also stated that Bingaman failed to respond to NASD requests for information.

**Francis W. Giampa (Registered Representative, Philadelphia, Pennsylvania)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. In addition, Giampa must

pay \$10,500 in restitution to a public customer and provide proof of such payment to the NASD within 45 days or his registration will be revoked. Furthermore, Giampa must requalify by examination as a general securities representative.

The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Giampa engaged in a trading strategy or pattern in the joint account of public customers that was unsuitable for the customers and subjected them to unwarranted risks. Moreover, the frequency of the transactions was excessive in light of the customers' investment objectives, financial situation, and other facts and circumstances disclosed to him. Giampa has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Helene R. Schwartz (Registered Representative, Maple Shade, New Jersey)** was barred from association with any NASD member in any capacity (with the right to reapply after one year). The NBCC imposed the sanction after review of a Philadelphia DBCC decision. The sanction was based on findings that Schwartz, during the course of taking the Series 6 examination, retained in her possession at her testing station notes related to the subject matter of the examination. Schwartz has appealed this action to the SEC, but the bar remains in effect during the pendency of the appeal.

**John D. Wilshere, Jr. (Registered Representative, St. Albans, West Virginia)** 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 Wilshere executed unauthorized transactions in the account of two public customers.

#### March Actions

**Bryn Mawr Investment Group, Inc. (Rosemont, Pennsylvania), Thomas J. Falzani (Registered Principal, Rosemont Pennsylvania), and Howard H. Flesher (Registered Principal, Rosemont, Pennsylvania)** submitted an Offer of Settlement pursuant to which the firm was fined \$14,000, jointly and severally with Falzani, and fined \$14,000, jointly and severally with Flesher. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Flesher and Falzani, effected securities transactions at unfair and unreasonable prices including markups or markdowns ranging from 5.05 to 43 percent. The findings also stated that the firm, acting through Flesher and Falzani, effected retail sales of corporate bonds at unfair prices including markups ranging from 4.5 to 6.83 percent. Moreover, the findings stated that the respondents failed to disclose the markup on 32 confirmations of principal transactions with customers.

In addition, the NASD found that the firm, acting through Flesher, effected municipal securities transactions without having a registered municipal securities principal. The NASD also determined that the firm, acting through Falzani, failed to prepare and maintain accurate books and records.

**William G. Coker, Jr. (Registered Representative, Baltimore, Maryland)** was fined \$30,000, barred from association with any NASD member in any capacity and must pay \$2,027.43 in restitution. The sanctions were based on findings that Coker collected from an insurance customer a total of \$2,807.91 in cash to pay insurance premiums. Coker, however, only applied \$780.48 of the amount toward the above policies and misappropriated \$2,027.43. In addition, Coker failed to respond to NASD requests for information.

**Andinos P. Damalas (Registered Representative, Virginia Beach, Virginia)** was fined \$15,000, barred from association with any NASD member in any capacity, and required to pay \$2,993.94 in restitution. The sanctions were based on findings that Damalas received from an insurance customer a \$9,111.96 check for insurance premiums. Damalas remitted only \$6,118.02 of the amount to the insurance company and converted the \$2,993.94 balance to his own use and benefit.

**John P. Lanigan (Registered Representative, Corapolis, Pennsylvania)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lanigan received from an insurance customer an \$886.63 check that the member firm had issued to the customer to pay an insurance premium and that the customer had endorsed. Lanigan induced a third party to negotiate the check and give Lanigan the money for his own use and benefit.

**Kenneth M. Salzman (Registered Representative, Baltimore, Maryland)** was fined \$120,000, barred from association with any NASD member in any capacity, and must pay \$28,536.08 in restitution. The sanctions were based on findings that Salzman received from two public customers two checks totaling \$23,000 for the purchase of a mutual fund and received from a third customer two checks totaling \$5,536.08 for the purchase of a variable annuity. Salzman deposited the aforementioned checks but instead of purchasing the shares or the annuity, converted the monies to his own use and benefit. Salzman also failed to respond to NASD requests for information.

**Penelope J. Thornton (Registered Representative, Temple Hills, Maryland)** was fined \$50,000, barred from association with any NASD member in any capacity, and must pay \$5,799 in restitution. The sanctions were based on findings that Thornton received from two public customers checks totaling \$5,799 for insurance premiums. Thornton failed to apply the funds towards the premiums; instead, she negotiated the checks and converted the proceeds to her own use and benefit. Thornton also failed to respond to NASD requests for information.

#### April Actions

**Gong Chen (Registered Representative, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$10,000, barred from association with any NASD member in any capacity, and required to repay a \$18,502.29 debit balance in his securities account. Without admitting or denying the allegations, Chen consented to the described sanctions and to the entry of findings that he placed an order for the purchase of securities in his account with his member firm resulting in a debit to his account at a time when he knew or should have known that he lacked the financial resources to pay for the transaction. According to the findings Chen failed to pay for the transaction, resulting in the position being sold out, leaving a debit balance in the account of \$18,502.29 that he thereafter failed to cover.

**Kevin J. Crocker (Registered Principal, Virginia Beach, Virginia)** submitted an Offer of Settlement 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, Crocker consented to the described sanctions and to the entry of findings that he forged customer signatures on various forms, causing the liquidation of certain shares and the subsequent purchase of other shares without their authorization. The findings also stated that Crocker executed an unauthorized transaction in a customer's account and forged the customer's signature on a form to transfer the shares sold. In addition, the NASD found that Crocker purchased only 2,000 shares of stock for a customer when instructed to purchase 5,500 shares.

**Gerald L. Fields, Jr. (Registered Representative, Carmichaels, Pennsylvania)** 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 \$1,477.58 plus interest in restitution to customers. Without admitting or denying the allegations, Fields consented to the described sanctions and to the entry of findings that he received from policyholders premium payments that he retained and failed to remit to his member firm. The findings also stated that Fields failed to respond to NASD requests for information.

**Michael G. Keselica (Registered Representative, Gaithersburg, Maryland)** was fined \$30,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Washington, D.C. DBCC decision. The sanctions were

based on findings that Keselica purchased shares of securities for the account of a public customer without the customer's authorization. Keselica has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Randy M. Lang (Registered Representative, Altoona, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$5,700, barred from association with any NASD member in any capacity, and ordered to pay \$1,133 plus interest in restitution to a member firm. Without admitting or denying the allegations, Lang consented to the described sanctions and to the entry of findings that he collected from an insurance customer policy loan repayments and failed to remit a total of \$1,000 of such collections to his member firm. The NASD also determined that Lang collected from two additional customers \$133 for payment of an insurance premium and failed to remit the funds to his member firm.

**Charles E. Placer (Registered Representative, New Martinsville, West Virginia)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Placer consented to the described sanction and to the entry of findings that he received from a public customer \$1,000 in cash for investment purposes. The NASD found that Placer failed to remit the funds to his member firm for its intended purpose and retained the money for his personal use.

**John Vignovich (Registered Representative, Bethel Park, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vignovich consented to the described sanctions and to the entry of findings that he received from a public customer a \$1,200 personal check intended for the purchase of a mutual fund. When the check was received, the "pay to" section of the check was blank. According to the findings, Vignovich filled in his own name as the payee of the check, deposited the check to his personal bank account, retained the proceeds, and failed to remit the funds to his member firm for the purchase of the mutual funds.

The findings also stated that Vignovich received from the same customer a series of seven bank money orders in amounts from \$20 to \$22. According to the findings, Vignovich represented to the customer that the money orders were payments from a mutual fund purchased by him, thereby deceiving the customer as to the purported existence of such a mutual fund account. The NASD determined that when the customer requested that Vignovich effect the redemption of what he believed to be his mutual fund account, Vignovich further deceived him into executing a request for a loan against an existing life insurance policy by representing that it was a mutual fund redemption request. Vignovich also misinformed the customer by stating that the \$1,131.00 policy loan check was actually mutual fund redemption proceeds.

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)

#### February Actions

**John Joseph Capano (Registered Representative, New York, New York)** submitted an Offer of Settlement 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, Capano consented to the described sanctions and to the entry of findings that, in a scheme to defraud a public customer, he employed manipulative, deceptive, and fraudulent devices and contrivances in an effort to induce the customer to invest money with him for the purported purpose of buying and selling securities. The findings also stated that, based on misrepresentations, Capano made improper use

of \$25,000 of the customer's funds and guaranteed at least a 10 percent return on her money.

Furthermore, the NASD found that, in connection with the above, Capano engaged in outside business activities and exercised complete discretion over the same customer's money and her purported account without receiving written authorization from the customer. In addition, the NASD determined that Capano sent fictitious monthly account statements to the customer detailing her positions and the value of her account on the letterhead of an entity he fabricated to lull the customer into believing she actually maintained a securities account and that it was steadily increasing in value.

**Colonial Securities, Inc. (New York, New York) and Yee Yee Wong (Registered Principal, Flushing, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. Wong was also suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wong, allowed an individual to act as a registered representative without being properly qualified. In addition, the NASD found that the firm, acting through Wong, paid commissions derived from securities transactions to this unregistered individual.

**Mark Ross Elston (Registered Representative, Shawnee, Kansas)** 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 six months. Without admitting or denying the allegations, Elston consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent.

**Salvatore Anthony Iradi, Jr. (Registered Representative, Monmouth Beach, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$41,900 in restitution to public customers. Without admitting or denying the allegations, Iradi consented to the described sanctions and to the entry of findings that he executed three transactions in the accounts of two public customers without their prior knowledge, authorization, or consent. In addition, the NASD found that Iradi made numerous misrepresentations to induce public customers to purchase and hold shares of common stocks.

**Roderick Odom (Registered Representative, Selden, New York)** was fined \$8,000, barred from association with any NASD member in any capacity, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Odom failed to pay a \$4,000 NASD arbitration award.

**Greg S. Passales (Registered Representative, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Passales failed to respond to NASD requests for information concerning a customer complaint.

**Mark A. Perosi (Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Perosi consented to the described sanction and to the entry of findings that he exercised discretion in two accounts of a public customer without written authorization.

#### March Actions

**Theodore Allocca (Registered Representative, Huntington, New York)** 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 District 10 District Business Conduct Committee (DBCC) decision. The sanctions were based

on findings that Allocca failed to pay a \$67,556.02 NASD arbitration award.

**Stephen Craig Harrison (Registered Representative, Merriam, Kansas)** was fined \$10,000 and required to requalify by examination before acting in any capacity with any member firm. The sanctions were based on findings that Harrison purchased or caused to be purchased shares of a common stock in the account of a public customer without the customer's prior knowledge, authorization, or consent.

**M. Rimson & Co., Inc. (New York, New York), Moshe Rimson (Registered Principal, New York, New York) and Irving Levine (Registered Representative, Woodmere, New York)** submitted an Offer of Settlement pursuant to which the firm and Rimson were fined \$15,000, jointly and severally, and ordered to disgorge \$72,641 to public customers. If the firm and Rimson cannot within six months document for the NASD staff the disgorgement payments, they will be added to the fine to be paid by the firm and Rimson, jointly and severally. The firm is also required to submit written supervisory procedures designed to prevent and detect any future violations of the NASD Mark-Up Policy, and Rimson was suspended from association with any NASD member as a general securities principal for 15 business days. Levine was fined \$15,000 and suspended from association with any NASD member in any capacity for 15 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Levine and Rimson, engaged in a course of conduct that operated as a fraud upon purchasers of a common stock. Specifically, the prices at which the firm sold the stock to customers were not fair, with markups ranging from 94 to 1,900 percent above the prevailing market price of the securities. In addition, the NASD found that the firm, acting through Rimson, failed to establish, maintain, and enforce written supervisory procedures that would have enabled them to supervise properly the activities of the firm's associated persons.

#### April Actions

**John T. Butler (Registered Representative, Reading, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days, with the understanding that the suspension will remain in effect until the fine is paid. Without admitting or denying the allegations, Butler consented to the described sanctions and to the entry of findings that he left an offensive/harassing message on a public customer's voice mail after the customer hung up on Butler when he placed a "cold call." Butler's suspension commenced February 22, 1994, and concludes once the fine is paid.

**Peter Thompson Higgins (Registered Principal, Metuchen, New Jersey)** was suspended from association with any NASD member in any capacity for three business days. The SEC affirmed the sanction following appeal of an October 1992 NBCC decision. The sanction was based on findings that Higgins failed to pay a \$13,015.63 NASD arbitration award in a timely manner. Higgins has appealed this action to the U.S. Court of Appeals; however, the appeal does not operate as an automatic stay of the sanctions.

**Steven D. Maliagros (Associated Person, Astoria, New York)** was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following review of a New York DBCC decision. The sanction was based on findings that during the course of the Series 7 examination, Maliagros was found to be in the possession of, reading, and/or otherwise using printed information that contained material relevant to the subject matter.

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)

#### February Actions

None

#### March Actions

None

#### April Actions

**Daniel L. Chabot, Sr. (Associated Person, Cumberland, Rhode Island)** 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, Chabot consented to the described sanctions and to the entry of findings that he endorsed and cashed checks totaling \$13,915.01 belonging to 12 policyholders and misappropriated the proceeds to his own use and benefit without his member firm's knowledge or consent.

**Thomas P. Corcoran (Registered Representative, Manlius, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Corcoran consented to the described sanctions and to the entry of findings that he improperly used an application originally prepared for another account but that the customer subsequently canceled. Around the same time, a different customer requested that Corcoran rollover \$200,000 into a Monymax account. In turn, the NASD found that Corcoran placed the funds as requested, using the existing application with the intent of changing the name. According to the findings, three years later, Corcoran facilitated the name change by creating two letters and forging the names of the trustees for each account authorizing the change.

**Jonathan J. Leary (Registered Representative, Stow, Massachusetts)** 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, Leary consented to the described sanctions and to the entry of findings that he opened a fictitious checking account in the names of two public customers using a false social security number. Thereafter, according to the findings, Leary made unauthorized transfers from the customers' legitimate account and withdrew \$4,000 that he misappropriated to his own use and benefit.

**Theodore G. Peck, IV (Registered Representative, Kingston, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and required to requalify by examination as a general securities registered representative. Without admitting or denying the allegations, Peck consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without the knowledge or consent of his member firm and without giving prior written notification to his member firm.

Market Surveillance Committee

#### February Actions

**Edward C. Farni, II (Registered Principal, Excelsior, Minnesota) and William S. Wright, Jr. (Registered Representative, Bloomington, Minnesota)** were each fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that Farni and Wright refused to answer NASD staff questions during an investigative interview. Farni has appealed this action to the SEC, and his sanc-

tions are not effective pending consideration of the appeal.

#### March Actions

**Michael C. Woloshin (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$170,850, ordered to pay \$204,150 in restitution to public customers, and suspended from association with any NASD member in any capacity for four years. Without admitting or denying the allegations, Woloshin consented to the described sanctions and to the entry of findings that he fraudulently used a nominee account to park securities, thereby concealing his ownership of such securities, and generated additional payout for himself. The findings also stated that Woloshin charged fraudulently excessive markups of 10 to 52 percent above the prevailing market price, markdowns of 10 to 30 percent below the prevailing market price, and unfair as well as unreasonable prices to customers for securities.

Furthermore, the NASD determined that Woloshin engaged in unauthorized trading in customer accounts and opened a customer account without authorization. In addition, the NASD found that Woloshin made misrepresentations and omissions of material facts to induce customers to purchase securities and willfully, with reckless disregard, caused the account of at least one customer to be excessively traded (churning) with the intention and effect of generating additional compensation for himself. The NASD also found that Woloshin made unsuitable recommendations to public customers.

#### April Actions

None

# NASD Regulatory & Compliance Alert Information

## Regarding Any Items in This Publication

If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Richard L. DeLouise, Editor, *NASD Regulatory and Compliance Alert*, 1735 K Street, N.W., Washington, D.C. 20006-1500, (202) 728-8474.

## Regarding NASD Disciplinary Actions & Histories

If you are a member of the media, please contact NASD Media Relations at (202) 728-8884. To investigate the disciplinary history of any NASD-licensed representative or principal, call our toll-free NASD Disciplinary Hot Line at (800) 289-9999.

## Regarding Subscription Questions, Problems, or Changes

### Member Firms

Please note that the compliance director at each NASD member firm receives a complimentary copy of the *RCA*, as does each branch office manager. To change your mailing address for receiving either of these complimentary copies of *RCA*, members need to file an amended Page 1 of Form BD for a main office change or Schedule E of Form BD for branch offices. Please be aware, however, that every NASD mailing will be sent to the new address. To receive a blank Form BD or additional information on address changes, call NASD Member Services at (301) 590-6500. For additional copies (\$25 per issue, \$80 per year), please contact NASD MediaSource<sup>SM</sup> at (301) 590-6578.

### Subscribers

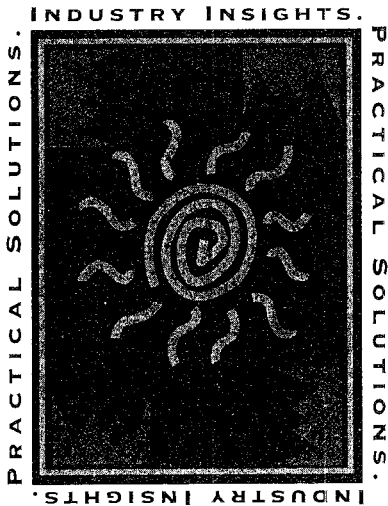
To subscribe to *RCA*, please send a check or money order, payable to the National Association of Securities Dealers, Inc., to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403 or, for credit card orders, call NASD MediaSource at (301) 590-6578. The cost is \$25 per issue or \$80 per year. *RCA* subscribers with subscription problems or changes may contact NASD MediaSource at (301) 590-6578.

### Other Recipients

Other recipients of *RCA* who wish to make an address change can send in writing your correct address with a label (or copy of a label) from our mailing that shows the current name, address, and label code. Send your request to: NASD, 1735 K Street, N.W., Washington, D.C. 20006-1500 Attn.: Mark DiJulio.

©1994, NASD is a registered service mark of the National Association of Securities Dealers, Inc. All rights reserved. Nasdaq, Nasdaq National Market, Nasdaq Stock Market, OTC Bulletin Board, and Nasdaq Workstation are registered service marks of The Nasdaq Stock Market, Inc. PORTAL, SOES, FIPS, SelectNet, The Nasdaq Stock Market, The Nasdaq SmallCap Market, and Nasdaq Workstation II are service marks of The Nasdaq Stock Market, Inc.

No portion of this publication may be photocopied or duplicated in any form or by any means except as described below without prior written consent from the NASD. Members of the NASD are authorized to photocopy or otherwise duplicate any part of this publication without charge only for internal use by the member and its associated persons. Nonmembers of the NASD may obtain permission to photocopy for internal use only through the Copyright Clearance Center (CCC) for a \$5-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923.



# The 1994 NASD Fall Securities Conference

**NOVEMBER 2-4  
PHOENIX, ARIZONA**

By all accounts, the Spring Securities Conference in Washington was a great success. That means the pressure is on. We have to make sure the fall conference in Phoenix gives you exactly what you need to be successful: the latest compliance and regulatory news for our industry and specific and practical information on what it means for your business.

Speakers for the general sessions will include leaders from other securities associations, sharing their insight on the future of our industry. Workshops will continue to target your specific areas of concern, including branch office inspections, unhappy customers, and disciplinary procedures. It's one conference you can't afford to miss.

**Important: Make sure your name is on our conference information mailing list.**

You'll receive the conference brochure for the NASD Fall Securities Conference only if you call, write, or fax us with your address today.

**Are  
you on the  
mailing list for  
conference  
information?**

**Yes! Add me to your list to receive information about  
NASD Securities Conferences.**

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone \_\_\_\_\_

**Complete and mail to: Jackie Niedermayer  
NASD Meetings and Conferences  
1735 K Street, NW  
Washington, D.C. 20006-1500**

**Or fax: (202) 728-8882**

**Or call: (202) 728-8383**