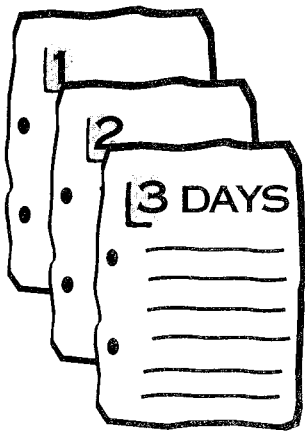


# ALERT



## T+3 Settlement Is On The Way

The Securities and Exchange Commission (SEC) adopted Rule 15c6-1 establishing three business days as the standard settlement time for most securities transactions starting June 1, 1995. The rule, adopted in October 1993, does not apply to a contract for an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills. (In August 1994, the MSRB filed with the SEC amendments to Rules G-12 and G-15 to also require three-business-day settlements for municipal securities.)

*Notice to Members 93-77* (November 1993) summarizes Rule 15c6-1 and contains the complete SEC Release on the rule.

Generally, the rule provides three exemptions to the three-day-settlement provision:

- Transactions in limited partnership interests that are unlisted or not quoted in The Nasdaq Stock Market<sup>SM</sup>.
- The sale of securities for cash by an  
(Continued page 3)

### Comment Sought On Cash And Non-Cash Compensation

## Proposal Covers Selling Investment Company And Variable Contract Securities

The NASD requested member comment on proposed amendments to Article III, Sections 26 and 29 of its Rules of Fair Practice (RFP). These changes would revise existing rules applicable to the sale of investment company securities and establish new rules that apply to variable contract securities sales. Limits on non-cash compensation are under consideration.

For sales of investment company and variable contract securities, the proposed amendments would:

- Prohibit, with certain exceptions, members and associated persons from accepting any non-cash compensation from an investment or insurance company or another member.

- Prohibit, with limited exceptions, associated persons from receiving any compensation from anyone other than the member with which the person is associated.
- Prohibit receipt of cash compensation by a member from the offeror unless such arrangement is described in the current prospectus.
- Require that members maintain records of compensation received from offerors.

The amendments also would retain the provision, in the sale of investment company securities, that prohibits a member from receiving compensation in the form of securities from an offeror.  
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## Reasons For Review

The NASD Investment Companies and Insurance Affiliated Member

Committees have considered the current environment in which investment company and variable contract securities are sold. The Committees did not find that the manner in which non-cash compensation is offered and paid to members and their associated persons indicates a level of supervisory and compliance problems similar to those present in the sale of direct participation program securities (DPPs) which led the NASD in 1988 to prohibit non-cash compensation in the sale of such securities. However, the Committees believe that the increased use of non-cash compensation for the sale of investment company and variable contract securities heightens the potential for loss of supervisory control over sales practices and increases the possibility for the perception of impropriety, leading to a loss of investor confidence. The Committees concluded that limit-

ing non-cash compensation for the sale of both securities products is now appropriate.

## Exceptions Allowed

Exceptions to the non-cash compensation prohibition would permit:

- In-house sales incentive programs for a broker/dealer's associated persons.
- Sales incentive programs of mutual funds and insurance companies for the associated persons of a broker/dealer subsidiary.
- Payment or reimbursement for training and educational meetings held by a broker/dealer or a mutual fund or insurance company for associated persons of broker/dealers.
- Gifts of up to \$100 per associated person annually.
- An occasional meal, ticket to a sport-

ing event or theater, or entertainment for associated persons and their guests.

A complete description of the proposed amendments and their implementation, including examples and analyses, is in *Special Notice to Members 94-67* (August 22, 1994).

Questions concerning this subject may be directed to R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325; Suzanne E. Rothwell, Associate General Counsel, at (202) 728-8247; and Robert J. Smith, Attorney, at (202) 728-8176. □

(T+3, continued from page 1)

issuer to an underwriter pursuant to a firm commitment offering registered under the Securities Act of 1933, or the sale to an initial purchaser by a broker/dealer participating in such offering. (Any secondary resales of these securities are not exempt and must be settled within three business days.)

- Securities transactions that the SEC may periodically exempt by order if it determines that an exemption is consistent with the public interest and investor protection.

The three-day settlement requirement applies to contracts for the purchase and sale of securities issued by investment companies, including mutual fund shares. However, a broker/dealer selling securities issued by a closed-end fund or unit investment trust could qualify itself for the exemption for new issues in a firm commitment underwriting. The new issue exemption would cover underwritings of closed-end funds and unit investment trusts but not open-end funds.

## Regulation

# SEC Approves 18-Month Pilot For Nasdaq Short-Sale Rule

On June 29, 1994, the SEC approved an 18-month pilot for a short-sale rule for securities trading on the Nasdaq National Market®. "The short-sale rule has been designed to prevent inappropriate short-selling activity that adversely affects the pricing efficiency of The Nasdaq Stock Market," said Joseph R. Hardiman, President and Chief Executive Officer of Nasdaq®. "Investors will now be afforded protections against abusive short selling comparable to those of the exchanges."

The rule will apply to private label collateralized mortgage obligations, but not to those mortgage-backed securities issued by government agencies and government-sponsored enterprises.

## Regulation T

The Federal Reserve Board (FRB) staff reviewed Reg T to determine if changes were needed in light of Rule 15c6-1, including the present seven-business-day payment requirement. The FRB staff has proposed that Reg T be amended to require payment for customer purchases within "one payment period," with "payment period" defined as the standard settlement period (T+3) in the United States plus two business days. This decision will not impact the settlement requirements among broker/dealers and clearing corporations, but will affect the length of time a member will be extending credit to the customer. See *Notice to Members 94-53* (July 1994) regarding proposed amendments to Reg T.

For smaller firms that introduce on a fully disclosed basis through another broker/dealer, the impact of T+3 could

be costly if clearing firms charge them for financing purchases not paid for by the customer by T+3. Estimates from major clearing firms indicate that 75 to 85 percent of customer purchases are paid with credit balances or funds swept from a money market or mutual fund account the clearing broker can access. Firms expect to get that figure up to 90 percent by June 1, 1995. If this is done, then the extent of financing charges to introducing firms may not be significant.

To be prepared for T+3 settlement, firms should contact their clearing organization to determine whether changes are needed in their clearing arrangements. Members should inquire how payments will be financed if payments are not received by T+3, whether higher deposits will be needed to finance customer purchases and if customers will be requested to open sweep accounts.

If you have questions about the forthcoming T+3 settlement issue, call Walter J. Robertson, Director, Compliance, at (202) 728-8236. □

The rule, effective September 6, 1994, prohibits NASD members from selling a Nasdaq National Market stock short for themselves or their customers at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid in the security. The inside bid is the highest bid from all market makers in a specific security, including markets in Nasdaq securities provided by exchanges. Nasdaq Workstations now indicate whether the current bid is an up bid or down bid. A short sale is the sale of a

security that the seller does not own, or any sale that is consummated by the delivery of a security borrowed by the seller.

## Rule Application

The rule will be in effect during normal domestic market hours (9:30 a.m. to 4 p.m., Eastern Time). For the first year the rule is in effect, Nasdaq market makers who have maintained quotations in a particular Nasdaq National Market security for 20 consecutive business days without interruption will be enti-

tled to an exemption from the rule, provided all exempted short sales are made in connection with bona fide market-making activity.

Effective September 6, 1995, the "20-day" test for the exemption for Nasdaq market makers will be replaced with a multi-part quantitative test. To be eligible for a market-maker exemption after that date, a market maker must satisfy two out of these three standards:

- A market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time;
- A market maker must maintain a spread no greater than 102 percent of the average dealer spread; or
- No more than 50 percent of a market maker's quotations updates may occur without being accompanied by a trade execution of at least one unit of trading.

If a market maker accounts for one and

a half times its proportionate share volume in a stock, however, it need only satisfy one of the criteria listed above. For example, if there are 10 market makers in a stock, each dealer's proportionate share volume would be 10 percent; therefore, one and a half times proportionate share volume would mean 15 percent of overall volume.

The rule also contains limited exemptions for options market makers and warrant market makers and exemptions similar to those under the SEC's short-sale rule for exchange-listed securities, Rule 10a-1.

In addition, there are three interpretations to the rule that address:

- What constitutes bona fide market-making activity;
- The prices at which "legal" short sales may be effected; and
- Examples of conduct that will be deemed to be in violation of the rule.

The implementation of a short-sale rule for Nasdaq National Market securities reflects the ongoing effort of the NASD and The Nasdaq Stock Market to ensure investor protection and the integrity of The Nasdaq Stock Market. Adoption of a short-sale rule will help prevent abusive short selling and enhance the quality of the Nasdaq market for investors and issuers. Before the pilot ends, the NASD will review the effectiveness of the rule to determine whether it should be made permanent or if other action is appropriate.

More detail about the short-sale rule is in *Notice to Members 94-68* (August 25, 1994), and *Notice to Members 94-83* (October 1994), including a series of questions and answers about the rule. Questions on the subject should be directed to James M. Cangiano, Senior Vice President, Market Surveillance, at (301) 590-6424; Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; or Thomas R. Gira, Assistant General Counsel, at (202) 728-8957. □

## Member Comments Sought On Markups In Government And Debt Securities

The Government Securities Act Amendments of 1993 extended the NASD's regulatory jurisdiction to sales practices in government securities. In response to its expanded role in the government securities markets, the NASD has proposed Interpretations to Article III, Sections 2 and 4 of the Rules of Fair Practice (RFP).

The first Interpretation focuses on the responsibility that a member has to its institutional customers. In particular, the proposed Interpretation would provide further guidance to members on their suitability obligations when making recommendations in equity or debt transactions, except municipals, to certain

institutional accounts as defined in the RFP. The proposal recognizes that important suitability investor protection provisions apply to transactions in the government securities market, but explain how suitability obligations should operate in certain institutional client relationships.

The second Interpretation is directed at providing guidance to members regarding markups in government and other debt securities, except municipals. Among other things, the proposed Interpretation considers key distinctions between the debt and equity markets, citing the infrequent nature of inter-dealer transactions and the similarities

between certain types of debt securities in which many firms make continuous markets.

Comments on both proposals were due to the NASD by September 30. For a full discussion and summary of the proposed Board Interpretations, see *Notice to Members 94-62* (August 1994). Questions concerning this subject should be directed to Walter J. Robertson, NASD Compliance, (202) 728-8236; or John H. Pilcher, NASD Office of General Counsel, (202) 728-8287. □

# Limit-Order Protection Rule Goes Into Place Following SEC Approval

The SEC approved a proposed Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice that prohibits a member firm from trading ahead of its customers' limit orders in a firm's market-making capacity. (See Securities Exchange Act Release No. 34279, June 29, 1994, and 59 *Federal Register* 34883.) The Interpretation, approved June 29, 1994, became effective July 8.

Approval of the Limit Order Protection Interpretation eliminates the so-called "Manning safe harbor" that permitted a member firm to trade ahead of its customers' limit orders in the firm's market-making capacity if the firm adequately disclosed that policy to its customers.

Under the Interpretation approved by the SEC, a member firm cannot accept and hold its customer's limit order in a Nasdaq security and continue to trade that security for its own market-making account at prices that would satisfy the

customer's limit order. The Interpretation, however, does not mandate that a member firm accept limit orders from its customers.

In developing the Interpretation, the Board recognized that member firms handling and committing substantial capital to institutional orders generally have reached a separate understanding as to the execution parameters for those orders. Accordingly, the Interpretation provides that a firm may attach terms and conditions governing the acceptance of a limit order, provided that such terms and conditions are made clear to the customer at the time that the order is accepted.

In a related matter, the Board is soliciting member and public comment on a proposal to extend customer limit-order protection to orders sent by one securities firm to another for execution. As proposed, the new proposal would apply to a customer of a firm that sends a limit order of 1,000 shares or less to another

member for execution (so-called member-to-member trades). In addition, the proposal would prohibit trading ahead of all customer limit orders sent from one member to another when the member firm accepting the order trades for its own account at prices that are superior but not equal to the limit-order price. The comment period expires November 7, 1994; details are in *Notice to Members 94-79* (September 23, 1994).

Further information about this Interpretation is in *Notice to Members 94-58* (July 15, 1994) including a series of questions and answers. Questions about this subject should be directed to James M. Cangiano, Senior Vice President, Market Surveillance, at (301) 590-6424; Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; Robert Aber, General Counsel, at (202) 728-8290; or Thomas R. Gira, Assistant General Counsel, at (202) 728-8957. □

## Advertising

# Investment Company Ranking Guidelines Get SEC Nod

Effective July 12, 1994, the SEC approved Guidelines to Article III, Section 35 of the NASD Rules of Fair Practice that permit the use of rankings for mutual funds and other investment companies in communications with the public under certain conditions. Because of the marked increase in the number, scope, and variety of rankings and ranking entities cited in communications

with the public, the NASD developed a set of comprehensive Guidelines based on standards suggested to the NASD by the Investment Company Institute.

"The increase in the number of investment companies, investment company categories, and ranking entities in recent years dictates the need for explicit rules covering the use of rankings," says R.

Clark Hooper, Vice President, Advertising/Investment Companies Regulation. "The new guidelines will help investors make sound investment decisions by providing more information about the meanings of mutual fund and other investment company rankings."

The full text of the Guidelines appears

in *Notice to Members 94-60* (August 1994) and will be included in the *NASD Manual*. Pursuant to the Guidelines, members may use investment company rankings prepared only by ranking entities that:

- Provide general information about investment companies to the public.
- Maintain independence from the investment company and its affiliates.
- Furnish services not procured by the investment company or any of its affiliates to assign a ranking to the investment company.

The Guidelines prohibit headlines and prominent statements from indicating that an investment company is the best performer in a category unless it is actually ranked first in the category. Furthermore, there must be prominent disclosure in close proximity to any headline or statement of the investment company's ranking of the total number of investment companies in the category, the name of the category, and the period on which the ranking is based.

All advertisements and sales literature with an investment company ranking must disclose:

- The name of the category and the number of investment companies in the category.
- The name of the Ranking Entity.
- Relevant time periods and dates for which the ranking was provided. Advertisement and sales literature must also disclose, among other things, the criteria on which the ranking is based and the fact that past performance is no guarantee of future results.

### **Sales-Load Disclosure**

For investment companies with front-end sales loads, advertisements and sales literature containing a ranking

must disclose whether the ranking takes sales charges into account. If the waiver or advancement of expenses by an investment company or its affiliate had a material impact on the performance for the ranking period, a statement to that effect must be made. Investment company rankings for more than one class or investment company with the same portfolio must be accompanied by a prominent disclosure that the investment companies or classes have a common portfolio.

The Guidelines also require, where investment company rankings use symbols such as a star system, that the advertisement or sales literature disclose the meaning of the symbols. For example, where a four-star ranking indicates that the investment company is in the top 30 percent of all investment companies, the four-star symbol must be explained in sufficient detail to provide the reader a clear understanding.

### **Time Periods**

At a minimum, rankings must reflect the most recent calendar quarter ended before use or submission for publication of the sales material. More current rankings in advertisements or sales literature are permissible. Except for money-market funds, the Guidelines prohibit the use of rankings based on periods of less than one year.

Under the Guidelines, non-money market fund rankings based on total return must include rankings based on multiple time periods. Specifically, investment company rankings based on total return require rankings based on total return for a one-year period for investment companies in existence for at least one year; a one- and five-year period for investment companies in existence for at least five years; and a one-, five-, and 10-year period for those in business at least 10 years. The same Ranking Entity must supply this historical data using the same category and time period.

For example, if an income fund has

been in existence since July 1987 and receives a number one ranking in its category for total return for the three years ended September 30, 1994, an advertisement quoting such ranking must also include the fund's one- and five-year total return rankings for the period ended September 30, 1994, in the same category as computed by the same ranking entity. The Guidelines also permit yield rankings for non-money market investment companies, provided these rankings are based on performance calculated using the SEC standardized yield formula. Yield rankings must be accompanied by total return-based rankings for the one-, five-, and 10-year periods as noted above.

### **Investment Company Categories**

The choice of category (including a subcategory of a broader one) on which the investment company ranking is based must provide a sound basis for evaluating the investment company's performance. The Guidelines specifically prohibit use of any category or subcategory based on investment company asset size, even if such category or subcategory is a creation of the Ranking Entity. In general, an investment company ranking must be based solely on a published category or subcategory created by a Ranking Entity.

With limited exception, the use of a subcategory requires disclosure of the full category's name as well as the investment company's ranking, as well as the number of companies in the full category. If using a ranking category created by an investment company or an affiliate based on the performance measurements of a Ranking Entity, prominent disclosure is required that states: (1) that the investment company or its affiliate has created the category; (2) the number of investment companies in the category; (3) the basis for selecting the category; and (4) the identity of the Ranking Entity that developed the research on which the ranking is based. If the created ranking appears in a headline or other prominent statement, a statement

must appear in close proximity disclosing that the ranking is based on a category developed by the investment company or its affiliate.

### **Filing Requirements**

Members are reminded that, effective June 1, 1994, the NASD Rules of Fair Practice were amended to require that when submitting advertising or sales lit-

erature that includes investment company rankings or comparisons to the Advertising Regulation Department, the basis for such ranking or comparisons must be part of the submission. If the sales material includes a ranking or comparison created by an investment company or affiliate, it must be submitted 10 days prior to first use, along with the data underlying the created ranking

or comparison. (See *Notice to Members 94-25*, April 1994.)

Questions regarding the Guidelines and filing requirements about investment company ranking material may be directed to the Advertising Regulation Department at (202) 728-8330. □

## **Members Cautioned About Discount Brokerage Commission Advertising**

Frequently, advertisements regarding deep discounts contain generalized or unqualified statements about a competitor's commission rates or services, or compare commission rates without disclosing all the facts necessary for investors to fully and adequately understand the distinctions being drawn. In this regard, advertisements containing incomplete comparisons, questionable claims, and improper unqualified statements do not comply with the NASD Rules of Fair Practice.

In 1986, the SEC approved NASD guidelines that apply the standards in Article III, Section 35 of its Rules of Fair Practice to discount brokerage advertising. Under this provision, discount brokerage communications must provide a sound basis for evaluating the facts regarding the securities or associated securities services offered, requiring that all material facts and qualifications be disclosed to prevent the presentation from being misleading.

### **Oversimplified Ads**

Advertisements that make oversimplified statements of superior commission rates or services based on limited trading circumstances or unique investor services easily mislead investors and may violate the NASD Rules of Fair Practice. Although a general description of the differences in services and costs when comparing a member firm and its competitors is permitted, the advertise-

ment must not imply that one firm offers overall rates superior to those of a competitor based on savings realized by trading a certain volume or type of stock if the competitor offers better value when trading at different volumes or in other types of securities. Similarly, it would be prohibited to imply that one firm is superior to another in overall brokerage services if the comparison is based on a single type of service. It would also be improper to expressly or implicitly state that substantial savings in commissions are available through a comparison of those charged by full-service competitors without clearly disclosing the greater array of brokerage services provided by and available at full-service firms.

Additionally, commission rates may vary markedly for different types of securities—stocks, bonds, and options—offered by the member or its competitors, requiring advertisements to clearly indicate the types of securities to which the quoted discounts apply. If mutual funds or other securities are mentioned that cannot be sold at commission or sales-charge discounts from that stated in the prospectus, advertisements must clearly disclose that the advertised discounts do not apply to these products.

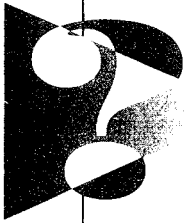
### **Unqualified Claims**

Generalized or unqualified statements about commission rates such as “save

up to 70 percent” or “any trade for \$30” are considered misleading if undisclosed factors exist that would cause the quoted rate or discount to be generally unavailable. Such factors include minimum commissions, volume requirements, and separate service charges for postage and handling. If a firm advertises a “flat fee” for all trades, the fee must include all charges that are generally assessed.

The basis for any discount also must be provided, such as the firm's normal commission rates or a recent survey of competitor prices. Where the comparison is based on a survey, its date and nature should be included. Discount brokerage material must offer additional information about the member's rates and services.

Questions concerning discount advertisements and requests for copies of the NASD guidelines for discount brokerage advertising, *Recommendations Concerning Advertising and Promotion of Commission Discounts*, may be directed to the NASD Advertising Regulation Department, 1735 K St. N.W., Washington, D.C. 20006, or call (202) 728-8330. The Department welcomes your questions or concerns about discount brokerage advertising. □



## “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.

**Q.** *If a member firm's principal responsible for compliance approval of advertising and sales literature leaves the firm, must the principal's successor automatically refile material approved by the previous principal?*

**A.** No. However, advertising rules and interpretations have changed during the past few years. The NASD strongly encourages member firms to reevaluate older material currently in use to determine if it is still in compliance and whether it needs to be refiled.

**Q.** *Is sales material (including hypothetical illustrations) pertaining exclusively to the guaranteed account of a variable annuity or variable life insurance contract subject to NASD and SEC advertising rules? If so, in preparing hypothetical illustrations of the guaranteed account of a variable life insurance policy, is it necessary to prepare an illustration at an assumed return of zero percent, even though the account's guaranteed return may be 3 percent or 4 percent?*

**A.** The Advertising Regulation Department considers sales material on behalf of a general account of a variable product to be securities sales material subject to the same principal approval, recordkeeping, and filing requirements and applicable NASD and SEC advertising rules, as any other securities sales material. We note that a policyholder may not invest in a variable product's general account unless he or she receives a prospectus, which constitutes an offer of securities. In addition, even if the policyholder were to initially direct all premiums to the general account, he or she is subsequently free to allocate those contributions and future premiums to the separate account.

In view of the guarantees associated with investing in the general account, it may be appropriate to illustrate the account's performance. Such an illustration should be clearly labeled as applicable only to the general account. However, in our opinion, it would constitute an incomplete and unbalanced presentation of the variable life product if the general account illustration were used by itself with prospective investors. Thus, the general account illustration should be used only if accompanied by an illustration for the variable accounts at zero percent and, if desired, another rate not to exceed 12 percent. For further guidance about preparing hypothetical illustrations for variable life insurance, please see Notice to Members 94-36 (May 1994).

**Q.** *Referring to sales-oriented material produced for an audience of registered personnel only, are there circumstances under which such material could constitute sales literature and be subject to all relevant filing and disclosure requirements?*

**A.** Internal material is exempt from the filing requirements, pursuant to Article III, Section 35(c)(6)(D) of the NASD Rules of Fair Practice. However, if the material is characterized by information that is reasonably likely to be communicated to clients—such as performance data, rankings, endorsements, or other facts that would tempt a registered representative to communicate the contents to the public—the firm is responsible for composing material that is consistent with the NASD Rules of Fair Practice and SEC advertising rules.

**Q.** *Regarding advertising and sales literature that includes mutual fund performance, how long should such*

*material remain in distribution, since the requirements of SEC Rules 482 and 34b-1 say that fund performance should be as of the most recent calendar quarter-end?*

**A.** Although mutual fund performance should be as of the most recent calendar quarter-end prior to the submission of sales literature for publication, the Advertising Regulation Department does not object to revising outdated performance with a supplement or sticker that includes the most recent calendar quarter-end performance. The data on the sticker or in the supplement should be equally prominent with the outdated data in the existing material.

However, the significant passage of time or sharp market fluctuations can change materially the character of a mutual fund's track record. In such cases, it may not be sufficient merely to supplement outdated mutual fund performance. If so, the piece may need revision to avoid being misleading, pursuant to the NASD Rules of Fair Practice.

**Q.** *If one of a mutual fund's objectives is to limit fluctuations in share price, can the fund cite the range of share value fluctuation without triggering the disclosure of the SEC-required standard annualized returns?*

**A.** A net asset value line chart that shows the fund's relative stability, or a discussion of a fund's history of narrow fluctuations in share price would not trigger the addition of the standard annualized returns.



## Arbitration

# NASD Takes Steps To Ensure Fair Settlement Of Employment Disputes

In recent years the NASD has taken several affirmative steps to ensure that employment dispute cases, including discrimination and sexual harassment claims, are heard by competent arbitrators and are fairly decided. These actions include arbitration rule changes, extensive arbitrator training, and stepped-up arbitrator recruitment. To further goals relating to competent arbitrators and fair dispute resolution, the NASD regularly includes in its regulatory conferences specific educational seminars for its members and others on employment issues.

In late 1993, the NASD amended its Code of Arbitration Procedure to require the use of public arbitration panels to decide discrimination claims. In adopting this amendment, the NASD formally acknowledged that claims involving discrimination, sexual harassment, or other public policy issues require the use of panels with a majority

of public arbitrators. At the same time, the NASD adopted rules to expand the public availability of arbitration awards to employment and member-to-member cases. This supplemented the already existing availability of arbitration awards involving public customers, and further allowed interested parties to analyze arbitrator decisions.

### Arbitrator Education

An NASD arbitrator education program includes segments designed to increase arbitrator understanding of the nuances of employment law issues. The program was created in conjunction with the Employment Committee of the Association of the Bar of the City of New York. Staff-developed programs with regional litigators provide seminars to arbitrators on various employment issues, including topics presented twice yearly at NASD national regulatory conferences. The purpose of the programs is to focus members

and arbitrators on the ways the law is compelling change in the employer/employee relationship. Instruction focuses on discrimination, wrongful discharge, sexual harassment, equal pay, and the "glass ceiling." More than 330 arbitrators attended at least one of 13 programs offered nationwide through mid-year 1994. Additional presentations are scheduled throughout the remainder of 1994.

### Arbitrator Recruitment

Finding qualified candidates to serve as arbitrators is an NASD goal. Special recruitment activities are underway to attract persons with labor background to participate as arbitrators, including women and minorities. The National Employment Lawyers Association, Women's Bar Associations, and the National Bar Association, a minority bar group, are being enlisted in these ongoing efforts. □

## Distinguished Panel To Study Arbitration Process

The NASD operates the largest arbitration forum in the securities industry to help resolve disputes between investors and securities firms, and among securities professionals. To ensure that the arbitration process is satisfying its original goal, the NASD Board of Governors initiated a special task force to review the arbitration process. In studying the issue, the Arbitration Policy Task Force will assess whether arbitration should continue in its current form, whether the NASD should expand the process to other forms of dispute resolution, or whether restrictions should be placed on dispute resolution processes.

"We are interested in finding out if the arbitration process is meeting its objec-

tives: a fast, fair, inexpensive resolution of disputes," says Deborah Masucci, Vice President, NASD Arbitration.

The Task Force plans to meet for one-year beginning in October, with a final report scheduled for release in the last quarter of 1995. The panel's chair is former SEC Chairman David Ruder. Mr. Ruder is counsel to the law firm of Baker & MacKenzie and is associated with Northwestern School of Law, Chicago, Illinois. Other task force members include long-time public interest advocates, senior members of broker/dealers, academics, and arbitration practitioners.

### Gallup Results

A recent survey for the NASD by the Gallup Organization indicates that 78 percent of arbitration party participants or their counsel are satisfied with the arbitration process. The survey sampled 500 parties or their counsel that were currently involved in arbitration proceedings and showed that more than three quarters of those responding would consider recommending the NASD arbitration procedure to others. Finally, the survey points out that participants had significant other experiences in arbitration outside the province of the NASD that helped them evaluate the overall process. □

# NASD Seeks Public Comment On Award Of Punitive Damages In Arbitration

Since November 1992, a subcommittee of the NASD Legal Advisory Board (LAB) has studied the issue of punitive damage awards in arbitrations. This is a difficult area that the NASD and its National Arbitration Committee (NAC) have grappled with for many years.

In May 1994, the NASD Board of Governors approved a Notice to Members soliciting comment on the *Report of the Subcommittee on Punitive Damages of the NASD Legal Advisory Board*. The Report proposes a series of approaches the NASD could adopt for the award of punitive damages in arbitration. It recommends, for example, that the NASD place limitations on the award of punitive damages in its arbitrations and establish stringent guidelines to ensure that arbitrators award punitive damages only in the most meritorious cases, under a process that protects respondents from excessive and arbitrary punitive awards. Comments were due on or before September 1. The complete proposal and text of the Report are in *Notice to Members 94-54* (July 1994).

## NAC Conclusions

Since early 1991, the NAC has been studying the punitive damages issue, and has independently considered several approaches discussed in the Report. In light of the LAB subcommittee recommendations, the NAC reached these conclusions:

- **Rationale for Award of Punitive Damages**—The NAC proposes that all awards of punitive damages articulate the legal standard applied in determining to award such damages, as well as the facts that the arbitrators found to constitute a basis for the award. The NAC believes that requiring such articulation will, among other things, alert members of the securities industry to the types of con-

duct that can lead to punitive damages, and thereby deter similar future misconduct. The NAC's views are generally consistent with those in Section III(A) of the Report.

On a related issue, the NAC recommends that arbitrators be deemed to have exceeded their authority when the facts they cite as warranting the award of punitive damages fail to satisfy the applicable legal standard. This recommendation is intended to facilitate vacatur of punitive damage awards under existing juridical standards, which generally preclude appeals of arbitration awards.

- **Appeals**—The NAC proposes making an appellate review process available within the NASD for punitive damages awards that exceed \$200,000, or the denial of punitive damages when compensatory damages exceed \$200,000. In contrast, Section III(B) of the Report proposes that only decisions to award punitive damages (not decisions to deny requests for such damages) be appealable.
- **Arbitrator Training**—Section III(C) of the Report endorses enhancements to arbitrators' qualifications and training. Based on NAC recommendations, mandatory arbitrator training has been in effect since early 1993. Topics covered in the mandatory training include assessment of damages (including punitive damages and the relevant standards). In addition, an accelerated training program implemented in 1993 emphasizes training of persons who chair arbitration panels.
- **Standard for Award of Punitive Damages**—The NAC, like the LAB subcommittee, recommends standardization of the level of intent to defraud that must be demonstrated

before punitive damages may be awarded. Further, the NAC and the LAB subcommittee agree that punitive damages should not be awarded on the basis of vicarious liability. See Section III(F) of the Report.

- **Bifurcation**—Section III(H) of the Report supports bifurcating arbitration proceedings to separate consideration of punitive damages from other aspects of the arbitration proceeding. The NAC previously rejected this concept because it might increase costs and delay the arbitration process.
- **Caps on Awards of Punitive Damages**—This recommendation is in Section III(I) of the Report. Although the NAC initially rejected caps because they might increase the incidence of punitive damage awards, the NAC subsequently revisited the issue, and now believes that caps are acceptable if tied to a formula, such as a stated multiple of compensatory damages.
- **Sharing Punitive Damage Awards with Regulators**—Section III(J) of the Report recommends requiring arbitration complainants to share a portion of punitive damage awards with state, federal, or quasi-governmental regulators. The NAC has rejected such a requirement based on questions that certain courts have raised regarding the permissibility of such sharing, as well as indications that the SEC staff would not support the proposal.

The Report's recommendations should not be viewed as a "package." Rather, the conclusions represent alternatives that the LAB subcommittee believes the NASD should consider individually or in combination. Finally, in reviewing the Report, readers should recall that certain changes have occurred since the

Report was completed in October 1993. These relate to:

- Section III(D) recommends that the NASD establish a system for referring arbitration cases to an enforcement body as an alternative to awarding punitive damages. The amendment received SEC approval and became effective August 15, 1994.
- Section III(E) recommends creating an offer of judgment rule to be modeled after Rule 68 of the Federal Rules of Civil Procedure. As proposed by the subcommittee, the offer of judgment rule would entitle the defending party to make an offer of judgment until several days before an arbitration hearing. If the offer was declined and the final award assessed was less than the offer of judgment, the arbitration claimant would be required to reimburse the offeror for costs incurred after the date of the offer. The NASD requested SEC approval of a rule change that would establish a variant of the offer of judgment procedure. However, after publication of the NASD proposal, comments received were overwhelmingly negative and the proposal was withdrawn to permit revisions and resubmission. □

### Violations

## NASD Expels Deltavest Financial, Bars Its Principals; SEC Supports NASD Action

In a decision issued on June 27, 1994, the NASD expelled Deltavest Financial Inc., Los Angeles, California (Deltavest) from membership, and barred David Alan Park (Park) and Diana Mariniello-Park (Diana Park) from associating with any NASD member in any principal capacity. Additionally, Deltavest, Park, and Diana Park were jointly and severally fined \$300,000, Park was suspended from association with any NASD member in any capacity for 90 days and required to requalify by examination, and Diana Park was suspended from association with any NASD member in any capacity for 60 days and required to requalify by examination.

The SEC denied requests for a stay of disciplinary sanctions imposed by the NASD against Deltavest and its principals Park and Diana Park.

The NASD sanctions were based on findings that Deltavest, Park, and Diana Park, permitted Charles Alan Bergman (Bergman) to remain associated with the firm as a "consultant" after he was barred from the securities industry by the New York Stock Exchange (NYSE). Deltavest and its principals were aware of the NYSE bar, which would also act to prohibit Bergman from associating with an NASD member in any capacity.

Nonetheless, Deltavest continued to retain Bergman.

Among other things, the NASD found that, "the Consulting Agreement with the compensation arrangement was designed as a ruse to permit Bergman to continue his association with Deltavest," and that Bergman (who was also named in the disciplinary proceeding) acted as an "associated person" in violation of the bar. Consequently, the NASD found the conduct of Deltavest, Park, and Diana Park to be egregious and to have occurred over an extended time period from August 28, 1992, through at least May 1993.

Emphasizing the serious nature of the misconduct, the NASD firmly opposed Deltavest's, Park's, and Diana Park's application to the SEC to stay the sanctions pending their appeal of the NASD decision. The application was denied by the SEC.

"In order to protect the investing public and deter similar misconduct in the future, it was critical that the sanctions against Deltavest and its principals take effect immediately in view of the seriousness of the violations," according to Lani M. Sen Woltmann, Director of NASD Los Angeles District Office 2. "The NASD decision to expel Deltavest

and to bar Park and Diana Park as principals, and the SEC determination to deny their request to suspend these sanctions, is significant in its recognition of the fact that such behavior will have serious consequences." □

### Real-Time Information Available In Notices To Members

Copies of *Notices to Members* referred to in the *Regulatory & Compliance Alert* should be available from your firm's main office. Or you can obtain individual *Notices* from NASD Administrative Services, at (202) 728-8302. However, if you want to be fully up to date regarding your regulatory role, you may prefer a personal subscription delivered by first-class mail directly to your desk. For your own annual subscription to this monthly newsletter of rules, interpretations, fees, and exam requirements, send a check or money order for \$225 payable to the National Association of Securities Dealers, Inc., NASD MediaSource<sup>SM</sup>, P.O. Box 9403, Gaithersburg, MD 20898-9403. For faster service on credit card orders, call (301) 590-6578, or fax (301) 590-6368.

## President and Other Officers Suspended

# NASD Orders F.N. Wolf & Co. To Rescind More Than 2,400 Trades; Imposes \$550,000 Fine

The NASD ordered F.N. Wolf & Co., Inc. (F.N. Wolf), and its president and largest shareholder Franklin N. Wolf (Wolf) to rescind more than 1,850,000 retail trades in shares of Treats International Enterprises, Inc. (Treats). Treats, a penny stock the firm recommended, was sold to customers in more than 2,400 trades from May 1992 through October 1992 for \$3.37 to \$4.25 per share.

In addition to the order of rescission, the NASD imposed a \$500,000 fine against the firm and Wolf, while James H. Petrantis, F.N. Wolf's Financial and Operations Principal, and Richard T. Sullivan, the firm's Compliance Director, were each fined \$25,000. In addition, Wolf and Petrantis were suspended from acting in a supervisory capacity with any NASD member firm for two years, and Sullivan was suspended from acting in a supervisory capacity for one year. F.N. Wolf was

also suspended for two years from doing business in penny stocks.

On June 30, 1994, shortly after the NASD imposed these disciplinary sanctions, Wolf Financial Group, Inc., a publicly held company that owns F.N. Wolf, announced that F.N. Wolf would close its operations as a broker/dealer, and that all customer accounts would be processed by the firm's clearing broker.

### Violative Behavior

The focus of the disciplinary action concerned sales of Treats shares in violation of penny-stock rules established by the SEC to reduce high pressure sales tactics and increase customer awareness in the sale of penny stocks by broker/dealers. The NASD found that between May 1, 1992, and October 30, 1992, F.N. Wolf, Wolf, Petrantis, and Sullivan made 2,432 sales of Treats shares to customers without complying with required penny-stock sales practice rules

designed to protect the investing public. Those rules required F.N. Wolf, before each retail sale, to provide every customer a written determination that must be signed by the customer that such securities were a suitable investment for the customer, and to obtain written authorization from the customer to purchase the stock. In addition, the NASD found F.N. Wolf and Sullivan failed to establish or enforce adequate supervisory procedures regarding transactions in penny stocks.

The case was decided by the District Business Conduct Committee for District 7 in Atlanta, Georgia, and affirmed on appeal by the NASD National Business Conduct Committee. This enforcement action is part of an ongoing NASD effort to eradicate abusive sales practices in the sale of penny-stock sales to the public. □

## SEC Grants Partial Stay Against Hibbard, Brown And Its Principals For Markup Violations

On August 2, the SEC issued a partial stay preventing Hibbard, Brown & Company, Inc., and its president and owner, Richard P. Brown, and head trader Anthony Nadino from conducting any retail securities business and from soliciting or effecting transactions with new or existing customers.

Specifically, the SEC order bars the firm, Brown, and Nadino from soliciting or effecting any transactions for or with new or existing customers, and from engaging in any underwriting activities involving retail sales. The firm, Brown, and Nadino may accept unsolicited orders from existing customers solely to liquidate existing positions at the firm,

and may take steps to transfer accounts at customers' requests to other registered broker/dealers.

The SEC action follows a recent NASD disciplinary proceeding against the firm, Brown, and Nadino that found that for a specified period Hibbard, Brown clearly dominated and controlled the market for Site-Based Media, Inc., (SITE), a penny stock that traded in the over-the-counter market, notwithstanding that the firm was not a market maker in the security. Consequently, the NASD found that the firm charged retail customers fraudulent markups ranging from 101 percent to 169 percent in sales of SITE common stock, resulting in about \$8.7 million in

overcharges. The firm partially covered its sales through a purchase of SITE units through another broker/dealer whose selling customer was a company wholly owned by Robert Brennan. The NASD concluded "based on the overwhelming amount of evidence in the record that the transaction was prearranged."

Based on its findings, the NASD ordered the firm and Brown to pay more than \$8.7 million in restitution to its retail customers for charging fraudulently excessive markups. In the NASD action, Brown and Nadino were barred from association with any NASD member in any capacity, and fined \$150,000

each. The firm and Nadino appealed the NASD decision to the SEC, that resulted in the partial stay.

Commenting on the NASD's disciplinary action, John E. Pinto, Executive Vice President, Regulation said, "This enforcement action by the NASD is

indicative of our commitment to eliminate fraudulent activity and abusive sales practices in the securities industry."

Regarding the SEC's appellate order Pinto said, "Naturally, we are disappointed that the SEC partially

granted Hibbard, Brown's request for a stay. However, we are greatly heartened by the conditions imposed by the SEC order on the firm's business, as they prohibit the firm and Nadino from conducting any retail securities business. This is truly a victory for investor protection." □

## Legislation

# Congress Renews Interest In Cold Calling

Federal Communication Commission (FCC) rules established under the Telephone Consumer Protection Act (TCPA) of 1991 set up procedures to protect the public from repeated, unwanted telephone solicitations. Furthermore, Rep. Edward J. Markey, Chairman of the House Telecommunications and Finance Subcommittee, and the SEC have expressed renewed interest in efforts by the securities industry to educate broker/dealers and registered representatives about TCPA's requirements.

The FCC rule requirements establish procedures to eliminate unwelcome telephone solicitations to residences, and by properly restricting use of automatic dialing systems, pre-recorded or artificial voice messages, and telephone facsimile machines.

A firm that solicits customers or sales using cold calls must abide by the following:

- **Time-of day restrictions**—No cold calls may be made before 8 a.m. or after 9 p.m. at the called party's location.
- **Do-not-call lists**—Firms must establish and maintain a do-not-call list and add to such list any person who requests that no further cold calls be made.
- **Identification requirements**—The called party must be provided with

the name of the caller, the person or organization on whose behalf the call is made, and a telephone number and address at which the caller may be contacted.

- **Established procedures**—Firms must have a written policy concerning cold calling and do-not-call lists.
- **Training requirements**—All personnel must be trained concerning cold-calling rules and the existence and use of do-not-call lists.

The FCC rule excludes calls made to parties with whom the caller has an established business relationship, and calls where the calling party has received prior express invitation or permission.

Use of autodialers is permitted when programmed to dial only non-emergency lines. Artificial or prerecorded voice-message telephone calls may not be placed to residential subscribers. Calls must state the firm's identity, and indicate the firm's telephone number or address during or after message.

FCC rules ban transmission of unsolicited advertisements to telephone facsimile machines.

### Cold-Call Definition

A cold call is defined as the initiation of a call or message to encourage purchase or investment in property, goods, or ser-

VICES. In connection with securities activities, Schedule C of the NASD By-Laws covers the registration requirements of any person who contacts potential customers to open an account, solicit orders, or qualify potential customers. Registration applies to, among others, individuals that rely on prepared scripts and who discuss non-specific products and services offered by a broker/dealer.

In addition to the FCC rules, Congress recently passed the Telemarketing and Consumer Fraud and Abuse Prevention Act, P.L. 103-27. The new legislation will further regulate cold-call activities because it requires the Federal Trade Commission (FTC) to enact cold-calling rules and directs the SEC to adopt rules similar to those of the FTC.

For more information about registration requirements, see Schedule C to the NASD By-Laws, and *Notice to Members 88-50* (July 1988). For background on FCC rules concerning telephone solicitations, refer to FCC Public Notice DA 92-1716, January 11, 1993. □

# Industry/Regulatory Council Proposes Continuing Education For Registered Persons

The NASD Board requests member comment by October 15 on rule proposals developed by the Securities Industry/Regulatory Council on Continuing Education regarding a proposed program to further enhance the education of registered persons. The mandatory program could be implemented in a series of steps as early as 1995, after final approval by self-regulatory organizations (SROs) and the SEC.

The proposed rules, developed in a cooperative effort among industry representatives and six SROs, would establish a formal, two-part continuing education program for securities industry professionals that would require uniform training on regulatory matters and ongoing tailored programs by firms to keep their registered persons current on job-specific subjects.

The program's regulatory component is designed for educational purposes rather than testing, and, like many other professions' educational programs, will use an interactive computerized system. The firm component also is designed as an educational tool and will be administered by member firms for their registered persons.

"This positive and cooperative joint effort by market regulators and the industry will further assure all investors, whether retail or institutional, of the high integrity and knowledge of the overwhelming majority of brokers practicing in the modern-day securities marketplace," Joseph R. Hardiman, NASD President and Chief Executive Officer; William H. Donaldson, Chairman and Chief Executive Officer, New York Stock Exchange; Marc E. Lackritz, President, Securities Industry

Association, and William R. Simmons, Council Chairman, said in a joint statement.

## Two-Element Plan

The continuing education program is composed of Regulatory and Firm Elements. The focus of the regulatory segment would be on registered persons with 10 years or less experience, while the firm portion would encompass all registered persons who directly deal with the public and to their supervisors. Regulatory Element training will be broad based, covering a variety of subjects, including regulation, compliance, ethics, suitability, investment risks, and sales practices, and will be delivered by computer-based training. As proposed, the Regulatory Element requires all registered persons to participate in a prescribed "one-size-fits-all" computer-based training session at specified times.

The firm component will be directed toward individual firm needs and the specific training needs of individuals. Firms will train registered personnel in the specific products and services they provide.

Exemption from the Regulatory Element would be available for brokers with 10 years or more experience who have not had any serious disciplinary history. There would be no exemption from the firm element.

On a registered individual's second, fifth, and tenth registration anniversary dates, they would be required by the SROs to participate in computer-based training developed by the SROs and industry committees; and on a continuing basis in the Firm Element under proposed standards. As part of their inspection program, the SROs will mon-

itor compliance with the Regulatory and Firm Elements of the continuing education program.

Registered persons who do not participate in the Regulatory Element training within specified time frames would be required to cease doing business until the requirements are satisfied. In addition, systematic firm failures to comply with Regulatory or Firm Elements requirements could result in SRO disciplinary proceedings.

Details of the continuing education proposal and the "Status Report On The Continuing Education Program" are in *Notice to Members 94-59* (August 15, 1994). The Notice contains 37 questions and answers regarding the continuing education proposals. Any additional questions about this subject or requests for additional copies of the report may be directed to Frank J. McAuliffe, Vice President, Membership & Qualifications, at (301) 590-6694; or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911. □

# COMPLIANCE SHORT TAKES

**Schedule E to the NASD By-Laws requires compliance with its provisions if a member participating in a distribution of a public offering of securities has a conflict of interest with the issuer.** A conflict exists if the member or its affiliates own an aggregate of 10 percent or more of the outstanding subordinated debt, common equity, or preferred equity of the issuer; or partnership interest in 10 percent or more of the distributable profits or losses of the issuer. The provisions of Schedule E would require that a qualified independent underwriter (QIU) be retained to conduct due diligence in the preparation of the prospectus or other offering document and render an opinion that these securities are to be distributed at a price that the QIU would recommend as appropriate.

The conflict also would have to be disclosed to the public in the prospectus or other offering documents. The NASD believes that compliance with these provisions safeguards the public from the conflicts an underwriter may encounter when it has a direct or indirect financial interest in the success of the underwriting. There are some exemptions from these requirements that are applicable if the conflicts are considered not to exist under the Schedule or if other market related forces tend to ameliorate the conflict. For more details and background, see *Notice to Members 94-45* (June 1994).

**The U.S. Department of the Treasury recently published for comment amendments to the financial responsibility requirements established under the Government Securities Act of 1986 (GSA).** The proposed amendments raise the minimum capital requirements for all government securities broker/dealers subject to the GSA, and require written notification for certain withdrawals of

capital. The changes parallel recent SEC actions in these areas. Treasury also is proposing a conforming change to its recordkeeping requirements that will affect 15C sole-government securities broker/dealers only. For more detail, see July 1994, *Notices to Members* "For Your Information," page 363.

**NASD rules to limit member participation in certain partnership rollup transactions take effect November 1.** The rules also will prevent companies from listing on the Nasdaq National Market if they fail to comply with these criteria. The new rules derive from provisions of the Rollup Reform Act, passed by the Congress and signed into law in 1993. They are fully covered in *Notice to Members 94-70* (September 1994).

For NASD member firms to participate in an underwriting of rollups, or for the company resulting from a rollup to qualify for listing on the Nasdaq National Market, the general partners or sponsors proposing the rollup must provide dissenting limited partners with alternatives to such participation. The alternatives include: the right to receive compensation based on an appraisal of partnership assets; the right to receive or retain a security with rights, certain privileges and preferences similar to their partnership units; or other comparable rights.

The rules also preclude a member from underwriting, and deny listing to rollup transactions where the terms of the transaction unfairly reduce or abridge the voting rights of investors; investors are required to bear an unfair portion of the costs of the rollup transactions; and there are no appropriate restrictions on the conversion of general partner or sponsor compensation resulting from the rollup.

**In Notice to Members 94-47 (June 1994), the NASD informed its membership about the terms and conditions of the SEC's policy governing broker/dealer activity on financial institution premises.** In a November 1993 no-action letter to the Chubb Securities Corporation, the SEC articulated guidelines for broker/dealers involved in networking arrangements with financial institutions. For example, a broker/dealer operating on the premises of a financial institution should enter into a written Customer Access Agreement with the financial institution. The agreement should stipulate that the broker/dealer will be responsible for all securities business conducted at the financial institution. In addition, customer disclosure procedures and promotional literature must distinguish brokerage services from banking functions. Questions about this subject may be directed to Regulation staff members R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325; or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911.

**Effective August 15, the SEC approved an amendment to Section 5 of the NASD Code of Arbitration Procedure to provide that arbitrators may refer issues that are discovered during an arbitration case for disciplinary investigation.** See *Regulatory & Compliance Alert*, March 1994, page 10, and *Notice to Members 94-61* (August 1994) for more information.

**Recent SEC amendments to Rule 17a-11 require broker/dealers to report when their net capital falls**

**below the required minimum.** In these notices, the broker/dealer must specify its net capital requirement and its current amount of net capital. The notice of capital deficiency must be sent on the day it occurs, by telegraph or facsimile, to the SEC at 450 5th Street, N.W., Washington, D.C. 20549; the SEC regional office where the broker/dealer has its principal place of business; the broker/dealer's designated examining authority; and the Commodities Futures Trading Commission (CFTC) if the firm is registered as a futures commission merchant. Broker/dealers designated to the NASD should send their notices to the attention of the Compliance Department at 1735 K Street, NW, Washington, D.C. 20006-1500, or fax them to (202) 728-8341. It is no longer necessary to file a FOCUS Report with-

in 24 hours after notifying the SEC about a net capital deficiency.



**Members entering into clearing agreements must specify the obligations and supervisory responsibilities of the introducing and clearing firm under Article III, Section 47 of the NASD Rules of Fair Practice.** Such agreements must be filed with the NASD as described in Subsections (b) and (c) of the Rule. For clearing members, a new clearing agreement negotiated with an introducing member must be submitted for review and approval with the NASD Compliance Department in Washington, D.C. (Standard agreements require a one-time approval, provided they are not changed.) An amended

clearing agreement also must be approved when information about any of nine items in Subsection (a)(1) through (a)(9) are revised.

Introducing member firms must submit to the local NASD District Office, for review only, any new clearing agreement entered into with a clearing member. In addition, any amended clearing agreement entered into with a clearing member designated to another SRO for oversight where information about any of nine items listed in Subsections (a)(1) through (a)(9) of the Rule is revised must also be submitted for review.



## NASD DISCIPLINARY ACTIONS

*In May, June, and July 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

### May Actions

**Jeanneane Denise Crabb (Registered Representative, Sacramento, California)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Crabb forged the signature of an assistant branch manager to seven option client information forms and agreements. Crabb also failed to respond to NASD requests for information.

**Catherine Ann Seiwert a/k/a Catherine Ann Jensen (Registered Representative, Omaha, Nebraska)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Seiwert exercised effective control over the account of a public customer. Specifically, she recommended the purchase and sale of securities including options without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the size and frequency of the recommended transactions and the customer's financial situation and needs. In addition, Seiwert forged the same customer's signature to an option client information form

and agreement.

**Thomas F. White & Co., Inc. (San Francisco, California) and John Warren Boudinot (Registered Representative, San Francisco, California).** The firm and Boudinot were fined \$10,000, jointly and severally. In addition, the firm was ordered to refund \$17,207 to the purchasers of securities with markups that exceeded 5 percent and to include with its refund to investors a letter acceptable to the NASD San Francisco staff disclosing that the refunds have been ordered by the NASD. The SEC modified the sanctions following appeal of a November 1992 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Boudinot, failed to comply with the NASD Mark-Up Policy in that it effected 32 corporate securities transactions as principal at prices that were unfair and unreasonable with markups ranging from 7.03 to 14.17 percent above the contemporaneous cost. This action has been appealed to a United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

### June Actions

**First California Capital Markets Group, Inc. (San Francisco, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$14,160. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings it participated in a "hot issue" public offering. However, the NASD found that the firm, acting through an individual, failed to make a bona fide public distribution of the stock at the public offering price, and retained such shares in its own account, in contravention of the Board of Governors' Interpretation with respect to Free-Riding and Withholding.

### July Actions

**C. R. Boggs Financial Services, Inc. (Fair Oaks, California) and Charles Richard Boggs (Registered Principal, Fair Oaks, California)** submitted an Offer of Settlement 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 Boggs, offered and sold limited partnership interests but made certain misrepresentations to investors and failed to make certain disclosures to customers. The NASD also found that the firm, acting through Boggs, failed to establish and maintain adequate written supervisory procedures, failed to evidence supervisory review of 40 transactions in equity securities and mutual funds, and failed to conduct an annual inspection of its main office. The findings also stated that the firm, acting through Boggs, engaged in options transactions without having a registered options principal.

**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 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



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inaccurate FOCUS Part IIA report, and failed to respond timely to an 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 markdown 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 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<sup>®</sup> 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.

**Financial Services Group (Belmont, California), Douglas Loy Chin (Registered Principal, Belmont, California), and Joanne Susan Abe-Chin (Registered Principal, Belmont, California)** submitted an Offer of Settlement pursuant to which the firm was fined \$150,000, jointly and severally, with Douglas Chin and Joanne Abe-Chin. Douglas Chin was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chin and Abe-Chin, engaged in the securities business without having a principal registered with the NASD, and the firm and Douglas Chin permitted Joanne Abe-Chin to act as a representative of the firm without proper registration with the NASD. In addition, the findings stated that Chin and Abe-Chin participated in private securities transactions while failing to give prior written notification to their member firms. The NASD also determined that Chin forged a customer's signature to a new account form for the purchase of securities.

**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.

**Neel Jay Pass (Registered Principal, Logan, Utah)** was suspended from association with any NASD member in any capacity for 15 business days and required to requalify by examination as a principal before becoming associated with any NASD member following the suspension. The sanctions were based on findings that Pass, while an associated person of a member firm, engaged in the securities business without being registered with the NASD in any capacity. Also, in connection with sales literature disseminated to 342 public customers, Pass made exaggerated, unwarranted, and misleading statements and claims; failed to obtain prior approval of such material from a principal of his member firm; and failed to provide customers with prospectuses for these programs before dissemination.

**Deborah Ruth Pines (Registered Representative, Oakland, California)** submitted an Offer of Settlement pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Pines consented to the described sanctions and to the entry of findings that she forged the names of five public customers on change-of-broker/dealer forms.

**Jeffrey Alan Turk (Registered Representative, San Jose, California)** 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 five business days. Without admitting or denying the allegations, Turk consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities that were not suitable for the customer.

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

### May Actions

**Peter Daniel DaValle (Registered Representative, Chino, California)** was fined \$208,787.09. The fine may be reduced by any amount paid to a member firm for its reimbursement to customers of the converted amounts (such reduction not to exceed \$88,787.09). In addition, DaValle was barred from association with any NASD member in any capacity. The sanctions were based on findings that DaValle caused \$24,466.87 to be wired from a trust account to an individual third-party account at a broker/dealer other than his member firm without the knowledge or consent of the trustee or the beneficiaries of the trust account. After the

trustee complained about the unauthorized withdrawal, DaValle reimbursed the account by causing \$24,466.87 to be transferred from another securities account maintained at his member firm. However, DaValle subsequently converted approximately \$80,782.25 from that account, and \$32,308 from two additional customer accounts. DaValle also failed to respond to NASD requests for information.

**Agostino Joseph Zolezzi (Registered Principal, San Diego, California)** was fined \$7,500, jointly and severally with a member firm, fined an additional \$500, jointly and severally with other respondents, and suspended from association with any NASD member in any capacity for three days. The SEC affirmed the sanctions following appeal of a December 1992 NBCC decision. The sanctions were based on findings that a member firm, acting through Zolezzi, effected securities transactions and/or induced the purchase or sale of securities when the firm failed to maintain sufficient net capital. In addition, the firm, acting through Zolezzi, failed to give telegraphic notice to the SEC and the NASD of its net capital deficiency in a timely manner and failed to file a report detailing steps taken to correct the situation. Furthermore, the firm, acting through Zolezzi, sold shares of an initial public offering to a public customer without a final registration statement in effect and without the benefit of an exemption from registration, which violated of Section 5 of the Securities Act of 1933.

### June Actions

None

### July Actions

**Mukesh H. Gidwani (Registered Representative, Phoenix, Arizona)** 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, Gidwani consented to the described sanctions and to the entry of findings that he forged a customer's name on a life insurance policy application and submitted the application to his firm for processing without the customer's knowledge or authorization.

**Gorman Commodities, Inc. (Beverly Hills, California) and Ira Gorman (Registered Principal, Los Angeles, California)**. The firm and Gorman were fined \$20,000, jointly and severally and the firm was expelled from NASD membership. In addition, Gorman was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Gorman, conducted a securities business while failing to maintain its minimum required net capital.

**Douglas Edward Laube (Registered Representative, Highland, California)** submitted an Offer of Settlement pursuant to which he was fined \$105,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Laube consented to the described sanctions and to the entry of findings that he withdrew funds totaling \$22,000 from the accounts of public customers without their knowledge or consent and deposited the funds into his personal securities account. According to the findings, Laube subsequently used the customers' funds for personal expenses, including, among other things, the purchase of shares in a mutual fund. The findings also stated that Laube shared in the losses in the accounts of 12 public customers carried by his member firm without obtaining prior authorization from his member firm and without having made any financial contribution into such accounts.

**Thomas Vincent Meaglia (Registered Representative, Glendora, California)** and **Robert Bradley Fuller (Registered Principal, Pasadena, California)** submitted an Offer of Settlement pursuant to which Meaglia was fined \$15,000. Meaglia was also ordered to pay a customer \$3,899 (which represents the amount of commissions received by him), provide satisfactory proof to the NASD that such restitution was paid, and requalify by examination as a general securities representative. Fuller was fined \$5,000 and suspended from association with any NASD member as a general securities principal for one year. Without admitting or denying the allegations, Meaglia and Fuller consented to the described sanctions and to the entry of findings that Meaglia recommended to a public customer the purchase of securities without having reasonable grounds for believing such recommendations were suitable for the customer. The findings also stated that Fuller, as Meaglia's branch manager and immediate supervisor, failed to utilize their member firm's supervisory procedures or otherwise to adequately review and monitor Meaglia's cited sales activities, which comprised mutual fund "switching," to ensure Meaglia's compliance with the applicable rules.

**Seldon Scott Rodgers (Registered Representative, Solana Beach, California)** was fined \$10,000 and ordered to pay \$5,000 in restitution to a customer. In addition, he was suspended from association with any NASD member in any capacity for 90 days and thereafter until he demonstrates to the NASD that he has paid the aforementioned fine and restitution. Moreover, he must requalify by examination as a general securities representative after the suspension. The sanctions were based on findings that Rodgers participated in private securities transactions while failing to provide prompt written notification to his member firm to participate in such transactions.

**Theodore Rodosovich (Registered Representative, Poway, California)** was fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days, and thereafter, until he demonstrates, to the satisfaction of the Los Angeles DBCC, that he has completely satisfied an arbitration award (by payment or settlement). The sanctions were based on findings that Rodosovich failed to pay a \$24,674.66 New York Stock Exchange arbitration award and \$1,350 in forum fees.

**UNEX Capital Corporation (Costa Mesa, California), Lawrence Robert Hazlewood (Registered Principal, Laguna Hills, California), and Mona Lynn Houseworth (Registered Principal, Irvine, California).** The

firm was fined \$50,000 and expelled from NASD membership, and Hazlewood was fined \$50,000 and barred from association with any NASD member in any capacity. Houseworth was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hazlewood functioned as a principal and was actively engaged in the management of the firm's securities business without either having registered as a principal or having passed a qualification examination for principals. Moreover, the firm and Houseworth permitted Hazlewood to engage in the aforementioned activity.

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

### May Actions

**Cesar J. DeLeon (Associated Person, Louisville, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that while taking the Series 7 examination, DeLeon was found to be in possession of unauthorized materials containing information pertaining to the subject matter of the examination.

**Jay Michael Fertman (Registered Principal, Englewood, Colorado)** was fined \$1,902,075 and barred from association with any NASD member in any capacity. However, Fertman's fine may be reduced by any amount of restitution he makes to customers. The SEC affirmed the sanctions following appeal of an April 1992 NBCC decision. The sanctions were based on findings that Fertman implemented and directed a fraudulent scheme to manipulate stock prices. Pursuant to this scheme, he sold shares of stock between accounts he controlled to give the appearance of an active trading market in the securities. This way he could disguise arbitrary price increases and induce investors to purchase the stock, thereby raising the price of the securities. As a result, the stock, owned and controlled by Fertman at nominal cost, could be sold at substantial profits.

**Scott A. Gould (Registered Representative, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Gould consented to the described sanctions and to the entry of findings that he participated in private securities transactions without his member firm's written approval or authorization. The findings also stated that Gould completed four customer new account forms with falsified addresses reflecting his personal residence as the customers' home addresses to avoid state registration requirements.

**Lawrence Milton Greenberg (Registered Representative, Tulsa, Oklahoma)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Greenberg prepared and presented to a public customer a written agreement to effect securities transactions in the customer's account to restore the value of the account to a predetermined amount, thereby guaranteeing against loss in a customer account. In addition, Greenberg failed to respond to NASD requests for information and failed to amend a *Uniform Application for Securities Industry Registration or Transfer* (Form U-4) to reflect his current address.

**John Thomas Mason (Registered Representative, Tacoma, Washington)** was fined \$7,500, and required to pay \$4,575.17 plus

interest in restitution to customers. The sanctions were based on findings that Mason deposited in a non-securities related business account \$579,548, comprising monies from four different customers intended for investment in mutual funds. These deposits commingled customer securities funds with other non-securities funds thereby denying these customers' funds the protection afforded by the applicable securities rules, regulations, and laws.

Mason also recommended that two customers redeem their investment in four mutual funds and re-invest the proceeds into another mutual fund while allowing the customers to believe that there would be no sales charge for the investments. Based on this understanding, the customers agreed to invest in a mutual fund and two IRA accounts. However, without notice to the customers, Mason canceled these purchases at net asset value and had them rebilled at the public offering price, thereby imposing sales charges on the customers.

**William J. Moriarty (Registered Representative, Snowmass Village, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. In addition, Moriarty must pay \$175,808.17 in restitution to customers. Without admitting or denying the allegations, Moriarty consented to the described sanctions and to the entry of findings that he provided a false and misleading document to a public customer concerning the purchase of a security when, in fact, no such security existed. The findings also stated that Moriarty made false and misleading representations to three public customers without having a reasonable basis for making these representations and knew, or should have known, that the representations were false and misleading.

**Charles A. Roth (Registered Representative, Denver, Colorado)** was fined \$105,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a registered representative. The United States Court of Appeals for the District of Columbia Circuit affirmed the SEC sanctions following appeal of a February 1990 NBCC decision. The sanctions were based on findings that Roth conducted business as a broker/dealer without being registered as required, and effected private securities transactions without properly notifying his member firm. The NASD also found that, in these transactions, Roth accepted fees and expenses from seven insurance companies for his participation in securities transactions involving these companies. Roth has filed a Petition for Rehearing with the U.S. Court of Appeals.

**David W. Rothenbusch (Associated Person, Phoenix, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that while taking the Series 7 examination, Rothenbusch possessed unauthorized materials containing information pertaining to the subject matter of the examination.

**Arthur H. Salas (Registered Representative, Fort Collins, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Salas consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities without providing written notice to his member firm of such activities.

**David Thomas Stover (Registered Representative, Seattle, Washington)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 business days. In addition, Stover must pay \$9,700 in restitution to a customer. Without admitting or denying the allegations, Stover consented to the described sanctions and to the entry of findings that he executed securities transactions in the margin account of a public customer on the order of an individual who was not an owner of the account and did not have third-party trading authorization for effecting these transactions.

The findings also stated that Stover recommended to the same customer the purchase of securities without having reasonable grounds for believing such transactions, including the use of margin, were suitable for the customer considering the customer's financial situation and needs. In addition, the NASD found that Stover sent a \$21,000 check to another individual to repay a portion of a \$40,000 loan the individual had taken to meet a margin call on the aforementioned customer's account. The findings further stated that Stover wired \$7,000 to this individual's bank account to assist in the payment of another margin call in the aforementioned customer's account, without the knowledge or prior authorization of his member firms.

**Darrell D. Svenby (Registered Representative, Colorado Springs, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Svenby must pay \$16,569.93 in restitution to a member firm. Without admitting or denying the allegations, Svenby consented to the described sanctions and to the entry of findings that he forged signatures of 12 customers on checks made payable to the customers without their authorization. Further, the NASD found that Svenby endorsed the checks to himself and deposited the funds into accounts he controlled, thereby misappropriating and/or misusing customer funds. In addition, the findings stated that Svenby falsified firm books and records by submitting false change of address forms reflecting his own address for the purpose of controlling the disbursement of funds from customer accounts.

**Michael Gregory Sweeney (Registered Representative, Spokane, Washington)** was fined \$90,520 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sweeney executed unauthorized transactions in customer accounts and made material misrepresentations and unsuitable recommendations. In addition, Sweeney used discretion in the account of a customer without obtaining prior written discretionary authorization from the customer and without acceptance of such account by his member firm.

**Charles Felix Tummino (Registered Representative, Rogue River, Oregon)** was fined \$39,139 and required to requalify by examination before registering with any NASD member. The sanctions were based on findings that Tummino distributed to customers and to the public a sales brochure that failed to disclose material facts, made exaggerated, unwarranted, or misleading statements or claims, and made promises of specific results and forecasts of future events. Moreover, Tummino distributed the aforementioned material when it was not approved by a registered principal of his member firm.

## June Actions

None

## July Actions

**Sheron Dillworth Fielding (Registered Representative, Lawton, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity until such fine is paid or arrangements for payment have been agreed upon by the NASD. Without admitting or denying the allegations, Fielding consented to the described sanctions and to the entry of findings that he participated in outside business activities.

**R.A. Johnson and Co., Inc. (Salt Lake City, Utah), Ronald A. Johnson, Jr., (Registered Principal, Salt Lake City, Utah), and Elaine Johnson (Registered Principal, Salt Lake City, Utah).** The firm was fined \$2,500, jointly and severally with Ronald Johnson, and fined \$12,500, jointly and severally with Ronald and Elaine Johnson. The sanctions were based on findings that the firm, acting through Ronald Johnson, made an improper extension of a contingency offering and failed to return customer funds promptly when the terms of the contingency were not met. In addition, the firm, acting through Ronald and Elaine Johnson, failed to maintain required books and records reflecting the receipt of customer funds received in the aforementioned offerings, and failed to comply with the Securities and Exchange Commission (SEC) Customer Protection Rule 15c3-3 in that it held customer funds when the firm did not qualify for an exemption from the Rule.

**Robert Theodore Nelson (Registered Principal, Seattle, Washington)** was fined \$73,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Nelson engaged in the sale to public investors of common stock for which no proper registration statement was filed with the SEC or for which no exemption from registration existed. Nelson also engaged in private securities transactions without providing prior written notice to his member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his firm's branch office and failed to discharge those responsibilities properly and adequately. Nelson has appealed this case 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

## May Actions

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

**Dickinson & Co. (Des Moines, Iowa) and Albert Thomas Ayala (Registered Principal, Colts Neck, New Jersey)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. The firm was also ordered to pay \$51,988.54 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 Mark-Up Policy, the firm, acting through Ayala, effected corporate securities transactions as principal at prices that

were not fair and reasonable with markups or markdowns ranging from 6.25 to 37.931 percent. The NASD also found that, in a private best efforts, minimum-maximum contingency offering, the firm failed to terminate the offering when the contingency was not met and failed to refund monies promptly to investors as represented. In addition, the findings stated that the firm failed to supervise an individual properly to ensure compliance with SEC Rules 15c2-4 and 10b-9.

**Michael Edward Svenson (Registered Representative, Lake Elmo, Minnesota)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Svenson failed to respond to NASD requests for information.

## June Actions

**Phyllis J. Elliott a/k/a Phyllis J. Riedel (Registered Representative, Independence, Missouri)** was fined \$25,000, suspended from association with any NASD member in any capacity for 30 business days, and required to pay \$30,000 in restitution, jointly and severally with another individual. The SEC affirmed the sanctions following appeal of a June 1993 NBCC decision. The sanctions were based on findings that Elliott recommended that a public customer invest \$30,000 in a speculative collateral transaction program without having a reasonable basis to believe that such investment was legitimate and/or suitable for the customer, and stated that the customer's investment was guaranteed. In addition, Elliott failed to respond to NASD requests for information.

**Stephen C. North (Registered Representative, Woodbury, Minnesota)** 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 days. Without admitting or denying the allegations, North consented to the described sanctions and to the entry of findings that he signed public customers' names to applications for cash reserve certificate accounts at his member firm, opened the accounts, and arranged for automatic monthly debits in the amounts of \$50 to be taken from each customer's account without their knowledge or consent.

## July Actions

**Lyle Glenn Beaton (Registered Principal, Rapid City, South Dakota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$62,924 (reducible by the amount of restitution paid to customers), suspended from association with any NASD member in any capacity for 60 days, and required to purchase 11 shares of a common stock for public customers within 60 days or otherwise pay restitution satisfactory to the customers. Without admitting or denying the allegations, Beaton consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firms.

**Mike K. Lulla (Registered Representative, Oklahoma City, Oklahoma)** was fined \$220,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1993 NBCC decision. The sanctions were based on findings that Lulla engaged in fraudulent activity in that he induced a public customer to give him checks totaling \$200,000 for investment purposes and, instead, deposited the funds in his personal account and converted the funds to his own use and benefit.

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

### May Actions

**Philip S. Chase (Registered Representative, Paducah, Kentucky)** submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to his member firm. Without admitting or denying the allegations, Chase consented to the described sanctions and to the entry of findings that he caused \$310,670.30 to be drawn on and transferred from 19 public customer accounts and converted \$274,740.70 of the funds to his own use and benefit without the knowledge or consent of the customers. In addition, Chase failed to respond timely to NASD requests for information.

**Robert K. Incaprera (Registered Representative, Metairie, Louisiana)** submitted an Offer of Settlement pursuant to which he was fined \$14,500, suspended from association with any NASD member in any capacity for two weeks, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Incaprera consented to the described sanctions and to the entry of findings that he exercised discretion pursuant to oral authority in the joint account of public customers without having obtained prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm.

The NASD also found that Incaprera recommended and engaged in transactions involving the use of margin in the joint account of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers. In addition, the NASD determined that Incaprera prepared and submitted to his member firm an active account information report with inaccurate information about a public customer and failed to obtain approval from a principal of his member firm on two items of undated correspondence sent to a public customer.

**Frank F. Millsaps (Registered Principal, Mobile, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$21,000, barred from association with any NASD member in any capacity, and must demonstrate that full restitution has been made. Without admitting or denying the allegations, Millsaps consented to the described sanctions and to the entry of findings that he received payroll checks totaling \$4,150.58 from his member firm for distribution to fellow employees. The NASD found that Millsaps failed to distribute the checks and, instead, deposited the funds into checking accounts under his control, thereby converting the funds to his own use and benefit without the knowledge or consent of the designated payees or his member firm.

**Charles C. Ramsey (Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000. Without admitting or denying the allegations, Ramsey consented to the described sanction and to the entry of findings that he engaged in activities requiring registration as either a general securities principal or government securities principal but failed to register with the NASD.

**Stephen J. Sciambra (Associated Person, Metairie, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,000 and barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, Sciambra consented to the described sanctions and to the entry of findings that he received a \$1,500 check from a public customer for the purchase of an annuity, but he failed to submit the funds to his member firm. Instead, the NASD found that Sciambra converted the money to his own use and benefit without the customer's knowledge or consent. In addition, the NASD found that Sciambra cashed a \$150 check drawn against his personal bank account that had been closed and used the bank checking account of a public customer as security, without the customer's knowledge or consent, eventually causing the customer's account to be charged for that amount.

**Securities Service Network, Inc. (Knoxville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000 and agreed to hire one additional compliance officer as well as to have all off-site registered representatives qualified as branch Offices of Supervisory Jurisdiction (OSJ) or assigned to already-established OSJ branch offices according to a schedule satisfactory to the NASD. In addition, the firm will immediately institute new policies requiring newly hired registered representatives to be qualified as an OSJ or assigned to already-established OSJ branch offices within 90 days of their effective registration with the firm, and the firm agrees to update its correspondence review procedures.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed and neglected to exercise reasonable and proper supervision over a registered general securities principal. Specifically, the NASD found that the firm failed to establish, maintain, and enforce proper supervisory procedures governing the suitability of investments in limited partnership programs and monitoring correspondence sent by employees.

**Shearson Lehman Brothers Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed and neglected to exercise reasonable and proper supervision over a registered representative of the firm in connection with the firm's policy for check disbursement. Specifically, the NASD found that the firm failed adequately to follow and enforce the supervisory procedures in place for the disbursement of checks out of client accounts by personnel in its Tulsa, Oklahoma branch office.

**Anna W. Smith (Associated Person, Fayetteville, Arkansas)** submitted an Offer of Settlement pursuant to which she was fined \$12,500, barred from association with any NASD member in any capacity, and ordered to pay \$2,500 in restitution to a member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that she caused funds totaling \$3,000 to be disbursed from her firm's payroll department to herself in the form of a bonus when she knew that she had only received proper authorization for \$500 of that amount, thereby, misappropriating \$2,500 from her member firm.

**Michael K. Stevens (Registered Principal, Jackson, Mississippi)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$17,000, suspended from association with any NASD member in any capacity for two weeks, and required to requalify by examination as a general securities representa-

tive. Without admitting or denying the allegations, Stevens consented to the described sanctions and to the entry of findings that he entered into a written agreement with a public customer whereby he guaranteed the customer against losses incurred in the customer's IRA account. In addition, the findings stated that Stevens engaged in private securities transactions without giving prior written notice to his member firm.

### June Actions

**Warren J. Mayeux, Jr., (Registered Representative, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Mayeux consented to the described sanctions and to the entry of findings that he received customer funds totaling \$1,403.54 for the purpose of funding three health insurance applications but did not apply the funds as directed. Instead, he misappropriated the funds by using them as a prepayment to a life insurance policy for another public customer. The NASD found that in furtherance of this activity, Mayeux falsified certain information on this public customer's life insurance policy application.

**Michael L. McKee (Registered Representative, St. Petersburg, Florida)** 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 one week. Without admitting or denying the allegations, McKee consented to the described sanctions and to the entry of findings that he signed his name as registered representative of record and as branch office manager on a new account card when he knew, or should have known, that a fellow employee was in fact the registered representative servicing the account, and that he was not authorized by his member firm to act or sign as a branch office manager.

**James L. Noles (Registered Representative, Benton, Kentucky)** was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$607.48 in restitution to the appropriate parties. The sanctions were based on findings that Noles received from 12 insurance customers \$607.48 as insurance premium payments and failed to remit the payments to his member firm, thereby converting the funds to his own use and benefit without the customers' knowledge or consent. In addition, Noles failed to respond to NASD requests for information.

**John G. Rollins (Registered Representative, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Rollins consented to the described sanctions and to the entry of findings that he engaged in a strategy of short-term trading, including the use of margin, in the account of a public customer without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customer on the basis of his financial situation, investment objectives, and needs.

In addition, the NASD found that Rollins exercised discretion in the accounts of the same customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firms. The findings also stated that Rollins remitted funds to the same customer for losses that had been incurred in the customer's

account and induced the same customer to enter into an agreement releasing Rollins and both his former and current member firms from liability, without notification to those firms.

**Thomas E. Warren, III, (Registered Representative, Tulsa, Oklahoma)** was fined \$5,000, suspended from association with any NASD member in any capacity for two weeks, and required to requalify by examination as a general securities representative within 90 days or cease functioning in that capacity until he passes the exam. The SEC affirmed the sanctions following appeal of a December 1992 NBCC decision. The sanctions were based on findings that Warren signed new account cards that contained inaccurate and incomplete information for four minors and submitted the cards to his branch manager for approval. Specifically, the new account cards reflected false dates of birth for each child and failed to state that the account holders were minors, to designate a custodian, or to state that the accounts were to be maintained in accordance with the Uniform Gifts to Minors Act. Furthermore, Warren accepted instructions from the minors' mother to execute transactions without documentation authorizing her to exercise such discretionary authority. Warren has appealed this action to a U. S. Court of Appeals, and the sanctions are not effective pending review by the Court.

#### July Actions

**Robert A. Amato (Registered Representative, New Orleans, Louisiana)** was fined \$20,000, suspended from association with any NASD member in any capacity for four weeks, and required to requalify by examination as a registered representative. The United States Court of Appeals for the Fifth Circuit affirmed the sanctions following appeal of a 1993 SEC decision. The sanctions were based on findings that, in violation of the NASD Mark-Up Policy, Amato engaged in securities transactions with public customers at prices that reflected unfair markups in excess of 10 percent. Amato has filed a Petition for Certiorari with the U. S. Supreme Court; however, the petition does not act as a stay of the sanctions.

**David W. Anderson (Registered Representative, New Orleans, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he executed unauthorized purchase and sale transactions in the accounts of public customers without their knowledge or consent.

**Robert A. Carter, Jr., (Registered Representative, Corbin, Kentucky)** 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 demonstrate that full restitution has been made. Without admitting or denying the allegations, Carter consented to the described sanctions and to the entry of findings that he received from public customers \$171,037.56 for investment purposes, failed to execute the transactions and, instead, converted \$56,958.59 of the funds to his own use and benefit without the knowledge or consent of the customers. In addition, the findings stated that Carter failed to respond to NASD requests for information.

**David L. Chandler (Registered Representative, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent

pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for two weeks (deemed served). Without admitting or denying the allegations, Chandler consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

**Don E. Harrison (Registered Representative, Mena, Arkansas)** was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$13,936.62 in restitution to his member firm. The sanctions were based on findings that Harrison submitted a falsified copy of a check indicating that he had received a premium payment for a life insurance policy from a public customer. As a result, Harrison received compensation from his member firm in the amount of \$13,936.62 to which he was not entitled. In addition, Harrison failed to respond to NASD requests for information.

**Robert Lynn O'Kelley (Associated Person, Goodlettsville, Tennessee)** was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$5,029.53 in restitution to the appropriate parties. The sanctions were based on findings that O'Kelley misused customer funds totaling \$5,029.53 when he endorsed the names of four public customers to life insurance refund checks and converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, O'Kelley failed to respond to NASD requests for information.

**Don D. Padilla (Registered Representative, Mary Esther, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$70,000, barred from association with any NASD member in any capacity, and required to pay \$10,000 in restitution. Without admitting or denying the allegations, Padilla consented to the described sanctions and to the entry of findings that he received \$10,000 from an insurance agent knowing that the funds were from a public customer and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the findings stated that Padilla failed to respond to NASD requests for information.

**Bradley S. Schaeffer (Registered Representative, Louisville, Kentucky)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schaeffer consented to the described sanctions and to the entry of findings that he received \$130 from an insurance customer as an insurance premium payment and failed to remit the payment to his member firm, thereby converting the funds to his own use and benefit without the knowledge or consent of the customer. In addition, the findings stated that Schaeffer failed to respond to NASD requests for information.

**Clifford C. White (Registered Representative, Jasper, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$20,000 in restitution to the appropriate party. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he received from a public customer a \$20,000 check for investment purposes and, instead, converted

the funds to his own use and benefit without the customer's knowledge or consent. The NASD also found that White prepared a false account statement and provided such statement to the same customer to cause the customer to believe that he had executed a purchase.

Furthermore, the NASD determined that White engaged in a private securities transaction without prior written notice to and approval from his member firm. In addition, the findings stated that White failed to respond to NASD requests for information.

District 6--Texas

#### May Actions

**Brighton Financial Corporation (Houston, Texas) and Harrell Ray Blacklock, Jr., (Registered Principal, Houston, Texas)** were fined \$50,000, jointly and severally. The firm was expelled from NASD membership and Blacklock was barred from association with any NASD member in any capacity. The sanctions were based on findings that in a contingent offering, the firm, acting through Blacklock, failed to establish and maintain an escrow account for the deposit and retention of customer and investor funds, and failed to return funds to the investors when the contingency was not met. The firm and Blacklock also failed to establish a reserve bank account, to compute reserve requirements, and to obtain a bank notification letter, in violation of SEC Rule 15c3-3.

In addition, the firm, acting through Blacklock, failed to maintain its required minimum net capital, to give telegraphic notice of its net capital deficiencies, and to abide by its restrictive letter agreement with the NASD. The firm, acting through Blacklock, also made improper use of customer funds by withdrawing \$146,700 and converting the funds to a use not intended by customers. The NASD also determined that the firm, acting through Blacklock, failed to file its FOCUS Part I report.

**Robert Edward Gillespie (Registered Principal, Dallas, Texas) and James P. Brennan (Registered Principal, Prosper, Texas)** Gillespie was fined \$10,000 and suspended from association with any NASD member as a principal for five years. Brennan was fined \$10,000 and required to pay \$100,000 in restitution to a public customer. The sanctions were based on findings that a member firm, acting through Gillespie, failed to comply with the provisions of its restriction agreement with the NASD limiting the firm to clearing securities transactions on a fully disclosed basis. Furthermore, the firm, acting through Gillespie, failed to comply with SEC Rule 15c3-3 by failing to introduce transactions on a fully disclosed basis while purporting to operate pursuant to the (k)(2)(ii) exemption of that Rule.

Also, Gillespie, acting for the firm, effected transactions in securities while failing to maintain the firm's required minimum net capital. In addition, Brennan recommended the purchase of securities to a public customer without having reasonable grounds for believing the recommendation was suitable for the customer. The firm, acting through Brennan, also fraudulently recommended and induced the same customer to purchase securities while misstating and omitting material facts. Furthermore, the firm, acting through Gillespie, failed to supervise Brennan adequately, and employed an individual as a general securities principal without proper registration.

**Omni Securities, Inc., (Dallas, Texas) and Michael Timothy Churchill (Registered Representative, Plano, Texas)** were fined

\$25,000, jointly and severally. The firm was expelled from NASD membership and Churchill was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Churchill, conducted a securities business while failing to maintain its minimum required net capital and failed to file its FOCUS Part IIA reports. In addition, the firm, acting through Churchill, failed to file its annual audited financial report with the NASD.

#### June Actions

**Mark Kipling Durham (Registered Representative, Euless, Texas)** 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 five days. Without admitting or denying the allegations, Durham consented to the described sanctions and to the entry of findings that he induced public customers to purchase securities by means of manipulative, deceptive, or other fraudulent devices.

**Jonathan J. Mitchell (Registered Principal, Tyler, Texas)** was fined \$1,500,000, required to pay \$273,000 in restitution to public customers, and barred from association with any NASD member in any capacity. The sanctions were based on findings that a former member firm, acting through Mitchell, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its required minimum net capital. The firm, acting through Mitchell, also withdrew \$75,000 in customer funds from its customer depository account without customer authorization and used such funds to increase the firm's clearing deposit. Furthermore, the firm, acting through Mitchell, failed to carry a blanket fidelity bond meeting the requirements as to form, amount, and type of coverage and violated SEC Rule 15c3-3(k)(2)(ii) by holding a customer's securities. In addition, Mitchell made improper use of customers' funds by converting certain funds to his own use and benefit.

#### July Actions

None

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

#### May Actions

**Jorge I. Acosta (Registered Representative, Tampa, Florida)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Acosta effected the purchase of shares of common stocks in the accounts of public customers without their knowledge or authorization. Acosta also made material misrepresentations to public customers without having a factual basis for such representations and engaged in fraudulent activity by changing the address of record for a customer's account to prevent him from discovering unauthorized trades. In addition, Acosta failed to respond to an NASD request for information.

**Wayne W. Bevis (Registered Representative, Salt Lake City, Utah)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bevis solicited and sold shares of a common stock to a public customer outside the scope of his regular employment with his member firm without giving prior written notice to or receiving written approval from his member firm. In addition, Bevis failed to respond to an NASD

request for information.

**Jeffrey H. Dunlap (Registered Representative, Taylors, South Carolina)** 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 six months. Without admitting or denying the allegations, Dunlap consented to the described sanctions and to the entry of findings that he participated in two private securities transactions outside the scope of his regular employment with his member firm without providing prior written notice to his member firm.

**Patricia Ann Lewis (Registered Representative, St. Petersburg, Florida)** submitted an Offer of Settlement pursuant to which she was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that she received from a public customer \$49,326.28 intended for investment purposes and, instead, converted the funds to her own use and benefit without the customer's knowledge or authorization. The NASD also found that Lewis received \$1,000 from a public customer for services rendered outside the scope of her relationship with her member firm without providing prompt written notice to her member firm. In addition, Lewis failed to respond to an NASD request for information.

**Edwin R. Lyon (Registered Representative, Charleston, South Carolina)** was fined \$20,000 and ordered to offer rescission to three public customers. In addition, he was suspended from association with any NASD member in any capacity for 30 days and thereafter until he provides proof that either he reimbursed those investors who requested rescission, or that none of the investors requested a rescission. Lyon is also required to requalify by examination. The NBCC imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Lyon engaged in private securities transactions outside the scope of his employment with his member firm without prior written approval from his member firm.

**James S. Oates (Registered Representative, Tampa, Florida)** was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,393.37 in restitution to public customers. The sanctions were based on findings that Oates effected transactions for the securities accounts of public customers without their knowledge or consent. In addition, Oates failed to respond to an NASD request for information.

**Michael D. Pullon (Registered Representative, Rome, Georgia)** was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pullon received from public customers checks totaling \$52,362.18 intended for the purchase of shares of mutual funds and, instead, converted the funds to his own use and benefit, without the knowledge or authorization of the customers. In addition, Pullon failed to respond to NASD requests for information.

**Edwin D. Simmons (Registered Principal, Greensboro, North Carolina)** was fined \$5,000 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, without the knowledge or authorization of a subordinate, Simmons forged and converted to his own use and benefit four insurance commis-

sion checks totaling \$605.60 that were payable to the individual.

#### June Actions

None

#### July Actions

**Lew Lieberbaum & Co., Inc. (Garden City, New York)** submitted an Offer of Settlement pursuant to which the firm was fined \$5,000, ordered to pay \$9,600 in restitution to public customers, and to provide the NASD with satisfactory proof of payment of restitution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased shares of a common stock that it sold at a markup of more than 20 percent over its contemporaneous costs.

**John R. McAlister, II (Registered Representative, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which he was fined \$8,920 and required to pay \$3,580 in restitution to public customers. Without admitting or denying the allegations, McAlister consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of shares of an income fund without having reasonable grounds for believing that the recommendation was suitable for the customers.

Furthermore, the NASD found that in his efforts to induce the customers to purchase shares in an income fund, McAlister sent a facsimile transmission to a representative of a member firm misrepresenting the source of the funds that the customers had available to invest. In addition, the findings stated that McAlister sent a letter to the same customers containing a misrepresentation of a material fact to induce them to maintain such investment.

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

#### May Actions

**Brooks Securities, Inc. (Cleveland, Ohio), Cleveland Clifford Brooks (Registered Principal, Shaker Heights, Ohio), and Eric L. Small (Registered Representative, Shaker Heights, Ohio)** submitted an Offer of Settlement pursuant to which the firm was fined \$15,000 and suspended from underwriting for 30 days. Brooks was barred from association with any NASD member in a principal capacity and Small was suspended from association with any NASD member in any capacity for one business day. In addition, the firm and Small were fined \$5,000, jointly and severally, and the firm and Brooks were fined \$25,000, 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 and Brooks failed to supervise representatives of the firm adequately and filed a false *Uniform Termination Notice for Securities Industry Registration* (Form U-5) concerning the termination of a registered representative. In addition, the NASD found that the firm, acting through Brooks and Small, conducted a securities business while failing to maintain sufficient net capital.

**Duane I. Hackman (Registered Representative, Lynwood, Illinois)** was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$200 in restitution to a member firm. The sanctions were based on findings that Hackman received from a public customer \$600 in checks

and cash with instructions to use such funds for insurance payments. Hackman failed to follow said instructions by using only \$400 as instructed, and used \$200 for some purpose other than to benefit the customer. Hackman also failed to respond to NASD requests for information.

**Richard L. Hansen (Registered Representative, Battle Creek, Michigan)** was fined \$20,000, that can be reduced by demonstrating that restitution has been paid to customers (reduction not to exceed \$10,000), and required to requalify by examination as a general securities representative. The sanctions were based on findings that Hansen engaged in private securities transactions while failing and neglecting to give written notice of his intention to engage in such activities to his member firm.

**Gerald Thomas Kieffer (Registered Representative, Buffalo, New York)** 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, Kieffer consented to the described sanctions and to the entry of findings that he recommended the implementation of a trading strategy in the accounts of public customers involving securities and options that was unsuitable given the customers' financial situations, investment objectives, and experience.

**Daryl Wilfred Schliem (Registered Representative, Janesville, Wisconsin)** was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$48,447.87 in restitution to a member firm. The sanctions were based on findings that Schliem received from a public customer checks for \$35,000 and \$7,039.44 intended to be used for payment of premiums on a variable life insurance policy. Contrary to the customer's instruction, and without her knowledge and consent, Schliem deposited the funds in a bank account he controlled or had an interest in, and retained the funds for his own use and benefit. Schliem also failed to respond to NASD requests for information.

**Michael Richard Waldman (Registered Representative, Henderson, Nevada)** was fined \$25,000 and barred from association with any NASD member in any capacity. Waldman executed for the account of a public customer the purchase of securities without the customer's knowledge or consent. Waldman also failed to respond to NASD requests for information.

**Michael John Wyrostek (Registered Representative, Naperville, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Wyrostek consented to the described sanctions and to the entry of findings that he participated in outside business activities while failing to give prompt written notice to his member firm of such activities.

**Darrell Murray Zimmerman (Registered Representative, Chicago, Illinois)** was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zimmerman filed a Form U-4 with the NASD that failed to disclose his previous employment as a floor trader at the Chicago Board of Trade and the fact that he was previously suspended by the Board. Zimmerman also failed to respond to NASD requests for information.

## June Actions

None

## July Actions

**Jon R. Butzen (Registered Representative, Clearwater, Florida)** and **Peter H. You (Registered Representative, Northfield, Illinois)**. Butzen was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative. You was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Butzen and You effected unauthorized transactions in customer accounts and You failed to respond to NASD requests for information.

**Steven Robert DeVries (Registered Representative, North Aurora, Illinois)** was fined \$150,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeVries participated in private securities transactions while failing to obtain prior written permission from his member firm to engage in such activities.

**Thomas Scott Drysdale (Registered Representative, Mt. Clemens, Michigan)** 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, Drysdale consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers while failing to give prior written notice to or receive written permission from his member firm to engage in such activities. The NASD also found that Drysdale failed to respond to NASD requests for information.

**Thomas Joe Gemlich (Registered Representative, Indianapolis, Indiana)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gemlich submitted a disbursement request form to withdraw \$318.15 in accumulated dividends from a public customer's insurance policy. Gemlich used the funds to pay the premium on another policy without the customer's knowledge or consent and despite instructions by the customer to permit the second policy to lapse. In addition, Gemlich failed to respond to NASD requests for information.

**Lawrence M. Gottlieb (Registered Representative, West Bloomfield, Michigan)** 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, Gottlieb consented to the described sanctions and to the entry of findings that he submitted Form U-4 applications that failed to accurately disclose certain employment dates, three unsatisfied judgments entered against him, and that he was discharged or permitted to resign for violating investment-related rules or standards of conduct.

**Ronald J. Marolda, Sr., (Registered Representative, Woodland Hills, California)** was fined \$2,500, jointly and severally with a former member firm, and barred from association with any NASD member in any principal capacity. The sanctions were based on findings that Marolda actively engaged in the management of the former member firm, but failed to requalify by examination as a principal as required by the NASD.

**Rodney Lee Pigford (Limited Representative,**

**Buffalo, New York)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pigford obtained \$272.60 from an insurance customer for the purpose of paying the annual premium on an insurance policy, failed to remit the funds to his member firm and, instead, misappropriated the funds to his own use. In addition, Pigford failed to respond to NASD requests for information.

**B. R. Stickle & Co. (Chicago, Illinois)** and **Bruce R. Stickle (Registered Principal, Chicago, Illinois)** were fined \$15,000, jointly and severally. The SEC affirmed the sanctions following appeal of a June 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Stickle, effected securities transactions while failing to maintain its minimum required net capital and conducted a securities business while failing to have an appropriately qualified and registered limited financial and operations principal employed by the firm. In addition, Stickle acted in the aforementioned capacity, but failed the qualification examination needed to become registered in such capacity.

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

## May Actions

**Marven O. Bowman, Jr., (Registered Principal, Pittsburgh, Pennsylvania)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bowman caused a member firm to conduct a securities business while it failed to maintain its minimum required net capital. Moreover, Bowman caused the firm to operate without a financial principal and used the personal identification number of a former financial principal to electronically file its FOCUS reports with the NASD. Bowman also failed to respond to NASD requests for information.

**Jose A. Dancel, Jr., (Registered Representative, Dover, Delaware)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dancel failed to respond to NASD requests for information regarding several customer complaints.

**Philip M. Hiestand (Associated Person, Villanova, Pennsylvania)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hiestand, while taking the Series 6 examination, retained in his possession notes relating to the subject matter of the examination. Hiestand also failed to respond to NASD requests for information.

**Robert E. Hutchinson (Registered Representative, Newport News, Virginia)** was fined \$150,000 (to be reduced by the amount of restitution made to the aggrieved parties) and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hutchinson participated in private securities transactions while failing to provide prior written notice to his member firm. Hutchinson also failed to respond to NASD requests for information.

**Michael J. Janik (Registered Representative,**

**Cherry Hill, New Jersey**) was fined \$30,000 and barred from association with any NASD member in any capacity. The fine shall be reduced by the amount of any restitution paid to customers. The sanctions were based on findings that Janik received from one public customer a \$1,000 loan and a \$3,000 loan from another customer by misrepresenting to them that he owned valuable stock options that he wanted to exercise and sell. In return, Janik gave each customer a promissory note agreeing to repay them \$2,000 and \$6,500, respectively, by a certain date. Janik has not repaid the first customer the full amount due under the note, nor has he paid the second customer any of the amount due under the note. Janik also failed to respond to NASD requests for information.

**Dinesh V. Kamath (Registered Representative, Princeton, New Jersey)** was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$91,185 plus interest in restitution to customers. The sanctions were based on findings that Kamath received from an insurance customer four checks totaling \$38,318.21 intended as payments on policy loans. Kamath negotiated the checks, retained the proceeds, and failed to apply such funds to their intended purpose.

In addition, Kamath received from two public customers three checks totaling \$33,323.24 intended for the purchase of a bond fund. Kamath negotiated the checks, retained the proceeds thereof, and failed to apply them to their intended purpose. Furthermore, Kamath received corporate checks drawn to the order of his member firm representing contributions to its profit sharing plan, and induced the clerical staff to issue "exchange checks" to his own order in the amount of \$19,543.17. He thereafter negotiated the checks and retained the proceeds.

**John J. Kelleher, Jr., (Registered Representative, Allentown, Pennsylvania)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kelleher received from public customers two checks totaling \$7,000 drawn to the order of his member firm and, without authorization, endorsed and deposited the checks in his personal bank account.

**Gregory W. Laubach (Registered Representative, Lancaster, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Laubach consented to the described sanctions and to the entry of findings that he forged the signature of an insurance policyholder to requests to withdraw policy dividends and thereafter submitted such requests to his member firm as genuine.

**Derrick E. Morales (Registered Representative, Philadelphia, Pennsylvania)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Morales received from a public customer a \$395 check intended for the purchase of insurance. Morales negotiated the check, but failed to remit the funds for their intended purpose. Morales also failed to respond to NASD requests for information.

**Richard L. Novosel (Registered Representative, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$14,000 and suspended from association with any NASD member in any capacity for 25 days. Without admitting or denying the allegations, Novosel consented to the described sanctions and to the entry of findings that as custodian of a lapsed securities account, he received

from his member firm a check in the amount of \$2,710.12. Novosel negotiated the check and retained the proceeds of the custodian account for his own use and benefit.

**George F. Tully (Registered Principal, Jessup, Georgia) and Michael D. Beck (Registered Representative, Petersburg, Virginia).** Tully and Beck were both barred from association with any NASD member in any capacity. The sanctions were based on findings that, on several occasions, Tully and Beck misappropriated customer funds, forged customer signatures, engaged in unauthorized transactions in customer accounts including municipal securities, and failed to respond to NASD requests for information.

In addition, Tully prepared an inaccurate confirmation in a customer's account, and diverted monthly statements, confirmations, and other official mail by submitting fictitious address change requests for various customer accounts. Furthermore, Tully made unsuitable recommendations and misrepresentations to public customers.

**Gregory A. Williams (Registered Representative, Sykesville, Maryland)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Williams received from an insurance customer two money orders totaling \$125 intended for the purchase of a health insurance policy. Williams never purchased any policy but, instead, negotiated the instruments and converted the proceeds to his own use and benefit. Williams also failed to respond to NASD requests for information.

#### June Actions

**Ernest A. Cipriani, Jr., (Registered Representative, Ellsworth, Pennsylvania)** was fined \$3,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an August 1993 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Cipriani received from a public customer \$647.20 in cash intended for payment of insurance premiums, retained the monies, and failed to remit the funds to his member firm. The action has been appealed to a U. S. Court of Appeals and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Francis W. Giampa (Registered Representative, Ambler, 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 objective, financial situation, and other facts and circumstances disclosed to him.

**Rebecca Nemiroff (Associated Person, Swarthmore, Pennsylvania)** was fined \$1,500 and barred from association with any NASD member in any capacity requiring registration with a right to apply to be associated with an NASD member in a registered capacity after one year. The sanctions were based on findings that Nemiroff took the Series 7 qualification examina-

tion and retained in her possession at her testing station a business card containing notes that were related to the subject matter of the examination.

#### July Actions

**Covato/Lipsitz, Inc., (Pittsburgh, Pennsylvania) and Alfred I. Lipsitz (Registered Principal, Pittsburgh, Pennsylvania)** were fined \$30,000, jointly and severally. The fine may be reduced by repaying to a partnership, with interest, the \$4,793.40 paid to customers as interest on their loan to the partnership. The reduction will be dollar for dollar with the respondents required to provide proof of such reimbursement that satisfies the Philadelphia DBCC staff. In addition, within 60 days, the firm must have registered with it a person along with Lipsitz who is qualified as a financial and operations principal or else it must cease effecting transactions until it has a second financial principal. If at any time it ceases to have at least two registered financial principals associated with it, it will have 60 days to register a second financial principal. This requirement will remain in effect unless and until rescinded in writing by the Philadelphia DBCC. Moreover, the firm and Lipsitz were required to make rescission offers to the investors who purchased interests in an offering.

The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that the firm, acting through Lipsitz, participated in a contingent offering of limited partnership interests and disbursed funds from its escrow account before the required minimum number of units were sold, and failed to disclose material information to investors necessary in determining whether to invest in the partnership. Furthermore, the respondents conducted a securities business while failing to maintain the firm's minimum required net capital and failed to maintain accurate books and records.

In addition, the firm, acting through Lipsitz, filed inaccurate FOCUS Parts I and IIA reports, filed its annual audited report late, and failed to comply with its restrictive agreement with the NASD. The firm, acting through Lipsitz, also failed to register its branch offices with the NASD and failed to establish, maintain, and enforce a supervisory system and written procedures to supervise the types of business in which it engaged and the activities of its registered representatives and associated persons.

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

#### May Actions

**Barrett Day Securities, Inc., (New York, New York), David Berger (Registered Principal, Roslyn, New York), Barry Leonard Schwartz (Registered Principal, Huntington, New York), and Phillip Edwin Bredow (Registered Principal, Ozone Park, New York)** submitted an Offer of Settlement pursuant to which the firm was fined \$10,000 and ordered to disgorge \$82,419.01 to public customers. Berger and Schwartz were each fined \$10,000 and suspended from association with any NASD member as general securities principals for 10 business days. Bredow was fined \$2,500 and suspended from association with any NASD member as a general securities principal for three 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 Berger and Schwartz, dominated and controlled the market for a common stock by charging prices to public customers that were unfair and included excessive and fraudulent markups ranging from 81 to 100.5 percent over the prevailing market price. The NASD also found that the firm, acting through Berger, Bredow, and Schwartz, failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with applicable securities laws and regulations and the NASD Rules of Fair Practice. In addition, the findings stated that the firm, acting through Berger, Bredow, and Schwartz, failed to reasonably supervise an individual to ensure that the prices charged to public customers on principal transactions were fair.

**Ronald Edward DiZinno (Registered Principal, LaQuinta, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$700 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, DiZinno consented to the described sanctions and to the entry of findings that, in violation of the Board of Governors Free-Riding and Withholding Interpretation, he purchased shares of new issues that traded at a premium in the immediate after-market.

**Ralph J. Eiseman (Registered Representative, Parlin, New Jersey)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions based on findings that Eiseman misappropriated commission checks totaling \$742 that belonged to fellow agents of his member firm by forging the agents' signatures and cashing the checks at a store, thereby converting the funds to his own use and benefit without the agents' knowledge or consent. In addition, Eiseman failed to respond to NASD requests for information.

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

**David Mark Gold (Registered Representative, Commack, New York)** submitted an Offer of Settlement pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Gold consented to the described sanctions and to the entry of findings that he failed to advise his member firm in writing that he was opening accounts with other member firms and failed to advise the other firms in writing that he was associated with his member firm. In addition, in violation of the Board of Governors Free-Riding and Withholding Interpretation, Gold purchased shares of a new issue that traded at a premium in the immediate aftermarket.

**Matthew Edward Kelly (Registered Representative, Syosset, New York)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kelly failed to pay a \$1,575 NASD arbitration award. In addition, Kelly failed to respond to NASD requests for information.

**Erika Safran a/k/a Erika Salamon (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Safran consented to the described sanctions and to the entry of findings that she purchased, or caused to be purchased, shares of a fund in the account of a public customer without the customer's prior knowledge, authorization, or consent. In addition, the NASD determined that Safran failed to take advantage of a breakpoint to reduce the sales charge available to the same customer in the aforementioned transaction.

**Peter J. Scanlan (Registered Representative, Nyack, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that during the course of a Series 7 examination, Scanlan possessed and used printed information that contained material relevant to the subject matter of the examination.

**Donald Schaefer (Registered Representative, Roselle Park, New Jersey)** was fined \$77,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schaefer received money orders from a public customer totaling \$1,500 for investment purposes and that he endorsed and deposited the money orders into his personal bank account, thereby converting the funds to his own use and benefit. In addition, Schaefer failed to respond to NASD requests for information.

**Cleveland Maynard Welsh, II, (Registered Representative, St. Louis, Missouri)** was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Welsh executed nine transactions in eight customer accounts and opened accounts in the names of two public customers without their prior knowledge, authorization, or consent. In addition, Welsh failed to respond to NASD requests for information.

#### June Actions

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

The U. S. Court of Appeals for the Second Circuit affirmed the sanctions following appeal of an August 1993 SEC decision. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Giraldi and Milana, engaged in a course of conduct that operated as a fraud on customers. The firm was not a market maker in any of the securities it sold to customers, and all transactions were effected on a riskless principal basis. The prices at which the securities were sold included excessive and fraudulent markups ranging from 11.11 to 186.46 percent above the firm's contemporaneous cost for the securities.

The NASD also found that the firm, acting through Giraldi, failed to disclose on customer confirmations the amount of the markups charged by the firm as required by SEC Rule 10b-10. In addition, the firm, acting through Giraldi, failed to establish and implement supervisory procedures to detect and prevent the aforementioned violations.

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

**Brendan Daniel Hart (Registered Representative, Lancaster, Pennsylvania)** was fined \$15,000, suspended from association with any NASD member in all principal capacities for six months, suspended from association with any NASD member in any capacity for one month, and required to requalify by examination in all capacities. The sanctions were based on findings that Hart executed transactions in eight unrelated public customer accounts without the prior knowledge, authorization, or consent of the customers.

#### July Actions

**David Burgher (Registered Representative, Stanton, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$520 in restitution to his member firm. Without admitting or denying the allegations, Burgher consented to the described sanctions and to the entry of findings that he received from insurance customers \$520 for insurance purposes but failed to deposit the funds with his member firm and, instead, misappropriated and converted the funds to his own use.

**Theodore Kaplan (Registered Representative, Stony Brook, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that during the course of a Series 7 examination, Kaplan was found to be in possession of, and reading printed information that contained, material relevant to the subject matter of the examination.

**Charles Joseph Muzzio, Sr. (Registered Representative, Manahawkin, New Jersey)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Muzzio had "de facto" control of a public customer's account and made recommendations in the customer's account without having a reasonable basis to believe that the recommendations were suitable for the customer in light of her stated investment. In addition, Muzzio failed to respond to NASD requests for information.

**Network 1 Financial Securities, Inc. (Red Bank, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it conducted a securities business while failing to maintain its required minimum net capital.

**Noyes Partners Incorporated (New York, New**

**York) and Jansen Noyes, Jr. (Registered Principal, Darien, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$14,619, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through Noyes, sold a hot issue to restricted accounts. In addition, the NASD found that the firm, acting through Noyes, failed to abide by its restriction agreement with the NASD and failed to establish and implement supervisory procedures to ensure compliance with the Board of Governors' Free-Riding and Withholding Interpretation.

**Daniel Oleckna (Registered Representative, Woodbridge, New Jersey)** 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. Without admitting or denying the allegations, Oleckna consented to the described sanctions and to the entry of findings that he telephoned a public customer and left threatening messages on the customer's answering machine.

**Pension Fund Evaluations, Inc., (Centreach, New York) and George W. Philipps (Registered Principal, Stony Brook, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Philipps, effected options transactions before employing a qualified registered options principal. The findings also stated that the firm, acting through Philipps, failed to establish and implement supervisory procedures to ensure compliance with its options activities.

In addition, the NASD found that the firm, acting through Philipps, failed to abide by the restrictions specified in its agreement with the NASD in that the firm commenced an options business without providing prior written notification to and obtaining written approval from the NASD to expand its business activities.

**Ian D. Quan-Soon (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Quan-Soon consented to the described sanctions and to the entry of findings that he signed client signatures to 18 delivery assurance forms.

**Charles Robert Tassinari (Registered Representative, Valley Stream, New York)** was fined \$20,000, suspended from association with any NASD member in any capacity for 10 months, and required to requalify as a general securities representative. If Tassinari does not requalify within 30 days after his suspension is served, he will again be suspended until he has passed the Series 7 examination. The sanctions were based on findings that Tassinari maintained trading accounts at his member firms that he had a beneficial interest in and caused trades to be effected in the accounts at prices that were away from the market and that were detrimental to the interest of his member firms. In addition, Tassinari caused seven blank order tickets to be completed that had previously been time-stamped by another representative at Tassinari's direction and submitted to the trading desk for execution.

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)

#### May Actions

**Joseph H. Miller, Jr., (Registered Representative, New Canaan, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$175,000 and barred from association with any NASD member in any principal or supervisory capacity. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and allowed various agents/registered representatives under his control and supervision to also engage in private securities transactions that were neither sponsored nor approved by his member firm.

**Daniel M. Ross (Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$320,000 and suspended from association with any NASD member in any capacity for 15 months (deemed served). Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving prior written notice to his member firm.

#### June Actions

None

#### July Actions

**Kenneth L. Anderson (Registered Representative, Brookline, Massachusetts)** 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, Anderson consented to the described sanctions and to the entry of findings that he engaged in a course of conduct involving the execution of at least 56 transactions by using false and misleading prices. These transactions were executed in a customer account under Anderson's control wherein the account received illegal profits in excess of \$83,000.

**Shahkar M. Fatemi (Registered Representative, Greenfield, Massachusetts)** 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, Fatemi consented to the described sanctions and to the entry of findings that he misappropriated insurance customer funds totaling \$2,500 without the knowledge or consent of the customers. Specifically, the NASD found that Fatemi caused checks to be issued against the customers' life insurance policies, obtained the checks, forged the customers' signatures, and deposited the checks in his personal account. In addition, the NASD found that Fatemi failed to respond to NASD requests for information.

**Chester G. Gural (Registered Representative, East Syracuse, New York)** was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The sanctions were based on findings that Gural failed to respond to NASD requests for information concerning a customer complaint.

**Steven W. Pelletier (Registered Representative, Kennebunkport, Maine)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pelletier misused public customer funds in the amount of \$854 intended for deposit into an insurance policy.

**Michael E. Seifert (Registered Representative, Ridgefield, Connecticut)** 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, Seifert consented to the described sanctions and to the entry of findings that he prepared a fictitious letter of authorization purportedly signed by a public customer authorizing his member firm to draw a check against the customer's securities account in the amount of \$12,500. The NASD found that upon receipt of the check, Seifert negotiated the check and misappropriated the proceeds to his own use and benefit. Thereafter, the findings stated that Seifert submitted a fictitious receipt to his member firm falsely reflecting delivery of the check to the customer.

Market Surveillance Committee

#### May Actions

**Marsh, Block & Co., Inc., (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000 and required to revise its supervisory procedures to ensure timely, complete, and accurate responses to NASD requests for information. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond timely to NASD requests for information concerning trades in an over-the-counter (OTC) security.

#### June Actions

**Frank L. Palumbo (Registered Principal, Lighthouse Point, Florida), Salvatore A. Venezia (Registered Principal, Castle Rock, Colorado), and Sandra Solomon Venezia (Registered Principal, Castle Rock, Colorado).** Palumbo was fined \$75,000, barred from association with any NASD member in any capacity, and required to pay \$687,500 in restitution to public customers, jointly and severally with another respondent. Salvatore and Sandra Venezia were each fined \$75,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that a former member firm, acting through Palumbo, Salvatore Venezia, and Sandra Venezia, dominated and controlled the market in two stocks such that there was no independent, competitive market in the securities by effecting transactions in, and inducing others to effect transactions in, the stocks at unfair and unreasonable prices with markups on the securities ranging from 5.14 to 83.77 percent over the prevailing market price for one stock and 5.74 to 76.42 percent on the other. Furthermore, the firm, Palumbo, Salvatore Venezia, and Sandra Venezia failed to disclose to their customers that the prices at which they were selling the stocks were not fair or reasonable.

In addition, the firm, acting through Palumbo, engaged in excessive markups involving one other stock, in violation of the NASD's Mark-Up Policy, without disclosing these markups to its customers. The markups on these transactions ranged from 8.57 to 77.33 percent over the prevailing market price. Moreover,

Salvatore Venezia failed to enforce supervisory procedures that would have enabled him to assure compliance for markups. This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

#### July Actions

**J. Gregory & Company, Inc.**, (Great Neck, New York), **Warren R. Schreiber** (Registered Representative, New York, New York), **Gennady I. Klotsman** (Registered Representative, New York, New York), and **Lawrence A. Rosenberg** (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$25,000 and required to pay \$450,000 in restitution, plus interest, to public customers. In addition, the firm will hire an individual with appropriate experience and expertise to supervise the firm's trading activity, and will hire an individual with appropriate experience and expertise as a head trader. Furthermore, the firm will adopt and implement new written supervisory and compliance procedures. Schreiber was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to pay \$20,000 in restitution, plus interest, to public customers. Klotsman and Rosenberg were required jointly and severally, to pay \$78,723.30, plus interest, 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 Schreiber, effected principal transactions with retail customers in securities at prices that included markups ranging from 5.04 to 70 percent above the prevailing market. The NASD also found that Klotsman and Rosenberg caused 89 customers to buy the securities at prices that were not fair.

Furthermore, the findings stated that, in violation of the Board of Governors' Free-Riding and Withholding Interpretation, the firm sold units in an initial public offering (IPO) to an account controlled by Schreiber's brother, and the brother of the president and majority shareholder of the firm which units traded at a premium in the immediate secondary market. In addition, the NASD determined that the firm failed to establish and maintain an effective supervisory system that would have enabled it to assure compliance with the NASD's rules and policies.

**Wayne D. 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 Market Surveillance Committee decision. The sanction was based on findings that Ingbritson engaged in manipulative and deceptive practices in a best efforts Regulation E offering by failing to make material disclosures to customers. Specifically, Ingbritson caused a member firm to effect a series of transactions in a common stock that created actual and apparent trading activity for the purpose of inducing the purchase or sale of the stock by others. Ingbritson also raised the commission payout to his registered representatives to 100 percent to generate demand for the stock.

Furthermore, Ingbritson arranged for the extension of credit to the same member firm to allow it to purchase the common stock with the proceeds of its immediate resale, in violation of Regulation T and X. In addition, Ingbritson failed to reasonably supervise the activities of a registered representative.

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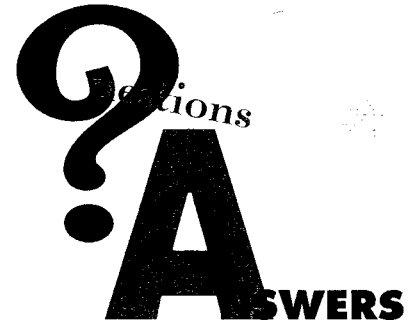
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