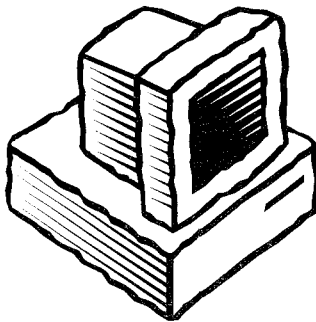


ALERT



NASD Preventive Compliance Program Offers New Computerized Support For Continuing Education

As part of an aggressive and significant effort to provide education and preventive compliance initiatives, the NASD® recently furnished members, free of charge, Release I of its new Member Compliance Support System. Release I, a multi-faceted, user-friendly software application, focuses on the Firm Element portion of the new Continuing Education Program rules.

The Firm Element covers any registered person who has direct contact with customers while conducting a member's securities sales, trading, and investment banking activities. Also covered is the immediate supervisor of such person. The new rules require members to complete a training needs analysis and to develop a written training plan by July 1, 1995, with implementation of their plan by no later than January 1, 1996. Release I was designed with extensive industry input specifically to help members conduct a needs analysis and developing a written training plan. Release I helps members

identify individual or group training needs based on job functions, specific products, and services. As firms identify training needs and seek to achieve educational goals, Release I allows them to record their work while developing formal training programs.

This fall, the NASD intends to issue Release II that will allow members to prepare training schedules and track training progress for covered persons. Additionally, Release II will help members identify available courses that match their unique training needs through an indexed list of training resources available from vendors. The NASD will charge a reasonable fee for members that subscribe to this enhanced service.

If you have general questions about the Continuing Education Program, call (301) 590-6500, or your Quality & Service Team. □

Memorandum Sent To Members

Advertising Regulation Clarifies Use Of Bank/Financial Institution Logos And Names

The NASD Advertising Regulation Department included a notification in the November 1994 account statement sent to each member currently filing material with

the Department that, among other things, addressed the use of bank logos on advertisements and sales literature for member

(Continued on page 2)

CONTENTS

| | | | | | |
|---|---|----|---|----|--|
| 1 | Cover Stories | 6 | Advertising | 11 | Violations |
| | NASD Preventive Compliance Program Offers New Computerized Support For Continuing Education | | "Ask the Analyst" | | NASD Fines Government Securities Corporation \$400,000; Suspends It From Selling Derivatives |
| | Advertising Regulation Clarifies Use Of Bank/Financial Institution Logos And Names | 8 | Rule Interpretations | | NASD Imposes Sanctions Against Greenway Capital, Two Principals, And An Associated Person |
| 3 | Regulation | | Members Cautioned About Solicitation For CD Sales | 13 | Compliance Short Takes |
| | NASD Moves To Prohibit Trading Ahead Of Research Reports | | NASD Requests Comments On Proposed Suitability Obligations To Institutional Customers | 15 | NASD Disciplinary Actions |
| | CRD Redesign Gets Underway With Two National Conferences | 10 | Members Strongly Urged To Avoid Settlement Agreements That Hinder NASD Investigations | | |
| | Compliance Questions & Answers | | 10 Arbitration | | |
| | Expanded Limit-Order Protection Rule Gets SEC Nod | | After Receiving Public Comments, NASD Files Proposed Mediation Rules With SEC | | |

(Continued from page 1)

firms. The purpose of this memorandum is to clarify the NASD's position on the use of logos of banks and other financial institutions under the current rules and regulations of the NASD and the federal securities laws generally.

The NASD views a logo as representative of the name of an entity. Thus, in communications containing the name of an NASD member, the use of any logo of a non-member (including banks and other financial institutions) is subject to the same rules and regulations that are applicable to the use of the **name** of a non-member. Article III, Sections 35(d)(1)(D)(i) and (ii) of the NASD Rules of Fair Practice require that, in judging whether the communication, in whole or in part, is misleading, the overall context in which a statement is made and the audience to which a communication is directed must be considered. Article III, Section 35(f)(2) requires that, in communications where a non-member is named, the relationship between the member and the non-member shall be clear, no confusion shall be

created as to which entity is offering which products and services, and securities products and services must clearly be offered by the member. The existing rules also recognize that the position of any disclosure can create confusion, even if the disclosure is accurate. If, in fact, such confusion occurs, it would violate NASD rules.

The current NASD rules under Article III, Section 35 of the Rules of Fair Practice on the use of non-members' names have been supplemented by the terms and conditions set forth in the Securities and Exchange Commission's (SEC) no-action letter issued to Chubb Securities Corporation in November 1993 (Chubb letter) which was distributed in *Notice to Members 94-47*, dated June 1994. The Chubb letter sets forth the SEC's Division of Market Regulation policy regarding third-party networking broker/dealers operating on the premises of financial institutions. The Chubb letter says that references to the financial institution "will be for identifying the location where brokerage services are available only, and will not

appear prominently in such materials." The NASD believes that, consistent with Chubb's and the Association's view that NASD rules have equal applicability to the logos and actual name of the non-member, the misuse of a logo of a financial institution may raise the same question of prominence as the actual name of the institution.

The logo of a non-member which is representative **only** of the non-member entity (e.g., a bank logo that is recognized solely as representative of the bank and not of the bank's holding company, affiliates, or other related entities), may be used in a communication on behalf of an NASD member, provided that it is used only for the purpose of identifying the non-member entity, in accordance with the provisions of the Chubb letter and the applicable NASD Rules of Fair Practice. Additionally, the logo may not be used in a way that is misleading or confusing, such as appearing in a disproportionate size so that it is unclear as to which entity is offering broker/dealer services. This application is consistent with the general

requirement that the context and audience to which the communication is directed be considered.

The logo of a financial conglomerate, such as a bank holding company, may be used in a communication on behalf of an NASD member, provided, once

again, that the logo is not used in a way that is misleading or confusing, consistent with the general requirement set forth above.

While this memorandum specifically addresses the clarification of the use of bank and/or financial institution logos

and names, please note that the position set forth would apply to the use of logos and names for any non-member entity. Any questions regarding the NASD's position on logos should be directed to the Advertising Regulation Department at (202) 728-8330. □

Regulation

Rule Now Before SEC

NASD Moves To Prohibit Trading Ahead Of Research Reports

In a move to prohibit trading ahead of research reports, the NASD Board of Governors approved a new Interpretation under Article III, Section 1 of its Rules of Fair Practice that will make it a violation to purposefully increase or liquidate a position in a Nasdaq®-listed stock in anticipation of a research report on the security. The rule, now before the SEC for approval and out for public comment, also covers exchange-listed stocks traded in the third market and derivative securities related to these underlying securities.

"Trading ahead of research reports creates an appearance of impropriety that harms the perception of the marketplace and could undermine investor confidence," said John E. Pinto, NASD

Executive Vice President, Regulation.

Broker/dealer research departments often prepare reports that recommend customers buy or sell certain stocks. Before publishing such a research report, some firms establish positions in the security to meet expected customer demand. Firms then fill orders from that inventory.

Specific Prohibitions

If the proposed rule is approved, an NASD member firm will be prohibited from "purposefully" increasing its inventory in a stock in advance of a bullish research report, or decreasing or liquidating its position because it was about to issue a bearish report. In the rule, the NASD strongly suggests that

member firms set up strict internal procedures to prevent the flow of research information across departmental lines. With these "Chinese Walls" in place, normal trading activity should not be affected. If, on the other hand, there are no such procedures implemented and the trading desk is aware of an upcoming research report on a specific security, the trading desk is allowed to continue to trade with its customers or with other broker/dealers **only** if the trading arises from unsolicited order flow.

Questions about this subject may be directed to Halley Milligan, NASD Market Surveillance, at (301) 590-6464, or Eugene A. Lopez, Assistant General Counsel, Office of General Counsel, at (202) 728-6998. □

Pilot Plan To Start In Early 1996

CRD Redesign Gets Underway With Two National Conferences

After more than two years of development, the new Central Registration Depository (CRD)—the registration system that will take the securities industry into the 21st century—is nearly complete. The pilot program is scheduled to begin in early 1996, with industry-wide implementation due soon thereafter. Two June conferences, in Los Angeles and New York City, gave member firms and others an opportunity to learn more about the new system.

In redesigning CRD, the NASD selected a rigorous, structured approach based on state-of-the-art systems development principles. CRD is being revamped to stay viable as an operating system and to improve customer service. Started in 1981, CRD was structured as a registration tool. But today's user communities—member firms, state securities commissions, self-regulatory organizations (SROs), the SEC, and the investing public—expect more from CRD than it can now provide.

Consequently, change is on the way for all CRD users.

New System Aspects

The CRD Redesign will be a fully electronic filing environment using client/server-based technology. A re-engineered process will eliminate repetitive filings. CRD data will serve as the basis of all registered representative (agent) and firm filings. Therefore, instead of the need to resubmit form information, filing after filing, users will

Correction: The April 1995 *Regulatory & Compliance Alert* article on page 4 about accurate and timely trade reporting erroneously referred readers to the NASD Services Operation Section for audit trail information. The correct number for audit trail information is (202) 728-8477 for members, and (202) 728-8015 for others. The cost to all callers for this information is \$25 per day for each stock.

simply download existing information from the CRD, make changes or updates, and transmit the filing back into the system. The new environment eliminates mailing and processing delays, and shifts data capture to the user for better control.

Technology process updates will facilitate access to data submitted by firms and regulators. The new CRD will fea-

ture a reports library that users can generate independently.

Agent re-licensing will be expedited for persons who want to transfer from one firm to another in that the CRD Redesign is built with a less restrictive set of re-licensing rules. Agent jurisdiction license approvals transferred from one firm to another will occur automatically, unless the agent has one or more reportable disclosure events added to his or her record since the last license approval in the jurisdiction. Even in that case, the agent may still elect to apply for a temporary registration while regulators review reportable events. The new Form U-4 is revised to include the "Temporary Registration Acknowledgment."

Later in its implementation, the new CRD will provide a centralized registration of investment advisers (IAs) and individual IA representatives and non-members (i.e., agents of the issuer and intrastate agents). States and member

firms will have the option to use CRD as the filing mechanism.

Phased Implementation

During Phase I, NASD member firms and Membership Department personnel will begin using the new CRD to capture individual filings, organization filings, and disclosure information. The current process of microfilming documentation received in Membership will be replaced by an imaging and indexing system used for optical storage. Phase II will bring all state and federal regulators, as well as other SROs into the new system. In Phase III, special system functionality, such as mass transfer and renewal, will migrate to the new CRD. Finally, Phase IV will demonstrate the new system capability to handle IA and non-member filing and processing.

More detail about the CRD Redesign is available from Morris Williams, NASD Membership, at (301) 590-6848. □

Compliance Questions & Answers

The Compliance Department receives many inquiries from members on a variety of topics. To inform members effectively on matters of common interest, the Compliance Department will periodically provide a question-and-answer feature through the *Regulatory & Compliance Alert*.

Q. What are the permissible activities of an introducing broker/dealer with a \$5,000 minimum net capital requirement?

A. A fully disclosed broker/dealer that has a \$5,000 minimum net capital requirement and receives and promptly transmits all customer and broker/dealer checks made payable to a third party, and does not receive or hold securities is permitted to: (1) effectuate riskless prin-

cipal customer transactions in accounts held by the clearing broker; (2) act as an underwriter in best efforts or all-or-none underwritings, provided an independent bank escrow account is used in accordance with SEC Rule 15c2-4; (3) transact mutual fund business on a subscription way basis; and (4) engage in Direct Participation Programs, Insurance Products, or in Merger and Acquisitions as a non-dealer.

Q. When must a member file a clearing agreement with the NASD?

A. Article III, Section 47, of the NASD Rules of Fair Practice, requires members entering into clearing agreements to specify the obligations and supervisory responsibilities of both the introducing and clearing firms. Subsection (a)

lists nine items that must, at a minimum, be specified in the agreements.

Clearing Member Obligations

Subsection (b) requires that any clearing member designated to the NASD for compliance oversight file the following with the Compliance Department **for review and approval:**

(1) Any new clearing agreement entered into with an introducing member. (Standard clearing agreements require approval only once, provided the language in the agreement does not change.)

(2) Any amended clearing agreement where information about any of nine items in Subsection (a) is revised.

Introducing Member Obligations

Subsection (c) requires any introducing member designated to the NASD for compliance oversight to file **for review only** the following with its local NASD District Office:

(1) Any new clearing agreement entered into with a clearing member.

(2) Any amended clearing agreement entered into with a clearing member designated to another self-regulatory organization for oversight where information about any of nine items listed in Subsection (a) is revised. (See NASD Rules of Fair Practice, Article III, Section 47.)

Q. Are all broker/dealers required to be registered with the SEC's Lost and Stolen Securities Program?

A. Yes, unless a broker/dealer is eligible for an exemption. SEC Rule 17f-1 lists three exemptions from the registration requirement:

(1) The broker/dealer, as a member of a national securities exchange, effects securities transactions through the trading facilities of the exchange, and has not received or held customer securities within the last six months.

(2) The broker/dealer is a reporting institution that, within the last six months, limited its securities activities exclusively to uncertificated securities, global securities issues, or any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificate.

(3) The broker/dealer is a reporting institution whose business activities in the last six months did not involve handling of securities certificates. The phrase "the handling of securities" includes any involvement in sale, purchase, pledge, transfer, or safekeeping of certificated securities. **This exemption is not available to members that intro-**

duce business on a fully disclosed basis. Examples of firms that currently may claim the exemption are broker/dealers that handle only limited partnership interests, mutual funds that do not permit investors to obtain negotiable certificates, and self-styled mergers and acquisition specialists whose business is limited to bringing together potential buyers and sellers of businesses.

The available exemptions include the requirement that a broker/dealer's business did not involve handling securities certificates in the past six months. Consequently, these exemptions are not available to new broker/dealers. After six months, if the business of a new broker/dealer meets one of the exemptions, it may take advantage of that exemption. If an exempt broker/dealer accepts even one securities certificate for processing on an accommodation basis, it will be required to register and otherwise participate in the program for at least six months. (See SEC Rule 17f-1(b).)

Q. How does a broker/dealer register with the SEC's Lost and Stolen Securities Program?

A. A broker/dealer must obtain a registration form from the Securities Information Center (SIC), the SEC's designee for operating the Lost and Stolen Securities Program. The mailing address for SIC is P.O. Box 9151, Boston, MA 02205. The general information number is (617) 345-4910. A broker/dealer must obtain a Financial Industry Numbering Standard (FINS) number before registration in the Lost and Stolen Securities Program.

Q. How does a broker/dealer obtain a FINS number?

A. A broker/dealer must write to The Depository Trust Company, 7 Hanover Square, 27th Floor, New York, NY 10004, Attn: FINS Publication. The letter must be written on company letterhead that includes the broker/dealer's

full name and address; type of institution or organization such as a broker/dealer, bank, or transfer agent; and indicates the reason why a FINS number is needed. There is no charge for obtaining a number; however, it may not be requested by telephone.

Q. Even though exempt from the requirements of the Federal Reserve Board's Regulation T, are U.S. government obligations and municipal obligations subject to the requirements of the NASD margin rule—Article III, Section 30 of the Rules of Fair Practice?

A. Yes. Government and municipal securities are subject to the margin maintenance requirements rules of self-regulatory organizations. These securities are addressed in Article III, Section 30, Section 3(e)(2)(A) and (B) of the NASD Rules of Fair Practice.

Q. Are dealer concessions and other receivables from the sale of variable life insurance policies, variable annuities, and 12b-1 fees treated as allowable or non-allowable assets in the computation of a broker/dealer's net capital?

A. These receivables are not specifically identified within SEC Rule 15c3-1, and are treated by definition as non-allowable assets. However, if the firm has a related payable to sales representatives or selling group members, the receivable may be treated as an allowable asset if it meets these conditions:

(1) A written contract exists between the broker/dealer and sales representatives or selling group members, whereby these individuals waive their payment of the commission until the broker/dealer receives the concession.

(2) The broker/dealer's liability for the commission payable is limited solely to the proceeds of the concession receivable.

(3) The entire amount of the

commission payable is included in aggregate indebtedness at the time of the accrual. (See *Notices to Members 81-12, 84-48, and 85-5* and *NASD Guide to Rule Interpretations*.)

Q. Can you sell short a security that is not margin eligible?

A. Yes. A security that is not margin eli-

gible can be sold short providing the transaction occurs in a margin account. Short sales are subject to the Federal Reserve's Regulation T, including NASD margin maintenance rules.

Therefore, current initial federal margin requirements apply to short-sale transactions. All short positions must be marked to the market and margin maintenance rules apply to all short

positions. If the short sale is effected using a security that **is not** margin eligible, an amount equal to 100 percent of the sale proceeds must be deposited in the account by the customer. If the short sale is effected using a security that is margin eligible, an amount equal to 50 percent of the sale proceeds must be deposited in the account by the customer. □

Expanded Limit-Order Protection Rule Gets SEC Nod

On May 19, the SEC approved an expansion of the NASD limit-order protection rule to include member-to-member trades in Nasdaq securities. Beginning June 21, members must protect limit orders sent to them from other members (a member-to-member trade) in the same way that they protect limit orders from their own customers. Limit orders are orders with prices or "limits" at which investors will buy or sell stocks.

For example, if the inside market is 20 - 20 1/4, and a market maker accepts a limit order to buy at 20 1/8 placed by a customer at another firm, the firm may not buy stock for its own account at a price equal to or less than 20 1/8 without first executing the limit order to buy at 20 1/8.

However, until September 1, a market maker holding a member-to-member limit order greater than 1,000 shares may trade at the same price as, but not at a superior price to that limit order without protecting it. *Special Notice to Members 95-43* (June 8, 1995) describes the rule in detail, including questions and answers.

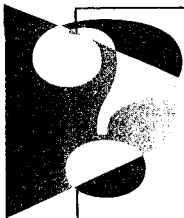
As with the current limit-order protection rule, the expanded rule does not require a member firm to accept limit orders from its own customers or the customers of another firm. However, in a clarification of the rule, member firms may attach terms and conditions to the execution of limit orders for institutional accounts, or if they are for 10,000 shares or more, regardless of whether for insti-

tutional accounts, provided that the order is for \$100,000 or more.

Institutional accounts include banks, savings and loan associations, insurance companies, or registered investment companies; investment advisers registered under the Investment Advisers Act of 1940; and any other entity with assets of at least \$50 million.

If you have questions about the new limit-order protection rule, call NASD Market Surveillance at (800) 925-8156, or Eugene Lopez, Assistant General Counsel, Office of General Counsel, at (202) 728-6998. □

Advertising



"ASK THE ANALYST"

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

Q. Is bringing disclosure into the text instead of putting information in a footnote a "rule," or just a strong suggestion?

A. Under the current rules, members may not rely on footnotes to ensure that a presentation is fair and not misleading.

Disclosure that is material to an investor's decision to invest, such as risk factors, must be included in the relevant portion of the text. However, footnotes may still be used for non-material information such as sources of charts or tables. Please see the section titled, "The Overall Clarity of the Communication"

in Article III, Section 35(d)(1)(D)(iii) of the Rules of Fair Practice that lists important factors in determining whether a communication is misleading. The rule specifically states that "... material disclosure relegated to legends or footnotes realistically may not enhance the reader's understanding

of the communication.”

Q. Since Article III, Section 35 of the Rules of Fair Practice is titled “Communications with the Public,” does an information summary on behalf of a private placement security have to comply with this standard?

A. The information summary for a private placement security meets the definition of sales literature in Article III, Section 35(a)(2) of the Rules of Fair Practice. Consequently, the information summary must adhere to the content standards in the rule. In particular, you must be sure to explain fairly the risks associated with the offering.

Q. I thought the pre-filing requirement for sales material applied only to new NASD members. Recently, I spoke to my Advertising Analyst and was told that my firm is still subject to this requirement even though we joined the NASD in 1992.

A. All member firms that have not filed advertising or sales literature with the NASD Advertising Regulation Department are subject to the filing requirement described in Article III, Section 35(c)(3)(A) of the Rules of Fair Practice. Under the rule, members must submit all advertisements 10 days before first use for one full year. This one-year period begins the date material is first received by the Advertising Regulation Department, not the date your firm became effectively registered with the NASD. If your firm has never sent anything to Advertising Regulation for review, your one-year period has not yet begun.

Although the rule states that only *advertisements* must be filed 10 days prior to first use, a member firm can start its one-year period by submitting an item of sales literature. The rule defines advertisements as material appearing in media such as television or radio, magazines, newspapers, or billboards. Sales

literature consists of material that is directly distributed by a member firm to members of the public, such as form letters, research reports, newspaper article reprints, seminar handouts, or any type of mass mailing.

For more information on other product-related filing requirements, you should review Article III, Section 35(c)(1) of the Rules of Fair Practice, or call the Department and speak with your Advertising Analyst.

Q. Section I of the Guidelines for the Use of Rankings in Investment Company Advertisements and Sales Literature indicates that procured rankings are prohibited. What is meant by “procured”?

A. Generally, the NASD considers a ranking to have been procured if the NASD member has approached a Ranking Entity, has specifically requested that the ranking be computed, and has paid the Ranking Entity for this service. If you are unsure whether a specific ranking would be considered an impermissible or procured ranking, please contact your Advertising Analyst.

Q. I recently saw a favorable article in a major magazine on a mutual fund my company sells. I would like to mail copies of this article to a couple of clients, but my branch manager says I have to use a prospectus with it. Since anyone could have read the article in the magazine, why do I have to use it with a prospectus?

A. Unlike the original, printed magazine article, your distribution of this information may constitute an offer of the mutual fund by you and your firm for purposes of the NASD Rules of Fair Practice and the federal securities laws. In addition, you and your firm will be responsible for the content of the article.

You will need to obtain advance, written approval by a registered principal of

your firm according to your firm’s procedures and Article III, Section 35(b)(1) of the Rules of Fair Practice. In addition, since the article concerns a mutual fund, it must to be filed with the Advertising Regulation Department within 10 days of first use as specified by Article III, Section 35(c)(1) of the Rules of Fair Practice.

The news article also must comply with the content standards in Article III, Section 35 of the Rules of Fair Practice. For example, the article must include your firm’s name, must present a balanced discussion of risk and reward, and must avoid exaggerated or misleading statements or claims.

Whether the article must be accompanied by a prospectus depends on its content. The federal securities laws permit only very limited types of communications about mutual funds before prospectus delivery. If the article contains information beyond SEC rule specifications, you may use the piece only with the prospectus for the fund.

Finally, you may need to obtain appropriate permission to use the reprint in accordance with the federal copyright laws. □

NASD Allows Payment For Filings By Credit Card

The Advertising Regulation Department now offers members the option to pay for review of their advertising and sales literature by credit card, using American Express, VISA, or MasterCard. For more information about this service, call Shirley Dorsey, at (202) 728-8330.

Rule Interpretations

Members Cautioned About Solicitation For CD Sales

Recently, the NASD learned that unregistered, unlicensed individuals and entities are attempting to induce registered representatives to offer and sell certificates of deposit (CDs). As part of the inducement, misstatements may be occurring about securities registration and licensing requirements for these products.

Potential misrepresentations also appear to have been made regarding state securities regulators' familiarity with the arrangements to offer and sell the CDs and determinations concerning the applicability of state securities laws. Apparently, representatives have also been offered referral fees based on CD sales. In other instances, it appears that registered representatives are being offered participation in multi-level marketing systems that provide profit to the representative for bringing individuals into the sales program with additional

compensation based on sales made by anyone in the chain initiated by the representative.

Available information suggests several registration and compliance issues and potential problems with respect to these CD arrangements. For example, some states define a security to include a CD. Additionally, in some instances individuals and entities involved in securities transactions may meet the broker/dealer definition by effecting transactions in securities for the account of others. Another concern is that the conduct of offering and selling CDs may require appropriate individual registration or licensing pursuant to a qualifications examination, and may require specific state licensing. Other obvious issues relate to sales literature, promotional materials or other correspondence that may be created and used by the registered representative in contraven-

tion of Article III, Section 35 of the NASD Rules of Fair Practice.

Firms should caution their registered representatives to be alert to any solicitations to broker CDs (or any other product). Representatives should also be reminded of their obligations under Article III, Sections 40 and 43 of the NASD Rules of Fair Practice requiring specific notifications by a registered representative to his or her employer firm when outside securities activities or other employment is or may take place. Finally, members should caution their representatives that multi-level marketing programs need to be carefully investigated to guard against any improper conduct or investor harm. Inquiries regarding the applicability of the federal securities laws or the Rules of Fair Practice to specific arrangements or registered representative activities should be directed to your local NASD office. □

NASD Requests Comments On Proposed Suitability Obligations To Institutional Customers

The NASD asked members to comment on a proposed Interpretation of its Board of Governors to Article III, Section 2 of the NASD Rules of Fair Practice (RFP). The proposed Interpretation would guide members in fulfilling their suitability obligations under Article III, Section 2(a) of the RFP when making recommendations to institutional customers in all equity and debt transactions, except municipals.

On August 15, 1994, the NASD published *Notice to Members 94-62* requesting member comment on the Fixed Income Committee's proposal that the NASD adopt a Board Interpretation regarding members' suitability obligations to institutional

investors in all equity and debt transactions, except municipals. The suitability proposal provides that a member's obligation to an institutional customer will be fulfilled if, at the time of the transaction, the member had reasonable grounds to believe that the customer:

- Developed resources and procedures to make its own investment decisions.
- Was not relying on the member's recommendation on the specific transaction.
- Was capable of understanding the product and its risks, or of making an independent investment decision.

Based on member comments, the

Committee redrafted the suitability proposal and the Board, on March 17, 1995, approved issuance of *Notice to Members 95-21* (April 1995) to request member comment on the revised proposal.

Amended Proposal

The amended proposal clarifies the Interpretation to provide guidelines for members to determine whether they have fulfilled suitability obligations to institutional customers regarding transactions in equity or debt securities, except municipals. The proposal is not intended to create a safe harbor from suitability obligations. Previous examples of methods for determining the member's suitability obligation were

eliminated with the amended version stating that the manner in which a member fulfills its suitability obligations in making a recommendation to a customer varies depending on the nature of the customer and the specific transaction.

The amended proposal states that the Board has identified certain factors that will be considered when the NASD reviews it for compliance with Article III, Section 2(a) of the RFP. These factors are neither requirements nor the only ones for consideration, but merely provide guidance to the member.

The amended proposal first states that a member must determine, based on the information available, the customer's capability to evaluate investment risk. In discussing this obligation, the proposal contrasts situations where a member concludes the customer is not capable, in general or with respect to a particular type of instrument, of making an independent investment decision with situations where the customer ultimately can make an independent investment decision without reliance on the member.

In addition, the proposal states that the primary consideration in a suitability determination is whether the customer is relying on the member's recommendation rather than the customer making an investment decision based on its own independent assessment of investment considerations. This guidance encourages the member to consider the member/customer relationship and to consider the customer's ability to make investment decisions.

The amended suitability proposal provides four non-inclusive factors to help members examine the member/institutional customer relationship. These factors suggest that the member:

- Consider whether there exists any written or oral agreement between

NASD Wants Members To Report Address And Contact Changes Promptly

The NASD Membership Department wants members to keep current the names of their executive representatives, including mailing addresses for branch offices. It's important that the Central Registration Depository (CRD) is kept up-to-date about changes in address and contact persons to ensure that regular notices and special mailings are directed correctly. This is especially important as we approach fall elections.

Article III, Section 3 of the NASD By-Laws requires each member to appoint and certify one "executive representative." Your firm's executive representative **must** be a registered principal and a senior manager. The designated person will represent, vote, and act on behalf of the member firm in all NASD affairs, and receive mailings that include *Notices to Members*, *Regulatory & Compliance Alert*, and updates to the *NASD Manual*.

You must send to CRD a properly executed Schedule E of Form BD to change the address for mailings sent to branch offices or to update the contact name. Notifications sent on U.S. Post Office address change cards **cannot** be processed.

To change the executive representative of your firm, you must submit written notification to Joan Conley, Corporate Secretary, National Association of Securities Dealers, Inc., c/o Membership Department, 9513 Key West Avenue Rockville, MD 20850-3389. The correct form for this submission is in *Notice to Members 95-39* (May 1995).

the member and the customer regarding the customer's reliance on the member for recommendations.

- Consider the presence or absence of a pattern of acceptance of the member's recommendations by the institutional customer.
- Contemplate the customer's use of ideas, suggestions, market views, and information received from other members or market professionals, particularly those related to the same types of securities.
- Evaluate the extent to which the customer provides the member with current comprehensive portfolio information in connection with discussing recommended transactions or does not provide important information about its portfolio or investment objectives.

The amended proposal provides these non-inclusive factors to help the member consider the customer's capability

to make independent investment decisions, including the resources available to the customer to make informed decisions. These factors suggest that the member:

- Consider whether the customer has the use of one or more investment advisers or bank trust departments.
- Consider the general level of the institutional customer's staff experience in financial markets and specific background with the type of securities under consideration.
- Consider the customer's ability to independently evaluate how market developments would affect the security and the complexity of the security or securities involved.

For more information on the amended suitability proposal, see *Notice to Members 95-21* (April 1995) or call Walter J. Robertson, Director, NASD Compliance, at (202) 728-8236.

Members Strongly Urged To Avoid Settlement Agreements That Hinder NASD Investigations

NASD District Offices continue to report that some member firms settle customer complaints using agreements that impede or obstruct NASD examinations and investigations of potential violations. In these circumstances, NASD Regulation staff may encounter difficulties in collecting necessary information because customers are reluctant (or even refuse) to cooperate after executing settlement agreements with members that condition settlement on an arrangement not to cooperate in self-regulatory organization (SRO) inquiries.

An example of improper settlement lan-

guage includes statements requiring the customer to keep the amount or terms of the settlement and claims non-public and confidential with respect to an SRO.

Members using agreements that could impede or obstruct an NASD investigation may violate Article III, Section 1 of the NASD Rules of Fair Practice, and be ongoing in conduct incompatible with the principles in *Notice to Members 86-36* (May 14, 1986). Additionally, agreements, whether direct or indirect, that preclude customers or any party from cooperating with an NASD investigation could

violate Article IV, Section 5 of its Rules of Fair Practice, as a failure to make information available in an investigation.

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

Arbitration

To Resolve Securities Disputes

After Receiving Public Comments, NASD Files Proposed Mediation Rules With SEC

Following approval by the Board of Governors, the NASD filed with the SEC its proposed Mediation Rules after considering extensive public comments. The NASD National Arbitration Committee developed the program provisions and procedures.

"The NASD wants to offer public customers, members firms, and associated persons another effective process for resolving disputes as an alternative to arbitration," said Ken Andrichik, Director of Mediation. "Mediation can help parties arrive at a more satisfactory resolution at an earlier point in the process, before they spend substantial funds to defend or prosecute a case."

Planned Rules

In response to the rapidly growing use

and success of mediation in commercial and insurance disputes, the NASD conducted two pilots between 1989 and 1993 and the proposed Mediation Rules are based on customer feedback from these previous events. In addition, the Rules preserve the procedural and structural elements published in *Notice to Members 95-1* (January 1995).

The Mediation Rules are expected to be incorporated into the Code of Arbitration Procedure as a new Part IV, thus permitting reference to the subject matter jurisdiction of the Code and the arbitrator disclosure provisions that apply to mediators.

In the NASD Mediation Program, a mediator will facilitate negotiations but will not impose a settlement on the par-

ties. The parties will retain control over the entire process and its outcome. Because the process is non-binding, mediation will run concurrently with the arbitration process so that the parties will not lose time if mediation proves unsuccessful. The Mediation Program plans to employ experienced mediators.

Growing Customer Options

The National Arbitration Committee found in its research that in the last decade mediation has proven to be an effective, faster, less costly, and less adversarial method of dispute resolution than arbitration or litigation. "Our commitment to customer service makes us want to furnish the same mediation option to our members and customers that is provided by outside dispute-resolution organizations," said Andrichik. □

Violations

NASD Fines Government Securities Corporation \$400,000; Suspends It From Selling Derivatives

The NASD imposed \$400,000 in fines against Government Securities Corporation of Houston, Texas (GSC), GSC Chairman and President Christopher Lee LaPorte, and Gregory Lee Putman, a GSC Vice President, for failure to adequately supervise personnel who sold mortgage-backed derivative products to public fund customers. In addition, GSC is suspended from selling certain derivative products to public fund customers for two years, and Putman is suspended from acting as a principal for 90 calendar days. Public fund customers, as defined in the settlement, include entities whose primary funding source comes from tax revenues or public funds.

Under the NASD's disciplinary action, GSC, LaPorte, and Putman, who did not admit or deny the allegations, consented to findings that from January 1989 through July 1994, in the sale of these mortgage-backed derivative products, certain GSC representatives called public fund customers and solicited purchases by informing them that the instruments could provide an increased yield while failing to adequately disclose material facts relative to the nature and risks of these instruments. During this period, GSC sold mortgage-backed derivative securities to approximately 30 cities, counties, and other public fund customers.

The instruments included stripped mortgage-backed securities and certain tranches of collateralized mortgage obligations (CMOs) such as interest only (IOs), inverse interest only (inverse IOs and inverse IOettes) and inverse floaters, all of which are market-sensitive securities subject to liquidity, prepayment, and interest rate risks. Certain instruments may also carry the risk of

potential loss of the initial investment. For example, purchasers of IOs, inverse IOs, and inverse IOettes are entitled only to the interest stream generated by the underlying mortgage pool, and not the principal payments. As interest rates fall and prepayments accelerate, the value and return on these derivative securities may decrease significantly. Public fund customers purchasing these derivative securities, including counties and cities in Ohio and Texas, were not adequately informed about these risks and have experienced significant losses.

John E. Pinto, NASD Executive Vice President, Regulation, said, "This is an important enforcement action by the NASD, and the sanctions are certainly significant to properly reflect the seriousness of the respondents' misconduct. They are mitigated somewhat by the more than \$11 million that the firm has paid back to public fund customers to compensate for their losses, as well as the firm's cooperation with the NASD throughout the investigative and enforcement process."

GSC, LaPorte, and Putman consented to findings that they failed to establish adequate written supervisory procedures, failed to adequately supervise GSC registered representatives when recommending the sale of the mortgage-backed derivative products to customers, and failed to adequately review and oversee sales activities to ensure that material facts were disclosed to the public fund customers. The firm was fined \$400,000, \$25,000 of which is joint and several with LaPorte, and \$25,000 joint and several with Putman. In addition, GSC was suspended from selling certain mortgage-backed derivative products to public fund customers for two years, and Putman was suspended

ed from acting in a principal capacity for 90 calendar days. The respondents were required to pay \$100,000 of the fines within 10 days of the NASD decision accepting the offer of settlement. The remainder is due within nine months, including accrued interest.

"Our enforcement efforts in this area clearly demonstrate the NASD's commitment to regulate member activities in the sale of derivatives of mortgage-backed securities, to ensure proper supervision by member firms that sell these securities, and to take swift enforcement action where misconduct occurs," said John Pinto. "The derivatives market is a significant area, and firms that sell such securities must understand the nature and risks involved in these securities and ensure that clients receive proper disclosure." □

☆ Mark Your Calendar ☆

Microstructure Conference on Competition for Order Flow

The University of Memphis
Memphis, Tennessee
October 26-27, 1995

Practitioners, academics, and regulators will address:

- ☆ Buy side trader perspectives.
- ☆ Trading cost measurement.
- ☆ Market structure and market quality.
- ☆ Competition for order flow in Europe.
- ☆ Perspectives on competition in Europe.
- ☆ International market mechanisms.
- ☆ Effectiveness of alternate market mechanisms.

For further information, contact
Ann Brock at (901) 678-2800.

NASD Imposes Sanctions Against Greenway Capital, Two Principals, And An Associated Person

The NASD announced that it took disciplinary action against Greenway Capital Corporation (GWAY) of New York, its President Joseph M. Guccione, its Executive Vice President Fred R. Luthy, and an associated person, Robert A. Neff.

Pursuant to an Offer of Settlement in which the respondents neither admitted nor denied the allegations, GWAY, Guccione, and Luthy were jointly and severally required to pay up to \$500,000 in restitution to the customers who were charged excessive prices due to the manipulation of Pacific Animated Imaging Corporation (PCIM) securities. Neff is also jointly and severally responsible for \$166,500 of the restitution. Each month, respondents are required to make deposits into an interest-bearing escrow account under the control of an independent escrow agent to be paid out over two years to customers identified by the NASD as harmed by the respondents' misconduct.

Guccione is suspended from association with any member in any capacity for three months and cannot associate with any member in a principal capacity for two years. Luthy and Neff are suspended from association with any member in any capacity for two months and three months, respectively.

GWAY has also undertaken, in consultation with counsel and other advisers, to adopt and implement written supervisory and compliance procedures in connection with all aspects of the NASD rules, regulations, and interpretations regarding market making, best execution of customers' orders, trading, domination and control, and markups and markdowns. Further, every six months for two years from the date of the decision, the counsel and/or other adviser must conduct a review and prepare a report of any recommendations considered appropriate regarding GWAY's policies, practices, and procedures related to trading, sales, compliance, and supervision. Thereafter, GWAY must implement all such recommendations.

The respondents consented to findings that from May 2, 1991, through June 30, 1992, they effected transactions in, or induced the purchase of, the common stock of PCIM using manipulative, deceptive, or other fraudulent devices, in violation of Article III, Sections 1 and 18 of the NASD Rules of Fair Practice.

The respondents also consented to findings that from March 28, 1991, through June 30, 1992, GWAY and Guccione failed to disclose to customers that the price at which GWAY was selling PCIM common stock and B warrants was not fair and reasonable, and was not reasonably related to the prevailing market price for PCIM common stock and B warrants, in violation of Article III,

Sections 1, 4, and 18 of the NASD Rules of Fair Practice.

Furthermore, the respondents consented to findings that Luthy had reason to know, or acted in reckless disregard of the fact, that the prices charged to customers were unfair because the compensation received by him and GWAY represented a large percentage of the total purchase price paid by the customers in these transactions, in violation of Article III, Sections 1 and 4 of the NASD Rules of Fair Practice.

The respondents also consented to findings that GWAY, acting through Luthy and Guccione, failed to preserve copies of all communications sent by GWAY (including interoffice memoranda and communications) relating to its business in violation of Article III, Section 1 of the NASD Rules of Fair Practice, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4). In addition, GWAY, Guccione, and Luthy failed to establish and maintain an effective supervisory system. They also failed to enforce supervisory procedures that would have enabled them to assure compliance with federal securities laws and NASD rules, and to deter and detect the conduct described above, in violation of Article III, Sections 1 and 27 of the NASD Rules of Fair Practice.

"This enforcement action is another example of the NASD's commitment to investor protection by addressing manipulative activity and abusive sales practices in the securities industry," said John E. Pinto, Executive Vice President, Regulation. "I am also pleased that money will be made available to pay investors amounts that they were overcharged because of fraudulent activity." □

**The annual NASD
Advertising Regulation
Seminar is scheduled
for October 12-13 at the
Mayflower Hotel in
Washington, DC.**

**Registration materials
will be mailed soon.**

COMPLIANCE SHORT TAKES

The SEC approved NASD amendments to Sections 5, 6, 12, 46, and 64 of the Uniform Practice Code (UPC) and Sections 1 and 26 of the Rules of Fair Practice (RFP) to conform NASD rules to the three-day settlement cycle (T+3) mandated in SEC Rule 15c6-1, effective June 7, 1995.

Following the SEC's adoption of Rule 15c6-1 requiring settlement of securities transactions no later than three days after trade date (T+3), the NASD adopted amendments to the UPC and the RFP. The complete amendments are described in *Notice to Members 95-36* (May 1995).

If you have questions about T+3, call Nasdaq Market Operations at (203) 375-9609. The effect of this change on investment company shares follows.

SEC Rule 15c6-1, effective June 7, 1995, established three business days as the standard time period for settling transactions, including securities issued by investment companies. Broker/dealer contracts for the purchase and sale of investment companies, including mutual fund shares, are subject to the three-business-day settlement requirement. Under Rule 15c6-1(b), the exemption for new issues in a firm-commitment underwriting covers underwritings of closed-end funds and unit investment trusts, but not open-end funds.

Effective concurrently with SEC Rule 15c6-1 is an amendment to NASD Rules of Fair Practice Article III, Section 26(m)(1). This section now requires members to transmit payments received from customers for the purchase of investment company shares to the payees (i.e., underwriters, invest-

ment companies, or their designated agents) by the fifth business day after receipt of a customer's purchase order or one business day following receipt of a customer's payment, whichever is later. The five-business-day transmittal requirement is shortened to three business days and the one-day alternative is unchanged.

In response to the recently passed Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 designed to protect the public from repeated, unwanted telephone solicitations, the NASD proposed a rule that requires members to make and maintain a do-not-call list. Recently approved by the SEC and effective June 9, the new rule adds Subsection (g) to Article III, Section 21 of the Rules of Fair Practice requiring that each member engaging in telephone solicitation to market its products and services keep a centralized do-not-call list of persons who do not want to receive telephone solicitations. For more information about this subject, see *Regulatory & Compliance Alert*, October 1994, page 13, or call Daniel M. Sibears, Director, NASD Regulatory Policy, at (202) 728-6911.

On February 13, 1995, in SEC Release No. 34-35361, File No. SR-NASD-94-51, the SEC approved amendments to Parts VI and X of Schedule C of the NASD By-Laws relating to foreign finders and foreign associates. Under specified criteria, these amendments permit the payment of transaction-related compensation to non-registered foreign finders not subject to the jurisdiction of U.S. securities laws.

The new rule focuses on disclosure and recordkeeping requirements by the U.S. broker/dealer in permitting members the opportunity to enhance their competitive position in foreign countries where new accounts are opened on a referral basis with ongoing compensation to the foreign finder. Under the amended rule, member firms and their associated persons may pay transaction-related compensation to non-registered foreign persons based on the business of customers those persons direct to member firms. The applicable conditions for this "foreign-finder" exemption appear in *Notice to Members 95-37* (May 1995).

The amendments also change the requirements regarding foreign associates. Under Part X of Schedule C of the NASD By-Laws those persons now are subject to Form U-4 registration, but still do not need to pass a qualification examination. Questions about this subject may be directed to Craig Landauer, NASD Office of General Counsel, at (202) 728-8291, or Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911.

On November 10, 1994, the SEC adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 that prohibit broker/dealers from underwriting and recommending municipal securities when adequate information is not available. SEC Rule 15c2-12 was originally adopted in 1989, and requires an underwriter of municipal securities:

- To obtain and review an issuer's official statement before making a purchase, offer, or sale.
- In negotiated sales, to provide the most recent preliminary official statement to potential customers.

- To deliver to customers, upon request, copies of the final official statement for a specified period of time.
- To contract to receive sufficient copies of the final official statement to comply with the rule's delivery requirements and any Municipal Securities Rulemaking Board (MSRB) rules.

The most recent amendments improve disclosure in the primary and secondary markets and, with certain exceptions, became effective July 3, 1995. The exceptions relate to Paragraph 15c2-12(c), effective January 1, 1996; Subparagraphs 15c2-12(b)(5)(i)(A) and 15c2-12(b)(5)(i)(B) that will not apply with respect to fiscal years ending before January 1, 1996; and Subparagraphs 15c2-12(d)(2)(ii) and 15c2-12(d)(2)(iii) that do not apply to an offering of municipal securities commencing before January 1, 1996.

Information about an SEC interpretative statement focusing on disclosure obligations of municipal securities dealers, underwriting requirements, and exemptions are in *Notice to Members 95-23* (April 1995). Additional information may be obtained from Erin Gilligan, District Coordinator, NASD Compliance Department, at (202) 728-8946.

The U.S. Treasury Department is granting to broker/dealers an exemption from the haircut treatment for written mortgage-backed options under Section 402.2a of its regulations implementing the Government Securities Act of 1986. The SEC concurred in the Treasury action.

The exemption, available to registered government securities broker/dealers subject to the capital requirements of Section 402.2, is applicable to written

over-the-counter options on mortgage-backed securities, provided the underlying fixed-rate security is a Treasury Market Risk Instrument (TMRI), defined in Section 402.2(e). The current Treasury haircut for a position in a 30-year pass-through, fixed-rate mortgage-backed security, that is a TMRI, is 3.3 percent. This haircut percentage recognizes the shorter effective maturity of a 30-year pass-through security, because of the repayment of principal during the security's life.

Since the risk of holding a position in mortgage-backed securities options derives from the risk inherent in a position in the underlying security, Treasury determined to apply the same haircut factor to both types of instruments. (See *Notice to Members 95-28*, April 1995.) For additional information call Janet Marsh, District Coordinator, NASD Compliance Department, at (202) 728-8228.

The Treasury approved amendments to the financial responsibility requirements established under the Government Securities Act of 1986. The amendments raise the minimum capital requirements for government securities broker/dealers subject to Section 402.2 provisions and require written notification for certain capital withdrawals. Treasury also approved a conforming change to its recordkeeping requirements.

These amendments only affect sole government securities broker/dealers registered under Section 15C of the Securities Exchange Act of 1934. The amendments became effective March 31, 1995, with the capital increases phased-in over 18 months.

Details of the four minimum capital categories are in *Notice to Members 95-29* (April 1995) and members should review the Treasury's release in the

March 1, 1995, *Federal Register*. Call Janet Marsh, District Coordinator, NASD Compliance Department, at (202) 728-8228, with questions concerning this subject.

Effective February 6, 1995, the SEC adopted amendments to Rules 138 and 139 under the Securities Act of 1933. The amendments clarify the availability of the safe-harbor provisions of Rule 138 regarding broker/dealer research reports on domestic and foreign companies, and the same provisions of Rule 139 for broker/dealer industry research reports that include sizeable, first-time foreign registrants.

The SEC approved an amendment to Article III, Section 46 of the Rules of Fair Practice clarifying the meaning of the terms "Do Not Reduce" (DNR) and "Do Not Increase" (DNI) used in connection with open orders. Section 46 requires members holding open orders to adjust the price and size of the order in proportion to the dividend or other distribution on the day the security is quoted "ex."

The amendment to Section 46 clarifies that DNR instructions only apply to cash dividends, while DNI instructions apply to stock dividends. The amendment to Subsection 46(e) appears in *Notice to Members—For Your Information* (May 1995) page 260.

Following SEC approval, the NASD amended Section 32(c) of its Code of Arbitration Procedure to increase the amount of time from 10 to 20 days before a hearing where parties are required to exchange documents. The change was made in response to numerous requests for additional but late discovery that arise from the exchange of

documents used by parties at a hearing. The rule change should ease the burden on arbitrators who respond to last minute discovery requests by increasing the time for exchanging pre-hearing memoranda and requiring an affirmative obligation by the parties to supplement and correct discovery.

Section 32(c) of the Code now says that at least 20 calendar days before the first scheduled hearing date, all parties must serve on each other copies of documents in their possession they intend to present at the hearing and must identify witnesses they plan to present at the hearing. The arbitrators may exclude from the

arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses that parties may use for cross-examination or rebuttal. □

NASD DISCIPLINARY ACTIONS

In February, March, and April 1995, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

District 1—Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

February Actions

Donnell Howard Hughes (Registered Representative, Menlo Park, California) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 60 business days. Without admitting or denying the allegations, Hughes consented to the described sanctions and to the entry of findings that he recommended and effected purchase transactions in customers' accounts without having reasonable grounds for believing that such transactions were suitable for the customers considering their financial situations and needs.

March Actions

Rick Randall Blair (Registered Representative, Honolulu, Hawaii) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blair exercised discretion in the account of a public customer without obtaining prior written authorization from the customer and approval of his member firm. In addition, Blair failed to respond to NASD requests for information.

Darrell Steven Dalton (Registered Representative, Las Vegas, Nevada) was fined \$1,000 and suspended from association with any NASD member in any capacity for 90 days. The Securities and Exchange Commission (SEC) affirmed the sanctions following the appeal of a January 1994 NBCC decision. The sanctions were based on findings that Dalton submitted to a member firm, and filed with the NASD, a Form U-4 that falsely represented that an individual had not been convicted of any felony.

James Vincent DiSanto (Registered Representative, Tualatin, Oregon) submitted an

Offer of Settlement pursuant to which he was fined \$5,750 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, DiSanto consented to the described sanctions and to the entry of findings that, in connection with the sale of shares of securities to a public customer, he made material misrepresentations of fact to the customer. According to the findings, DiSanto made statements that he had inside information that the stock would be purchased by another company, that his boss controlled the stock, and that its price would climb.

April Actions

Robert Lester Gardner (Registered Representative, Castaic, California) was fined \$50,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination as a general securities representative. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Gardner effected the purchase of stock in the account of a public customer without the customer's knowledge or consent. Gardner has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Gregory Allen Soares (Registered Representative, Santa Rosa, California) was suspended from association with any NASD member in any capacity for 15 business days. The sanction was based on findings that Soares recommended and effected the purchase of securities in the account of a public customer without having a reasonable basis for believing that such recommendation was suitable for the customer based upon her other security holdings, financial situation, and needs.

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), and the former U.S. Trust territories.

February Actions

Thomas R. Alton (Associated Person, Alameda, California) was fined \$50,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following an appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Alton submitted to his member firm a Uniform Application for Securities Industry

Registration or Transfer (Form U-4) wherein he gave false responses to questions about his disciplinary history. This action has been appealed to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

March Actions

Kevin S. Allen (Registered Principal, San Diego, California) 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, Allen consented to the described sanctions and to the entry of findings that he engaged in an illegal unregistered distribution of a control stock. In addition, the NASD found that Allen failed to keep accurate firm books and records in that he knew that a member firm was using nominee accounts as de facto trading accounts. The findings also stated that Allen failed to supervise adequately with respect to the aforementioned unregistered sales of stock.

Stanley E. Cameron (Registered Representative, Westlake Village, California) submitted an Offer of Settlement pursuant to which he was fined \$45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cameron consented to the described sanctions and to the entry of findings that he recommended purchase and sales transactions in a public customer's account without having reasonable grounds for believing that such transactions were suitable for the customer considering the securities involved; the frequency of the recommended transactions; and the customer's financial situation, objectives, circumstances, and needs. In connection with one of the recommendations, the NASD found that Cameron falsely represented to the customer that the customer had purchased \$50,000 in stock, when, in fact the customer only purchased \$47,000.94 worth of shares. This false representation was made to conceal the fact that the shares of stocks Cameron sold the customer were done so at a loss.

Furthermore, the NASD determined that Cameron participated in private securities transactions in that he sold to public customers shares of stock totaling \$135,000, but failed to provide prompt, written notification to his member firm before participating in such transactions. In addition, the findings stated that Cameron opened an account at another member firm without notifying his member firm in writing that he intended to open the account and without notifying the other firm of his association with his member firm. The NASD also found that Cameron failed to respond to NASD requests for information.

Howard M. Fromson (Registered Representative, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Fromson consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he received compensation while failing to provide prompt written notice to his member firm of these activities.

Abdollah H. Jirvand (Registered Representative, Anaheim, California) 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, Jirvand consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he submitted a Disbursement Request Form on behalf of the customer seeking the withdrawal of accumulated dividends on the customer's life insurance policy in the amount of \$800. According to the findings, Jirvand cashed an \$800 check issued by his member firm payable to the customer, by forging the customer's signature on the check and then converted the proceeds to his own use and benefit.

James A. Keiderling (Registered Representative, Buena Park, California) was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm \$85,884.99. The sanctions were based on findings that Keiderling received from two public customers \$85,884.99 with instructions to purchase shares of securities and, contrary to their instructions, he converted the funds to his own use and benefit without the customers' knowledge or authorization. Keiderling also failed to respond to an NASD request for information.

K&Y Securities Corp. (Los Angeles, California) and Gary S. Kading (Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$22,500, jointly and severally. In addition, Kading was ordered to requalify by examination as a direct participation programs principal within 90 days or be suspended until he requalifies. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kading, participated in a contingent offering of limited partnership interests and failed to return investor funds when the terms of the contingency were not met. The findings also stated that the firm, acting through Kading, received investor funds for the purchase of limited partnership interests and failed to transmit the funds to an escrow account. Instead, the NASD determined that the funds were transmitted directly to a bank checking account in each of the issuer's names and under the control of the firm's accountant.

Jerry W. McClintic (Registered Representative, Irvine, California) was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to offer recision of \$54,000 to all investors not otherwise reimbursed by his firm. The sanctions were based on findings that McClintic offered and sold limited partnership interests to investors and failed to return the investors' funds when the terms of the contingency were not met, but rather used the funds to conduct partnership operations. In addition, McClintic participated in private securities transactions while failing to provide prompt written notification of his participation to his member firm.

Mark Allen Pap (Registered Representative, Riverside, California) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pap submitted a Request for Insurance Benefits form that contained false information and a forged signature of the intended beneficiary of a life insurance policy in an attempt to convert customer funds. The benefits underlying the life insurance policy had become due and payable because the insured had died. Pap caused the falsified request form to be processed under the guise that it had been submitted by the intended beneficiary and obtained a \$35,956.85 check payable to the benefactor. Pap attempted to cash this check by forging the benefactor's signature on the check but was unsuccessful when the bank refused to accept the check. In addition, Pap failed to respond to NASD requests for information.

Behzad D. Shirapour (Registered Representative, Northridge, California) was fined \$30,000, barred from association with any NASD member in any capacity, and must reimburse a member firm \$1,980 (the amount it repaid a customer). The sanctions were based on findings that Shirapour converted from a public customer \$1,980 by forging, or causing to be forged, the customer's signature on three checks issued to the customer. These checks had constituted a refund to the customer by a member firm in connection with three life insurance policies canceled by the customer. Shirapour also failed to respond to an NASD request for information.

Timothy B. Tarpenting (Registered Representative, Redondo Beach, California) was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Tarpenting's fine will be reduced by any amount that he can demonstrate that he pays to the finance company as a result of the deficiency following the repossession and sale of his stepfather's leased car. The sanctions were based on findings that Tarpenting falsified a customer's account statement. Specifically, he altered the account statement of one of his customers to make it appear as if the account belonged to his stepfather. This was done to induce a finance company to lease his stepfather a new automobile.

Edward Joseph Wells (Registered Representative, Las Vegas, Nevada) was fined \$15,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm \$3,005. The sanctions were based on findings that Wells received from three public customers \$4,696 intended for the purchase of stock. Wells failed to purchase the stock and converted the funds.

Richard R. Whatley (Registered Representative, Rancho Palos Verdes, California) was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to offer recision to public customers totaling \$188,000. The sanctions were based on findings that Whatley participated in private securities transactions but failed to provide prompt, written notification to his member firm before participating in such transactions. Whatley also failed to respond to NASD requests for information.

April Actions

None

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

February Actions

Richard L. Brown (Registered Representative, Cheyenne, Wyoming) and David E. Foreman (Registered Representative, Cheyenne,

Wyoming) submitted Offers of Settlement pursuant to which Brown was fined \$7,500 and barred from association with any NASD member in any capacity. Foreman was fined \$7,500, suspended from acting as a general securities sales supervisor for 10 business days, and required to requalify by examination as a general securities sales supervisor within 45 days or cease acting in such a capacity until he requalifies. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brown made two unsuitable recommendations to a customer and failed to have a reasonable basis for believing that this customer could meet the payment obligations set forth in Regulation T of the Federal Reserve Board. The findings also stated that Foreman failed to enforce his member firm's written supervisory procedures adequately with regard to the review of large orders and the determination of the suitability of customer transactions.

William J. Cole (Registered Representative, Belen, New Mexico) 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, Cole consented to the described sanctions and to the entry of findings that he received a \$38,000 check issued by his member firm payable to a public customer, which represented payment of a portion of a life insurance benefit. According to the findings, Cole forged the customer's endorsement on the check, signed his own name, and deposited the proceeds into his personal bank account. The findings also stated that Cole caused to be issued a \$9,256.92 cashier's check in payment of the first year's premium for a variable life insurance policy for the same customer and retained the remaining \$28,743 in his personal bank account. In addition, the NASD determined that Cole received from a customer a \$13,476.22 check that was intended for investment purposes, and Cole kept the check in his desk until its discovery by his supervisor, thus failing to follow his customer's instructions. The NASD also found that Cole failed to respond to NASD requests for information.

Joseph Louis DeBeauchamp (Registered Representative, Bainbridge Island, Washington) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 days, and required to pay \$7,531 in restitution to a customer. Without admitting or denying the allegations, DeBeauchamp consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities and the use of margin to a public customer without having reasonable grounds for believing such recommendations were suitable for the customer considering her investment objectives, financial situation, and needs.

Gerald Michael Hagan (Registered Representative, Portland, Oregon) was fined \$200,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hagan engaged in private securities transactions while failing to inform his member firm of such activities. In addition, the NASD found that Hagan engaged in improper use of customer funds by transferring \$17,000 from a customer's account to another account at his member firm without the customer's knowledge and used the funds for his own benefit. Hagan also received from another customer \$20,000 intended for investment purposes, failed to remit the funds for their intended purpose or to return the monies to the customer and, instead, used the funds for his own purposes. Hagan also failed to respond to NASD requests for information.

Robert Theodore Nelson (Registered Principal, Seattle, Washington) was fined \$73,000 and barred from association with any NASD member in any capacity. However, five years after the bar was originally imposed, Nelson may apply for association in a non-proprietary, non-supervisory capacity, upon a satisfactory showing of adequate supervision. The SEC modified the sanctions following the appeal of an April 1994 NBCC decision. The sanctions were based on findings that Nelson engaged in the sale of common stock to public investors for which no proper registration statement was filed with the SEC or for which no exemption from registration existed. Nelson also engaged in private securities transactions without providing prior written notice to his member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his member firm's branch office and failed to discharge those responsibilities properly and adequately.

Francis Linden Sanem, Jr. (Registered Representative, Bozeman, Montana) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Sanem consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice to his member firm describing the proposed transactions, his role therein, and stating whether he would receive selling compensation in connection with the transactions.

Joseph Robert Shaw (Registered Representative, Albuquerque, New Mexico) and **Michael Robert Shaw (Registered Representative, Albuquerque, New Mexico)** submitted an Offer of Settlement pursuant to which Joseph Shaw was fined \$50,000 and barred from association with any NASD member in any capacity, and Michael Shaw was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Joseph Shaw received from individuals at least \$123,803 intended for investment in various insurance-related products and neither invested the funds as intended, nor returned them to the investors. The findings also stated that Joseph and Michael Shaw engaged in outside business activities while failing to provide prompt written notice to their member firm. In addition, the NASD determined that Michael Shaw failed to respond fully to NASD requests for information about its investigation of possible misuse of customer funds.

Gene A. Tyrrell (Registered Representative, Peoria, Arizona) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that he submitted a Form U-4 that failed to disclose a revocation by the state of Arizona of Tyrrell's state securities registration. In addition, Tyrrell failed to amend in a timely manner his Form U-4 to reflect a personal bankruptcy proceeding.

William I. Wilson (Associated Person, Lakewood, Colorado) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wilson failed to disclose on his Form U-4 that he had been charged with and convicted of various criminal offenses and provided a non-existent address as his principal residence.

March Actions

Lance L. Sylvester (Registered Representative, Northglenn, Colorado) was fined \$35,000 and barred from association with any NASD member

in any capacity. The sanctions were based on findings that Sylvester falsified his former member firm's records by entering on a customer account form and two suitability questionnaires, information that he knew to be false and misleading. In addition, Sylvester effected purchase transactions in the same customer's account without the customer's prior authorization or consent and failed to respond to NASD requests for information.

April Actions

Norman D. Autry (Registered Representative, Tijeras, New Mexico) was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The NBCC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Autry participated in and received compensation for private securities transactions and outside business activities without providing prior written notice to his member firm.

Howard Mattes Crosby (Registered Principal, Spokane, Washington) was fined \$12,000. The NBCC affirmed the sanction following appeal of a Seattle DBCC decision. The sanction was based on findings that Crosby effected private securities transactions with individuals or issuers without providing prior written notice to his member firm. In addition, Crosby served as a principal of his member firm without being registered as a principal.

Bron Allen Gailey (Registered Representative, Boise, Idaho) 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, Gailey consented to the described sanctions and to the entry of findings that he submitted six Requests for Change of Dealer or Agent forms to his member firm and signed the investors' names, all without their prior knowledge, authorization, or consent.

Clinton Hugh Holland, Jr. (Registered Principal, Salem, Oregon) was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination as a registered principal. The NBCC affirmed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Holland recommended to a public customer the purchase of speculative or high-risk securities without having reasonable grounds for believing that such recommendations were suitable for the customer considering the size and nature of the transactions, the concentration of speculative securities in the account, and the customer's financial situation, circumstances, needs, and objectives. This action has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Strategic Resource Management, Inc. (Englewood, Colorado) and **William A. Moler (Registered Principal, Aurora, Colorado)** were fined \$10,000, jointly and severally. The NBCC imposed the sanction following review of a Denver District Business Conduct Committee (DBCC) decision. The sanction was based on findings that the firm, acting through Moler, effected securities transactions with retail customers at prices that were unfair in that the respondents failed to calculate the retail price on the basis of the firm's contemporaneous cost for the securities, resulting in excessive markups. This action has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

U.S. Securities Clearing Corporation (San Diego, California) and **Anthony James Miranti (Registered Principal, San Diego, California)**

were fined \$55,000, jointly and severally, and required to pay \$396,846 in restitution to public customers. The firm also was suspended from effecting any principal transactions for 90 days, and Miranti was suspended from association with any NASD member in any capacity for 90 days.

The SEC affirmed the sanctions following appeal of a September 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Miranti, executed 301 principal retail sales to public customers at unfair and unreasonable prices taking into consideration all relevant circumstances. The firm was not a market maker in the relevant securities at the time the trades were effected, and the markups on these retail sales ranged from 5.1 to 150 percent over the prevailing market price for the securities. In addition, the firm, acting through Miranti, failed to report its price and volume activity for its principal transactions in non-Nasdaq securities. Miranti has appealed this action to a U.S. Court of Appeals, and the sanctions as to him are not in effect pending consideration of the appeal.

Gregory D. Weinstein (Registered Representative, Englewood, Colorado) 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, Weinstein consented to the described sanctions and to the entry of findings that he maintained a securities account at a member firm other than his member firm and failed to notify either firm of his association with the other firm. In addition, the NASD found that Weinstein provided false and misleading information to NASD staff when responding to staff inquiries, Weinstein denied having a securities account at a member firm other than at his member firm. The findings also stated that Weinstein disseminated unapproved and misleading sales literature.

Kenneth Mitchell Wiggins, Jr. (Registered Principal, Kent, Washington) submitted an Offer of Settlement pursuant to which he was fined \$55,000, barred from association with any NASD member in any capacity, and required to pay \$12,000 in restitution to public customers. Without admitting or denying the allegations, Wiggins consented to the described sanctions and to the entry of findings that he received from a public customer two checks totaling \$2,000 intended for investment purposes and failed to remit the funds for their intended purpose, but instead, caused these monies to be deposited into the operating account of his member firm where the funds were used for the benefit of the firm. The findings also stated that Wiggins solicited and raised \$290,000 from six investors to purchase security interests that were not recorded on the books and records of his member firm, thereby precluding the review of these securities transactions by the NASD or other regulatory examining authorities. In addition, the NASD determined that Wiggins made misrepresentations and omissions to a customer regarding an investment.

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

February Actions

Dickinson & Co. (Des Moines, Iowa) and **Glenn Scott Cushman (Registered Principal, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$80,000, jointly and severally. Cushman was also suspended from association with any NASD member in a principal capacity for 15 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 Cushman, sold securities that were not registered or exempt from registration pursuant to the Securities Act of

1933. The NASD also found that the firm, acting through Cushman, made certain misstatements or omissions of material fact when using two separate private placement memoranda. In addition, the findings stated that the firm failed to supervise the activities of Cushman adequately and properly.

Dickinson & Co. (Des Moines, Iowa) and John Michael Herrmann (Registered Principal, Clive, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Herrmann was also suspended from association with any NASD member as a general securities principal for 30 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 Herrmann, distributed to brokers in its Des Moines branch office and permitted the use of certain sales scripts that failed to provide a sound basis for an investor to make an informed investment decision and contained exaggerated, unwarranted, and misleading statements.

Michael Patric Holmes (Registered Principal, Overland Park, Kansas) 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 10 business days, and required to requalify by examination as a general securities representative (Series 7). Without admitting or denying the allegations, Holmes consented to the described sanctions and to the entry of findings that he received from a public customer a \$20,000 check, made payable to an entity he controlled, that was intended for the purchase of shares of a corporation that Holmes owned. The findings stated that Holmes deposited the proceeds from the check into his personal bank account and issued transfer instructions to the corporation he owned asking that the shares be recertified in the customer's name, and that Holmes engaged in this activity without giving prior written notice to his member firm.

Steven Ralph Thorp (Registered Principal, Wayzata, Minnesota), David Harold Thorp (Registered Principal, Wayzata, Minnesota), and Jay Courtney Cope (Registered Representative, Shorewood, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they allowed a member firm, of which they were limited partners, to purchase three hot issues in two customer accounts without obtaining and submitting the minimum information required, in violation of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

March Actions

None

April Actions

William Howard Sandberg (Registered Representative, Minneapolis, Minnesota) 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 14 business days. Without admitting or denying the allegations, Sandberg consented to the described sanctions and to the entry of findings that he executed securities transactions for the accounts of public customers without their prior knowledge or consent.

Jacquelyn Straub (Registered Representative, Emporia, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any

capacity for two years. Without admitting or denying the allegation, Straub consented to the described sanctions and to the entry of finding that she participated in private securities transactions without prior written notice to her member firm.

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

February Actions

American Trading & Investments, Inc. (Oklahoma City, Oklahoma) and Ronald L. Wigington (Registered Principal, Oklahoma City, Oklahoma) were fined \$15,000, jointly and severally. In addition, the firm was suspended from any and all underwriting activity for 30 days. The sanctions were based on findings that the firm, acting through Wigington, failed to disclose material facts in an offering memorandum. The firm, acting through Wigington, also accepted customer funds in the minimum-maximum contingency offering before entering into a written escrow agreement with a bank. In addition, the firm, acting through Wigington, failed and neglected to maintain accurate records to reflect the receipt of customer checks and account for customer funds and failed to deposit promptly \$3,000 into an escrow account.

Andrews, Hentges & Associates, Inc. (Tulsa, Oklahoma), Howard L. Andrews, Jr. (Registered Principal, Houston, Texas), Michael E. Hentges (Registered Principal, Tulsa, Oklahoma), Kenneth E. Jones (Associated Person, Tulsa, Oklahoma), and George M. Tipton (Associated Person, Henryetta, Oklahoma) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. Andrews was fined \$5,000 and suspended from association with any NASD member in any principal capacity for four months. Hentges was fined \$15,000, barred from association with any NASD member in any principal capacity, and required to pay \$100,000 in restitution to public customers within one year. Jones and Tipton were each 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, in connection with a best-efforts offering of securities to 13 investors, the firm, acting through Andrews, Hentges, and Jones, failed to disclose material information to the investors, in contravention of SEC Rule 10b-5. The findings also stated that Hentges failed to obtain information necessary to determine the suitability of the investment for the 13 customers, based on their investment objectives, financial situations, and needs. The NASD also determined that, in connection with the above offering, the firm, acting through Andrews, Hentges, Jones, and Tipton, failed to record the sales of units on the firm's books and records.

Also, in connection with sales of investments in a pool of 11 Certificates of Origination Fees to seven public customers, the NASD found that the firm, acting through Andrews and Hentges, failed to inform public customers of the suitability requirements of the investment and the risks involved. According to the findings, these respondents also failed to establish a reasonable basis for determining whether the investment was suitable for five of the customers based on their respective investment objectives, financial situations, and needs. In addition, the findings stated that, in reference to the above certificates, the firm, acting through Hentges, misappropriated and misused funds received for the payment of interest on the 11 Certificates of Origination Fees by paying expenses of the firm and investing the funds in various bank accounts without the knowledge or consent of the customers.

The NASD further found that the firm, acting through Andrews, Hentges, and Tipton, failed to record the purchase and sale of the 11 Certificates of Origination Fees on the firm's books and records. In addition, the firm, acting through Hentges, Jones, and Tipton, prepared inaccurate net capital computations and submitted inaccurate FOCUS Part I and Part II reports. Furthermore, the firm, acting through Jones, engaged in a securities business while failing to maintain its minimum required net capital. According to the findings, Tipton misrepresented to certain directors and officers of the firm that certain liabilities of the firm were being paid when in fact they were not, and failed to respond to NASD requests for information. The NASD also found that Hentges failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U-4) that he had filed for bankruptcy under the U.S. Bankruptcy laws; and Andrews failed to disclose on his Form U-4 that he had been served with a notice of levy issued by the U.S. Internal Revenue Service.

In addition, the findings stated that the firm, acting through Andrews and Hentges, allowed Jones to actively manage the firm without registration with the NASD in any capacity, and failed to adequately supervise the activities of Tipton in preparing the books and records of the firm and its parent company.

David B. Bancroft (Registered Representative, Meridian, Mississippi) submitted an Offer of Settlement pursuant to which he was fined \$30,220 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bancroft consented to the described sanctions and to the entry of findings that he failed and neglected to comply with instructions given to him by public customers by failing to enter purchase and/or sale transactions in the customers' accounts. The findings also stated that Bancroft shared in the losses of public customers when he deposited a check and a money order totaling \$605 into the customers' accounts to cover losses sustained by the customers. The NASD also determined that Bancroft made misrepresentations to a public customer that a U.S. Treasury bond had been purchased. In addition, the NASD found that Bancroft caused three checks totaling \$8,008.50 to be issued to a public customer from the customer's account and misrepresented to him that the checks were interest payments from a U.S. Treasury bond that he had failed to purchase for the customer's account.

Mark A. Brewer (Registered Representative, Sapulpa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,500 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he recommended and engaged in three purchase transactions in the account of public customers without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers based on their financial situations, investment objectives, and needs. The NASD also found that Brewer failed to complete accurately new account documentation for the aforementioned customers. In addition, the findings stated that Brewer engaged in private securities transactions without prior written notice to and approval from his member firm.

Darryl T. Cristwell (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$65,000, barred from association with any NASD member in any capacity, and required to pay \$13,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Cristwell

consented to the described sanctions and to the entry of findings that he received, in error, a \$14,529.14 check, deposited it into his growth fund account, and redeemed \$13,000 of the funds. According to the findings, Cristwell knew, or should have known, that the funds had been deposited into his account in error, and thereby misappropriated such funds.

John C. Cummings, III (Registered Representative, Birmingham, Alabama) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$19,600 in restitution to a customer. The sanctions were based on findings that Cummings induced a public customer to liquidate certain securities from her account and to loan a portion of the proceeds totaling \$19,600 to him. In doing so, Cummings executed two promissory notes to the customer that promised an interest rate of 20 percent. Cummings engaged in this activity without having reasonable grounds for believing that the aforementioned recommendations and the resultant transactions were suitable for the customer on the basis of the customer's financial situation, investment objectives, and needs. The NASD also found that Cummings forged the name of his branch office manager to a memorandum that he used to misrepresent the terms of his compensation, and his ability to repay certain loans to the aforementioned customer.

David D. deBerardinis (Registered Representative, Shreveport, Louisiana) 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, deBerardinis consented to the described sanctions and to the entry of findings that he participated in distributions of promissory notes through a non-registered entity in which he had an ownership interest. In addition, the findings stated that deBerardinis sent to public customers correspondence that was misleading, in that it misrepresented certain safety features of the aforementioned notes, and failed to adequately disclose the risks of the offerings.

Robert L. Eaton (Registered Representative, Kingsport, Tennessee) 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 \$85,221.57 in restitution to the appropriate parties. Without admitting or denying the allegations, Eaton consented to the described sanctions and to the entry of findings that he fraudulently induced at least nine public customers to invest about \$85,221.57 in various securities, but neglected to invest these funds. The NASD found that Eaton converted the funds to his own use and benefit without the customers' knowledge or consent. The findings also stated that Eaton altered a customer's account statement to reflect fictitious investments in the customer's account. In addition, the NASD found that Eaton failed to respond to NASD requests for information.

Ivan J. Fisher (Registered Representative, Moore, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$26,500 in restitution to the appropriate parties. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he solicited and received checks totaling \$26,500 from public customers for investment purposes, failed to return the funds or provide the customers with an accounting for their funds, and misappropriated customer funds. In addition, the NASD found that Fisher failed to respond fully to an NASD request for information.

Donald R. Gates (Registered Representative, Cabot, Arkansas) was fined \$50,967.70,

suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Gates accepted payments based on commissions earned from transactions in a customer account when he knew, or should have known, that at the time the transactions occurred he was not properly registered with the NASD or approved as an agent in the state where the customer was domiciled. Gates appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Kenneth E. Hudson (Registered Representative, Gadsden, Alabama) was fined \$80,000, barred from association with any NASD member in any capacity, and required to pay \$9,663.44 in restitution to the appropriate parties. The sanctions were based on findings that Hudson received from insurance customers \$9,663.44 to purchase insurance products, but failed to execute the purchases or issue refund checks and, instead, converted the funds for his own use and benefit without the customers' knowledge or consent. In addition, Hudson signed the name of an insurance customer to a \$1,602.22 refund check, cashed the check, and converted the funds for his own use and benefit without the customer's knowledge or consent. Also, Hudson failed to respond to NASD requests for information.

Kenneth L. Lucas (Registered Principal, Englewood, Colorado) and **Jeffrey E. Modesitt, Sr. (Registered Principal, Littleton, Colorado)** were fined \$15,000, jointly and severally with other respondents, and each suspended from association with any NASD member in any principal capacity for one month. Modesitt also submitted an Offer of Settlement pursuant to which he was ordered to disgorge \$6,003 to the NASD. The SEC imposed the sanctions following appeal of an October 1991 NBCC decision. The sanctions were based on findings that Lucas and Modesitt failed to establish, maintain, and enforce written procedures governing the imposition of markups and markdowns on principal transactions. The suspensions began August 15, 1994 and ended September 15, 1994.

Alexander Marks, Jr. (Registered Representative, Hueytown, Alabama) was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Marks received a \$95.76 insurance commission check that was issued to a fellow agent of his member firm, failed to remit the check to the agent and, instead, forged the agent's name on the check and converted the funds for his own use and benefit without the agent's knowledge or consent. In addition, Marks second-endorsed a \$2,764.03 check made payable to a public customer and converted the funds for his own use and benefit without the knowledge or consent of the customer. Marks also failed to respond to NASD requests for information.

William E. Powdrill, III (Registered Representative, Shreveport, Louisiana) submitted an Offer of Settlement 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, Powdrill consented to the described sanctions and to the entry of findings that he sold promissory notes to profit-sharing accounts and public customers without having a reasonable basis for determining that these purchases were suitable for the customers considering their financial situations, investment objectives, and needs. The findings also stated that Powdrill falsified information submitted with public customers' subscription agreements, and made oral misrepresentations to at least nine public customers concerning the safety

of their principal and the risks associated with promissory notes. The NASD also found that Powdrill participated in the sale of interests in a limited partnership to at least eight investors without providing prior written notice to and receiving approval from his member firm. In addition, the NASD determined that Powdrill recommended and executed purchase and sale transactions in the account of a public customer without having a reasonable basis for determining that these investments were suitable for the customer considering her financial situation, investment objectives, and needs.

Rod M. Solow (Associated Person, New Orleans, Louisiana) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Solow consented to the described sanctions and to the entry of findings that he received \$30,000 from a public customer for investment purposes, failed to execute the purchase on behalf of the customer and, instead, converted the funds for his own use without the public customer's knowledge or consent. In addition, the findings stated that Solow failed to respond to NASD requests for information.

Don M. Warren (Registered Representative, Montgomery, Alabama) was fined \$16,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Warren converted customer funds totaling \$2,982.68 for his own use and benefit without the customers' knowledge or consent.

March Actions

Nazmi C. Hassanieh (Registered Representative, Memphis, Tennessee) was barred from association with any NASD member in any capacity. The SEC affirmed the sanction following appeal of an August 1993 NBCC decision. The sanction was based on findings that Hassanieh failed to respond to NASD requests for information.

Karen G. Hayes (Registered Representative, Rogersville, Tennessee) submitted an Offer of Settlement pursuant to which she was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$361 in restitution to her member firm. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that she received from public customers \$361 to purchase automobile insurance and she failed to submit it to her member firm. Instead, the NASD found that Hayes converted the funds to her own use and benefit without the customers' knowledge or consent. The findings also stated that Hayes failed to respond to NASD requests for information.

Donald M. Hogan, Jr. (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Hogan 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 Hogan executed transactions in a public customer's account that created a margin balance without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer based on the customer's financial situation, investment objectives, and needs. In addition, the

NASD found that Hogan completed a new account form on behalf of a public customer, without having a reasonable basis for believing that the information regarding income and net worth, among other items, was correct.

April Actions

William H. Kautter (Registered Principal, Kansas City, Missouri), Janet K. Gatz-Bennett (Registered Principal, Stilwell, Kansas), and Brian G. Augustyn (Registered Principal, Kansas City, Missouri) submitted an Offer of Settlement pursuant to which Kautter was fined \$12,500 and suspended from association with any NASD member in any principal capacity for six months. Gatz-Bennett was fined \$12,500 and suspended from association with any NASD member in any capacity for one year and Augustyn was fined \$5,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the promotion and sale of shares of a mortgage fund, Kautter, Gatz-Bennett, and Augustyn misrepresented, or failed to state to participating broker/dealers, certain material facts concerning the status of an extension of an initial public offering of the fund. The findings also stated that Kautter, Gatz-Bennett, and Augustyn distributed to the broker/dealers materials that contained material misrepresentations about the past performance of the fund. In addition, the NASD determined that Kautter and Gatz-Bennett failed and neglected to supervise properly the activities of Augustyn. Augustyn's suspension began March 20, 1995, and concluded April 2, 1995.

Bruce L. Sage (Registered Representative, Rogers, Arkansas) submitted an Offer of Settlement 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, Sage consented to the described sanctions and to the entry of findings that he signed a public customer's name to 13 separate documents, including letters of authorization, without having obtained prior written approval from the customer. The findings also stated that Sage received from the same customer \$29,516.30 and converted those funds to his own use and benefit.

District 6—Texas

February Actions

Kenneth James Adam (Registered Representative, League City, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adam circumvented the registration requirements of Schedule C of the NASD By-Laws and failed to respond to NASD requests for information.

Terry William Funk (Registered Representative, El Paso, Texas) 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 one year. Without admitting or denying the allegations, Funk consented to the described sanctions and to the entry of findings that he functioned as a financial and operations principal for his member firm without qualifying by examination in that capacity. The findings also stated that the same firm, acting through Funk, failed to maintain a blanket fidelity bond and conducted a securities business while failing to maintain its required minimum net capital. Furthermore, the NASD determined that the firm, acting through Funk, conducted a securities business while failing to make and keep current books and records. In addition, the NASD found that the firm, acting through Funk, took

possession of customers' funds and securities while purporting to operate under exemptive provisions of SEC Rule 15c3-3.

David Scott Kendrick (Registered Representative, Irving, Texas) was fined \$25,000, suspended from association with any NASD member as a registered representative for six months, and required to requalify by examination. The sanctions were based on findings that, by means of manipulative, deceptive, or other fraudulent devices or contrivances, Kendrick effected unauthorized transactions in options in the accounts of public customers. In addition, Kendrick failed to respond to NASD requests for information.

March Actions

Bluebonnet Securities, Inc. (Austin, Texas) and Susan L. Henry (Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$21,422, 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 Henry, permitted up to five salesmen to be associated with it and to solicit customers or potential customers for the purchase of shares securities of investment companies, without having been registered with the NASD. Furthermore, the findings stated that the firm, acting through Henry, failed to maintain accurate books and records and filed an inaccurate FOCUS Part I report. In addition, the NASD found that the firm and Henry failed to establish and maintain written supervisory procedures to permit them to supervise adequately the securities activities in which the firm engaged.

Paul McCulloch Byatt (Registered Principal, Irving, Texas) was suspended from association with any NASD member in any capacity for 60 days and must requalify by examination in all capacities. The sanctions were based on findings that Byatt effected transactions in a public customer's account by means of manipulative, deceptive, or fraudulent devices or contrivances, thereby causing over \$30,000 in losses to the customer.

John Wayne Ezell (Registered Representative, Arlington, Texas) submitted an Offer of Settlement pursuant to which he was fined \$27,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Ezell consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities to public customers and effected unauthorized, excessive, and unsuitable transactions in the accounts of public customers. The findings also stated that Ezell did this by means of manipulative, deceptive, or other fraudulent devices or contrivances, without having reasonable grounds for believing that such recommendations and transactions were suitable for the customers based on their other security holdings and financial situations and needs, and fraudulently induced the purchase and/or sale of securities by such public customers.

Jerome Joseph Hansmann (Registered Representative, San Antonio, Texas) submitted an Offer of Settlement pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$440,000 in restitution to a customer. Without admitting or denying the allegations, Hansmann consented to the described sanctions and to the entry of findings that he induced the purchase and sale of securities by means of manipulative, deceptive, or fraudulent devices and contrivances by selling units of securities to a public customer. Thereafter, the NASD found that Hansmann, by means of false and misleading statements, obtained from the same customer,

without payment of just compensation, the transfer to himself of the same securities, which he converted to his own use and benefit. In addition, the NASD determined that, in connection with these activities, Hansmann engaged in private securities transactions.

InterAmerican Securities Corporation (Houston, Texas) and Catherine Kinsel Collins (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$11,756, 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 Collins, permitted the firm to pay commissions to persons or entities, that were not registered with the NASD. The findings also stated that the firm, acting through Collins, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its minimum required net capital.

Shine Thomas Philip (Registered Representative, Sugarland, Texas) 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, Philip consented to the described sanctions and to the entry of findings that he made improper use of customer funds by forging their endorsements on refund checks made payable to the customers and by submitting a public customer's check accompanied by a forged application in the customer's name to his member firm to have an insurance policy issued.

Texas Capital Securities, Inc. (Houston, Texas), Patrick Joseph Smetek (Registered Principal, Houston, Texas), and Thomas Francis Buckley (Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$52,000, jointly and severally. Buckley was suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Smetek, failed to buy securities from and/or sell securities to public customers of the firm at prices that were fair. The findings also stated that the firm, acting through Smetek, failed to disclose accurately the commission and/or markup/markdown in at least 56 transactions as required by Rule 10b-10 under the Securities Exchange Act of 1934, as amended, and Schedule D of the NASD By-Laws. Furthermore, the NASD found that the firm, acting through Smetek, sold shares of common stock to four investment partnerships in an initial public offering without obtaining the information for investment partnerships and corporation that is required by the Interpretation of the Board of Governors concerning Free-Riding and Withholding. In addition, the NASD determined that Buckley failed to respond to an NASD request for information.

Andrew Ross Zodin (Registered Representative, Houston, Texas) 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 five business days, and ordered to disgorge \$1,539 in net commissions. Without admitting or denying the allegations, Zodin consented to the described sanctions and to the entry of findings that he executed and caused to be executed in the account of a public customer unauthorized transactions in a common stock resulting in a \$7,452 loss to the customer.

April Actions

Enex Securities Corporation (Kingwood, Texas) and Luther Clyde Campbell (Registered Principal, Spring, Texas) submitted an Offer of Settlement pursuant to which they were fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Campbell, effected transactions in nonexempt securities while failing to maintain its minimum required net capital. The findings also stated that the firm, acting through Campbell, failed to comply with SEC Rule 15c3-3 by taking possession of customer funds while purporting to operate under exemptive provisions of the Rule.

John Austin Leech, Sr. (Registered Representative, Houston, Texas) was fined \$25,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination if he becomes associated with any NASD member. The sanctions were based on the findings that Leech engaged in excessive trading in the account of a public customer, resulting in a loss of \$43,000 without having reasonable grounds for believing such transactions were suitable for the customer. In addition, Leech exercised discretion in executing transactions in the same customer's account without having written authority from the customer.

Katherine Sholes Parker (Registered Principal, Heaters, West Virginia) submitted an Offer of Settlement pursuant to which she was fined \$5,000 and suspended from association with any NASD member as a limited financial principal or in a similar principal capacity for one year, provided, however, the suspension shall not prohibit Parker, on behalf of any member of the NASD who is required to have associated with it a financial principal, and acting under the supervision of such financial principal, or who is exempted by the NASD from maintaining a financial principal, from preparing financial statements and FOCUS reports and filing FOCUS reports with the SEC and the NASD. Without admitting or denying the allegations, Parker consented to the described sanctions and to the entry of findings that a member firm, acting through Parker, failed to file its annual certified audit within the time required, and failed to maintain its minimum required net capital. The findings also stated that Parker, acting on behalf of the firm, failed to record properly bank deposits on the firm's books and records.

Ronald Kevin Shimkus (Registered Representative, Houston, Texas) was fined \$10,000 and suspended from association with any NASD member in any capacity until an arbitration award is satisfied. The sanctions were based on findings that Shimkus failed to pay a \$22,144.13 NASD arbitration award.

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

February Actions

Lawrence W. Cinquemani (Registered Representative, Smyrna, Georgia) was fined \$44,864.35, barred from association with any NASD member in any capacity, and ordered to pay \$4,972.87 in restitution to his member firm. The sanctions were based on findings that Cinquemani caused the transfer of shares from the securities account of a public customer to his personal securities account without the customer's knowledge or authorization. Cinquemani also liquidated the aforementioned securities positions and converted the proceeds for his own use and benefit without the customer's knowledge or authorization. In addition, Cinquemani failed to respond to NASD requests for information.

David W. Fritz (Registered Representative, Martinez, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$33,224.35 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he received from a public customer a \$6,644.87 check representing the cash value from a life insurance policy that the customer had surrendered. According to the findings, the customer directed Fritz to use the funds to pay the premiums on a new insurance policy but, instead, he converted the funds for his own use and benefit.

Michael K. Hall (Registered Representative, Sebring, Florida) 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, Hall consented to the described sanctions and to the entry of findings that he converted to his own use and benefit funds that he received from a public customer for the purchase of shares of a municipal bond mutual fund.

William L. Joiner, Jr. (Registered Representative, Powder Springs, Georgia) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$23,099.53 in restitution to his member firm. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Joiner withdrew \$23,099.53 from the life insurance policies of six public customers and converted the funds for his own use and benefit without the knowledge or authorization of the customers. In addition, Joiner failed to respond to NASD requests for information.

Keith E. Martin (Registered Representative, Spartanburg, South Carolina) was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Martin obtained from public customers a \$2,930.89 check intended to be used to purchase investment company securities and without the knowledge or authorization of the customers, converted the funds to his own use and benefit. In addition, Martin failed to respond to NASD requests for information.

Algie L. McCormick (Registered Representative, St. Petersburg, Florida) was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that during the course of a Series 6 examination, McCormick had in her possession notes relating to the subject matter of the examination.

Keith S. Norris (Registered Representative, Hilton Head, South Carolina) was fined \$10,000, suspended from association with any NASD member in any capacity for one year, required to disgorge commissions totaling \$28,285.41, and ordered to pay restitution to his customers of the principal amounts they each invested. In addition, Norris was ordered to requalify by examination as an Investment Company and Variable Contracts Products Representative and receive a score of not less than 80. Furthermore, Norris was required to reimburse the member firm with which he was associated if the firm is ever ordered to pay restitution to Norris' customers. The sanctions were based on findings that Norris engaged in private securities transactions without providing to his member firm written notice of the transactions or obtaining prior approval from his member firm.

Larry James Oliver (Registered Representative, Port St. Lucie, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanc-

tions were based on findings that Oliver failed to respond to NASD requests for information concerning his termination from a member firm and a customer complaint.

Walter L. Swafford (Associated Person, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings in that during the course of a Series 7 examination, Swafford had in his possession notes relating to the subject matter of the examination.

Edward W. Tanner (Registered Representative, St. Petersburg, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tanner opened securities accounts for two public customers and submitted to his member firm inaccurate information on the new account cards. In addition, Tanner failed to respond to an NASD request for information.

Joseph F. Taylor (Registered Representative, Casselberry, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Taylor failed to respond to an NASD request for information about his termination from a member firm.

Robert J. Thomas (Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$21,392.39 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he effected 21 transactions in the accounts of 10 public customers without the knowledge or authorization of the customers. In addition, the NASD found that Thomas provided some of these customers with falsified confirmations and/or account statements intended to hide the unauthorized transactions.

Douglas M. Warner, Jr. (Registered Representative, Naples, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the account of a public customer without the customer's knowledge or consent. In addition, the NASD found that Warner signed customers' names to a client agreement and transfer documents.

John R. White (Registered Representative, Graniteville, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$49,365 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he received from 10 public customers checks totaling \$9,873 intended for the purchase of insurance products but, instead, misused and/or converted the funds for his own use and benefit.

Oliver J. Williams, Jr. (Registered Principal, Miami, Florida) was fined \$7,500, jointly and severally with another respondent and suspended from association with any NASD member as a financial and operations principal for 30 days and thereafter until he requalifies by examination. The sanctions were based on findings that a member firm, acting through Williams, conducted a securities business while failing to maintain its required minimum net capital. The NASD also found that the firm, acting through Williams, failed to accurately maintain certain books and records; filed a materially inaccurate FOCUS Part

I report with the NASD; and failed to file FOCUS Part IIa reports and its annual audited report in a timely manner. In addition, the firm, acting through Williams, failed to send timely telegraphic notice with regard to its net capital deficiency.

Bruce Martin Zipper (Registered Principal, Miami, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Zipper failed to pay a \$418,000 arbitration award. Zipper has appealed this action to the SEC, and the sanctions are stayed pending consideration of the appeal.

March Actions

Bernard D. Gorniak (Registered Representative, Cape Coral, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Gorniak received from a public customer \$1,000 in cash for the purchase of shares of an investment company and instead of investing these funds on the customer's behalf, he held them for an indeterminate period before returning them without making the investments as requested by the customer. Gorniak has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Robert R. Houck (Registered Representative, Bradenton, Florida) was fined \$8,121.97 and suspended from association with any NASD member in any capacity for five business days. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Houck prepared and provided to a public customer periodic securities portfolio valuations that contained overstated values for certain positions held by the customer in at least two separate accounts without having a factual basis for making such representations.

Richard J. Lanigan (Registered Representative, Laurel, Florida) was fined \$2,500 and suspended from association with any NASD member in any capacity for five days. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Lanigan failed to pay a \$4,500 arbitration award in a timely manner. Furthermore, Lanigan failed to amend his Form U-4 to reflect that the award included a finding of liability against him and that he had an unsatisfied judgment against him. Lanigan has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Manoochehr Nosratishamloo (Registered Representative, Bal Harbour, Florida) was fined \$26,735 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nosratishamloo caused \$13,000 to be wired from his personal bank account into the securities account of a public customer, thereby sharing in losses sustained by the customer. Nosratishamloo also effected, or caused to be effected, a series of transactions for the same customer's account without the knowledge or consent of the customer. In addition, Nosratishamloo stated to NASD staff that he had no knowledge of the origin of these wire transfers and that he did not deposit funds in a customer's securities account when in fact they came from his personal bank account.

Palm State Equities, Inc. (Largo, Florida), James R. Tuberosa (Registered Principal, Largo, Florida) and **Holly Ann Schuck, f.k.a. Holly Ann Tuberosa (Registered Principal, Sarasota, Florida)**. The firm and Tuberosa were fined \$20,000, jointly and severally. The firm was

also fined \$7,500 and Schuck was fined \$10,000. The NBCC affirmed the sanctions following appeal and review of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Tuberosa, failed to comply with its restrictive agreement with the NASD by participating in a firm commitment underwriting. In addition, the firm, acting through Schuck, filed its annual audit report with the NASD 35 days late. Furthermore, the firm failed to reconcile its bank checking account statements and its clearing commission account and post necessary adjustments to its general ledger. The firm and Tuberosa have appealed this action to the SEC, and their sanctions are not in effect pending consideration of the appeal.

Schembra Securities, Inc. (Hilton Head, South Carolina) and **Philip A. Schembra (Registered Representative, Hilton Head, South Carolina)** were fined \$10,000, jointly and severally. Schembra was barred from association with any NASD member in any principal or supervisory capacity. The sanctions were based on findings that the firm, acting through Schembra, failed to file its annual audited financial reports in the prescribed time periods. The firm, acting through Schembra, also failed to file notice with the NASD when it engaged a new accountant to perform its audit and failed to have its annual financial reports audited by an independent public accountant. In addition, the firm, acting through Schembra, failed to amend promptly and keep current its Form BD and maintained a principal registration with the NASD for an individual when he was no longer active in the firm's investment banking or securities business, and was not functioning as a principal. Furthermore, Schembra functioned in a principal capacity without being so registered with the NASD. Also, the firm, acting through Schembra, failed to have a qualified registered principal and failed to amend its written supervisory procedures in a timely manner to reflect the replacement of its supervisory officer for compliance and to correct violations found in a previous Letter of Acceptance, Waiver and Consent.

April Actions

David L. Gray, Jr. (Registered Representative, Tampa, Florida) was fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$11,424.25 in restitution to a public customer. The sanctions were based on findings that Gray misrepresented to a public customer that he was aware of certain non-public information that indicated the price of a stock would increase, and thus caused the customer to purchase the stock. In addition, Gray failed to respond to an NASD request for information.

Cristina I. Marti (Registered Representative, Miami, Florida) submitted an Offer of Settlement pursuant to which she was fined \$10,000 and barred from association with any NASD member in any capacity with the right to reapply to become an associate with a member after two years. Without admitting or denying the allegations, Marti consented to the described sanctions and to the entry of findings that she submitted modifications to customer payroll deduction agreements without the authorization of the customers.

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

February Actions

None

March Actions

James V. Anzalone (Registered Representative, Tonawanda, New York) 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, Anzalone consented to the described sanction and to the entry of findings that he obtained two checks totaling \$12,493.99 from his member firm payable to insurance customers, which represented a dividend withdrawal and the cash surrender value from the customers' insurance policies. According to the findings, the customers did not authorize the withdrawal of the funds and Anzalone used the monies for some purpose other than the benefit of the customers. The findings also stated that Anzalone obtained from an insurance customer a \$500 check that was endorsed by the customer and was to be applied toward the customer's variable life insurance policy premium. The NASD found that Anzalone failed to apply the funds as directed and used them for some purpose other than for the benefit of the customer.

Kevin Lee Butts (Registered Representative, South Holland, Illinois) 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 allegation, Butts consented to the described sanctions and to the entry of findings that he executed margin account agreements and the purchase of securities on margin in the accounts of two public customers without their knowledge or consent.

Dominic G. Celli (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Celli consented to the described sanctions and to the entry of findings that he submitted a Uniform Application for Securities Industry Registration (Form U-4) application on which he failed to disclose that he had been charged with misdemeanor theft. The findings also stated that Celli failed to respond to NASD requests for information.

John K. Coyne (Registered Representative, Westlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Coyne consented to the described sanctions and to the entry of findings that he misappropriated \$9,000 from a securities customer.

Victor F. DiGiacomo (Registered Representative, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiGiacomo consented to the described sanctions and to the entry of findings that he obtained from a public customer a \$3,000 check that was to be applied to the common stock option of the customer's variable life policy. According to the findings, DiGiacomo failed to apply the funds as requested and used the monies for some purpose other than for the benefit of the customer. In addition, the NASD determined that DiGiacomo obtained a \$6,000 check from a member firm payable to an insurance customer, which represented a withdrawal from the customer's insurance policy and intended to pay off a loan on another insurance policy of the customer. The NASD found that DiGiacomo failed to apply the check as requested and used the funds for some purpose other than the benefit of the customer.

Louis Feldman (Registered Principal, Coral Springs, Florida) was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination in any registered capacity that he might function within 90 days or he may not act in a registered capacity until he passes the examination. The SEC modified the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Feldman submitted letters on a member firm's letterhead but with his home address to six mutual fund companies. Feldman engaged in this activity for the purpose of changing the broker/dealer of record for customer accounts without having authority to approve bulk transfers of accounts and without obtaining prior authorization from the firm or from the customers.

Geneva Securities, Inc. (Schaumburg, Illinois) and Richard M. Eisenmenger (Registered Principal, McHenry, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. In addition, the firm was required for one year to submit all advertising and sales literature to the NASD Advertising Department for approval before use. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Eisenmenger, permitted the distribution of advertisements and sales literature to the public without submitting them to the NASD Advertising Department for approval before use. The findings also stated that the firm, acting through Eisenmenger, failed to file a portion of the advertisements and sales literature with the NASD Advertising Department within 10 days of their first use or publication by the firm. Furthermore, the NASD determined that the firm, acting through Eisenmenger, permitted the distribution of the advertisements and sales literature that included exaggerated, unwarranted, or misleading statements or claims that appear promissory and failed to reflect the risks of fluctuating prices and the uncertainty of yield.

David E. Lobel (Registered Representative, Ann Arbor, Michigan) 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, Lobel consented to the described sanctions and to the entry of findings that he purchased life insurance for public customers and signed their names to life insurance applications without their knowledge, consent, or authorization. The findings also stated that Lobel purchased life insurance for fictitious customers.

Norman B. March, Jr. (Registered Representative, Olcott, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$6,000 in restitution to his member firm. The sanctions were based on findings that March received from a public customer a \$6,000 check with instructions to invest the funds in the customer's Individual Retirement Account. March failed to follow the customer's instruction and used the funds for some purpose other than for the benefit of the customer. March also failed to respond to NASD requests for information.

Orion Securities, Inc. (Englewood, Colorado) and Douglas Nutt (Registered Principal, Greenwood Village, Colorado) were fined \$400,000, jointly and severally. The firm was expelled from NASD membership and Nutt was barred from association with any NASD member in any capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of an April 1993 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm and Nutt engaged in improper practices relating to a

loan transaction. Specifically, the firm and Nutt were involved in a scheme involving a \$500,000 loan obtained by one of their investment banking clients. The principal collateral for the loan was supposed to be a Government National Mortgage Association (GNMA) bond, purportedly being held by another member firm that had been pledged by another of the firm's clients. Several months before this loan was obtained, Nutt, under mysterious circumstances, bought 372,000 shares of common stock, which was approximately one-third of the company's purported free-trading stock, from three shareholders at an average price of \$.0006 per share. The firm then entered quotes in the NQB Pink Sheets at \$5 bid and \$5.25 ask, effected several trades at these prices, while subsequently trading the stock at prices of \$1.25 to \$1.75 per share, thereby realizing a profit of almost \$400,000. In addition, the firm and Nutt engaged in deceptive and fraudulent devices and contrivances in that they purchased shares of common stock that were effected with fraudulently excessive markdowns from the prevailing market price in violation of the NASD Mark-Up Policy.

Daniel P. Romeo (Registered Representative, Poland, Ohio) was fined \$25,742 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Romeo misappropriated insurance customer funds totaling \$5,158.40 when he intercepted and endorsed a check issued by his member firm to one customer and induced another customer to endorse another check issued by his member firm, which he then cashed.

Mark Steven Warner (Registered Representative, Willoughby, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$80,000, required to submit proof of restitution of \$15,522.90 to a member firm, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he obtained \$15,522.90 from 31 insurance customers with instructions to apply the funds to insurance policies they owned. The NASD found that, contrary to the customers' instructions and without their knowledge or consent, Warner deposited the funds in a bank account in which he had an interest or which he controlled, and retained the funds for his own use and benefit.

James Mitchell Warren (Registered Representative, Clarence, New York) was fined \$5,000 and barred from association with any NASD member in any capacity with the right to reapply for association with a member after one year. In addition, Warren must requalify by examination in the appropriate capacity before again acting as a representative of a member firm. The sanctions were based on findings that Warren changed, or caused to be changed, the address for a public customer to his own home address without the knowledge or consent of the customer. In addition, Warren, altered the same customer's policy statements to conceal an \$896.57 redemption charge that had been incurred and to reflect higher ending account values.

April Actions

None

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

February Actions

Paul F. Adams, Jr. (Registered Representative, Pittsburgh, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were

based on findings that Adams failed to respond to NASD requests for information.

Frank A. Azzalina (Registered Representative, Easton, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Azzalina failed to make a written report concerning his reported failure to submit an application form and premium payments to his member firm or its affiliated insurance companies.

Dale E. Barlage (Registered Representative, Jackson, Wyoming) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barlage consented to the described sanctions and to the entry of findings that he recommended and sold shares of stock directly from his personal account to a public customer without disclosing his material adverse interest in the security. In addition, the NASD found that Barlage sold shares of the same stock to two additional customers based on false and misleading representations he made about the performance of the stock.

Jerry A. Blackwell, Sr. (Registered Representative, Gaithersburg, Maryland) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blackwell failed to respond to NASD requests for information about alleged misrepresentations made in connection with an investment for a customer.

Boening & Scattergood, Inc. (West Conshohocken, Pennsylvania) and Harold F. Scattergood, Jr. (Registered Principal, West Conshohocken, Pennsylvania) were fined \$22,500, jointly and severally. The fine will be reduced by the aggregate amount of restitution the respondents make to customers who were charged excessive markups. The sanctions were based on findings that the firm, acting through Scattergood, effected principal sales to public customers of stock and warrants at prices that were unfair and unreasonable taking into consideration all relevant circumstances. The prices charged included markups ranging from 11 to 45 percent above the prevailing market price, in violation of the NASD Mark-Up Policy.

Scott D. Carr (Registered Representative, Dallastown, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carr failed to respond to NASD requests for information in connection with an ongoing NASD investigation.

Richard E. Dilworth (Registered Representative, Connellsville, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for seven business days, and ordered to pay \$2,235 in restitution to customers. Without admitting or denying the allegations, Dilworth consented to the described sanctions and to the entry of findings that he made materially false and misleading statements to public customers about their mutual fund investments and failed to disclose material information that would provide shareholders with information that could affect their investment decision. The findings also stated that Dilworth sent to customers sales literature that omitted material facts and contained inaccurate, unwarranted, and/or misleading statements and claims without having the literature approved by a principal of his member firm.

Robert Hammerman (Registered Representative, Vienna, Virginia) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member

in any capacity for 30 business days. Without admitting or denying the allegations, Hammerman consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice of such participation to his member firm.

Charles Hofheimer (Registered Representative, Virginia Beach, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hofheimer consented to the described sanctions and to the entry of findings that he recommended securities transactions to public customers without having reasonable grounds for believing such recommendations were suitable for the customers considering their financial situations and needs. The findings also stated that Hofheimer accepted oral discretionary authority over the accounts of public customers and used it to effect discretionary securities transactions in the respective accounts without first having such authority in writing and accepted by his member firm.

Stephen A. Krzywiec (Registered Representative, Peckville, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,000, barred from association with any NASD member in any capacity, and required to pay \$1,617.05 plus interest in restitution to a member firm. Without admitting or denying the allegations, Krzywiec consented to the described sanctions and to the entry of findings that he received from seven customers \$1,617.05 that were to be applied to insurance policy premiums and that Krzywiec failed to remit or apply the funds properly and converted the funds for his own benefit.

Kenneth J. McGaffin, Sr. (Registered Representative, Jessup, Maryland) 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, McGaffin consented to the described sanctions and to the entry of findings that he endorsed and negotiated a \$250.56 check that was made payable to an insurance agency, and converted the proceeds for his personal use and benefit. The findings also stated that McGaffin failed to respond to NASD requests for information.

William H. Raub, III (Registered Representative, Bethlehem, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Raub consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning his alleged embezzlement of funds.

Paul A. Short (Registered Representative, Huntington, West Virginia) submitted an Offer of Settlement pursuant to which he was fined \$12,525. Without admitting or denying the allegations, Short consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm or receiving the firm's approval to engage in such transactions.

Michael P. Stevens (Registered Representative, Clifton Heights, Pennsylvania) was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC modified the sanctions following review of a Philadelphia DBCC decision and reconsideration of its own earlier decision. The sanctions were based on findings that while taking the Series 7 examination, Stevens was discovered to have in his possession notes related to the subject matter of the examination.

Martin J. Tate (Registered Representative, Erie, Pennsylvania) 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, Tate consented to the described sanctions and to the entry of findings that he affixed a signature purporting to be that of an insurance customer to an annuity application form and, thereafter, submitted such form to his member firm without the prior authorization or consent of the customer.

Edward A. Verba (Registered Representative, Easton, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Verba failed to submit to the NASD a written report about the disposition of funds that he allegedly collected from policyholders but did not remit to his member firm.

Washington Investment Corporation (Washington, DC) and James R. Johnson (Registered Principal, Annapolis, Maryland) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. In addition, Johnson was required to requalify by examination as a general securities principal or cease to function in that capacity. Furthermore, the firm was precluded from maintaining non-Office of Supervisory Jurisdiction (OSJ) branch offices or executing solicited transactions involving a "penny stock," as defined in SEC Rule 3a51-1, promulgated under the Securities Exchange Act of 1934. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Johnson failed to establish, implement, and enforce adequate supervisory procedures in a branch office with respect to the sales practices of a registered representative.

March Actions

Covato/Lipsitz, Inc. (Pittsburgh, Pennsylvania) and Alfred I. Lipsitz (Registered Principal, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which they were fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Lipsitz, effected securities transactions while failing to maintain its minimum required net capital and failed to comply with a provision of its restriction agreement with the NASD in that it participated in a firm commitment distribution of securities. The findings also stated that the firm, acting through Lipsitz, filed inaccurate FOCUS Part I reports with the NASD, failed to comply with the books and records requirements, and filed an inaccurate assessment report. The NASD also determined that the firm, acting through Lipsitz, failed to comply with Section 15(f) of the Securities Exchange Act of 1934 in that it did not establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information. In addition, the NASD found that the firm, acting through Lipsitz, failed to establish, maintain, and enforce written supervisory procedures.

Michael G. Keselica (Registered Representative, Gaithersburg, Maryland) was fined \$30,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Keselica purchased shares of securities for the account of a public customer without the customer's authorization.

April Actions

None

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

February Actions

Michael L. Brod (Registered Principal, New York, New York) was fined \$7,500, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify as a general securities principal within six months or be barred until he requalifies. The sanctions were based on findings that Brod, acting on behalf of a member firm, failed to enforce the firm's written supervisory procedures to prevent and detect violations by one of its registered representatives.

First Empire Securities, Inc. (Hauppauge, New York) and Michael Belfiore (Registered Principal, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$40,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Belfiore, failed to prepare accurate books and records. The findings also stated that the firm, acting through, conducted a securities business while failing to maintain its minimum required net capital. In addition, the firm, acting through Belfiore, in three transactions, sold government agency securities to three customers at prices that were not as favorable as possible under the prevailing market conditions.

March Actions

Russell Bennett Alexander (Registered Representative, Newton, New Jersey) was fined \$42,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alexander received three checks totaling \$3,104.55 issued by his member firm payable to insurance customers, endorsed the customers' names on two of the checks, and misappropriated and converted \$2,990.35 of the funds to his own use without the customers' prior knowledge or consent. In addition, Alexander caused the address of one customer to be changed without the customer's knowledge or consent to conceal his misappropriation and conversion of the customer's funds. Alexander also failed to respond to NASD requests for information.

Roberto M. Argente (Registered Representative, Metuchen, 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 \$58,468.62 in restitution to public customers. Without admitting or denying the allegations, Argente consented to the described sanctions and to the entry of findings that he caused 14 checks totaling \$58,468.62 to be drawn against funds in the accounts of eight public customers, signed the customers' names to the checks in certain instances, and gave all the checks to another individual to satisfy his personal debts.

Beacon Securities, Inc. (New York, New York), Gary Lewis Donahue (Registered Principal, New Rochelle, New York), Stephen William Schwartz (Registered Principal, New York, New York), Karen Sue Billings (Registered Principal, New York, New York), and Edward Roderick Yaman (Associated Person, New York, New York) submitted Offers of Settlement pursuant to which the firm was fined \$10,000 and will undertake to hire a Series 24 registered principal to act as its principal and compliance director. Billings was fined \$20,000 and suspended

from association with any NASD member as a financial and operations principal for 60 days. Donahue was fined \$100,000, barred from association with any NASD member as a general securities principal, and suspended from association with any NASD member as a general securities representative for 60 days. Yaman was fined \$45,000 and barred from association with any NASD member in any capacity. Schwartz was fined \$20,000, barred from association with any NASD member as a general securities principal, and suspended from association with any NASD member as a general securities representative for 60 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 Donahue, Schwartz, and Billings, arranged for and allowed Yaman to become associated with the firm and to engage in a securities business at the firm when he was subject to statutory disqualification and not properly registered as required by Schedule C of the NASD By-Laws. The findings also stated that Yaman acted as an associated person of the firm and engaged in a securities business when he was subject to a statutory disqualification and not properly registered as required by Schedule C of the NASD By-Laws. The NASD also found that the firm, acting through Donahue, Schwartz, and Billings, engaged in a scheme to conceal the fact that barred and/or unregistered persons were associated with and/or engaged in a securities business at the firm and failed to maintain accurate financial records reflecting compensation paid to Yaman. In addition, the NASD determined that the firm, acting through Donahue and Schwartz, failed to establish, maintain, and enforce written procedures that would have enabled them to supervise properly the activities of the firm's associated persons, including Yaman.

Chatmon Capital Group, Inc. (West Orange, New Jersey), Warren Peter Chatmon (Registered Principal, South Orange, New Jersey) and Darryl Lloyd Johnson (Registered Principal, Lawrenceville, New Jersey) submitted an Offer of Settlement pursuant to which the firm was fined \$10,000 and suspended from conducting any securities business for 30 business days. Chatmon and Johnson were each fined \$10,000 and must requalify by examination in all capacities requiring qualification within 90 days or they will be suspended until the requisite qualifications are complete. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chatmon and Johnson, failed to demonstrate to the NASD that the firm maintained the minimum net capital required under Section 15(c) of the Securities Act and Rule 15c3-1 thereunder.

Steven Paul Hologounis (Associated Person, Staten Island, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hologounis, without having obtained permission to do so, removed from his member firm's offices sheets of microfiche that were the firm's property and sold them to two employees of another member firm.

Robert S. Leben (Registered Representative, Plainview, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leben consented to the described sanctions and to the entry of findings that he entered into an outside business arrangement without providing written notice of this activity to his member firm. The findings also stated that Leben failed to appear for an on-the-record interview in connection with the NASD investigation of this matter.

Rita H. Malm (Registered Principal, Jupiter, Florida) and Robert W. Berg (Registered Representative, New York, New York) Malm was fined \$15,000 and suspended from association with any NASD member in any principal capacity for 10 days. Berg was fined \$20,412.50, suspended from association with any NASD member in any capacity for three months, and required to requalify by examination as a registered representative before associating with any NASD member firm. The SEC affirmed the sanctions following appeal of a March 1992 NBCC decision. The sanctions were based on findings that Berg refused and failed to execute orders for six public customers and executed transactions in customer accounts without the authorization or consent of the customers. The NASD found that Malm failed to establish and implement supervisory procedures to detect and prevent violations relating to fraudulent and excessive markups, unauthorized trading, and failure to execute customer orders.

Joel Silverstein (Registered Representative, City Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$52,500, barred from association with any NASD member in any capacity, and required to pay \$10,500 in restitution to his member firm. Without admitting or denying the allegations, Silverstein consented to the described sanctions and to the entry of findings that, without the knowledge or permission of a public customer, he requested and received loan checks totaling \$10,500 on the customer's life insurance policy, signed the customer's name to the checks, negotiated the checks, and converted the funds to his own use and personal benefit. The findings also stated that Silverstein caused the same customer's address to be that of his without the knowledge or permission of the customer.

Mark A. Sonnino (Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sonnino consented to the described sanctions and to the entry of findings that he withdrew funds exceeding \$10,000 from a customer's account. The findings also stated that Sonnino caused his member firm to issue altered account statements to a public customer that did not accurately reflect the value of the account. Furthermore, the NASD determined that Sonnino failed to submit to an on-the-record interview at the NASD's offices.

Charles John Sullivan (Registered Representative, Greenlawn, New York) was fined \$2,500 and suspended from association with any NASD member in any capacity for 90 days, and thereafter until the arbitration award is satisfied. The sanctions were based on findings that Sullivan failed to pay a \$2,203 NASD arbitration award.

April Actions

Richard Stanley Chancis (Associated Person, New York, New York) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chancis acted as an associated person of a member firm and engaged in a securities business when he was subject to a statutory disqualification and not properly registered as required by Schedule C of the NASD By-Laws. In addition, Chancis failed to appear at the NASD for an on-the-record interview.

South Richmond Securities, Inc. (New York, New York), Herman Ralph Garcia, Jr. (Registered Principal, Staten Island, New York), and Barbara Hosman (Registered Principal, Deer Park, New York) submitted an Offer of Settlement pursuant to which they were fined \$75,000, jointly and severally, and ordered

to pay \$109,994 in restitution to public customers. In addition, the firm was suspended from effecting principal retail transactions for 10 business days and suspended from participating in any underwritings for three months. Hosman was barred from association with any NASD member as a general securities principal, and Garcia was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Garcia, dominated and controlled the market for a common stock to the extent that there was no independent, competitive market in the stock. The findings also stated that the firm, acting through Garcia, engaged in a course of conduct that operated as a fraud upon purchasers of a common stock in that the prices at which the firm sold the stock to public customers from inventory were unfair, and the prices charged to the customers contained fraudulent and/or excessive markups ranging from 5 to 30 percent over the prevailing market price, thus violating the NASD Mark-Up Policy. The NASD also determined that the firm, acting through Hosman, failed to establish, maintain, and enforce written procedures that would have enabled them to supervise properly the activities of the firm's associated persons, including Garcia. In addition, the NASD found that Garcia failed to provide testimony in an on-the-record interview with the NASD.

District 11—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the counties of Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)

February Actions

Joseph J. Bailey (Registered Representative, Binghamton, New York) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bailey deposited customer checks totaling \$101,683.68 into his personal mutual fund account, without the knowledge or consent of the customers, and misappropriated the funds for his own use and benefit.

Betty R. Cantelmo (Registered Representative, Hollywood, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$25,000. Without admitting or denying the allegations, Cantelmo consented to the described sanctions and to the entry of findings that she engaged in private securities transactions outside the regular scope of her association with her member firm without giving prior written notice to the firm.

James R. Cruise (Registered Representative, West Barnstable, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cruise consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about his alleged participation in private securities transactions.

Stephen J. Kende (Registered Representative, Burlington, Vermont) 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, Kende consented to the described sanctions and to the entry of findings that he failed to remit to his member firm three checks totaling \$87,344 for insurance premiums payments.

Michael T. Mahoney (Registered Representative, Branford, Connecticut) was fined \$1,000 and barred from association with any

NASD member in any capacity. The sanctions were based on findings that Mahoney withheld and misappropriated for his own use and benefit customer funds totaling \$260 that were intended as the initial premium payment on an automobile insurance. In addition, Mahoney failed to respond to NASD requests for information.

Harold R. Shailer (Registered Representative, Waterbury, Connecticut) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shailer misappropriated for his own use and benefit \$50,000 intended for investment on behalf of a public customer, without the knowledge or consent of a public customer or his member firm.

Edward S. Skane (Registered Representative, Framingham, Massachusetts) 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, Skane consented to the described sanctions and to the entry of findings that he submitted fraudulent insurance applications and disbursement request forms on behalf of insurance policyholders. In addition, the NASD found that Skane forged customers' signatures on insurance applications and dividend checks.

March Actions

Daniel K. Cooper (Registered Representative, Belgrade Lakes, Maine) 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, Cooper consented to the described sanctions and to the entry of findings that he received from a public customer \$1,578.86 intended for repayment of an insurance policy loan, and without the customer's knowledge or consent he misappropriated the funds for his own use and benefit.

Robert F. Jackson (Registered Representative, Quincy, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he received a \$9,500 check that was issued in error by his member firm and upon receipt of the check, he converted the funds to his own use and benefit.

Steven D. Lamell (Registered Representative, Hampstead, New York) 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, Lamell consented to the described sanctions and to the entry of findings that, without authorization, he caused the issuance of 20 withdrawal checks from the insurance policies of a public customer totaling \$10,512.47, and converted the proceeds to his own use and benefit.

Richard A. Lavoie (Registered Representative, Ledyard, Connecticut) 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, Lavoie consented to the described sanctions and to the entry of findings that he received from two insurance customers funds totaling \$800 intended for insurance premium payments. The NASD found that Lavoie misappropriated the funds to his own use and benefit without the customers' knowledge or consent.

Curtis R. Ponder (Registered Representative, Cranston, Rhode Island) 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, Ponder consented to the described sanctions and to the entry of findings that he falsified a mutual fund application by submitting the application in his name for business solicited by an individual barred from the securities industry.

Abilio V. Soares (Registered Representative, Fairhaven, 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, Soares consented to the described sanctions and to the entry of findings that he purchased for his account at his member firm two stocks having a combined purchase price of \$198,336.50, while knowingly having insufficient funds to pay for the transactions. The findings stated that Soares failed to make payment, resulting in liquidation by his member firm and a \$12,183 deficit balance.

Gerald R. Swirsky (Registered Representative, Sudbury, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and must requalify by examination as a general securities registered representative. Without admitting or denying the allegations, Swirsky consented to the described sanctions and to the entry of findings that he engaged in a course of conduct involving the recommendation, purchase, and sale of a security, a speculative investment, which was unsuitable in relation to the customers' investment objectives and financial situation and needs.

April Actions

Richard L. Hess (Registered Representative, Scotia, New York) was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Hess engaged in private securities transactions outside the regular course or scope of his employment with his member firm without giving prior written notice to the firm describing in detail the proposed transactions, his proposed role therein, and whether he received selling compensation in connection with the transactions.

Bryan W. McEldowney (Registered Representative, Cromwell, Connecticut) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McEldowney caused a \$3,092.14 check to be issued for the account of a public customer, forged the customer's endorsement, and converted the funds to his own use without the prior knowledge, authorization, or consent of the customer.

William F. Rizzo (Registered Representative, Bellerose, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rizzo consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit customer funds totaling \$38,548 intended for investment in insurance products and variable annuities.

Lincoln T. Tedeschi (Registered Representative, Willington, Connecticut) was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. The NBCC affirmed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that Tedeschi engaged in private securities transactions without

providing prior written notification to his member firm.

Louis A. Zannella (Registered Representative, East Providence, Rhode Island) 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, Zannella consented to the described sanctions and to the entry of findings that he received from 27 insurance customers cash totaling \$6,743 intended for auto insurance premium payments, and, without the customers' knowledge or consent, misappropriated the funds for his own use and benefit.

Market Surveillance Committee

February Actions

Arneson, Kercheville, Ehrenberg and Associates (San Antonio, Texas) and Joe B. Kercheville (Registered Principal, Boerne, Texas) submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kercheville, failed to establish, maintain, and enforce adequate written supervisory procedures that would have enabled them to supervise properly the trading of certain securities.

William F. Giles (Registered Representative, Omaha, Nebraska) was fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following review of a Market Surveillance Committee decision. The sanctions were based on findings that Giles knowingly and willfully engaged in a manipulative scheme to increase the reported closing price of a common stock. Specifically, Giles effected a series of purchases in the common stock at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade and to reduce or eliminate margin calls. Giles appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Oscar Gruss & Son, Inc. (New York, New York) and Jonah M. Meer (Registered Principal, Brooklyn, New York) were fined \$10,000, jointly and severally. The sanctions were based on findings that the firm failed to meet its obligations under SEC Rule 15c2-11 by submitting and continuously pursuing, without independent inquiry or verification, a Form 211 application to quote a common stock in the National Quotation Bureau Pink Sheets that contained materially inaccurate and unreliable information regarding the issuer. In addition, the firm and Meer, failed to establish, maintain, and enforce written supervisory procedures that would have enabled them to supervise properly the activities of two individuals.

Michael J. Randy (Registered Representative, Richton Park, Illinois) and Howard N. Barlow, Jr. (Registered Representative, Mundelein, Illinois). Randy was fined \$20,000 and barred from association with any NASD member in any capacity. Barlow was fined \$15,000, suspended from recommending penny stocks for one year, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal and review of a Market Surveillance Committee decision. The sanctions were based on findings that Randy refused to participate in an NASD staff interview, and that Barlow charged retail customers unfair prices on trades in a common stock, in that the gross sales credits were patently excessive when compared to the dollar amounts of the

transactions in question. In addition, the NASD found that Barlow effected retail sales of a designated security in contravention of SEC Rule 15c2-6, in that suitability forms required to be completed before the execution were not completed or were completed incorrectly.

Kenneth M. Wong (Registered Principal, San Rafael, California) submitted an Offer of Settlement pursuant to which he was fined \$45,000 and suspended from association with any NASD member in any capacity for 22 months. Without admitting or denying the allegations, Wong consented to the described sanctions and to the entry of findings that he knowingly communicated, for his direct or indirect personal benefit or as a trading gift, material, nonpublic, confidential, and proprietary information pertaining to pending merger discussions to his son-in-law and a long-time friend.

March Actions

None

April Actions

Thomas C. Kocherhans (Registered Representative, Orem, Utah) was fined \$50,500, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that Kocherhans knowingly and willfully engaged in a manipulative, deceptive, and fraudulent scheme to increase the reported closing price of a common stock. Specifically, Kocherhans effected a series of purchases in a manner that caused the purchases to be executed at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade, thereby reducing or avoiding margin calls on an account held in his wife's name, and to deter higher maintenance requirements on the stock. In addition, Kocherhans failed to inform his member firm in writing that he maintained brokerage accounts at two other member firms. Kocherhans has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

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.

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