NASD Regulatory & Compliance

ALERT

National Association of Securities Dealers, Inc. Volume 8, Number 4 January 1995

Follows Large Firm Sweep

NASD, SEC, And Others Launch Joint Regulatory Examination Sweep

At a Congressional hearing, Securities and Exchange Commission (SEC) Chairman Arthur Levitt, Jr., announced plans for another joint regulatory examination sweep in coordination with the NASD, the New York Stock Exchange, and the North American Securities Administrators Association. Addressing the U.S. House Telecommunications and Finance Subcommittee of the Energy and Commerce Committee, Levitt said, "Rather than focus on specific large firms as we did during the Large Firm Project,

(Continued page 2)

NASD Expresses Concern About Members Acting As Investment Advisers

In *Notice to Members 94-44* (May 15, 1994), the NASD clarified the applicability of Article III, Section 40 of the NASD Rules of Fair Practice (RFP) to certain activities of persons registered as representatives with an NASD member and as an investment adviser (RR/RIA) with the SEC. In particular, the Notice addressed supervision of securities transactions conducted by RR/RIAs "away from" their employer/member.

Since issuance of *Notice to Members 94-44*, the NASD is aware that some RR/RIAs receive data downloads from broker/dealers and/or registered investment advisory firms that support the investment advisory and brokerage activities they conduct away from their member firms. Afterwards, RR/RIAs may use this information to generate performance reports for their clients.

When members and RR/RIAs create or recreate performance reports for securities transactions, there is a substantial risk that calculations may be inaccurate or incomplete, resulting in material misrepresentations or omission of facts. Consequently, the supervisory responsibilities outlined in Article III, Section 40 of the RFP may require an NASD member to determine whether to permit associated persons to develop performance reports for securities transactions and, if so, to review them before distribution to clients. The review would be designed to ensure that such reports are not inaccurate, misleading, or do not otherwise violate NASD or SEC rules. In particular, members should review standards in Article III, Section 35 (the NASD rule that governs member communications with the public) and applicable SEC regulations.

Questions relating to members' compliance responsibilities under Article III, Section 40 may be directed Daniel Sibears, Director, Regulatory Policy, at (202) 728-6911, or Sarrita Cypress, Attorney, Regulatory Policy, at (202) 728-8203. ❑

CONTENTS

(Sweep, continued from page 1)
during this sweep we will include large, small, and medium-sized firms in the industry, and will target so-called 'rogue' or 'problem' registered representatives throughout the industry." The large firm project was a cooperative regulatory program that included examining 161 branch offices of nine large brokerage firms. The SEC issued its report on that subject in May 1994.

Levitt told the Subcommittee of plans to use information in the NASD Central Registration Depository (CRD) to target "problem" registered representatives who have been the subject of customer complaints, arbitration proceedings, or disciplinary actions, and who have changed employment frequently. "The Large Firm Project, as well as the recent Penny Stock Sweep, demonstrate that, by coordinating our resources, we can make significant progress to reduce fraud, abuse, and manipulation and add to overall investor confidence in the securities markets," Levitt said.

NASD Officer Testifies

During the hearing, John E. Pinto, NASD Executive Vice President of Regulation, testified about sales-practice regulation of "problem" registered representatives. "We agree with the findings of the SEC Report on large firms and a GAO study that 'problem' brokers, while certainly not widespread or pervasive, nevertheless deserve the increased attention of regulators," Pinto told the Subcommittee. "These individuals with histories of compliance problems are a major focus of NASD examination efforts through focused sales-practice investigations that are being given the highest regulatory priority across the country by the NASD in each of its 14 District Offices."

Highlighting a number of initiatives in this area, Pinto described the NASD's multi-million dollar redesign of the CRD system, which will help regulators identify and flag "problem" brokers, and will identify firms and branches for examination in a more effective way. Pinto described the NASD's newly developed interim automated system, which analyzes the current registered representative population by drawing data from CRD as well as NASD regulatory data bases.

Pinto also discussed a proposed reporting rule issued for member comment in December 1994. The proposed rule will require members to report to the NASD the occurrence of certain specified material events and quarterly statistical data on customer complaints. Pinto stressed the importance of this information as additional regulatory intelligence and the need to maintain it in a regulatory data base for use by the NASD and other regulators.

Pinto went on to explain the critical importance of providing qualified immunity to members in connection with Form U-5 filings to encourage firms to report more accurately the rea-

sons for an employee's termination. "The NASD strongly endorses the SEC's recommendation for qualified immunity and supports rulemaking or legislation in seeking the most effective approach to devise uniform policies on liability and qualified immunity," he said.

In response to an issue raised in the GAO study on the subject of so-called rogue brokers, the NASD is also working to share data with other financial service industries. The NASD has a long-standing policy of sharing relevant regulatory information with the states, has recently met with bank regulators, and is providing information to state insurance commissioners on "problem" representatives who are also insurance agents.

In support of testimony by Chairman Levitt, Pinto reiterated the NASD's long-standing and proactive position on the importance of continuing education and agreed to work with the SEC on its announced tougher stance on barred individuals. "We are delighted that the SEC is supporting a harsher position on the ability of barred individuals to return to the industry," he said. "At the NASD, we have always taken the position that a bar is a bar." ❑

Regulation

NASD Asks Members To Comment On Disclosure Of Partnership Valuations On Customer Statements

The NASD is proposing amendments to Article III, Section 45 of its Rules of Fair Practice that would require certain disclosures and reporting of Direct Participation Program (DPP) securities on customer account statements. (The most common DPP securities held in customer accounts are units of limited partnership interest.)

Members were asked to comment by January 31, 1995, on the proposal that would require that DPP securities held by the member or listed on a customer account statement be segregated from other securities. In that case, DPP securities may then be listed on the account statement *without a price*, but must include a remark saying accurate pricing information is not available because no active secondary market exists. However, if a DPP security is listed on the account statement *with a price*, the amendments would prohibit the value from being aggregated with the value of other securities held for the customer, or included in calculating the net worth of the customer's securities.

The proposal also requires members to provide a statement disclosing how the value was reached, and to advise the customer that since DPP securities are illiquid, the disclosed value may not be realized if the customer needs to sell the security in the near future.

Comments from members will be considered by the NASD Board and appropriate committees. Before becoming effective, the proposed amendments must be approved by the SEC.

Provisions Explained

The planned amendments establish a general requirement that DPP securities on a customer account statement (even if not held by the member) must be segregated from other securities. This can be done by grouping all DPP securities and placing them below a demarcation line on the statement. This requirement would also cover any description of DPP securities listed by the member on an account statement, even if the member does not possess or control the securities. This provision recognizes that often DPP securities were sold originally in uncertificated form.

If a customer's ownership of DPP securities is listed without a price and there is no active secondary market in the securities, the proposal would require members to include a narrative statement explaining the difficulty of pricing DPP securities. If a value is disclosed for DPP securities, it must not be aggregated with other non-DPP securities to reach a total value of the securities held in the customer account. Further, the methodologies used for obtaining or deriving the value of DPP securities must be adequately disclosed and a disclaimer added, indicating the value may not be realizable if the customer must liquidate the DPP securities sooner than expected.

Brief History

The NASD Direct Participation Programs Committee (DPP Committee) and Operations Committee studied how DPP security values are reported to investors on customer account statements. The Committees realize that currently some members report purchase price as the value of partnership interests on customer account statements, which is usually not equivalent to the current market value. Further, members that list DPP securities at purchase price tend to include that amount in the aggregate total current value of all securities held in the customer's account. The Committee is concerned

about this practice, because DPP securities are generally illiquid and the purchase price often is not related to current value.

The Committees also reviewed issues that occur when members report partnership securities on customer account statements without a price. This practice is growing, and appears to reflect how difficult it is to establish a definitive current value for DPP securities. It also reinforces to customers that they purchased an illiquid security that cannot easily be valued until the partnership is liquidated.

However, the Committee is conscious of regulatory and practical business considerations that might make a member want to place a value for DPP securities on a customer account statement. For example, when members act as fiduciaries for individual retirement accounts or ERISA plans, Departments of Labor and Treasury regulations require that a value be obtained or derived, and reported at least annually. Thus, members acting as fiduciaries often report a value for these accounts on the customer statement.

The Committee is also aware that some members, general partners, and independent third-party services are using sophisticated valuation methods to evaluate DPP securities. These techniques include the appraisal of the underlying assets, an analysis of income expected to be earned by the partnership, discounted to a current value, or a recent sales analysis. The Committee believes that it would benefit investors to see how these values were reached, and that information should appear on a customer's account statement.

For more information on this subject, see *Notice to Members 94-96* (December 1994) or call Charles L. Bennett, Director, Corporate Financing Department, at (301) 208-2736. ❑

Regulation Business Line Develops Interpretive Letters Data Base For Members

In response to input from members regarding service quality, the NASD Regulation Business Line compiled a series of interpretive letters from several NASD departments into a hard-copy data base. The data base was recommended by the Directors Service Quality Committee (DSQC), a staff group focusing on customer service initiatives, in order to provide a uniform, comprehensive system to notify members about key NASD interpretations. A two-step program is underway to compile and disseminate the interpretations.

Initially, a hard copy of the interpretive letters and an accompanying master index was created. Included are key interpretive letters from selected NASD Departments: the Office of General Counsel, Advertising, Corporate Finance, Market Surveillance, and Regulatory Policy. Quarterly, during 1995, more letters from these and other NASD departments will be added to the data base and index.

In the initiative's second phase, the Regulation Business Line will automate the interpretive letters data base, and a vendor will begin to develop an electronic data base for interpretive positions. As soon as it is ready, the data base will be distributed for testing to NASD District Offices, using CDs and/or diskettes. After testing by District Offices, the interpretive letters data base will be available to the NASD membership before the end of 1995.

While the data base is under development, members may request selected interpretive positions from the Regulatory Policy Department. A hard-copy index of interpretive letters should be available during the first quarter of 1995. ❑

New Address And Telephone Number To Report Lost And Stolen Securities

The SEC Securities Information Center (SIC) new mailing address to report lost and/or stolen securities is P.O. Box 9151, Boston, MA 02205. The telephone number for inquiries is (617) 345-4900; for general information call (617) 345-4910.

SEC Rule 17f-1 governs the Lost and Stolen Securities Program which requires broker/dealers, municipal dealers, and government securities broker/dealers to register with the SEC's designee (the SIC), and to file reports and make inquires regarding lost, stolen, and counterfeit securities.

Exemptions from registration with the SIC include the requirement that a broker/dealer's firm has not handled security certificates within the previous six months. However, the exemption does not apply to new broker/dealers. They must register with the SIC program unless they meet one of the available exemptions.

See Rule 17f-1 for more information, or call Susan Lang, Senior Research Analyst, at (202) 728-6969.

Compliance Questions & Answers

Through its Compliance and other departments, the NASD Regulation Business Line receives many inquiries from members on a variety of topics. To more effectively inform members on matters of common interest, Regulation plans to periodically provide to members, through the *Regulatory & Compliance Alert*, a question and answer feature designed to enhance communication with members on important and timely regulatory and compliance issues. Our first installment is on Regulation T, margin eligibility, mutual fund issues, and related matters.

Q. What is an exempt security under Regulation T (issued by the Federal Reserve Board of Governors?)

A. An exempt security is one that is not subject to the federal margin requirements of Regulation T. These include direct or indirect obligations guaranteed as to principal or interest by the U.S. government or any state, municipality, or political subdivision, or any other security defined as exempt by the Federal Reserve. Although exempt, a security is still subject to NASD maintenance requirements.

Q. What securities are eligible for purchase on margin?

A. Regulation T, issued by the Federal Reserve Board of Governors, defines a marginable security as any:

- Security/bond qualified for trading in the Nasdaq National Market® segment of The Nasdaq Stock Market℠.
- Security listed or registered on a national securities exchange.
- Non-Nasdaq National Market and foreign security listed in the Federal Reserve Board's quarterly publication "List of Marginable OTC Stocks and List of Foreign Margin Stock."
- Security issued by an open-end investment company or unit investment trust registered under Section 8 of the Investment Company Act of 1940. Although Regulation T allows the margining of open-end investment trusts, the margin use of such investment is limited because these investments can be used only as margin collateral if they have been owned by the customer for 30 calendar days.

The Federal Reserve Board's (Fed) quarterly report is available by calling its publication department at (202) 452-3244(5), or by writing Publication Services, Mail Stop 127, 20th and C Streets, NW, Washington, DC 20551.

Q. How does the Fed determine if a security is margin eligible?

A. Each quarter, the Fed reviews all Nasdaq securities to determine which meet the requirements for initial or continued inclusion on the list of OTC margin stocks under Regulation T, Section 220.17. The Fed notifies all securities issuers of securities that meet the margin eligibility requirements before publication of the next quarterly report. A security cannot be margined until the report is publicly disseminated.

Q. What is the difference between a wire-order and a subscription-order mutual fund dealer?

A. Wire order refers to the purchase or redemption of investment company shares using the telephone or other electronic means. Firms engaging in wire-order transactions must prepare and send confirmations and maintain customer accounts and other records required by SEC Rules 17a-3 and 17a-4. Subscription or application order refers to a method whereby customers complete an application and attach a check payable to the fund or its agent, and let the firm process the application and check, or mail both directly to the fund for processing. (See questions 11 and 12 in *Notices to Members 92-72* and *93-30* for minimum net capital requirements of wire and subscription order mutual fund dealers.)

Q. Can the annual compliance meeting with the broker/dealer's registered persons that is required under Article III, Section 27 of the NASD Rules of Fair Practice be conducted over the telephone?

A. No. A telephone interview or video conference does not comply with the rule. The meeting must be conducted "in person." The rule states the meeting may be individual or collective, and the compliance discussions may take place in connection with discussions or presentations on other topics. It is permissible to show a videotape before or as part of the demonstration. (*See Notice to Members 89-34.*)

Q. What are the minimum requirements to qualify for the NASD's installment payment plan for fines and costs imposed as a result of a disciplinary action?

A. The installment payment plan will be permitted only for fines and/or costs of $5,000 and above. A minimum 25 percent down payment of total fines and/or costs must be made as the initial payment.

Q. What interest rate applies for installment payment plans for fines and costs?

A. The rate on the unpaid balance of fines and/or costs is based on the current prime rate plus three percentage points. ❑

How To Prevent Common Customer Complaints About Mutual Fund Sales Abuses

Customer complaints submitted to the NASD indicate that many involve mutual fund sales abuses, such as switching or failure to offer breakpoints. When conducting a supervisory review, look for the following elements that may help you prevent or detect such activity in your customer accounts.

Mutual Fund Switching

Mutual fund switching problems occur when salespersons recommend, without a reasonable basis, the liquidation of a customer's existing mutual fund to purchase another mutual fund with related investment objectives to generate additional sales commissions.

- A pattern of customers selling one mutual fund and purchasing another, usually with charges involved.
- Inadequate written supervisory procedures that may hinder effective review for evidence of switches.
- Customer complaints concerning switches and whether they are fully investigated.
- Regular, periodic reviews of customer accounts to find evidence of switches. (Most switches occur on different days and often in different months.)
- A requirement that the firm must have a written customer authorization for the liquidation of one mutual fund to purchase another fund when commission charges are involved.
- Where a switch is initiated, the customer should enjoy an economic gain, considering the charges involved. In these cases, customers should be contacted by a manager or supervisor. When a customer initiates a switch, such action may not absolve a broker/dealer or registered representative from liability.

Mutual Fund Breakpoints

Breakpoint problems occur when salespersons recommend the sale of investment company shares in dollar amounts "just below" the point at which the sales charge is reduced on quantity transactions.

- Firm records that may show sales of two or more mutual funds to the same customer at the same time in amounts apparently below a breakpoint, presumably for diversification reasons.

When conducting a supervisory review, look for the following elements that may help you prevent or detect such activity in your customer accounts.

- A pattern of customers purchasing a large quantity of one mutual fund at amounts just below the breakpoint.
- Clear, written supervisory procedures to review for sales just below breakpoints. These routines should indicate who is responsible to ensure disclosure of breakpoints.
- A plan that provides for regular review of customer accounts for breakpoint sales. Occasionally, problems appear only after several months of activity.
- Indications that customers knowingly sign a letter that clearly discloses the breakpoints, thus waiving the opportunity for reduced sales transaction charges.
- A method to question registered representatives to determine the reasons for sales just below the breakpoint, and whether customers are notified when the reasons for sales make no sense.
- Procedures that furnish the customer with the option of completing a "Letter of Intent" for purchases within a 13-month time frame. ❑

Guide To Locating Advertising And Sales Literature Rules

In reviewing member advertising and sales literature, the Advertising Regulation Department staff generally refers to NASD, Municipal Securities Rulemaking Board (MSRB), and SEC advertising rules and guidelines. Following is a list of applicable rules and regulations frequently cited by the Advertising Regulation Department.

NASD Rules

Approval And Filing Requirements And Standards For All Communications With The Public Including Proper Broker/Dealer Identification
- *Article III, Section 35, NASD Rules of Fair Practice*
- *Paragraph 2195, NASD Manual (page 2173-14)*

Approval And Filing Requirements And Standards For Government Securities Advertising And Sales Literature
- *Section 8, NASD Government Securities Rules*
- *Paragraph 2428, NASD Manual (page 2267)*

Restrictions On Advertising Non-Branch Office Locations
- *Article III, Section 27(g)(2), NASD Rules of Fair Practice*
- *Paragraph 2177, NASD Manual (page 2118)*

Approval And Filing Requirements And Standards For All Options-Related Communications With The Public
- *Article III, Section 35A, NASD Rules of Fair Practice*
- *Paragraph 2195A, NASD Manual (page 2185)*

SEC Rules

The "Tombstone Advertising Rule"
- *SEC Rule 134, Securities Act of 1933*
- *Paragraph 5281, NASD Manual (page 5041); CFR 230.124*

The "Generic Advertising Rule" For Mutual Funds And Other Investment Company Securities
- *SEC Rule 135A, Securities Act of 1933*
- *Paragraph 5282, NASD Manual (page 5045); CFR 230.135a*

The "Omitting Prospectus Rule" For Mutual Funds And Other Investment Company Securities
- *SEC Rule 482, Securities Act of 1933*
- *Paragraph 5283, NASD Manual (page 5055); CFR 230.482*

The "Investment Company Sales Literature Rule"
- *SEC Rule 156, Securities Act of 1933*
- *Paragraph 5285, NASD Manual (page 5061); CFR 230.156*

The "Sales Literature Rule" for Performance of Open-End Mutual Funds and Variable Annuities
- *SEC Rule 34b-1, Investment Company Act of 1940*
- *Paragraph 5284, NASD Manual (page 5057); CFR 270.34b-1*

Other Rules

Approval Requirements And Standards for Municipal Securities Sales Material
- *Rule G-21, MSRB Rules*
- *Paragraph 3601, MSRB manual (page 4869)*

Requirements For Identifying Securities Investor Protection Corporation (SIPC) Membership In Advertising
- *Article 11, Section 4, SIPC By Laws*
- *Available from Advertising Department staff at (202) 728-8330*

Guidelines

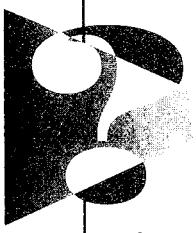
Guidelines For Government Securities Advertising
- *Available from Advertising Department staff at (202) 728-8330*

Guidelines For Discount Brokerage Service Communications
- *Available from Advertising Department staff at (202) 728-8330*

Guidelines Regarding Communications With The Public About Collateralized Mortgage Obligations (CMOs)
- *Paragraph 2195, NASD Manual (page 2175)*

Guidelines Regarding Communications With The Public About Variable Life Insurance And Variable Annuities
- *Paragraph 2195, NASD Manual (page 2180)*

Guidelines For The Use Of Rankings In Investment Companies Advertisements And Sales Literature
- *Paragraph 2195, NASD Manual*



"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. *Can a member produce and use one-on-one comparisons between mutual funds?*

A. Yes, but the comparison, which is held to very vigorous standards, must be complete and fair. Comparisons between specific products are easy to distort toward a bias, especially when the member drawing the comparison has a proprietary interest in one of the products. This is why many members receive critical comments from the Advertising Regulation Department about such comparisons.

Pursuant to Article III, Section 35(d)(2)(M) of the Rules of Fair Practice, direct or indirect comparisons must make clear the purpose of the comparison and provide a fair and balanced presentation, including any material differences between the subjects of the comparison. Such differences include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors to make the comparison fair.

Q. *Is there a minimum type size for the text of advertisements and sales literature?*

A. Members should clearly and legibly communicate information that is important to an investor's decision whether to invest. Members should not rely on footnotes to balance a presentation. Instead, important information such as risk factors or costs of an investment should appear on or near the relevant section of the communication. In addition, members should avoid overly technical explanations or caveats, as these may do more harm than good. See Article III, Section 35(d)(1)(D) of the Rules of Fair Practice for more information about these requirements.

Although there is no universal type-size rule, investment company communications subject to SEC Rule 482 are required to be in at least 8-point type. However, even in a Rule 482 communication, members may need to use a larger size type to assure that a presentation is fair and not misleading.

Q. *Are there any limitations on the filing of reprinted mutual fund reports, such as Morningstar reports?*

A. According to Article III, Section 35(c)(1) of the Rules of Fair Practice, reprinted mutual fund research reports should be filed with the Advertising Regulation Department when intended for use promotionally as sales literature. If a Morningstar report is given to one person in response to that person's request, such use would be considered individual correspondence, rather than sales literature, and the piece would not have to be filed.

Mutual fund research reports such as Morningstar reports should be approved before use by a firm's compliance principal. They may be distributed to the public when preceded or accompanied by a prospectus for the fund. If the reports cite fund performance, they should include the SEC-required standard annualized returns. The reports should also include an explanation of the methodology of any rankings or ratings cited.

Q. *The Advertising Regulation Department recently sent a message to filers requesting that they include the date of first use or publication in cover letters accompanying all filings. When should members implement this change?*

A. This policy is effective now. The date of first use or publication is an important tool in ensuring that the filing requirement deadlines are honored. Having this information allows the Advertising Regulation Department to provide faster service because its analysts will avoid delays involved in contacting the member to find out the date. The date of first use also helps ensure that the comments are appropriate because knowing whether a piece has been used with the public can affect the Department's recommendations for remedial action. Also, keep in mind that Article III, Section 35(d)(2)(A) of the Rules of Fair Practice states that the date on which sales literature is first published or distributed is necessary information.

NASD To Allow Payment For Filings By Credit Card

Beginning in 1995, the Advertising Regulation Department will offer members the option to pay for filings by VISA or Master Card. The Department will issue a notice before implementation.

NASD Rules Of Fair Practice Say Family Members May Not Buy "Hot Issues"

Recent disciplinary actions indicate that members may not be fully aware that the NASD Free-Riding and Withholding Interpretation under Article III, Section 1 of the Rules of Fair Practice prohibits sales or purchases of "hot issues" by persons associated with members or their immediate families. Hot issues are securities of a public offering that trade at an immediate premium when secondary market trading begins.

For example, consider members or persons associated with members purchasing hot issues directly from an issuer, without underwriter or selling group assistance. Some members believed that this was not a violation of the Interpretation that resulted from these facts because the purchase was made directly from an issuer, not a member firm. However, the Interpretation clearly states that all hot issues, including those that are self-underwritten, are subject to the rule's provisions.

In another application of the Interpretation regarding purchases by a member's immediate family, there is a limited exemption available for family not supported directly or indirectly by the member. The exemption requires that the hot-issue purchase is consistent with the person's normal investment practices and that the purchase is not substantial, either in the aggregate or in proportion to sales to other persons. **The exemption applies only to immediate family members** and not to registered persons. (More complete explanations of immediate family members will appears in February 1995 *Notice to Members* 95-7.

The NASD is considering proposed rule changes to exempt certain securities industry professionals from the Interpretation. Currently, however, the Interpretation applies to all registered persons, including those in limited-purpose registration categories such as investment company securities, variable contracts, and direct participation programs. Questions regarding this issue may be directed to Walter J. Robertson, Director, Compliance, at (202) 728-8236, or Bill Hotchkiss, at (202) 728-8235. ❑

IPO Investment Partnership Provisions Emphasized Under Free-Riding And Withholding Interpretation

In response to member inquiries, the NASD emphasizes member responsibilities under its Free-Riding and Withholding Interpretation as it applies to investment partnerships and corporations.

The question posed by initial public offering (IPO) underwriters is: If a registered investment adviser buys shares of a "hot issue" for the benefit of an investment partnership or corporation, is it adequate to obtain a verbal affirmation from the adviser that no beneficial owner is a restricted person and make a record on the order ticket, or is it necessary to procure either a current list of the names of all persons having a beneficial interest in the account, or a legal opinion?

At issue is whether such sales are covered by Section 7 of the Interpretation that permits the sale of hot-issue securities to a domestic bank, domestic branch of a foreign bank, trust company, or other conduit for an undisclosed principal upon inquiry or notation on the order ticket, or whether the transaction should be treated as a sale under the Investment Partnerships and Corporations provisions of the Interpretation.

The NASD's position is that such accounts should be governed by the Interpretation's investment partnership provisions, rather than treating the investment adviser as an "other conduit for an undisclosed principal." Section 7 predates the investment partnership provisions of the Interpretation; the partnership provisions were initially adopted in 1973 and substantially amended in 1988. The investment partnership provisions were established to create specific responsibilities by member firms when selling hot-issue securities to investment partnerships or corporations. It would be inappropriate to permit those provisions to be circumvented by allowing an investment adviser to buy the securities on behalf of the investment partnership or corporation.

Members active in this segment of the business should review details in the Investment Partnerships and Corporations section of the Free-Riding and Withholding Interpretation. If you have questions about this subject, call Craig Landauer, NASD Associate General Counsel, at (202) 728-8291, or your local District Director. ❑

Member Comment Sought On Rule To Let Registered Reps Lend To Or Borrow From Customers

The NASD Board recently approved *Notice to Members 94-93* (December 1994) to solicit member comment on a proposed amendment to Article III of the Rules of Fair Practice. The planned rule would require registered persons to provide prior notification to, and obtain prior approval from, their employing member firm before personally borrowing funds or securities from a customer, or before lending funds or securities to a customer. Under the proposed rule, the notification and the advance approval must be in writing.

The comment period expired January 31, 1995. Before becoming effective, the rule must be adopted by the Board and the membership, and then filed for SEC approval.

In May 1994, the Board's Advisory Council recommended that the NASD consider adopting a rule that would require registered persons to notify their employing member when personally borrowing funds or securities from customers. The National Business Conduct Committee (NBCC) backed the Council's proposal and recommended to the Board to expand coverage of the proposed rule to include lending of funds or securities, in addition to borrowing of funds or securities, by registered persons with their customers. The NBCC also advocated that the member, upon prior written notification by the registered person, must record in writing the approval or disapproval of the proposed transaction with the customer.

The NBCC's determinations were based partly on several recent NASD disciplinary actions confirming examples of abuse where registered representatives borrowed funds or securities from customers. Specifically, the SEC affirmed two NASD disciplinary actions where the principal violation focused on registered representatives that borrowed funds from customers, but did not repay them.

In approving this rule proposal for comment, the Board recognizes that many member firms prohibit this type of conduct by their registered persons. Thus, this rule amendment proposes to establish a regulatory framework for member firms that now permit this practice.

A member's prior knowledge that a registered representative intends to borrow funds or securities from or loan funds or securities to its customers, and the member's subsequent approval, may serve as an effective deterrent to potential misconduct. It will also improve the member's ability to monitor and supervise the activities of its registered personnel by serving as an information gathering source for members about additional activities of their registered persons that may go beyond the scope of their normal activities. With that information, members would be able to evaluate, before granting approval, whether these activities are an unnecessary risk to the customer and/or the member.

Finally, the notice requirement will place an affirmative obligation on the representative that could be separately charged in a disciplinary action if not followed. Questions about this proposal may be directed to Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911. ❑

NASD Requests Comment On Rules To Govern Members Operating On Bank Premises

The NASD is requesting comment by February 15, 1995, on proposed amendments to its Rules of Fair Practice to adopt rules governing broker/dealers operating on financial institution premises. The proposed rules embrace investor protection principles similar to those in a recent no-action letter from the SEC to the Chubb Securities Corporation. (The Chubb Letter addresses broker/dealer networking agreements with financial institutions; see *Regulatory & Compliance Alert*, October 1994, page 15.)

The proposed rules provide NASD members with clear guidance to address activities of bank-affiliated and networking broker/dealers who operate on financial institution premises. Before becoming effective, the NASD Board and the membership must adopt the rule amendments, and they must be approved by the SEC.

Background

On November 24, 1993, the SEC staff issued the Chubb Letter that describes the SEC's policy regarding certain broker/dealers operating on the premises of financial institutions. Following the release of the Chubb Letter, on February 15, 1994, the four banking agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision—issued an Interagency Statement on Retail Sales of Non-deposit Investment Products (the Interagency Statement). That statement adopts many of the investor protection concepts in the Chubb Letter, and directs banks to follow such principles when making direct sales of securities to

customers, while overseeing activities of NASD members selling securities on financial institution premises.

To assist members doing business on the premises of financial institutions to comply with the NASD Rules of Fair Practice, the federal securities laws, and applicable banking regulations, *Notice to Members 94-47* (June 1994) advised members regarding the policies described in the Chubb Letter and the Interagency Statement. Bank-affiliated members and members participating in bank networking arrangements previously were told by the NASD to take precautions to protect investors addressing issues of investor confusion.

In particular, *Notice to Members 94-16* (March 1994) reminds members of mutual fund sales practice obligations, citing the explosive growth of fund sales by bank-affiliated and networking broker/dealers. Similarly, *Notice to Members 93-87* (December 1993) guides members on reinvesting maturing certificates of deposits in mutual funds, focusing on NASD members affiliated with financial institutions or participating in networking arrangements. In addition, *Notice to Members 93-87* describes the specific disclosure requirements for money market, fixed income, and equity funds, and points out specific concerns that may arise in connection with sales of mutual funds on bank premises.

Rationale For Proposed Rules

Although the Chubb Letter provides regulatory guidance for some members operating on financial institution premises, the NASD believes further action is necessary to establish uniform, consistent standards to govern this activity. The Chubb Letter focuses specifically on broker/dealer networking arrangements, but does not address the regulatory obligations of bank-affiliated broker/dealers. Accordingly, action is necessary to ensure the existence of a level playing field for bank-affiliated members, and members operating on bank premises under networking agreements. Further, because the Chubb Letter is a "no-action" position, it may be seen as a guideline, or an interpretive position rather than a rule requirement or regulation designed for investor protection.

Description Of Proposed Rules

The proposed rules apply exclusively to the activities of NASD members that are conducting broker/dealer services on the premises of a financial institution where retail deposits are taken. Although applicable to all customers of such members, the main focus of the proposed rules is to minimize confusion by retail customers. Broker/dealer services are defined as services that include, but are not limited to, conducting an investment banking business, recommending any security, giving investment advice, describing investment vehicles, discussing the merits of any security or type of security with a customer, exercising judgment regarding securities and investment alternatives, accepting customer orders, transmitting orders, or handling customer funds or securities.

The proposed new rules also require that a member, operating on the premises of a financial institution, enter into a written agreement with that institution that describes the conditions and responsibilities of the parties. Conditions for conducting broker/dealer services on the premises of a financial institution include the member's physical location, customer disclosure, compensation, supervisory responsibilities, customer solicitation, and communications with the public.

This written "Networking and Brokerage Affiliate Agreement" required by the proposed rules must stipulate that the broker/dealer will have exclusive responsibility for securities activities conducted through the broker/dealer at its financial institution location. Significantly, the agreement must contain provisions whereby the member agrees to notify the financial institution if any associated person of the member who is also an employee of the financial institution (dual employee) is terminated for cause by the member.

In turn, under the terms and conditions of the written agreement, the financial institution must agree to allow supervisory personnel of the member, and SEC and NASD representatives, to have access to the financial institution's premises where the member conducts broker/dealer activities so they may conduct examinations, and perform any other regulatory responsibilities regarding a member. Further, the financial institution must agree to monitor the unregistered employees of the financial institution to ensure that they perform only clerical- and ministerial-related functions regarding investment-related services of the member.

The written agreement also must stipulate that the financial institution agrees that its unregistered employees will not receive any compensation, cash or non-cash, that is based on the effectiveness or the success of referrals of financial institution customers to the member. Importantly, the written agreement must contain provisions whereby the financial institution agrees that any dual employee whom the member suspends from association with the member, or whom the SEC, the NASD, or any other regulatory or self-regulatory organization bars or suspends from association with the member or any other broker/dealer, will be terminated or suspended, respectively, from any securities activities conducted directly by the financial institution.

To minimize customer confusion, the proposed rules require that the member's broker/dealer services function in a physical location distinct from the area where retail deposits are taken. Member's disclosure obligations require

that, when an account is opened, the member obtain a written acknowledgment from each customer that products purchased or sold by the member:

- are not insured by the Federal Deposit Insurance Corporation;
- are not deposits or obligations of the financial institution;
- are subject to investment risks, including possible loss of principal invested; and
- are not protected by the Securities Investor Protection Corporation (SIPC) as to loss of principal.

The compensation provisions of the proposed rules prohibit the member from making any payments, including referral fees, to individuals employed with the financial institution who are not registered with the member. Broker/dealer services offered by the member must be provided only by persons associated with the member. To comply with the supervisory requirements of Article III, Section 27 of the NASD Rules of Fair Practice, associated persons must be properly supervised by the member in light of the member's particular activities conducted at the financial institution. In this regard, the rules require that the member designate a registered principal to supervise its associated persons at the financial institution location, and the member also must register its location at the financial institution as a branch office.

With regard to the member's communications with the public and the solicitation of customers, the rules stipulate that materials used to promote the member's broker/dealer services are considered materials of the member, and must comply with Article III, Section 35 of the NASD Rules of Fair Practice. Additionally, the rules address how the financial institution may be referenced in advertising and promotional materials, so as to ensure that it is clear that the broker/dealer services are furnished by the member and not the financial institution. Finally, the rules prohibit the member from using confidential financial information kept by the financial institution to solicit customers for its broker/dealer services.

"We are confident that these actions taken by the NASD and other agencies will help establish the standard of conduct for securities firms operating on bank premises and to provide appropriate disclosures to investors in order to avoid confusion, understand investment risks, and address general customer protection issues," said John E. Pinto, NASD Executive Vice President, Regulation. For more information on these proposed rules, contact R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325, or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911. ❑

New Customer Complaint Rules Proposed By NASD

The NASD requests comments on a proposed amendment to Article III of the Rules of Fair Practice (Rules) to require members to report to the NASD the occurrence of specified events and quarterly summary statistics concerning customer complaints. The rule would provide important new regulatory information to help the NASD quickly identify problem members, branch offices, and registered representatives to more aggressively detect and investigate sales-practice violations. If adopted, the proposed rule would significantly parallel comparable provisions of New York Stock Exchange (NYSE) Rule 351.

Comments received by January 31, 1995, will be considered by the NASD in formulating an amendment to the Rules. Before becoming effective, any change must be adopted by the NASD Board and the membership and filed with the SEC for approval.

Reasons For Proposal

Concerned about sales-practice abuses by some registered representatives associated with broker/dealers, the NASD introduced its 1994 regulation program that required each District Office to identify and conduct intense sales practice examinations of main offices, branch offices, and individuals associated with such offices who may pose regulatory concerns, including past misconduct related to abusive sales and trading practices.

In this connection, the NASD developed an interim automated system that draws on the Central Registration Depository (CRD) and NASD internal regulatory systems to profile and analyze all registered representatives. When incorporated with NASD regulatory systems that contain, for example, information about all examinations, District Business Conduct Committee (DBCC) disciplinary actions, customer complaints, and terminations for cause, the NASD can more precisely and expeditiously profile registered representatives who may pose regulatory risks to investors.

This new initiative will complement action taken by the NASD during the past several years to:

- Increase sanctions for sales-practice violations.
- Emphasize improving the hiring and termination practices at member firms.

- Commit additional resources to sales-practice cases.

Member supervisory systems, practices, and procedures also remain the subject of increased scrutiny. Any members employing individuals with a history of compliance or disciplinary problems should now be aware of their heightened standard of supervisory responsibility targeted to address the known past problems of the specific individual.

The proposed amendment to Article III of the Rules will significantly strengthen the existing regulatory and surveillance efforts to address sales-practice abuses by requiring member firms to report the occurrence of certain events and summary statistics concerning customer complaints. Specifically, critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member, is not required by Form U-4 or other NASD filings. Therefore, this information is not available to NASD staff on a routine or timely basis. In view of this, the NASD believes that the members' affirmative obligation to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly aid the NASD's ability to quickly identify problem representatives and to respond appropriately.

The SEC clearly supports the adoption of a customer complaint reporting rule in its *Large Firm Project Report.* That report followed a cooperative effort with the NASD, SEC, and NYSE that examined hiring and retention practices of nine of the largest broker/dealers in the United States. Similarly, the General Accounting Office (GAO) in its report *Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers*, recommended that member firms' customer complaint information be computer captured and used as an additional regulatory tool to identify potential problem firms.

Amendments As Proposed

Subsection (a) of the rule would require member firms to file a report with the NASD when any of 10 different specified events occur. These events vary significantly, ranging from situations where a court, government agency, or self-regulatory organization (SRO) determines a violation of securities laws occurred, to circumstances where a firm receives a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. Subsection (b) of the proposed rule requires each person associated with an NASD member to properly report to the member the existence of any of the 10 conditions covered in Subsection (a).

Subsection (c) of the rule further requires members to report to the NASD statistical and summary information regarding written customer complaints received by the member firm, or relating to the firm or any of its associated persons. Importantly, Subsection (e) of the proposed rule eliminates the possibility of unnecessary regulatory duplication by providing an exemption from filing with the NASD for members already subject to another SRO's similar reporting requirements. NYSE Rule 351 is the only such rule in place.

Currently, Part V of Schedule C to the NASD By-Laws requires members to promptly notify the NASD in writing of any disciplinary action that the member takes against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines exceeding $2,500, or any other significant limitation on activities. As this existing disclosure requirement is incorporated into the proposed rule in Subsection (a)(10), the NASD proposes to rescind this part of Schedule C with the adoption of the new rule. For more information on this issue, see *Notice to Members 94-95* (December 1994). Questions about this subject may be directed to Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911.❑

Members Are Reminded About Open-Order Repricing Requirements That Took Effect September 15

Members are reminded to adjust the price and size of open orders by the amount of any dividend, payment, or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. Beginning September 15, 1994, members were required to comply with new Section 46 of Article III of the NASD Rules of Fair Practice, regardless of whether automated repricing systems are available internally on proprietary systems or from outside vendors.

Currently, the Small Order Execution System (SOES℠) limit-order file will "pend" an order (remove it from the automatic execution mode) when the security trades ex-dividend. Such orders are held and not executed until the member confirms or corrects the price. Orders not reconfirmed by the member are canceled. Effective September 15, 1994, members must reprice pended orders according to the rule.

For more information on order repricing, see *Notice to Members 94-63* (August 1994). Direct any questions about this subject to Dorothy Kennedy, Assistant Director, Nasdaq Market Operations, at (203) 385-6243. ❑

Arbitration

Uniform Filing Fee For Unspecified Arbitration Claims Gets NASD Nod; Needs SEC Approval

The NASD Board approved a National Arbitration Committee proposal to amend Sections 43(e) and 44(e) of the Code of Arbitration (Code) to increase the non-refundable filing fee for industry parties when submitting claims, disputes, or controversies that do not involve, disclose, or specify monetary relief. The proposed rule changes encourage specificity regarding the amount claimed by increasing the non-refundable fee for unspecified claims to $500. The SEC must approve the rule changes before they become effective.

Under present regulations, claim filing fees designate a $500 fee for all industry claims, but a party that does not disclose or specify monetary damages need submit only a nonrefundable $250 fee. Consequently, there has been an increase in circumstances where industry parties do not disclose the monetary amount of their claim, so that their fee is reduced to $250 from $500. ❑

Education

Meeting Dates Set For March

NASD Sponsors Industry Training Seminar; Guidelines For Firm Element Get Underway

In November 1994, the NASD Board formally approved establishment of a structured continuing education requirement for the securities industry. Immediately thereafter, the NASD and five other self-regulatory organizations (SROs) filed rule proposals governing the continuing education program with the SEC. If approved by the SEC, the program will become effective July 1, 1995. Developed by the Securities Industry/Regulatory Council (Council), the training program is aimed at furnishing a continuing education program for securities industry professionals.

In anticipation of the program's enactment, the Council is sponsoring a series of one-day seminars that will introduce members and others to details of the two-part plan. The program would establish a continuing education plan for securities industry professionals that would require uniform training on regulatory matters (Regulatory Element), and ongoing training programs tailored by firms to keep their employees current on job- and product-related specific subjects (Firm Element). Details about the Continuing Education Program Seminar to be held in four different cities on March 7, 9, 14, and 15 are available by calling (202) 728-6900.

Firm Element Guidelines

To help broker/dealers meet their responsibilities under the Firm Element of the Continuing Education Program, a subcommittee of the Council is drafting a guidebook. An early framework of the Firm Element Guidebook focuses on a specific needs analysis that firms must perform to properly develop and implement an annual training plan to educate covered registered persons. To help firms plan, develop, execute, and document training programs pursuant to the Firm Element, the Guidebook identifies several pertinent factors that will help all firms establish their training needs:

- Economic and market conditions, especially as they affect investment products/services offered.
- Existing and planned business initiatives, particularly new services, investment strategies, and their associated risks.
- Legal and regulatory developments.
- Input from the firm's product development, compliance and legal, internal audit, trading, operations, and sales/marketing departments.
- Regulatory reviews, investigations, and disciplinary actions.
- Performance of covered associated persons in the Regulatory Element. (For more information about the Regulatory Element, see *Regulatory and Compliance Alert*, October 1994, page 14.)

Any additional questions about this subject may be directed to Frank J. McAuliffe, Vice President, Membership, at (301) 590-6694; or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911. ❑

Two Principals Suspended; Fines Total $175,000

NASD Fines Citadel Funding For Violations Connected With Highly Leveraged Repo Transactions

The NASD took disciplinary action against The Citadel Funding Corp. (Citadel) of Denver, Colorado, and three of its principals, Robert I. Kessler (Kessler), Karen Haschenburger (Haschenburger), and Michael A.J. Farrell (Farrell) for violations involving highly leveraged repo transactions.

Pursuant to an Offer of Settlement in which the respondents neither admitted nor denied the allegations, Citadel, Haschenburger, and Farrell were fined $150,000, jointly and severally, and Kessler was fined $25,000. In addition, Haschenburger was suspended from association with any NASD member in any capacity for 15 days, as was Farrell for 30 days. Haschenburger and Farrell must requalify by examination.

The NASD found that Citadel, on six separate occasions, conducted a securities business but failed to maintain minimum financial standards required under federal net capital securities laws. Kessler and Haschenburger were found to be responsible for all of these violations, while Farrell was found responsible for one of the net capital violations.

In addition, the NASD determined that in connection with two of the net capital violations, Citadel, acting through Kessler and Haschenburger, failed to send prompt telegraphic notice of the violations to the SEC and the NASD. These net capital deficiencies resulted from the firm's failure to accurately account for certain highly leveraged lending and borrowing transactions it used to finance its operations, and purchases of large amounts of securities by customers of its affiliate, Kessler-Ehrlich Investments, Inc. These borrowing and lending transactions, known as repurchase and reverse repurchase agreements (repos), involved transfer of large amounts of U.S. government and mortgage-backed securities to collateralize approximately $900 million in financing arrangements.

Additionally, the NASD found further violations in that Citadel, acting through Kessler, Haschenburger, and Farrell, maintained materially inaccurate books and records and filed inaccurate specialized financial FOCUS Reports with the NASD. Furthermore, Citadel, Kessler, and Farrell allowed Farrell to represent himself as president of Citadel and to act as a principal of the firm without being properly qualified.

"This NASD enforcement action is indicative of our commitment to focus our regulatory efforts on significant activity in highly leveraged financing arrangements and on the financial integrity of our member firms," says Frank Birgfeld, District Director of the NASD Denver District Office. "Based on the facts and findings in this matter, we believe the interests of the investing public are well served." ❑

Registered Representatives Must Disclose All Material Adverse Interests To Customers

When a registered representative recommends the purchase or sale of a stock to a customer, he or she must not only avoid affirmative misstatements, but must also disclose material adverse facts about which the salesperson is, or should be, aware. This includes disclosure of all so-called material adverse interests, including a self-interest, that could influence the salesperson's recommendation or the customer's decision to purchase or sell the security. (See In re Gilbert A. Zwetsch, Securities Exchange Act Release No. 30092, pages 3-4, December 18, 1991, 50 SEC Docket 812, 815-16.) In two recent NASD disciplinary actions, the NASD found that registered representatives failed to make necessary disclosures of material adverse interests to their customers.

In the first case (In re Michael A. Niebuhr, Complaint No. C02940011, October 19, 1994), an individual acted as both a trader and a registered representative and received free shares of a penny stock from his firm's president. Niebuhr later sold a portion of those shares directly from his personal account to a retail customer without disclosing his material adverse interest. The National Business Conduct Committee affirmed the findings of the District Business Conduct Committee (DBCC) for District 2, that Niebuhr failed to disclose "that he was selling his own . . . . stock at the same time he was recommending that the customer

purchase it; that the stock that would be used to fill the customer's purchase order would be the very same shares that he was selling; and that he was selling shares he had received from the firm's president at no cost."

The NASD found that Niebuhr's lack of disclosure, especially given his zero-cost basis in the stock, to be a serious violation of Article III, Sections 1 and 18 of the NASD Rules of Fair Practice, and affirmed sanctions consisting of a censure, restitution of $4,414, a fine of $15,000, and a 90-day suspension in all capacities. Niebuhr appealed that decision to the SEC.

In the second case, the NASD's DBCC for District 9 imposed sanctions against a former registered representative, Dale E. Barlage. Pursuant to a Letter of Acceptance, Waiver and Consent (AWC), Barlage consented to findings that he recommended and sold stock directly from his personal account to customers without disclosing his material adverse interest in that security, in violation of Article III, Sections 1 and 18 of the NASD Rules of Fair Practice.

In this instance, the NASD specifically alleged that Barlage failed to disclose: (1) that he was selling his personal holdings in a security at the same time he was recommending its purchase to customers; (2) that the customers' purchase orders would be filled using shares crossed directly from his personal account; and (3) that he had acquired his shares from the daughter of the issuer's president at a substantially discounted price. The NASD also alleged that Barlage made several fraudulent misrepresentations and price predictions to customers in connection with those sales.

Without admitting or denying the allegations, Barlage consented to findings and to the imposition of a censure, a fine of $200,000, and a permanent bar in all capacities. ❑

COMPLIANCE SHORT TAKES

Effective November 30, 1994, the SEC approved an NASD proposal requiring members to annotate their affirmative determinations regarding stock availability made in connection with short sales. The rule change amends the Prompt Receipt and Delivery of Securities Interpretation issued by the NASD Board of Governors under Article III, Section 1 of its Rules of Fair Practice. As amended, the Interpretation requires members to annotate their affirmative determinations as to stock availability that are required to be made when effecting short sales for their own proprietary account or the account of a customer.

This rule change will enable the NASD to more effectively examine with affirmative determination requirements. It also makes clear the NASD's long-standing policy that firms cannot rely on daily fax sheets of "borrowable stocks" to satisfy their affirmative determination requirements under this Interpretation. The annotation requirement precludes this practice because members now have to annotate the name of the person contacted and number of shares for each short sale. For more information, see *Notice to Members 94-80* (November 1994). Questions regarding this subject should be directed to NASD Market Surveillance, at (301) 590-6080, or Thomas R. Gira, Assistant General Counsel, at (202) 728-8957.

❑

The SEC approved an NASD rule proposal to require Consolidated Quotation System (CQS) market-maker participation in the Computer Assisted Execution System (CAES) and ITS/CAES effective October 31, 1994. The approval implements these rule changes concerning trading in exchange-listed securities by NASD market makers:

- All CQS market makers in Rule 19c-3 securities must register as ITS/CAES market makers.
- All CQS market makers in non-Rule 19c-3 securities must register as CAES market makers.
- All CQS market makers must input a minimum size of 500 shares in their quotations.
- All CQS market makers must abide by the excess spread parameters for CQS securities in Part V of Schedule D to the NASD By-Laws.
- All CQS market makers may enter principal orders into CAES.

These changes are intended to enhance the quality and liquidity of the markets provided by CQS market makers in exchange-listed securities, improve opportunities for customers to receive automated executions of their orders in the third market, and make the Intermarket Trading System (ITS) a more effective market-link mechanism in exchange-listed securities.

More detail about mandatory market-maker participation in ITS/CAES is in *Notice to Members 94-81* (November 1994). Questions about this rule change should be directed to Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250, or

Thomas R. Gira, Assistant General Counsel, at (202) 728-8957. Questions concerning the *ITS/CAES Market Maker Application Agreement* should be directed to Market Data Services at (301) 948-6162.

❑

Effective November 25, 1994, the Board of Governors of the Federal Reserve System (Fed) adopted several amendments to Regulation T (credit by broker/dealers) regarding payment periods for government securities purchases and transactions. One amendment deletes references to a specific number of days in which customers must meet initial margin calls or make full cash payment for securities purchases; instead the amendment establishes that the "payment period" will be two business days beyond "the standard securities settlement cycle in the United States" as defined in SEC Rule 15c6-1.

Presently, standard settlement is five days after trade date and Regulation T requirements must be met in seven business days. There is no change until June 1, 1995, when SEC Rule 15c6-1 becomes effective. (Recent SEC action changed the effective date to June 5.) Then, the standard settlement period will be three business days (T+3) and payments required by Regulation T must be made in five business days. Broker/dealers are required to liquidate customer purchases if they have not received payment within the required time period. Currently, amounts of $500 or less are exempt from this requirement. The amendments to Regulation T increase this de minimis amount to $1,000.

Under certain circumstances, broker/dealers can obtain a time extension for a customer who has not made full cash payment or met an initial margin call within the payment period. Regulation T currently permits a broker/dealer to request these extensions from any self-regulatory organization. As amended, Regulation T requires that these extensions be granted only by a broker/dealer's designated examining authority.

Among the changes to Regulation T are technical amendments to the language concerning cash accounts. These changes ensure that the time periods in which extensions must be obtained and when the "90-day freeze" may be lifted are consistent for certain transactions in which settlement exceeds the standard settlement period.

The changes to Regulation T include two amendments that affect transactions in government securities that:

- Exempt from Regulation T broker/dealers registered with the SEC solely as government securities broker/dealers (Section 15C broker/dealers).
- Create a new account for customers of general securities broker/dealers in which transactions in government securities may be effected and that is exempt from the other provisions of Regulation T.

For a detailed description of these amendments, see *Notices to Members 94-53* (July 1994) and *94-89* (November 1994), and the October 25, 1994, *Federal Register*, which contains the Federal Reserve's release adopting these changes. Questions about this subject may be directed to Derick Black, NASD Compliance Department, at (202) 728-8225.

❑

The SEC recently approved proposed rules requiring broker/dealers to disclose to investors any payments they receive for order flow, including information about internalization of order flow, and affiliated practices. Effective April 3, 1995, members will have to disclose to investors on their transaction confirmation receipts if the member received payment for the order flow of a security transaction. Comments on the proposal were due to the SEC by December 15. (See Release No. 34-34903 in the November 2, 1994, *Federal Register.*)

❑

Effective November 1, 1994, transaction reports submitted to the NASD on Form T should be sent to the NASD Market Surveillance Department, 9513 Key West Avenue, Rockville, MD 20850-3389. Previously, these reports were sent to Nasdaq Market Operations in Trumbull, CT. This procedural change was filed for immediate effectiveness with the SEC on October 3, 1994, and is being incorporated into various trade-reporting rules.

❑

For the first time, the North American Securities Administration Association (NASAA) published proposed revisions to Form U-4 and Form U-5 for public comment. The forms are being revised for implementation scheduled to coincide with the start up of the redesigned Central Registration Depository (CRD). See *Notice to Members 94-74* (September 1994).

❑

Member firms that expect to take internal disciplinary action against employees that also are subject to NASD disciplinary procedures should follow the NASD policy on suspensions to avoid conflicting suspension dates. An NASD-imposed suspension following a disciplinary review process is not effective until set by the NASD president and published in NASD *Notices to Members*, usually two

months after the action becomes final (see table below). Respondents, attorneys, or member firms may not negotiate suspension dates.

If a suspension is imposed as a sanction, it begins at the opening of business on the Monday after the 15th of the month in which it is published in NASD *Notices to Members*. If the suspension is stayed pending an appeal to the SEC, the disciplinary action is so noted.

Disciplinary Action	When Final
Letter of Acceptance, Waiver, and Consent	After approval by NBCC and issuance by DBCC
Offer of Settlement	After approval by NBCC and issuance by DBCC
DBCC Decision	45 days from issuance, unless appealed
NBCC Decision	30 days from issuance, unless appealed

❑

In *Notice to Members 94-80*, the NASD announced that the SEC approved an NASD rule change that amends the Prompt Receipt and Delivery of Securities Interpretation issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice. Specifically, the Interpretation, as amended, requires members to annotate their affirmative determinations as to stock availability, which is required when effecting short sales for their own proprietary account or the account of a customer. This rule change, scheduled to be effective last November 30, was postponed to January 9, 1995.

❑

On October 28, 1994, the SEC approved an NASD proposal to include quotations from national securities exchanges in the calculation of excess spread parameters for CQS securities. Effective November 21, 1994, the maximum allowable spread for CQS securities is 125 percent of the average of the three narrowest market-maker spreads, and the average spread calculation will include quotations from national securities exchanges. Under earlier rules, market makers in CQS securities could not enter quotations in CQS securities that exceeded the NASD parameters for maximum allowable spreads. At that time, the maximum spread was 125 percent of the average of the three narrowest spreads in each security, with the limitation that the maximum allowable spread could never be less than one quarter of a point. That calculation method only factored in quotations disseminated by CQS market makers, without considering exchange-disseminated quotations. The NASD proposed this change so that the excess spread parameters for CQS securities would better reflect, and relate to, quotations by all market makers in such securities. Call Glen Shipway, Nasdaq Market Operations, at (203) 385-6250, if you have questions about this new procedure.

❑

On November 9, 1994, the SEC approved amendments to MSRB Rule G-14, regarding reports of sales or purchases, and procedures for reporting inter-dealer transactions. The rule change should increase transparency in the municipal securities market through collecting and disseminating aggregate market data activity to public investors concerning price and volume information on such transactions.

NASD Disciplinary Actions

In August, September, and October 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

August Actions

Wedbush Morgan Securities, Inc. (Los Angeles, California), Rene R. St. Pierre (Registered Representative, Meadow Valley, California), and **Richard Anthony Lanni (Registered Principal, Los Angeles, California).** The firm was fined $15,000 and Lanni was fined $10,000. In addition, the firm must submit a letter to the NASD describing steps it has taken to detect and prevent further violations. St. Pierre was fined $25,000 and suspended from association with any NASD member in any capacity for 30 days. The National Business Conduct Committee (NBCC) imposed the sanctions following review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that St. Pierre exercised effective control over the account of public customers and engaged in excessive transactions, commonly referred to as "churning," in the account. These transactions were unsuitable for the customers in view of the size and frequency of the recommended transactions, and the customers' financial situation and needs. In connection with such activities, the firm, acting through Lanni, failed to take the appropriate steps to enforce the firm's written supervisory procedures in the firm's Reno office to prevent the violations alleged, and to otherwise supervise St. Pierre.

September Actions

Reynaldo Pampo Asuncion (Registered Representative, Pittsburg, California) was fined $5,000, barred from association with any NASD member in any capacity, and required to pay $2,587.31 in restitution to a member firm. The sanctions were based on findings that Asuncion received from two public customers funds totaling $2,587.31 intended for the purchase of insurance but, instead, misappropriated and converted the funds to his own use and benefit.

Donald Marquis Bickerstaff (Registered Representative, San Anselmo, California) was fined $50,000 and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) affirmed the action following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bickerstaff forged a customer's signature on insurance policy change and rein-

statement forms. In addition, Bickerstaff prepared and provided to a customer a computer illustration that falsely represented how a single $85,000 premium would fund the customer's $400,000 variable appreciable life policy. Bickerstaff has appealed this action to the Securities and Exchange Commission (SEC) and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Timothy Lane Burkes (Registered Representative, Pleasanton, California) was fined $16,200 and suspended from association with any NASD member in any capacity for 180 days. A United States Court of Appeals affirmed the sanctions following review of an April 1993 SEC decision. The sanctions were based on findings that, to make his 1989 sales quota, Burkes caused $17,514.62 to be credited improperly to his commission account. As a result, Burkes received credit for funds to which he was not entitled.

Dolphin Private Offerings, Inc. (South San Francisco, California), Lee James Johnson (Registered Principal, Pacifica, California), Richard Heneberry Delaney (Registered Principal, San Francisco, California), and **Ernest Vandever (Registered Principal, San Carlos, California)** submitted an Offer of Settlement pursuant to which the firm was fined $5,000 and suspended from NASD membership for 10 business days. Johnson, Delaney, and Vandever were each fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Johnson, Delaney, and Vandever, participated as underwriter in the sale of two best-efforts part or none offerings and received investor funds without depositing them into a bank escrow account. The findings also stated that the firm, acting through Johnson, Delaney, and Vandever, represented to investors that their funds would be returned if a minimum sales level was not reached when, in fact, the minimum was reached through an alleged non-bona-fide sale to Delaney. In addition, the NASD found that the firm, acting through Johnson, failed to file FOCUS Part IIA reports on a timely basis.

Chester Elwood Dwyer (Registered Representative, San Jose, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $61,033.54 in restitution to a member firm. Without admitting or denying the allegations, Dwyer consented to the described sanctions and to the entry of findings that he booked fictitious securities entries into his securities account at a member firm and sold the positions for $61,033.54.

Global Strategies Group, Inc. (San Francisco, California), Jon Francis Williams (Registered Principal, San Francisco, California), and **Kerry H. Spizel (Registered Representative**, San Francisco, California). The firm and Williams were fined $13,500, jointly and severally. Spizel was fined $10,000 and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that the firm, acting through Williams and Spizel, engaged in securities transactions with public customers but failed to use reasonable diligence to ascertain the best interdealer market for the security under the prevailing market condition. In addition, the firm, acting through Williams, failed to make and keep order tickets reflecting the name of each dealer contacted and the quotations received to determine the best interdealer market. Moreover, Spizel acted, and the firm and Williams permitted him to act, without registration with the NASD as a representative. Furthermore, the firm, acting through Williams, effected principal transactions in non-Nasdaq securities, but failed to report price and volume information through the non-Nasdaq reporting system.

Roger Williams Graham (Registered Representative, Mililani, Hawaii) was fined $170,000, barred from association with any NASD member in any capacity, and ordered to pay $100,269 in restitution to a member firm. The sanctions were based on findings that Graham received from a public customer three checks totaling $100,269 for the purchase of securities and converted the funds to his own use and benefit. In addition, Graham provided the same customer with a fictitious account statement reflecting a purchase of securities that were valued at $106,096.89. Graham also failed to respond to NASD requests for information.

Michael Richard Jacks (Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he was fined $28,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Jacks consented to the described sanctions and to the entry of findings that he effected securities transactions in the account of a public customer without the customer's prior knowledge and consent. The findings also stated that Jacks agreed with customers to make up losses suffered in their accounts without the knowledge of his member firm.

Sharon Marie Smith (Registered Representative, San Francisco, California) was fined $26,000, barred from association with any NASD member in any capacity, and ordered to pay $1,000 in restitution to a member firm. The sanctions were based on findings that Smith received $13,000 from a public customer to purchase stock but converted $1,000 of the proceeds to her own use and benefit. In addition, Smith failed to respond to NASD requests for information.

Steve C. Wang (Registered Representative, San Francisco, California) was fined $2,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination before becoming associated with any NASD member following the suspension. The sanctions were based on findings that Wang failed to respond to NASD requests for information in a timely manner.

October Actions

None

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)

August Actions

Joseph P. Christian (Registered Principal, Stayton, Oregon) was fined $70,000, barred from association with any NASD member in any capacity, and ordered to disgorge ill-gotten gains in the amount of $530,591. The sanctions were based on findings that Christian offered and sold to public customers shares of unregistered stock. As part of the unregistered distribution, Christian used two nominee accounts as repositories for shares of the stock that his member firm acquired from affiliates of the company and knew, or should have known, that these shares were not accurately reflected on the firm's books and records as part of the firm's inventory. Furthermore, Christian failed to establish, implement, and enforce reasonable supervisory procedures and measures necessary to detect and prevent the above violations and failed to respond to NASD requests for information.

Finley Henderson Martell (Registered Principal, Irvine, California) submitted an Offer of Settlement pursuant to which he was fined $2,500, suspended from association with any NASD member as a direct participation programs principal for six months, and ordered to requalify by examination in any principal capacity should he seek to become associated as such. Without admitting or denying the allegations, Martell consented to the described sanctions and to the entry of findings that he permitted an individual to function as a principal and actively engage in the management of a member firm's securities business without having registered as a principal or having passed a qualification examination for principals.

September Actions

None

October Actions

Allen Dewayne Hawkins (Registered Representative, Rancho Palos Verdes, California) was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC imposed the sanctions following review of a Los Angeles DBCC decision. The sanctions were based on findings that Hawkins executed unauthorized transactions in the accounts of public customers. In addition, Hawkins used the proceeds of an authorized sale of stock to purchase another security when he was instructed to distribute the funds to the customers.

David J. Nava (Associated Person, La Jolla, California) was fined $10,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Nava submitted to two member firms and to the NASD Uniform Applications for Securities Industry Registration (Form U-4) wherein he gave a false response to a question regarding his disciplinary history.

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

August Actions

Michael Scott Azrak (Registered Representative, Portland, Oregon) was fined $40,000 and barred from association with any NASD member in any capacity. In addition, Azrak must pay $1,500 in restitution to a public customer. The sanctions were based on findings that Azrak received from two public customers checks totaling $2,500 for investment purposes and failed to remit the funds for their intended purpose or to return the funds to the customers. In addition, Azrak failed to respond to an NASD request for information.

James Clayton Bain, Jr. (Registered Representative, Montesano, Washington) submitted an Offer of Settlement pursuant to which he was fined $62,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bain consented to the described sanctions and to the entry of findings that he received from a public customer a cashier's check in the amount of $3,375 for investment purposes. According to the findings, Bain endorsed the check, deposited it into his personal bank account, and used the funds for his personal benefit. The findings also stated that Bain, while acting as the agent for the guardian of an individual, redeemed $9,000 in seven transactions from the individual's money market account, deposited the proceeds into an account for himself, and used the funds for his benefit.

Joan Alisa Carter (Registered Representative, Murray, Utah) was fined $60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carter submitted to her member firm five fictitious applications for the purchase of securities products. In addition, Carter submitted to her member firm an application for the purchase of a securities product without a customer's prior authorization and consent and forged the customer's signature to the application. Carter also failed to respond to NASD requests for information.

Cary Daniels Clark (Registered Representative, Englewood, Colorado) was barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Clark made fraudulent misrepresentations to public customers to induce them to purchase securities and, thereafter, made improper use of the customers' funds totaling $176,000.

First Inland Securities, Inc. (Spokane, Washington) and Glenn Lamoyne Ottmar (Registered Representative, Spokane, Washington) were fined $5,000, jointly and severally, and required to pay, jointly and severally, restitution of $29,393.70 to public customers. In addition, Ottmar was required to requalify as a general securities principal. The SEC affirmed the sanctions following appeal of an April 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Ottmar, effected 14 sales of common stock at unfair prices, taking into consideration all relevant factors in that sales resulted in markups from 14 to 57 percent over the firm's contemporaneous cost.

Joseph Steven Giordano, Jr. (Registered Representative, Seattle, Washington) 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 five business days. Without admitting or denying the allegations, Giordano consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Interpretation with respect to Free-Riding and Withholding, Giordano financed the purchase of common stock in initial public

offerings that immediately traded at a premium in the secondary market. According to the findings, Giordano personally benefited from these transactions by retaining about $5,542 of the profits generated from these transactions.

Traci Lynn Gramenz (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which she was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gramenz consented to the described sanctions and to the entry of findings that she solicited a customer to purchase shares of securities and instructed the customer to wire to her member firm's clearing firm $6,500. According to the findings, Gramenz represented to the customer that the funds would be credited to the account of another customer of the firm and that the shares would be transferred into the appropriate account upon receipt of payment. Contrary to the representations made to the customer, the NASD found that Gramenz failed to transfer the shares to the customer's account. The findings also stated that Gramenz failed to respond to NASD requests for information.

Robert Holbert (Registered Principal, Phoenix, Arizona) and **Cary DePriest (Registered Principal, Phoenix, Arizona)**. Holbert was fined $25,000, jointly and severally, with a former member firm, and barred from association with any NASD member in any capacity. DePriest was fined $20,000, jointly and severally, with a former member firm, and jointly and severally with the firm required to pay $42,446.75 in restitution to customers. In addition, DePriest is required to requalify by examination as a general securities principal. The NBCC imposed the sanctions following review of a Denver DBCC decision. The sanctions were based on findings that a former member firm, acting through Holbert, conducted a securities business while failing to maintain its minimum required net capital, failed to maintain accurate books and records, filed inaccurate Focus Part I reports, and failed to respond to NASD requests for information.

In addition, the firm, acting through DePriest, effected transactions in common stock with public customers at prices that were not reasonably related to the prevailing market price for these securities and failed to disclose to customers the amount of markup, markdown, or similar remuneration received in connection with principal transactions. Moreover, the firm, acting through DePriest, purchased restricted securities from four insider customers while failing to comply with the provisions of SEC Rule 144 pursuant to the Securities Act of 1933 and, thereafter, resold these securities to customers in simultaneous riskless principal transactions.

Michael Ben Lavigne (Registered Principal, Spokane, Washington) was fined $10,000 and barred from association with any NASD member in any principal capacity. The SEC affirmed the sanctions following appeal of a July 1993 NBCC decision. The sanctions were based on findings that Lavigne permitted a barred individual to remain associated with a member firm. In addition, Lavigne failed to implement written or unwritten procedures to ensure that the individual did not effect any transaction directly or indirectly in customer accounts during his association with the firm. Moreover, Lavigne failed to supervise the transactions effected by the individual in customer accounts through the firm.

G. Earl Lloyd, II (Registered Representative, Sandy, Utah) submitted an Offer of Settlement pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. In addition, Lloyd must pay $26,994 in restitution to customers. Without admitting or denying the allegation, Lloyd consented to the described sanctions and to the entry of findings that he induced investors to purchase securities by making material misrepresentations and omitting to state material facts necessary to prevent other statements from being misleading. The findings also stated that Lloyd made unsuitable recommendations to public customers, failed to respond to NASD requests for information, and neglected to provide to his member firm prompt written notice of his involvement in outside business activities. Moreover, the NASD determined that Lloyd failed to amend his Uniform Application for Securities Industry Registration (Form U-4) to reflect current information.

Sabrina Lynn Martinez (Registered Representative, Englewood, Colorado) submitted an Offer of Settlement pursuant to which she was suspended from association with any NASD member in any capacity for one year and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Martinez consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prior written notice of these transactions to her member firm.

Alan R. Michael (Registered Representative, Carnation, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000. Without admitting or denying the allegations, Michael consented to the described sanction and to the entry of findings that he accepted compensation totaling $7,000 as a result of business activities outside the scope of his relationship with his member firm without providing prompt written notice to his member firm of such activity.

John Gordon Nevers (Registered Principal, Scottsdale, Arizona) was fined $2,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of a Denver DBCC decision. The sanctions were based on findings that Nevers failed to respond truthfully to an NASD request for information relating to securities purchased by a public customer whose checks were allegedly deposited into Never's personal bank account.

Lee F. Pioske (Registered Principal, Safford, Arizona) and Amy L. Lofgreen (Registered Representative, Mesa, Arizona). Pioske was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $181,000 in restitution to customers. Lofgreen was barred from association with any NASD member in any capacity. The sanctions were based on findings that Pioske provided false and misleading information to public customers for the purpose of obtaining and misusing their funds. By inducing investors to rely on this information, Pioske obtained funds aggregating about $228,000 and, thereafter, used the funds for his own use and benefit. In addition, Pioske and Lofgreen failed to respond to NASD requests for information.

John W. Sutton (Registered Representative, Denver, Colorado) 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 one year or until the fine is paid, whichever is longer. Without admitting or denying the allegations, Sutton consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in a customer's account, failed to enter a "stop loss" order for the customer, and guaranteed the customer against loss. The NASD also found that Sutton converted the customer's cash account to a margin account by forging the customer's signature on a margin account agreement.

September Actions

Stephen House Herron (Registered Principal, Bellevue, Washington) was fined $120,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Herron ordered stock for the account of a company he owned but he never paid for the transaction. As a result, his member firm lost $139,582.50 when it sold out the position. Herron also failed to respond to NASD requests for information.

Klaus Langheinrich (Registered Representative, Murray, Utah) was fined $10,000. The SEC affirmed the sanction following appeal of a November 1993 NBCC decision. The sanction was based on findings that Langheinrich accepted four checks totaling $27,000 from public customers for the purchase of securities without providing prior written notification to his member firm of these private securities transactions. Langheinrich has filed a Petition for Review with the United States Court of Appeals for the Tenth Circuit.

Michael Gregory Sweeney (Registered Representative, Spokane, Washington) was fined $40,000. The sanction was based on findings that Sweeney executed numerous securities transactions in the accounts of two public customers without their prior knowledge or consent. These transactions were effected exercising discretion granted pursuant to oral authority without obtaining prior written discretionary authorization from the customers and without obtaining written acceptance of such discretionary accounts by his member firm. In addition, Sweeney effected securities transactions in one of the aforementioned accounts without having reasonable grounds for believing that such transactions were suitable for the customer.

Kelly A. Whitsett (Associated Person, Denver, Colorado) submitted an Offer of Settlement pursuant to which she was fined $2,500 and barred from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Whitsett consented to the described sanctions and to the entry of findings that she was observed away from her testing station in possession of materials pertaining to the Series 27 examination during the period that the examination was in progress.

October Actions

Bonnie Jean Baker (Registered Representative, Bellevue, Washington) was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Baker failed to amend her Uniform Application for Securities Industry Registration or Transfer (Form U-4) to disclose a criminal conviction and failed to disclose this information on a Form U-4 when applying for association with another member firm.

David Blake Bansmer (Registered Representative, Spokane, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $75,000, barred from association with any NASD member in any capacity, and required to pay $193,000 in restitution to a customer. Without admitting or denying the allegations, Bansmer consented to the described sanctions and to the entry of findings that he received from a public customer $50,000 to fund a joint trading account or otherwise to purchase securities on his behalf. According to the findings, the funds were used by Bansmer and the $50,000 has not been returned to the customer.

The findings also stated that Bansmer received $143,000 from the same customer and represented that in return for the use of these funds he would provide the customer with one-half the trading profits in the account ($10,000) and that the $143,000 would be returned. The NASD determined that the $143,000 was used by Bansmer to repay a loan he had taken out with another individual and was never returned to the customer. In addition, the NASD determined that Bansmer opened a securities account at another member firm but failed to notify his firm in writing of his association with the other firm.

Franklin-Lord, Inc. (Scottsdale, Arizona) and John E. Cathcart (Registered Principal, Scottsdale, Arizona). The firm was fined $20,000 and suspended from NASD membership for five days. Cathcart was fined $20,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination as a general securities representative and a general securities principal. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a Denver District Business Conduct Committee decision. The sanctions were based on findings that the firm, acting through Cathcart, filed seven inaccurate Uniform Applications for Broker Dealer Registration (Form BD) with the NASD and failed to abide with the terms of its restriction agreement with the NASD. In addition, the firm, acting through Cathcart, effected municipal securities transactions prior to paying the required registration fee to the MSRB and without having a qualified municipal securities principal. This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Stuart J.D. Mills (Registered Principal, Englewood, Colorado) was fined $10,000 and suspended from association with any NASD member in any capacity for one year. In addition, Mills must requalify by examination before acting in any capacity with any member firm. The SEC affirmed the sanctions following appeal of a May 1993 NBCC decision. The sanctions were based on findings that Mills either solicited, or otherwise caused customer orders to be received and processed for purchases of securities, at unfair and unreasonable prices with gross commissions

ranging from 23.08 to 40 percent of the total price paid by customers. Moreover, Mills failed to disclose to his customers that these prices were unfair and unreasonable.

Jeffrey Michael Pieper (Registered Representative, Tigard, Oregon) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pieper consented to the described sanctions and to the entry of findings that he signed a customer's name on a company proceeds check made payable to the customer in the amount of $2,026.56 and deposited the check into his own bank account.

Ratliff Securities, Inc. (Phoenix, Arizona) and John D. Ratliff, Sr., (Registered Principal, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which they were fined $5,000, jointly and severally, and Ratliff was required to requalify by examination as a direct participation programs principal or cease to function in that capacity until he successfully requalifies. In addition, the firm was suspended from NASD membership and Ratliff was suspended from association with any NASD member in any capacity until they pay the aforementioned fine. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Ratliff, disbursed the proceeds received from a contingency offering before meeting the stated contingency.

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

August Actions

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

Thomas Michael Benz (Associated Person, Dubuque, Iowa) was barred from association with any NASD member in any capacity. The sanction was based on findings that Benz received assistance while taking the Series 7 examination by bringing and/or using notes regarding the subject matter of the examination with him into the examination room.

James Phillip Braseth, II (Registered Representative, St. Louis Park, Minnesota) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Braseth failed to respond to NASD requests for information concerning a public customer. In addition, Braseth guaranteed the same customer against any loss incurred in connection with purchases of shares of a common stock.

Jeffrey D. Field (Registered Principal, Lafayette, California) was fined $30,000, jointly and severally, with other respondents and fined an additional $5,000. The SEC affirmed the sanctions following appeal of a July 1992 NBCC decision. The sanctions were based on findings that a member firm, acting through Field, effected principal securities transactions with public customers at prices that were not fair and reasonable with markups ranging from 5 to 50 percent.

Ebrima S.M. Jeng (Registered Representative, Banjul, Gambia, West Africa) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jeng failed to respond to NASD requests for information concerning his termination from a member firm.

Michael Joseph Schlueter (Registered Representative, Rogersville, Missouri) was fined $5,000 and suspended from association with any NASD member in any capacity for 90 days. The NBCC imposed the sanctions following review of a Kansas City DBCC decision. The sanctions were based on findings that, without the knowledge or consent of a public customer, Schlueter falsified a money market statement of another customer by changing the name and address to that of the first customer. Schlueter then sent the falsified statement to the first customer to hide losses sustained in the account.

Gary Dean Taylor (Registered Representative, Estherville, Iowa) 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, Taylor consented to the described sanctions and to the entry of findings that he submitted phony invoices totaling $1,497.60 to his member firm for reimbursement on the rental of a machine and converted $867.44 to his own use and benefit.

September Actions

Rick D. Althoff (Registered Representative, Yankton, South Dakota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Althoff consented to the described sanctions and to the entry of findings that he signed the name of a public customer to checks totaling $828.29 and endorsed the checks to an account that was used to fund three disability policies without the customer's knowledge or consent. The NASD also found that Althoff signed customer names to numerous insurance documents.

Robert Joseph Suellentrop (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $42,500, suspended from association with any NASD member in any capacity for five days, and required to pay $25,000 in restitution to public customers. Without admitting or denying the allegations, Suellentrop consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, he sold shares of a "hot" issue to restricted persons. Suellentrop's suspension commenced September 12, 1994.

October Actions

Mark Allen Elliott (Registered Representative, Independence, Missouri) was fined $7,500 and suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of a June 1993 NBCC decision. The sanctions were based on findings that Elliott failed to respond to NASD requests for information concerning a customer complaint.

Edward C. Farni, II (Registered Principal, Excelsior, Minnesota) 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. Without admitting or denying the allegations, Farni consented to the described sanctions and to the entry of findings that he made written representations to a public customer concerning the purchase of securities in which he made price predictions, without having a reasonable basis.

Shearson Lehman Brothers, Inc. n/k/a 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 to supervise adequately and properly an account executive of the firm.

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

August Actions

Gary E. Arbogast (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Arbogast consented to the described sanctions and to the entry of findings that he misused customer funds in the amount of $1,000 intended for investment in a life insurance policy and failed to apply the funds as required or return the funds to the public customer. Furthermore, the NASD found that Arbogast failed to exercise reasonable and proper supervision over a registered representative and failed and neglected to establish, maintain, and enforce proper supervisory procedures governing the handling of public customer funds. In addition, the NASD determined that Arbogast accepted two $10,000 cash payments from a public customer to be invested in variable appreciable life insurance policies and failed to file the required currency reports for the receipt of cash in the amount of $10,000 or more from a customer.

Raymond B. Cahoon (Registered Representative, Tuscumbia, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $125,000, barred from association with any NASD member in any capacity, and ordered to demonstrate that full restitution of at least $158,000 has been made to the appropriate parties. Without admitting or denying the allegations, Cahoon consented to the described sanctions and to the entry of findings that he signed a public customer's name to documents in connection with the handling of her account without the customer's knowledge or consent. Furthermore, the NASD found that Cahoon converted about $158,391.16 to his own use and benefit by causing checks to be drawn from annuities owned by the same customer and depositing them into his personal checking account, without the customer's knowledge or consent. In addition, the findings stated that Cahoon failed to respond to NASD requests for information.

Kenneth R. Dew, Jr. (Registered Representative, Jackson, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $12,500 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Dew consented to the described sanctions and to the entry of findings that he signed the names of two public customers to a margin agreement in an attempt to accommodate the customers, but without their knowledge or consent.

In addition, the NASD found that Dew engaged in margin purchase transactions in the joint account of the same customers without having reasonable grounds for believing that this purchase was suitable for the customers on the basis of their financial situations, investment objectives, and needs.

James R. Hill (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000, suspended from association with any NASD member in any capacity for one month, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that he executed a discretionary sale transaction in the account of a public customer without the customer's knowledge or consent. The findings also stated that Hill executed a trade in the same account on the order of the customer's husband, without obtaining a third party power of attorney to take such directions.

Furthermore, the NASD found that Hill sent correspondence to a public customer wherein he proposed crediting the customer's account in connection with losses incurred. In addition, the NASD determined that Hill sent correspondence to the same customer that led the customer to believe that he would be repaid for trading losses of $1,476, thereby sharing in the losses in the account. Furthermore, this correspondence was not approved by a principal of Hill's member firm. The findings further stated that Hill failed to respond in a timely manner to NASD requests for information.

Mark R. Loft (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $17,500 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Loft consented to the described sanctions and to the entry of findings that, in an attempt to circumvent sales charges, he falsified public customers' birth dates on new account cards. The findings also stated that Loft knowingly provided false and misleading information in correspondence sent to a public customer regarding the current annualized yield on the customer's portfolio. Furthermore, the NASD found that Loft failed to obtain prior approval from his member firm before transmitting the written information to the public customer.

In addition, the NASD determined that Loft recommended and engaged in purchase and sale transactions in the

account of the aforementioned customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation, investment objectives, and needs. The findings further stated that Loft exercised discretion in the same customer's account without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Sherry Lynn Parman (Registered Representative, Greenville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Parman consented to the described sanctions and the entry of findings that she made material misrepresentations orally and through newspaper advertisements concerning the rate of return on variable annuity products to public customers to induce them to invest in variable annuities. The findings also stated that Parman failed and neglected to include in the advertisements necessary data, including the name of the member and failed to obtain prior written approval from her member firm for the placement of the advertisements.

Furthermore, the NASD found that Parman obtained cashier's checks totaling $4,612.50 and deposited such checks into public customers' accounts, thereby sharing in their accounts. In addition, the NASD determined that Parman forged the public customers' signatures on handwritten notes requesting that cashier's checks purchased by her be deposited into the customers' annuity accounts.

Kevin W. Roberts (Registered Principal, Biloxi, Mississippi) was fined $15,000 and suspended from association with any NASD member in any capacity for one month. The sanctions were based on findings that Roberts executed unauthorized transactions in the account of a public customer without the customer's knowledge or consent. In addition, Roberts failed and neglected to reflect the aforementioned transactions on the books and records of his member firm.

Harold S. Simpson, Sr., (Registered Representative, Jackson, Tennessee) 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 three weeks. Without admitting or denying the allegations, Simpson consented to the described sanctions and to the entry of findings that he deposited a $25,575 check into the account of a public customer to compensate for losses that were incurred in the customer's account. The NASD also found that Simpson sent correspondence to the same customer on the letterhead of his member firm without having obtained prior approval of the correspondence by a principal of the firm. In addition, the findings stated that Simpson received a verbal complaint from the same customer but he failed and neglected to refer the complaint to his branch office manager.

Sherwood A. Taylor (Registered Representative, Norman, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $300,000, barred from association with any NASD member in any capacity, and required to pay $258,000 in restitution to his member firm. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Taylor obtained a check that was disbursed from the joint account of public customers, endorsed the customers' names and delivered the check to another individual as a loan, thereby converting $37,500 to his own use and benefit without the customers' knowledge or consent. Furthermore, the NASD found that Taylor prepared a misleading account asset statement for public customers to induce them into believing that he had purchased a collateralized equipment trust on their behalf.

In addition, the NASD determined that Taylor recommended and engaged in purchase and sale transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. The findings further stated that Taylor made payments disbursed from his personal funds, to a public customer to reimburse the customer for losses incurred in her accounts.

Joey Wade Whiteside (Registered Representative, McAlester, Oklahoma) submitted an Offer of Settlement pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and ordered to pay $300,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Whiteside consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers without providing prior written notice to his member firm. The NASD also found that Whiteside failed to make complete and timely payments to investors in accordance with the terms of promissory notes he issued thereby misappropriating the customers' funds. In addition, the findings stated that Whiteside failed to respond adequately to NASD requests for information.

September Actions

Hamid R. Daneshy (Associated Person, Oklahoma City, Oklahoma) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Daneshy consented to the described sanction and to the entry of findings that he violated testing procedures by bringing written materials with him into the testing area for the purpose of assisting him on the examination.

Gary L. Fogleman (Registered Representative, Knoxville, Tennessee) was fined $30,000, barred from association with any NASD member in any capacity, and required to pay $4,200 in restitution to his member firm. The sanctions were based on findings that Fogleman 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. Fogleman also misrepresented to the same customer the net equity value of the customer's account and failed to respond to NASD requests for information.

Robert B. Francis (Registered Representative, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which he was fined $12,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Francis consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior written notice to and approval from his member firm. In addition, Francis failed to respond timely to NASD requests for information.

Carl L. Lewallen (Associated Person, Corbin, Kentucky) submitted an Offer of Settlement pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $941,556 in restitution. Without admitting or denying the allegations, Lewallen consented to the described sanctions and to the entry of findings that he received checks from public customers totaling $941,556 for the purchase of variable insurance products, money market certificates, and a variable annuity product. The NASD also determined that Lewallen converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, the NASD found that Lewallen failed to respond to NASD requests for information.

Gregory E. Opara-nadi (Registered Representative, Jackson, Mississippi) was fined $22,500, barred from association with any NASD member in any capacity, and required to pay $6,458 in restitution to his former member firm. The sanctions were based on findings that Opara-nadi received a $4,435.92 check made payable to the beneficiary of a public customer. The check was intended for the purchase of a life insurance policy but Opara-nadi converted the funds to his own use and benefit without the customer's knowledge or consent.

Richard D. Whitman (Registered Representative, Knoxville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Whitman consented to the described sanctions and to the entry of findings that he executed three unauthorized transactions in the account of public customers without their knowledge or consent. In addition, the findings stated that Whitman exercised discretion in the accounts of public customers without obtaining prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm.

October Actions

William H. Cantrell (Registered Representative, Shreveport, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cantrell consented to the described sanctions and to the entry of findings that he offered to sell unregistered securities in violation of Section 5 of the Securities Act of 1933. In addition, the findings stated that Cantrell engaged in private securities transactions without prior written notice to and approval from his member firm. The NASD also determined that Cantrell, while registered with a member firm, failed to notify the firm of his status as president of another company.

Devon Resources Financial Corporation (Tulsa, Oklahoma), Catherine W. Yox (Registered Principal, Tulsa, Oklahoma), W. Jeffrey A. Haver (Registered Representative, Ontario, Canada), and James M.C. Haver (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which they were fined $15,000, jointly and severally. In addition, the firm agrees to engage a public accounting firm acceptable to the NASD to perform an analysis of the firm's operational and accounting procedures and agrees to institute the recommendations in the audit within 60 days of its issuance. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Yox, W. Haver, and J. Haver, collected $228,455.81 from 16 subscribers in connection with a joint venture offer, without issuing an adequate private placement memorandum or similar disclosure document.

The NASD also found that the firm, acting through Yox, failed to have an annual audit performed by an independent accountant. Furthermore, the findings stated that the firm, acting through Yox and J. Haver, engaged in a securities business while failing to maintain its required minimum net capital. In addition, the NASD found that the firm, acting through Yox, failed to compute accurately its net capital.

Thomas J. Gavin (Registered Representative, Orange Beach, Alabama) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gavin shared in the losses in the account of public customers when he submitted a personal check to the branch office cashier and caused the check to be deposited into the account of the customers. In addition, Gavin failed to respond to NASD requests for information.

Ricky Lee Grady (Registered Representative, Jackson, Tennessee) was fined $15,000, barred from association with any NASD member in any capacity, and required to pay $3,000 in restitution to his former member firm. The sanctions were based on findings that Grady signed the names of two public customers to checks issued to them by his member firm, deposited the checks into his personal bank account, thereby converting the funds to his own use and benefit without the customers' knowledge or consent.

Gary D. Hamby (Registered Representative, Louden, Tennessee) submitted a Letter of Acceptance, Waiver and Consent 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, Hamby consented to the described sanctions and to the entry of findings that he received from public customers checks totaling $21,544.72 to be deposited into separate annuity accounts. The NASD found that Hamby failed to deposit the funds and, instead, endorsed the checks and deposited the funds into his personal credit union account, thereby converting the funds to his own use and benefit without the knowledge or consent of the customers.

In addition, the findings stated that Hamby submitted a completed application along with a cashier's check in the amount of $1,513.30 to purchase a variable life insurance policy on behalf of a public customer. Hamby then signed the customer's name to the application without the knowl-

edge or consent of the customer and received $2,360.75 in commissions to which he was not entitled.

Masters Financial Group, Inc. (Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000. 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.

Herbert B. Moriarty, III (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any NASD member in any capacity for 6 months. Without admitting or denying the allegations, Moriarty consented to the described sanctions and to the entry of findings that he signed the names of four public customers to three requests for account transfer without the knowledge or consent of the customers.

Fred C. Smith (Registered Representative, Tupelo, Mississippi) submitted an Offer of Settlement pursuant to which he was fined $150,000, barred from association with any NASD member in any capacity, and required to pay $124,700 in restitution to the appropriate parties. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he obtained customer funds totaling $141,700 for the purpose of investing in securities, deposited a portion of these funds into his own bank account, and otherwise converted the funds to his own use and benefit without the knowledge or consent of the customers. The findings also stated that in connection with the above, Smith provided public customers and individuals with false monthly account statements reflecting fictitious stock transactions. Furthermore, the NASD found that Smith provided letters to individuals wherein he guaranteed them against losses in their investment portfolios. In addition, the NASD determined that Smith engaged in sales of securities to public customers, and failed and neglected to become properly registered with the NASD as a general securities representative prior to engaging in such acts. Also, the findings stated that Smith failed to respond to NASD requests for information.

District 6—Texas

August Actions

FEC Securities Corporation (Dallas, Texas) and **Earl Carter Bills, II (Registered Principal, Dallas, Texas)** submitted an Offer of Settlement pursuant to which they were fined $5,000, jointly and severally. The firm was also expelled from NASD membership. Bills was suspended from association with any NASD member in any capacity for one year and required to requalify by examination before serving in any capacity with any NASD member. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Bills, failed to record as loans in its general ledger, commission advances from its affiliate firm. The findings also stated that the firm, acting through Bills, failed to make and preserve trial balances, net capital computations, and computations of aggregate indebtedness.

Furthermore, the NASD found that the firm, acting through Bills, failed to maintain its minimum-required net capital and failed to promptly forward for deposit into an escrow account at least 10 customer checks. In addition, the NASD determined that the firm, acting through Bills, failed to maintain customer funds in an escrow account over which the respondents had no control or to which the respondents had no direct access. The findings further stated that the firm, acting through Bills, deposited and withdrew funds on the same date from escrow accounts while continuing to sell units of the limited partnerships to its customers, and failed to file accurate FOCUS Part IIA reports.

Gerald Thomas Nolan (Registered Representative, Dallas, Texas) was fined $43,825, barred from association with any NASD member in any capacity, and ordered to pay $8,765 in restitution to his son. The sanctions were based on findings that Nolan made improper use of customer funds by receiving $6,400 from an overpayment on the customer's life insurance policy and by making an unauthorized loan on the same policy, thereby converting the proceeds of both transactions to his own use and benefit. In addition, Nolan failed to respond to NASD requests for information.

Sunpoint Securities, Inc. (Longview, Texas) and **Van R. Lewis, III (Registered Principal, Longview, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $40,000, jointly and severally. The firm was also suspended from NASD membership for five business days. Lewis was barred from association with any NASD member as a financial and operations principal and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lewis, was conducting a securities business while having a net capital deficiency and failed to make and keep current its required books and records. The findings also stated that the firm, acting through Lewis, filed materially inaccurate FOCUS reports and failed to file its FOCUS Part IIA report within the time required by SEC Rule 17a-5.

Furthermore, the NASD found that the firm, acting through Lewis, inaccurately stated its accounts receivable and accounts payable. In addition, the NASD determined that the firm, acting through Lewis, obtained agreements from five of its registered representatives providing that they would forego commissions due them to stabilize the firm's financial condition when they should have known that such agreements would not, and did not, improve the firm's financial condition. The findings further stated that the firm, acting through Lewis, made an erroneous entry to its cash account, which had the effect of overstating the firm's cash.

James Harvey Thornton (Registered Principal, Houston, Texas) submitted an Offer of Settlement pursuant to which he was fined $5,000, jointly and severally, with a member firm and suspended from association with any NASD member in a principal capacity for three days. Without admitting or denying the allegations, Thornton consented to the described sanctions and to the entry of findings that while acting on behalf of a member firm, he failed to maintain its books and records and placed an advertisement offering to sell certain securities by way of a private placement and invited accredited investors to a meeting sponsored by the firm and the president of the potential issuer of such securities thereby failing to comply with Section 5 under the Securities Act of 1933.

The findings also stated that Thornton, on behalf of the same member firm, failed to maintain a copy of one of two advertisements. In addition, the NASD determined that Thornton, on behalf of the same member firm, allowed off-site retirement investment group representatives of the firm located at branch offices not registered with the NASD to use firm letterhead that failed to meet NASD requirements.

Furthermore, the NASD found that the same member firm, acting through Thornton, failed to file amended Form U-5s to disclose a state investigation and a customer complaint against two employees of the firm.

September Actions

Mark Bachik (Registered Principal, Addison, Texas) submitted an Offer of Settlement pursuant to which he was fined $12,040. Without admitting or denying the allegations, Bachik consented to the described sanction and to the entry of findings that he recommended the purchases of securities to public customers without having reasonable grounds for believing that the transactions were suitable for the customers.

Douglas Terrell Fonteno (Registered Principal, Dallas, Texas) was fined $126,244, barred from association with any NASD member in any capacity, and ordered to pay $50,000 in restitution to a public customer. The sanctions were based on findings that Fonteno made misrepresentations and omissions of material facts in offering and selling a common stock. Fonteno also failed to give written notice to his member firm of his offer and sale of the aforementioned stock and his ownership of and employment by another member firm. Furthermore, Fonteno executed unauthorized securities and options transactions in the accounts of two customers and made misrepresentations of material facts concerning such transactions to the customers.

In addition, Fonteno issued two checks to his member firm's clearing firm in payment of securities transactions and the checks were returned unpaid by his bank. Fonteno also recommended securities and options transactions to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer. Furthermore, Fonteno failed respond to NASD requests for information.

October Actions

Randy Richard Franks (Registered Representative, Cypress, Texas) was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $78,045 in restitution to public customers or his member firm. The sanctions were based on findings that Franks received seven checks totaling $78,045 from public customers for investment purposes. Without the knowledge, consent, or authorization of the customers, Franks endorsed and deposited the checks in bank accounts he controlled and personally used, thereby converting said funds to his own personal use and benefit. In addition, Franks failed to respond to NASD requests for information.

Julia Gail Frisino (Registered Representative, Gilmer, Texas) was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $5,291 in restitution to public customers or her member firm. The sanctions were based on findings that Frisino received from public customers checks totaling $5,921 for insurance premium payments, endorsed the checks, and converted the funds to her own personal use and benefit. In addition, Frisino failed to respond to NASD requests for information.

Richard Earl Scholl (Associated Person, Dallas, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that without the benefit of registration with the NASD, Scholl solicited customers to purchase partnership interests. In addition, Scholl failed to respond to NASD requests for information.

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

August Actions

Berry Dale Baxley (Registered Representative, Atlanta, Georgia) was fined $25,000, barred from association with any NASD member in any capacity, and required to disgorge $9,924 to his member firm. The sanctions were based on findings that Baxley engaged in securities transactions outside the regular course or scope of his association with his member firm and failed to provide written notice of these private securities transactions or obtain approval from his member firm.

R. Anderson Cain (Registered Principal, Greensboro, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cain consented to the described sanction and to the entry of findings that he diverted customer funds to the accounts of other customers to reimburse those customers for investment losses that they realized.

Jose A. Collazo (Registered Representative, Guayama, Puerto Rico) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collazo consented to the described sanction and to the entry of findings that he obtained $13,411.61 from the life insurance policies of seven public customers and converted the funds to his own use and benefit.

Dori Edelman (Registered Representative, N. Miami Beach, Florida) and **Alvin Baer Epstein (Registered Principal, Hollywood, Florida)** submitted an Offer of Settlement pursuant to which Edelman was fined $15,000 and suspended from association with any NASD member in any capacity for 20 business days. Epstein was fined $5,000 and suspended from association with any NASD member in any principal capacity for 20 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Edelman recommended numerous transactions in eight customer accounts that were excessive in view of the nature of the securities involved and for which she did not have reasonable grounds for believing that the transactions were

suitable for said customers. The NASD also found that Epstein failed to adequately supervise Edelman's securities sales activities.

First Continental Corporation (Old San Juan, Puerto Rico) was fined $30,000. The sanction was based on findings that the firm conducted a securities business while failing to maintain its required minimum net capital. The firm also failed to maintain and keep current and accurate its books and records and filed materially inaccurate FOCUS Parts I and IIA reports. In addition, the firm failed to file its annual audited financial report in a timely manner and failed to establish and maintain written supervisory procedures.

Robert F. Franek (Registered Principal, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Franek consented to the described sanctions and to the entry of findings that he purchased and sold shares of common stocks in the securities accounts of public customers without their knowledge or authorization. The NASD also found that Franek gained access to a check made payable to a public customer in the amount of $2,336 and converted the funds to his own use and benefit. In addition, the findings stated that Franek prepared and presented to a public customer a letter wherein he guaranteed the customer against loss on his purchase.

Raymond J. Gibbs (Registered Representative, Ocala, Florida) was fined $16,625 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gibbs received from a public customer $3,325 intended for the purchase of shares of a common stock but, instead, converted the funds to his own use and benefit without the customer's knowledge or authorization.

Lux Investors Services Corporation (Bethesda, Maryland) and **John Ernst Lux (Registered Principal, Bethesda, Maryland)** submitted an Offer of Settlement pursuant to which they were fined $100,000, jointly and severally, and ordered to pay $10,191 in restitution to investors. In addition, the firm was expelled from NASD membership and Lux was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lux, failed to comply with its restrictive agreement with the NASD and conducted a securities business while failing to maintain its required minimum net capital. The findings also stated that the firm, acting through Lux, failed to give telegraphic notice to the Securities and Exchange Commission (SEC) and NASD of its net capital deficiency. Furthermore, the NASD found that the firm, acting through Lux, acted as an underwriter and engaged in the unregistered distribution of a common stock.

In addition, the NASD determined that the firm, acting through Lux, purchased a common stock for an account in which it had a beneficial interest and effected principal transactions with public customers at prices that were not fair. The findings further stated that the firm, acting through Lux, failed to accurately disclose to its customers the markups charged by the firm. According to the findings, the firm, acting through Lux, failed to maintain and keep current books and records and failed to give telegraphic notice to the SEC and NASD of its failure to maintain and keep current books and records. The NASD also found that Lux converted to his own use and benefit $400,000 in estate assets belonging to a beneficiary without the knowledge or approval of the beneficiary.

Furthermore, the findings stated that the firm, acting through Lux, failed to file its annual audited financial report within the time period prescribed by Rule 17a-5 under the Securities Exchange Act of 1934. The NASD additionally found that the firm, acting through Lux, employed about 28 registered persons in violation of its restriction agreement with the NASD. In addition, the firm, acting through Lux, participated as the sole underwriter of a best-efforts offering, however, the offering circular did not disclose that the minimum offering amount could be satisfied through purchases by parties affiliated with the escrow agent and was not amended during the offering period to so disclose, in contravention of Exchange Act Rule 10b-5. Also, the findings stated that the firm, acting through Lux, failed to return the escrowed funds to the subscribers at the end of the offering period, but rather released the funds to the issuer. The NASD also determined that the firm, acting through Lux, engaged in a manipulative, deceptive, or fraudulent device or contrivance in connection with the sale of securities.

McCarley and Associates, Inc. (Greenville, South Carolina) and **Harold C. McCarley, Jr. (Registered Principal, Greenville, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $100,000, jointly and severally, and ordered to pay $720,224.19, jointly and severally in restitution to a member firm and public customers. In addition, McCarley and Associates, Inc. was expelled from NASD membership and McCarley was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McCarley, misappropriated at least $750,000 from 16 customer accounts. The NASD also determined that the firm and McCarley misappropriated an additional undetermined amount of money from customers of the firm through unauthorized withdrawals from their securities accounts and converted the funds to the benefit of the firm.

Julio R. Quintana (Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quintana consented to the described sanctions and to the entry of findings that, without the knowledge or authorization of officers of his member firm, he drafted checks in the amount of $7,100 from the operating bank account of his member firm and converted the funds to his own use and benefit.

Ramiro Jose Sugranes (Registered Representative, Miami, Florida) was fined $16,988.38 and suspended from association with any NASD member in any capacity for three months. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions are based on findings that Sugranes provided an institutional customer with a letter in which he falsely stated that a certificate of deposit the customer had purchased was backed by a letter of credit from a bank. In addition, Sugranes provided the same customer with copies of wires indicating that the bank had issued irrevocable standby letters of credit for the certificates of deposits when, in fact, the wires were prepared by Sugranes and the bank had no such standby letters. The action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Scott Michael Symons (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,738.29 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Symons consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss regarding the sale of a stock that the customer had purchased through him.

September Actions

Kevin Michael Thomas (Registered Representative, Deerfield Beach, Florida) was fined $10,000, ordered to disgorge $892.50 to public customers, and required to requalify by examination before acting in the capacity of a general securities representative. The sanctions were based on findings that Thomas effected transactions in the accounts of public customers without their knowledge or consent.

October Actions

None

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

August Actions

Steward Ross Moscov (Registered Representative, Rochester, New York) and **David James Whitaker (Registered Principal, Rochester, New York)** submitted an Offer of Settlement pursuant to which Moscov was fined $5,000 and suspended from association with any NASD member in any capacity for five business days. Whitaker was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Moscov, aided and abetted by Whitaker, offered and sold securities to a public customer of another member firm without first having provided written notice to or received written authorization from his member firm. The findings also stated that, in connection with the aforementioned activity, Moscov and Whitaker submitted false or misleading documents to Whitaker's member firm and/or the issuer the of securities. In addition, the NASD found that Whitaker failed to adequately supervise the activities of Moscov.

September Actions

David Lawrence Burgess, Jr., (Registered Representative, Warren, Michigan) was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Burgess failed to provide prior written notice to or obtain written approval from his member firm before engaging in private securities transactions with a public customer. In addition, Burgess failed to respond to NASD requests for information.

Stephen A. Corbett (Registered Principal, Hamburg, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Corbett failed to provide written notice to or obtain written approval from his member firm prior to participating in private securities transactions.

Brett C. Daniels (Registered Representative, Kokomo, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000, barred from association with any NASD member in any capacity, and required to submit proof of restitution of $2,000 to a member firm with any future application for association with a member firm. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he obtained a $2,000 check made payable to a public customer with instructions to deposit the funds into the customer's account. The findings stated that Daniels failed to follow the customer's instructions, signed and deposited the check in a checking account for which he was the beneficial owner, and used the funds for some purpose other than the benefit of the customer. The NASD also determined that Daniels failed to respond to NASD requests for information.

Gardner Rich & Company (Chicago, Illinois) and **Christopher P. Gardner (Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $30,000, jointly and severally. In addition, Gardner was suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gardner, permitted an individual, barred from association with any NASD member in any capacity, to associate with the firm. The firm, acting through Gardner, also permitted this barred individual to engage in the securities business and to function as a representative without being registered in that or any other capacity with the firm.

In addition, the NASD found that the firm, acting through Gardner, failed to obtain the Form U-5 filed by the individual's previous employer, with any amendments thereto, within 60 days following the individual's filing of his application for registration with Gardner Rich & Company. The findings also stated that the firm, acting through Gardner, failed to comply with the terms of its restrictive agreements with the NASD by maintaining a branch office.

Michael W. Koper (Registered Representative, North Street, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination before becoming associated with any NASD member firm. Without admitting or denying the allegations, Koper consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice of his intention to engage in such activities to his member firm.

October Actions

Donna J. Beatty (Registered Representative, Dayton, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $5,000, barred from association with any NASD member in any capacity, and required to provide proof that restitution was paid. Without admitting or denying the allegations, Beatty consented to the described sanctions and to the entry of findings that she misappropriated insurance customers' funds totaling $601.

Roger D. Hanna (Registered Representative, Girard, Ohio) submitted an Offer of Settlement pursuant to which he was fined $3,000, suspended from association with any NASD member in any capacity for five business days, and required to retake and pass the Series 6 examination. If Hanna does not requalify within 90 days, he will remain suspended until he passes the exam. Without admitting or denying the allegations, Hanna consented to the described sanctions and to the entry of findings that he participated in the sale of securities to four public customers without having provided written notice to or written authorization from his member firm.

William D. Harrison (Registered Representative, Delaware, Ohio) submitted an Offer of Settlement pursuant to which he was fined $2,500, suspended from association with any NASD member in any capacity for one business day, and required to retake and pass the general securities representative's examination. Without admitting or denying the allegations, Harrison consented to the described sanctions and to the entry of findings that he mishandled customers' funds totaling $18,987.94 when he deposited the funds in an account he controlled.

Zebedee McLaurin, V (Registered Representative, Chicago, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that McLaurin purchased for the accounts of public customers securities without the customers' knowledge or consent and in the absence of written or oral authorization to exercise discretion in said accounts. In addition, McLaurin purchased and sold shares of stock for a fictitious account.

John P. Pala (Registered Representative, Poland, Ohio) 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, Pala consented to the described sanctions and to the entry of findings that he received from an insurance customer payments of $125 each designated for semi-annual premiums on an auto insurance policy and, instead, he retained and converted the funds to his own use.

Caron George von Carlowitz (Registered Representative, Concord, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $90,000, barred from association with any NASD member in any capacity, and required to pay restitution to his member firm. Without admitting or denying the allegations, von Carlowitz consented to the described sanctions and to the entry of findings that he misappropriated and converted $17,891 from 10 insurance customers of his member firm.

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

August Actions

Bruce E. Butler (Registered Representative, Altoona, Pennsylvania) was fined $10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Butler submitted to his member firm redemption requests when he knew, or reasonably should have known, that the signatures thereon purporting to be those of a public customer were forged.

Marilyn A. Davis (Registered Representative, Oakton, Virginia) submitted an Offer of Settlement pursuant to which she was fined $15,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prior written notification to her member firm.

Michael J. Highlands (Registered Representative, New Oxford, Pennsylvania) was fined $2,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination. The sanctions were based on findings that Highlands submitted to his member firm applications for the purchase of shares of stock by public customers. Highlands was listed on the applications as the soliciting representative when such transactions were actually solicited by individuals who where not then associated with the member firm or not registered at all.

Steven D. Kelly (Registered Representative, Harrisburg, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kelly executed unauthorized transactions in the accounts of public customers and made misrepresentations to one of the customers after the unauthorized purchase was made concerning the stock's profitability.

Kenneth M. Murdock (Registered Representative, Elysburg, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Murdock failed to respond to NASD requests for information concerning the disposition made by him of insurance premium payments that he had received from policyholders.

P. David Pack (Registered Representative, Philadelphia, Pennsylvania) was fined $5,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Pack obtained statements of another registered representative that reflected year-to-date production of $196,385.43 and affixed his own name to it. At that time, his own year-to-date production had been $75,748.99. Thereafter, seeking employment with another member firm, Pack submitted the altered production statement to the firm and falsely represented it as his own. This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Robert S. Silverman (Registered Representative, New Castle, 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 one year. Without admitting or denying the allegations, Silverman consented to the described sanctions and to the entry of findings that he failed to pay a $50,000 arbitration award.

Mark D. Socci (Registered Representative, Monroeville, Pennsylvania) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Socci received from insurance customers premium payments totaling $206.55 that he retained and failed to remit to his member firm. In addition, Socci failed to respond to NASD requests for information.

Ronald S. Spotts (Registered Representative, Beech Creek, Pennsylvania) was fined $70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Spotts used funds received from insurance customers for purposes other than the payment of premiums on their annuities. In addition, Spotts failed to respond to NASD requests for information.

September Actions

Jacob C. Young (Registered Principal, Indiana, Pennsylvania) was fined $15,000, suspended from association with any NASD member in any capacity for 10 days (deemed served), and required to requalify by examination as an investment company/variable products representative. The NBCC imposed the sanctions on review of a Philadelphia DBCC decision. The sanctions were based on findings that Young offered and sold to public customers securities that were neither registered with the SEC nor exempt from registration. Moreover, in the offers and sales of the aforementioned securities, Young failed to have an adequate and reasonable basis for believing the securities were suitable for the customers. Furthermore, Young participated in this offer and sale of securities without providing prior written notice to his member firm and after his member firm told him in writing that it disapproved of his participation in the transactions.

October Actions

David C. Kovacic (Registered Representative, Jeannette, Pennsylvania) 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, Kovacic consented to the described sanctions and to the entry of findings that he failed to transmit promptly to his member firm mutual fund subscriptions and payments he received from public customers. In addition, the NASD found that Kovacic failed to respond to NASD requests for information.

James A. Vitale (Registered Representative, Carpools, Pennsylvania) 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, Vitale consented to the described sanctions and to the entry of findings that he collected from insurance customers $5,877.75 in premiums that he failed to remit to his member firm. Vitale also failed to respond to NASD requests for information.

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)

August Actions

Barry V. Bernstein (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Bernstein consented to the described sanctions and to the entry of findings that he failed to disclose two convictions and an arbitration award rendered against him on his Form U-4 filings.

Michael Charles Cammarota (Registered Representative, Huntington, New York) submitted an Offer of Settlement pursuant to which he was fined $25,000 suspended from association with any NASD member in any capacity for 30 business days, and required to requalify in all capacities requiring qualification within 90 days or be suspended until the requisite qualifications are complete. Without admitting or denying the allegations, Cammarota consented to the described sanctions and to the entry of findings that he made recommendations to a public customer without having reasonable basis to believe that the recommendations were consistent with the customer's stated investment objectives or financial needs.

The NASD also found that Cammarota liquidated or caused to be liquidated all GNMA bonds in the accounts of the same customer and used the proceeds to make a purchase without the prior knowledge, authorization, or consent of the customer. Furthermore, the findings stated that Cammarota forged the same customer's endorsement on checks from the proceeds of the aforementioned liquidation. In addition, the NASD determined that Cammarota sent the customer a letter wherein he personally guaranteed the customer's investment against any risk or loss of capital.

Ronald A. Durando (Registered Principal, Nutley, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $8,000, jointly and severally with a member firm and suspended from association with any NASD member as a financial and operations principal for 20 days. Without admitting or denying the allegations, Durando consented to the described sanctions and to the entry of findings that while acting on behalf of a member firm he conducted a securities business while failing to maintain the firm's required minimum net capital.

Ahmed Elsayed (Registered Representative, Avenel, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $105,000 in restitution to his member firm. Without admitting or denying the allegations, Elsayed

consented to the described sanctions and to the entry of findings that he received $105,000 from a public customer for the purpose of establishing and funding an annuity but failed to deposit the funds with his member firm and, instead, misappropriated and converted the funds for his own use. In addition, the NASD found that in an attempt to conceal his activities, Elsayed prepared fictitious account statements and tax documentation to give the appearance that the customer actually had an effective annuity investment.

Emanuel Bahr Feit (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days and ordered to disgorge $4,886.16 to customers. Without admitting or denying the allegations, Feit consented to the described sanctions and to the entry of findings that he effected sales of a common stock to public customers at prices that were not fair and reasonable in that the total markups represented about 50 percent of the total cost to the customer.

Oscar Garcia (Registered Representative, Elmhurst, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay full restitution to the City of New York, Department of Probation, in the amount set forth in the restitution agreement. Without admitting or denying the allegations, Garcia consented to the described sanctions and to the entry of findings that he secured unauthorized policy loans from the insurance policies of 10 public customers. forged their signatures on the loan disbursement checks totaling $42,900, and converted the customers' funds for his own use and personal benefit.

Gilmore Securities & Co., Inc. (Fair Lawn, New Jersey) and **Daniel D. Gilmore (Registered Principal, Washington Township, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Gilmore were fined $10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Gilmore, failed to prepare accurate books and records and failed to preserve records relating to its quarterly box count. The findings also stated that the firm, acting through Gilmore, failed to reduce to its possession and control of a total of five customers' fully paid or excess margin securities within required time frames and failed to prepare and maintain a detailed description of the procedures utilized to comply with the possession and control requirements of the SEC Customer Protection Rule.

Furthermore, the NASD found that the firm, acting through Gilmore, failed to deposit cash or qualified securities into its Special Reserve Bank Account when required to do so, and on five occasions withdrew monies from the reserve account when in fact a deposit was required. In addition, the NASD determined that the firm, acting through Gilmore, failed to file its FOCUS Parts I and II reports in a timely manner. Also, according to the findings the firm, acting through Gilmore, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with securities laws and regulations applicable to its financial recordkeeping and reporting, reserve account, and possession and control requirements.

Paragon Capital Corporation (New York, New York) and **Danny Jay Levine (Registered Principal, West Caldwell, New Jersey)** submitted an Offer of Settlement pursuant to which they were fined $65,000, jointly and severally, and ordered to pay $97,616.94, jointly and severally, 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 and Levine engaged in a solicitation and selling effort of an initial public offering that resulted in the execution of contracts of sale with 146 public customers before the SEC declared the registration statement for the security effective. The NASD also found that the firm, acting through Levine, effected transactions, and induced others to effect transactions in the aforementioned stock at prices that were excessive and fraudulent with markups of 6.625 to 10.5 percent above the prevailing market price, and markdowns ranging from 5.56 to 36.8 percent below the prevailing market price. Furthermore, the findings stated that the firm, acting through Levine, failed to adequately supervise the firm's employees to ensure that sales were effected according to federal securities laws. In addition, the NASD determined that the firm, acting through Levine, failed to establish, implement, and enforce reasonable supervisory procedures to prevent pre-effective date sales and prevent retail customers from being charged fraudulently excessive markdowns and markups.

David G. Poindexter (Registered Representative, Riverdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $88,000 in restitution to his member firm. Without admitting or denying the allegations, Poindexter consented to the described sanctions and to the entry of findings that, through a scheme involving forgery and the establishment of fictitious accounts, he converted customer funds in the amount of $88,000 to his own use and purposes.

Raniero Sebastiani (Registered Representative, Sussex, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $27,500, barred from association with any NASD member in any capacity, and ordered to pay $5,484.71 in restitution to his member firm. Without admitting or denying the allegations, Sebastiani consented to the described sanctions and to the entry of findings that he submitted a disbursement request form to his member firm to obtain a cash surrender check against the policy of a public customer and signed the customer's name to the form. The NASD found that, upon receipt of the check, Sebastiani signed the customer's name, endorsed his own name, deposited the check into his own personal bank account, and converted the funds to his own use without the knowledge or consent of the customer.

Sherman, Fitzpatrick & Co., Inc. (Mineola, New York), Sheldon Paul Prager (Registered Principal, Lynbrook, New York), and **Jack Weinberg (Registered Principal, Flushing, New York)** were fined $15,000, jointly and severally. The SEC affirmed the sanctions following appeal of a September 1992 NBCC decision. The sanctions were based on findings that the firm, acting through Prager and Weinberg, engaged in a securities business and failed to maintain its required minimum net capital. In addition, the firm, acting through Prager and Weinberg, sold shares of common stock to customers in principal transactions at unfair prices with markups on these transactions ranging from 5.41 to 18.75 percent above the prevailing market price, in violation of the NASD Mark-Up Policy.

In contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Prager and Weinberg, sold shares of three "hot" issues to restricted accounts. Furthermore, the firm, acting through Prager and Weinberg, effected transactions in the accounts of two registered representatives of other members but failed to notify the firms in writing that the respondents intended to open or maintain accounts for these individuals. Also, before executing any transactions in these two accounts, the respondents failed to use reasonable diligence to ensure that the transactions would not adversely affect the interests of the member firms.

September Actions

Michael James Leiter (Registered Representative, New Canaan, Connecticut) was fined $100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Leiter engaged in a fraudulent course of conduct including the creation of fictitious accounts, falsification of member firm documents, forgery, and unauthorized trading. In addition, Leiter failed to respond to NASD requests for information.

Darren David Morhaim (Associated Person, East Northport, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Morhaim arranged to have another individual take the Series 7 examination on his behalf. In addition, Morhaim failed to respond to NASD requests for information.

Joseph H. O'Brien, II (Registered Principal, New York, New York) was fined $5,000, barred from association with any NASD member in any capacity, and required to pay $7,500 in restitution to a public customer. The SEC affirmed the sanctions following appeal of an August 1993 NBCC decision. The sanctions were based on findings that O'Brien withdrew $7,500 from the account of a public customer and converted the funds to his own use and benefit without the customer's authorization, knowledge, or consent.

October Actions

Stephen Carella (Registered Representative, Bayside, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Carella consented to the described sanctions and to the entry of findings that, without the knowledge, authorization, or consent of public customers, Carella caused their account addresses to be changed to a fictitious address and executed purchase and sale transactions in their accounts.

Jon Clayton Stanley (Registered Representative, Honolulu, Hawaii) was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Stanley engaged in private securities transactions without giving prior written notice to his member firm.

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)

August Actions

G.R. Stuart & Company, Inc. (Maynard, Massachusetts) and **Gregory R. Stuart (Registered Principal, Maynard, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $200,000, jointly and severally. The firm was suspended from executing transactions with its customers in a principal capacity for two years provided, however, that nothing herein shall prohibit the firm from applying to the District Office of the NASD for removal of this restriction after January 1, 1995. Stuart must requalify by examination as a registered principal by taking and successfully passing the NASD general securities principal examination.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stuart, engaged in the securities business while failing to maintain its required minimum net capital. The NASD also found that firm, acting through Stuart, failed to prepare and maintain its books and records and failed to establish and maintain a supervisory system to adequately supervise the activities of each registered representative and associated person.

Furthermore, the findings stated that the firm, acting through Stuart, failed to comply with the Interpretation of the Board of Governors with respect to markups, in that the firm effected the execution of various transactions as principal to retail customers that were not fair and reasonable, taking into consideration all relevant circumstances. In addition, the NASD determined that the firm, acting through Stuart, failed to give certain disclosures and/or information to its penny-stock customers as required or to obtain from its public customers required agreements and suitability statements.

September Actions

Andrew C. Burke (Registered Representative, Cape Elizabeth, Maine) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burke consented to the described sanctions and to the entry of findings that he negotiated 12 checks drawn against four customers' securities accounts totaling $18,400. According to the findings, he converted those checks to his own use and benefit without the knowledge or consent of his member firm or the customers.

Joanne Mary Emery (Registered Representative, Norwood, Massachusetts) submitted an Offer of Settlement pursuant to which she was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations,

Emery consented to the described sanctions and to the entry of findings that she misappropriated insurance customer funds totaling $5,221.67 by forging the customers' signatures and depositing the monies into her personal bank account without the customers' knowledge or consent. In addition, the NASD found that Emery failed to respond to NASD requests for information.

Dennis R. Hancock (Registered Representative, Dover, New Hampshire) 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, Hancock consented to the described sanctions and to the entry of findings that he was responsible for misappropriating insurance funds totaling $5,403.

Russell F. Laubinger (Registered Representative, Norwell, Massachusetts) 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. Without admitting or denying the allegations, Laubinger consented to the described sanctions and to the entry of findings that he converted $134,500 from public customers to his own use and benefit without the customers' knowledge or consent.

David P. Martinelli (Registered Representative, Torrington, Connecticut) 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, Martinelli consented to the described sanctions and to the entry of findings that he accepted customers' checks totaling $1,972.48 for deposit into their variable life policy and mutual fund accounts; however, Martinelli converted the funds to his own use and benefit.

Bruce R. Rubin (Registered Principal, West Haven, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000, suspended from association with any NASD member as a general securities principal for two years, and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Rubin consented to the described sanctions and to the entry of findings that while acting for his member firm, he engaged in a securities business while failing to maintain its required minimum net capital. In addition, the NASD found that Rubin failed to prepare and maintain the firm's books and records.

October Actions

Craig R. Brown (Registered Representative, Manchester, Connecticut) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown recommended and caused the execution of unsuitable transactions in the account of a public customer. In addition, Brown engaged in private securities transactions outside the regular course or scope of his association with a member firm without giving prior written notification to the firm.

Newcomb D. Cole, Jr. (Registered Representative, Melrose, Massachusetts) was fined $15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cole misused customer funds totaling $5,500 intended for investment purposes. In addition, Cole failed to respond to NASD requests for information.

Carlo D'Alelio (Registered Representative, Magnolia, 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, D'Alelio consented to the described sanctions and to the entry of findings that he misappropriated for his own use and benefit public customer funds totaling $24,925 intended for securities investment. In connection with the above activity, the NASD found that D'Alelio engaged in business activities outside the scope of his relationship with his member firm without providing prior written notice to the firm.

Christopher Regan DeVany (Registered Representative, Wayland, Massachusetts) 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, DeVany consented to the described sanctions and to the entry of findings that he falsified a medical examination form on behalf of a potential client in an effort to secure a traditional life insurance policy for the client without the client's desire or request for the policy.

Kevin P. McCoy (Registered Representative, Waterford, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCoy consented to the described sanctions and to the entry of findings that he misappropriated for his own use and benefit policyholders' funds totaling $25,145. In addition, the NASD found that McCoy forged customers' signatures on checks representing disbursements of accumulated dividends for seven life insurance policies without the knowledge or consent of the customers.

Manuel R. Silva (Registered Representative, Assonet, 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, Silva consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit insurance customer funds totaling $4,288 intended for insurance premium payments on seven policies.

Thomas M. Sipsey (Registered Representative, Salem, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sipsey consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit funds totaling $29,276. These funds represented checks generated subsequent to the submission of forged insurance loan and dividend disbursement requests made by Sipsey.

John V. Ziedins (Registered Representative, Norwood, 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, Ziedins consented to the described sanctions and to the entry of findings that he submitted 17 fictitious life insurance policies to his member that generated approximately $3,785 in commissions.

Market Surveillance Committee

August Actions

First Interregional Equity Corp. (Short Hills, New Jersey), Lawrence J. Doherty, Registered Representative, Matawan, New Jersey), and **Anthony L. Gianninoto (Registered Principal, Malverne, New York)** submitted an Offer of Settlement pursuant to which the firm was fined $30,000, of which $7,500 is to be jointly and severally paid with another respondent and $5,000 is to be jointly and severally paid by Gianninoto. Doherty was fined $10,000, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination as a general securities representative. Gianninoto was suspended from association with any NASD member in any capacity for three days and required to qualify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, Doherty, and Gianninoto engaged in the distribution of shares of a common stock when they knew, or should have known, that no registration statement was in effect or had been filed with the SEC and no exemption from registration was available.

The findings also stated that the firm and Doherty created inaccurate books and records. Specifically, the NASD found that, in completing new account forms for 19 retail customers, Doherty provided information that he knew, or reasonably should have known, was materially inaccurate, or recklessly provided customer information without regard for the accuracy of material information required by the account forms and required by NASD rules. Furthermore, the NASD found that in executing the sale of the aforementioned shares of common stock, the firm failed to contact any other market markers to obtain a quotation for the stock and further failed to note quotations of any market markers of the common stock on any order tickets written for these sales. In addition, the NASD determined that the firm and Gianninoto failed to maintain and enforce written supervisory procedures designed to enable them to supervise properly the activities of the firm and its associated persons. Gianninoto's suspension began with the opening of business on June 22, 1994, and concluded June 24, 1994.

Gary L. Leavitt (Registered Principal, Orem, Utah) was fined $5,000, suspended from association with any NASD member in a principal or supervisory capacity for one year, and ordered to requalify by examination as a general securities representative, general securities principal, and a financial and operations principal. The sanctions were based on findings that Leavitt failed to establish, maintain, and enforce an adequate system to supervise the activities of his member firm's registered representatives, which was reasonably designed to achieve compliance with NASD rules and policies. In addition, Leavitt failed to properly and adequately supervise the activities of a registered representative to detect, deter, and prevent marking-the-close violations.

Vincent A. Paolano (Registered Representative, Massapequa, New York), Richard M. Gross (Registered Principal, Seaford, New York), and **Michael P. Rouse (Registered Representative, Lynbrook, New York)** submitted an Offer of Settlement pursuant to which Paolano and Gross were each fined $100,000 and barred from association with any NASD member in any capacity. Rouse was fined $2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Paolano and Gross artificially and fraudulently created increased demand for a common stock through misrepresentations, material omissions, improper price predictions, and the sale of stock to customers for whom the investment was unsuitable. This activity influenced the price at which other market markers bid for the stock, thus creating the appearance of actual bona fide trading in the stock and resulting in increased prices.

The findings also stated that Paolano, Gross, and Rouse made recommendations to a customer to purchase the same stock without having reasonable grounds for believing that such recommendations were suitable for the customer in light of the nature and size of the recommended transactions and the customer's investment objectives, financial situation, and needs. Furthermore, the NASD found that Paolano, Gross, and Rouse solicited customers and made misrepresentations and omissions of material facts in recommending the purchase of the same stock. In addition, the NASD determined that Paolano and Gross failed to notify their member firm in writing that they had opened an account at another member firm and failed to notify the other member firm of their association with their member firm. The findings further stated that Paolano and Gross failed to notify their member firm of their outside business practices.

Maryann Ward (Associated Person, Glen Cove, New York) submitted an Offer of Settlement pursuant to which she was fined $1,000 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Ward consented to the described sanctions and to the entry of findings that she failed to appear for testimony as requested by the NASD staff.

September Actions

Edward C. Farni, II (Registered Principal, Chanhassen, Minnesota) was fined $100,000 and suspended from association with any NASD member in any capacity for 30 days. The SEC affirmed the sanctions following appeal of a November 1993 NBCC decision. The sanctions were based on findings that Farni refused to answer NASD staff questions during an investigative interview.

Kemper Securities, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that the firm failed to have sufficient controls in place to prevent the execution of transactions between a registered representative of Kemper and the representative's spouse at another member firm.

October Actions

William M. Binder (Registered Principal, Deerfield Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Binder consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices when he knew he would receive a large percentage of the total purchase price.

Steven J. Finklestein (Registered Principal, Fort Lee, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Finklestein consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices while knowing that he would receive compensation on a large percentage of the total purchase price.

Paul T. Fiorini (Registered Principal, Linden, New Jersey) 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 30 days. Without admitting or denying the allegations, Fiorini consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices when he knew he would receive a large percentage of the total purchase price. The findings also stated that Fiorini failed to assure that his member firm established and enforced written supervisory procedures that would have enabled the firm to supervise properly the activities of its associated persons. In addition, the NASD found that Fiorini failed to supervise properly the activities of certain principals and registered representatives of his member firm.

John J. Margiotta (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Margiotta consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices while knowing that he would receive compensation on a large percentage of the total purchase price.

Howard B. Schwartz (Registered Principal, Dix Hills, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 5 days. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he caused customers to purchase common stock and warrants in a security at unfair prices while knowing that he would receive compensation on a large percentage of the total purchase price. Schwartz's suspension will commence October 24, 1994.

NASD Regulatory & Compliance Alert Information

Regarding Any Items in This Publication

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

Regarding NASD Disciplinary Actions & Histories

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

Regarding Subscription Questions, Problems, or Changes

Member Firms

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

Subscribers

To subscribe to *RCA*, please send a check or money order, payable to the National Association of Securities Dealers, Inc., to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403 or, for credit card orders, call NASD MediaSource at (301) 590-6578. The cost is $25 per issue or $80 per year. *RCA* subscribers with subscription problems or changes may contact NASD at (202) 728-8169.

Other Recipients

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