

# NASD NOTICE TO MEMBERS 96-43

## SEC Approves NASD By-Laws Amendments Regarding Gross Revenue

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On June 13, 1996, the Securities and Exchange Commission approved amendments to Section 5 of Schedule A to the NASD By-Laws (Schedule A). The amendments delete the interest and dividend exclusion from gross revenue for member assessment purposes. The amendments, however, allow a member to deduct from its gross revenue all interest and dividend expenses but not in excess of related interest and dividend revenue or, alternatively, to deduct 40 percent of interest earned by the member on customer securities accounts. The amendments also allow a member to deduct the first \$50,000 of net interest and dividend revenue from gross revenue.

Questions regarding this Notice may be directed to James E. Shelton, NASD Finance, at (301) 590-6757.

### Background

Gross revenue is defined for member assessment purposes under Schedule A as total income reported on FOCUS form Part II or IIA. However, members are allowed certain exclusions. For example, income derived from interest and dividends is currently an allowable exclusion under Section 5.

The NASD<sup>®</sup> surveyed members' FOCUS filings for 1994 and conducted discussions with a number of member firm representatives. From these discussions the NASD determined that, along with the normal interest income from customer margin accounts and interest and dividends from trading and investment positions, a significant portion of interest revenue for certain members is associated with the member's trading strategies. These trading strategies involve, for example, repurchase, reverse repurchase, and stock loan/borrow transactions, which are

all considered revenues from the securities business.

The NASD has amended Section 5(a) of Schedule A by deleting the provision that allowed a member to exclude its interest and dividends from gross revenue for assessment purposes.

The NASD also has amended Section 5(b) of Schedule A by adding new subsection (3) to allow a member to deduct from gross revenue for assessment purposes either: (i) its interest and dividend expenses but not in excess of related interest and dividend revenue; or, alternatively, (ii) 40 percent of interest earned by the member on customer securities accounts. The first deduction is intended to allow a member to subtract directly related expenses from interest and dividend revenue to be included in the definition of gross revenue. The alternative deduction is intended to eliminate the potential for inequitable allocation of assessments on those members whose interest and dividend revenue is obtained without significant expenses related to trading strategies, (i.e., if a member derives interest revenue primarily from margin accounts and finances this lending through its own capital). This provision is consistent with the assessment of interest and dividend revenue by the Securities Investor Protection Corporation, which permits an alternative offset to gross interest and dividend revenue consisting of 40 percent of interest earned on customer securities accounts.

New Section 5(b)(3) also allows a member to deduct from its gross revenue the first \$50,000 of net interest and dividend revenue. This provision is intended to continue to encourage the accumulation of net capital, particularly by smaller members.

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## Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

## NASD By-Laws Schedule A

### Section 5—Gross Revenue for Assessment Purposes

(a) Gross revenue is defined for assessment purposes as total income as reported on FOCUS form Part II or IIA with the following exclusions:

[•](1) Other income unrelated to the securities business;

[•] [Interest and dividends;]

[•](2) Commodities income;

[•](3) Advisory fees, investment management fees and finders' fees not directly involving the offering of securities; proxy fees; vault service fees; safekeeping fees; transfer fees;

and fees for financial advisory services for municipalities:

[•](4) Commissions derived from transactions executed on a registered national securities exchange or a foreign securities exchange (Note 1);

[•](5) Profits or losses derived from transactions of which both the purchase and sale are executed on a registered national securities exchange, including arbitrage (Note 1): and

[•](6) Profits and losses derived from transactions in certifications of deposit and commercial paper, which is defined to include drafts, bills of exchange, and bankers acceptances.

(b) In addition, members may deduct:

[•](1) Any commissions, concessions or other allowances paid to another member in connection with the execution or clearance of transactions included in reported revenue. For

example, a member acting as a clearing agent for another member shall deduct net amounts allowed to the non-clearing member; [and]

[•](2) 25% of gross wrap fees charged to and received from customers and paid or allocated to investment managers or advisors[.]; and

[•](3) Interest and dividend expense but not in excess of related interest and dividend revenue or, alternatively, the member may deduct 40% of interest earned by the member on customer securities accounts; provided, however in addition, the member may deduct the first \$50,000 of net interest and dividend revenue.

Note 1: Income not subject to exclusion for members for whom the NASD is the designated examining authority.

# NASD NOTICE TO MEMBERS 96-44

## NASD Interprets NASD Rule 2110 And Files Telemarketing Rule Changes With SEC

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

As members are aware, abusive communications between members and their associated persons with customers or associated persons of other members is considered conduct that is inconsistent with the requirement that members shall observe high standards of commercial honor and just and equitable principles of trade as contained in NASD's fundamental rule of ethical practice—NASD Rule 2110 (formerly Article III, Section 1 of the NASD Rules of Fair Practice). The Federal Trade Commission (FTC) has issued regulations prescribing deceptive and abusive acts and practices in connection with telephone solicitation to market products and services (telemarketing).

Although the FTC Rules are not applicable to broker/dealers, under the Telemarketing and Consumer Fraud Prevention Act (Prevention Act), the Securities and Exchange Commission (SEC) or the self-regulatory organizations (SROs) must either have rules similar to the FTC Rules or adopt such rules. Consistent with the rules adopted by the FTC and prior NASD<sup>®</sup> interpretation and policy, the NASD is advising its membership that it is inherent in and implied by the provisions of Rule 2110 that members and their associated persons shall not engage in communications with customers that constitute threats, intimidation, the use of profane or obscene language, or calling a person repeatedly on the telephone to annoy, abuse, or harass the called party.

Members and their associated persons that engage in such abusive activity shall be subject to disciplinary action by the NASD. Moreover, the NASD has filed with the SEC on June 28, 1996, proposed amendments to its rules that would implement certain parts of the regulations adopted by the Federal Com-

munications Commission (FCC) and FTC. **The rule amendments will not be effective until approved by the SEC.**

Questions regarding this Notice may be directed to Suzanne E. Rothwell, at (202) 728-8247, or Robert J. Smith, at (202) 728-8176.

### Background

Pursuant to the Prevention Act, which became law in 1994, the FTC adopted detailed regulations to prohibit deceptive and abusive telemarketing acts and practices that became effective on December 31, 1995 (FTC Rules). The Prevention Act requires the SEC to establish rules or to require the SROs to promulgate telemarketing rules consistent with the legislation.

Among other things, the FTC Rules require the establishment and maintenance of "do-not-call" lists. The NASD previously adopted such a requirement. Specifically, Subsection (g) to Rule 3110 of the NASD's Business Conduct Rules (formerly, Article III, Section 21 of the NASD Rules of Fair Practice) requires each member engaged in telephone solicitation to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons.

In *Notice to Members 95-54* which announced adoption of Rule 3110(g), the NASD stated that the new rule establishes minimum standards to protect members' customers against abusive telemarketing practices. The rule change took effect on June 9, 1995.<sup>1</sup>

<sup>1</sup> See, Securities and Exchange Act Rel. No. 34-35831 (June 9, 1995); 60 FR 31527 (June 15, 1995).

## Description Of Interpretation

The FTC Rules also specifically prohibit "threats, intimidation, or the use of profane or obscene language," as well as "causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." The NASD's most fundamental ethical rule is contained in Rule 2110, which requires that, in the conduct of its business, a member "shall observe high standards of commercial honor and just and equitable principles of trade." The NASD's policy has been that abusive communications between members and their associated persons with customers or associated persons of other members is considered conduct that is inconsistent with the principles set forth in Rule 2110. Consistent with the rules adopted by the FTC and the NASD's prior interpretation and policy, the NASD has determined that it is inherent in and implied by Rule 2110 that it is contrary to high standards of commercial honor and just and equitable principles of trade for members and their associated persons to engage in communications with customers that constitute threats, intimidation, the use of profane or obscene language, or calling a person repeatedly on the telephone to annoy, abuse, or harass the called party. Members and their associated persons that engage in such abusive activity shall be subject to disciplinary action by the NASD.

## Related NASD Rule Filing

The FTC Rules also contain other requirements. The NASD has determined to adopt certain rules based on those other requirements to fulfill the mandate under the Prevention Act that either the SEC or the SROs have rules substantially similar to the FTC Rules (as determined by the SEC). The NASD, therefore, filed on June 28, 1996, with the SEC proposed

amendments to its rules that would impose time limitations and disclosure obligations, with certain exceptions, on members with respect to telemarketing calls and adopt limitations on the use of demand drafts to pay for securities in conformance with the requirements of the FTC Rules. These amendments would give the NASD enforcement authority with respect to these telemarketing regulations.<sup>2</sup> The text of the proposed rules follows this Notice. For a more complete description of the proposed rules, see SR-NASD-96-28.

For additional information regarding the FCC rules on telemarketing, refer to FCC Public Notice DA 92-1716, January 11, 1993. For additional information regarding FTC rules on telemarketing, refer to 16 CFR Part 310 or to 60 FR 43842 (August 23, 1995).

## Text Of Amendments

(Note: New text is underlined.)

## CONDUCT RULES

### 2000. BUSINESS CONDUCT

### 2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

#### 2211. Telemarketing

No member or person associated with a member shall:

(a) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or

(b) make an outbound telephone call to any person for the purpose of soliciting the purchase of securities

or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(1) the identity of the caller and the member firm;

(2) the telephone number or address at which the caller may be contacted; and

(3) that the purpose of the call is to solicit the purchase of securities or related services.

(c) The prohibitions of paragraphs (a) and (b) shall not apply to telephone calls by any person associated with a member, or a person acting at the direction of a person associated with a member, for the purpose of maintaining and servicing the accounts of existing customers of the member under the control of or assigned to such associated person:

(1) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit,

<sup>2</sup> Under the Telephone Consumer Protection Act, which became law in 1991, the FCC also developed rules, effective December 20, 1992, to protect the rights of consumers that are the object of telemarketing efforts.

Unlike the FTC Rules, the FCC Rules apply to broker/dealers because neither the SEC nor the NASD has jurisdiction to enforce these rules. The FCC rules contain time of day and disclosure requirements similar to the FTC Rules. The NASD's rule proposal, in addition to complying with the mandate of the Prevention Act that either the SEC or SROs have rules similar to the FTC Rules, also is intended to give the NASD enforcement authority with respect to rules similar to the FCC time of day and disclosure rules that already apply to members but cannot be enforced by the NASD.

was under the control of or assigned to, such associated person;

(2) to an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months, or

(3) to a broker or dealer.

For the purposes of paragraph (c), the term "existing customer" means a customer for whom the broker or

dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account.

### **3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES**

#### **3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION**

##### **3110. Books and Records**

###### **(g) [Cold Call] Telemarketing Requirements**

Each member shall;

(1) make and maintain a centralized

do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons;

(2) not obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument; and

(3) maintain the authorization required by subparagraph (2) for a period of three years.

# NASD NOTICE TO MEMBERS 96-45

## NASD Appoints Ombudsman

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

The NASD® today appointed Bernard Thompson as Ombudsman for the NASD and its subsidiaries, The Nasdaq Stock Market, Inc., and NASD Regulation, Inc. The Ombudsman position has been created within the NASD's Department of Internal Review. The Ombudsman will serve as an alternative dispute resolution practitioner. His primary objective is to find an acceptable solution to problems and concerns that meet the needs of both the individual and the NASD. The Ombudsman will act in an objective and confidential manner to resolve matters that fall outside established forums and to ensure that existing structural operations are functioning equitably.

The Ombudsman's role will not displace the NASD's existing procedures for handling customer complaints, members' disciplinary grievances, arbitration matters, or issuer concerns.

Questions regarding this Notice should be directed to the Department of Internal Review at (202) 728-8973 or (202) 728-8442.

### Background

The NASD created the Ombudsman position in response to recommendations made by the NASD Select Committee on Structure and Governance (see *Notices to Members 95-84, 95-101, 95-102, and 96-35*) that an independent office be established to receive and address "concerns and complaints, whether anonymous or not, from any source (within or outside of the NASD) concerning the operations, enforcement or other activities of the NASD, NASD Regulation, or Nasdaq, or any staff members."

Bernard Thompson, who most recently served as an Assistant Director of Member and Market Services in Market Regulation, has been

appointed as the NASD Ombudsman. Thompson joined the NASD in 1977 as an Examiner in the Washington, DC office and has risen steadily through the organization to his current post in Market Regulation.

### Description

The Ombudsman will serve as an alternative dispute resolution practitioner by suggesting actions or policies that are intended to be equitable to all parties. One of the major functions of the Ombudsman will be to provide confidential assistance to parties inside and outside the NASD regarding a complaint or a concern. The Ombudsman will assist all parties in identifying and evaluating options for positive actions and remain neutral in doing so.

Matters that may be reviewed by the Ombudsman include:

### Inconsistent Decisions By NASD Staff

Complaints regarding decisions made or actions taken by NASD staff that may be inconsistent, biased, or result in disparate treatment may be directed to the Ombudsman. These complaints may be based on discretionary acts by the NASD staff for which an established appellate channel does not exist. The Ombudsman will process each complaint received, review or conduct an informal investigation of the allegations, and recommend appropriate action, if warranted.

For issues in which an established complaint or appellate process already exists, but it appears that the complainant is being unduly constrained by the established procedures, the Ombudsman will review and, when necessary, informally investigate the complaint and recommend appropriate corrective action.

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## Weak Procedures

The Ombudsman will review complaints of weaknesses in NASD controls, practices, or procedures submitted by persons who are aware of control weaknesses but, for whatever reason, do not want to or believe they cannot report them to NASD management or who wish to remain anonymous. This could include, for example, continued failure of an NASD manager to respond to public customers, member firms, or issuers' needs or the failure of an NASD department to address matters for which it is responsible. These issues will be reviewed by the Ombudsman.

## Failure To Provide Information

Complaints that the NASD staff has not provided information to which complainants believe they are entitled are situations that may be reviewed by the Ombudsman. The Ombudsman, after referring to NASD guidelines for the release of information, will decide whether the NASD staff acted properly in denying the information and if necessary make recommendations to remedy the situation.

Matters that will **not** be reviewed by the Ombudsman include:

Complaints, where established procedures currently exist regarding application of rules, policies, procedures or interpretations, will be directed to the appropriate office. These complaints may deal with various topics and allegations, (i.e., Committee or Hearing Panel action, applicability of a rule or a procedure, how an interpretation is applied, etc.).

Complaints from member firms and/or their associated persons' regarding disciplinary rulings, issuers regarding listing proceedings, member firms regarding the staff of market opera-

tions application of existing rules, staff misconduct during an investigation, prosecutorial bias, bias by a Hearing Panel, or a conflict of interest by a Hearing Panel member are subject to review by the existing NASD appellate procedures and processes.

Where a structured dispute resolution and/or appellate process currently exists, that process should continue to be used by parties seeking a redress. Accordingly, the Ombudsman's role will be limited to informing persons of the existence of the appropriate process for resolution and monitoring the outcome. The Ombudsman will, of course, have the ability to conduct independent reviews of any complaints involving particular NASD staff, departments, processes, or procedures.

## Arbitration And Mediation

Complaints from parties in arbitration or mediation dealing with arbitrators' rulings, conduct, or awards will not be the focus of the Ombudsman. The arbitration staff currently investigates and responds to complaints regarding the arbitration and mediation processes. The Ombudsman will only be available for reviewing complaints regarding allegations of NASD staff misconduct.

## Member Complaints

Members that complain about the actions of another member (or associated person) will be directed to pursue the matter through arbitration when it relates to monetary disputes or in the case of violative conduct, the complainants will be directed to call the District Office in their region. The Ombudsman will be available to make such referrals.

Complaints that are clearly within the jurisdiction of another department or organization will be referred by the

Ombudsman to those areas that have the jurisdiction and expertise to handle them. If the complainant is referred internally to another NASD department, the Ombudsman will follow up to ensure the appropriate department responds in a timely manner.

## Board Actions, Rulemaking, Or Policy Decisions

As a matter of policy, any complaints of disparate impact resulting from all Boards' (or Board Committee) actions, rulemaking, or policy decisions **will not** be handled by the Ombudsman. Questions relating to these types of complaints will continue to be directed to the Corporate Secretary, or the staff liaison for a particular Board Committee. To the extent someone believes they have been aggrieved by a Board decision, they should petition the Board to reverse itself or challenge the decision at the Securities and Exchange Commission or in court, where the complainant's arguments can be fully aired.

If a member, associated person, investor, issuer, or other has a complaint or comment regarding an action by the NASD as described above, he or she should contact the Ombudsman at (202) 728-8442 or (888) 700-0028; E-mail: ombuds@nasd.com or write to:

NASD Ombudsman  
Bernard Thompson  
1735 K Street, NW  
Washington, DC 20006.

The inquiries may be anonymous, or not, and will be treated with the utmost confidentiality.

# NASD NOTICE TO MEMBERS 96-46

## CRD Disclosure Conversion

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
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- Training

### Executive Summary

The Central Registration Depository (CRD<sup>SM</sup>), a computerized database containing information on all licensed registered representatives and broker/dealers, is undergoing a technological upgrade. As part of this project, the NASD<sup>®</sup> has converted disclosure information from its current state (free text) into a new format (Windows-based, with discrete fields and pick lists). This Notice explains the disclosure conversion process, alerts members to the disclosure roster mailings that will begin shortly, and covers the procedures members should follow in reviewing these disclosure rosters. Because the converted disclosure data will form the basis of information released to the public pursuant to the NASD Regulation Public Disclosure Program, members are urged to review this data at their earliest opportunity.

Questions about this Notice may be directed to the NASD Regulation Disclosure Conversion Team at (703) 227-2700.

### Disclosure Conversion Process

Members will find it easier to read and understand disclosure data on the new CRD. They will also be able to request and receive selective extracts of data, based on various sets of conditions, to assist them with compliance efforts. In addition, the NASD believes that the changes to the Uniform Application for Securities Industry Registration or Transfer (Form U-4), and consequently to the new CRD, will give members, regulators, and the investing public a better, more realistic picture of a registered person's disclosure history.

The conversion of CRD disclosure data began in March 1995 and will continue until all members are using the new CRD system. The scope of the conversion effort included all **active** member firms and registered persons having at least one disclosure event. Inactive persons with disclosure information were not converted, although the data from the Legacy system will be viewable in the new system in its current free-text format. To date, the NASD has converted about 180,000 disclosure events for more than 50,000 registered persons and member firms.

Legacy CRD disclosure data are often lengthy and repetitive. Inconsistencies, or even conflicting information, can appear within an event. Because of these problems, the conversion of disclosure data required a manual review and transferral of information into discrete fields contained on the new system. The goal of the conversion effort was to create the most accurate representation of the facts surrounding each disclosure event.

NASD Regulation created a Disclosure Conversion Team (Team) consisting of attorneys and paralegals, to review and convert disclosure information. To resolve inconsistencies and conflicts within the data, Conversion Business Rules were established. Whenever an event contained conflicting information, the data were assigned a hierarchy of preferences according to the Business Rules. For example, a regulator's version of sanctions issued in a regulatory action took precedence over a registered person's version of the sanctions. A summary of the Business Rules hierarchies is on the following page.



<b>DRP (Disclosure) Type</b>	<b>1st Preference</b>	<b>2nd Preference</b>	<b>3rd Preference</b>
Criminal	Court document, then Department of Justice report	Form U-4 information	Form U-5 information
Regulatory Action	Regulator's filing/data	Form U-4 information	Form U-5 information
Civil Judicial	Regulator's filing/data	Form U-4 information	Form U-5 information
Customer Complaint	Supporting documents, then arbitration data provided by forum (NASD, NYSE, etc.)	Form U-5 information	Form U-4 information
Investigation	Supporting documents	Form U-5 information	Form U-4 information
Internal Review	Supporting documents	Form U-5 information	Form U-4 information
Termination	Form U-5 information	Form U-4 information	N/A
Bankruptcy/SIPC	Supporting documents	Form U-4 information	N/A
Bond and Judgment/Lien	Supporting documents	Form U-4 information	N/A

Certain types of events were not converted from the current database to the new CRD:

- all "Z" (non-reportable) records, except criminal events and investment-related, consumer-initiated arbitration or civil litigations resulting in an award or judgment against a registered person, regardless of the dollar amount;
- bankruptcies, Securities Investor Protection Corporation (SIPC) Liquidations, Receiverships, Involuntary Liquidations, and Compromises with Creditors that were resolved or completed more than 10 years ago;
- business failures;
- satisfied Judgments and Liens;
- investigations and Internal Reviews closed without action; and
- terminations for cause not involving violations of industry rules, fraud, or wrongful taking of property.

**In addition, a registered person's comments on the circumstances**

**that led to a disclosure event were not converted.** For example, if a representative's version of an event included a statement that "the customer was a sophisticated investor," that information will not appear on the converted event.

NASD Regulation made the regulatory decision not to convert individual comments, due to the complexity of the effort as well as the oftentimes sensitive nature of this information. After reviewing many records containing these comments, it was deemed nearly impossible to ascertain which information an individual would want to appear in the new record. This concern was heightened by the likelihood that this information may be available to the investing public.

#### **Disclosure Roster Mailings**

Each member will receive a Disclosure Conversion roster package about six weeks before its implementation date in the new CRD system. The package will contain the current and converted versions of each disclosure

event accumulated by the member and its registered persons, along with a synopsis of the Business Rules and other information and instructions. Any amendments filed to add information to a converted event must be made in the new CRD.

Member review of this package will accomplish several things. It will serve as an important quality-control tool to validate the accuracy of the converted data. Information that was missing from the Legacy record at the time of conversion can be identified and added to the converted event, especially if it appears as pending but in reality has been resolved. Members and their registered persons also can determine what, if any, appropriate comments should be added to the record through an amendment filing on the new CRD.

NASD Regulation strongly urges its members and registered persons to review the conversion product for completeness and accuracy. Pursuant to SEC, self-regulatory organization (SRO), and state securities laws and

rules, each member and registered person has a continuing responsibility to keep their records current by reporting information to CRD. A thorough review of these rosters will facilitate compliance with these reporting requirements.

**NASD Regulation will not impose a deadline for review of these rosters.** However, the review process should begin at your earliest opportunity. Members performing a "pre-hire" background check on potential employees will begin viewing the converted records as their Quality & Service Team goes live in the new system. The conversion data will also form the basis of information released to the public pursuant to the NASD Regulation Public Disclosure Program.

### Roster Review Procedures

Members may choose to review these rosters at the home office or distribute the rosters to their branch offices and registered persons for review. Because disclosure information forms the basis of most member hiring and regulator licensing decisions, and is made available to the public, the NASD performed a rigorous quality review of the conversion product. Disclosure data quality was measured by daily statistical samplings of completed events. All information in each sampled event was reviewed to ensure compliance with the Business Rules.

The cumulative accuracy of the converted disclosure data (based on conversion Business Rules) is currently 99.7 percent. However, inconsisten-

cies in some converted data may still exist. Members should contact the Team if they have any questions or problems after reviewing the disclosure rosters. The following situations may be encountered while reviewing the roster package.

- The package will **not** include a roster for a representative who joins a member after the date NASD Regulation mails the package to the member. Contact the Team to have a new roster generated and mailed.
- The package **will** include a roster for a representative who terminates from a member after the date NASD Regulation has mailed the package to the member. Simply discard that agent's roster.
- The package will **not** include new filings processed to the current CRD system after the NASD Regulation has mailed the package to the member. The member may request copies of these events or may query the agent's records on the new CRD system to perform a comparison of data.
- If a member disputes data that the Team converted according to the Business Rules, the member will be instructed to file a written report with appropriate documentation describing the problem. NASD Regulation may also require other supporting documentation (copies of customer letters, court documents, or other official correspondence) to substantiate the information provided in the written submission. To speed processing, it is recommended that this documentation be provided with each amendment as a regular course

of business. The member will be notified of the Team's determination and the record will be amended as necessary. Members may be required to file a Disclosure Reporting Page (DRP) for these matters.

- The new CRD system has mandatory fields that the current CRD system does not require. If the Team fails to convert previously filed data to a mandatory field, the Team will correct the record and notify the member of the action. However, if the information was never provided to CRD, the Team will advise the member to file a DRP amendment in the new system.
- As stated previously, comments by registered persons were not converted. If a member or the registered individual would like his or her comments in the converted record, a DRP amendment may be filed in the new system to add this information.

The Team will be available to handle inquiries Monday through Friday from 8 a.m. to 6 p.m., Eastern Time. Members should contact the Team at (703) 227-2700 or send written inquiries to:

NASD Disclosure Conversion Team  
3675 Concorde Parkway, Suite 1200  
Chantilly, VA 20151.

Upon the conclusion of the Disclosure Conversion project (estimated November 1996), your Quality & Service Team will assist you with conversion-related questions and problems, including those relating to the filing of amendments.



# NASD NOTICE TO MEMBERS 96-47

## NASD Regulation, Inc., Expanding Computerized Delivery Sites

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

NASD Regulation, Inc., as part of its continuing efforts to provide additional locations for computerized delivery of Qualification Examinations and the Regulatory Element of the Continuing Education Program (CEP), has contracted with Sylvan Learning Systems, Inc. (Sylvan), for the management and operation of its test center network. The transition of the current NASD PROCTOR® Certification and Training Centers into the Sylvan Network will begin mid-November 1996 and continue into 1997.

Questions regarding locations available for computerized delivery of Qualification Examinations and CEP should be directed to your Quality & Service Team.

### What This Means To You

- Access to more geographically diverse sites. The current network of 55 sites will increase to 125 sites by March 1, 1997, and to 250 by March 1, 1998.
- Availability of extended appointment hours. Centers will provide increased availability, including evening and weekend hours.
- Improved access for appointment scheduling. In addition to scheduling your appointment at your local center, you also can call Sylvan's National Registration Center (NRC) to schedule your appointment at any one of the NASD Regulation authorized delivery sites nationwide. The NRC is available from 8 a.m. until 8 p.m., Eastern Time (ET), Monday through Friday, and from 8 a.m. until 4 p.m., ET, on Saturday.
- Some current delivery sites will move to new locations. With this change some current NASD Centers will be closed; delivery in that area

will be transferred to an existing Sylvan location approved by NASD Regulation. No area currently serviced by an existing NASD Center will be without at least one delivery location.

- You will **not** see any changes to the appearance of your computerized session. Our PROCTOR presentation software will continue to be used to deliver your sessions in the Sylvan Network.
- NASD Regulation and Sylvan are committed to providing candidates with the same high level of service to which they have grown accustomed. Candidates will still be required to comply with the same policies, ID presentation, and Rules of Conduct agreement, including fingerprinting at the delivery location.
- Enrollments for examinations and the Regulatory Element of Continuing Education will continue to be processed through NASD Regulation's Central Registration Depository (CRD<sup>SM</sup>) system. The enrollments will be transferred to the PROCTOR system, where appointments are verified. Result records will continue to post automatically to the CRD system from the PROCTOR system.

Please watch for further communications regarding specific changes as they occur. Questions regarding locations available for computerized delivery of Qualification Examinations and CEP should be directed to the Quality & Service Teams at:

- Quality & Service Team 1  
(301) 921-9499
- Quality & Service Team 2  
(301) 921-9444
- Quality & Service Team 3  
(301) 921-9445
- Quality & Service Team 4  
(301) 921-6664
- Quality & Service Team 5  
(301) 921-6665.

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# NASD NOTICE TO MEMBERS 96-48

## New London Training Center; Registered Representatives In England, Scotland, And Wales Must Comply With Continuing Education Requirements

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

Effective July 1, 1996, NASD Regulation, Inc. (NASD Regulation) will begin accepting appointments at the Certification and Training Center in London, England, at which registered representatives can complete the computer-based training required under the Regulatory Element of the securities industry Continuing Education Program (CEP). Also effective July 1, NASD Regulation will no longer grant deferrals of Continuing Education Regulatory Element windows to registered representatives who reside in England, Scotland, or Wales.

Questions concerning this Notice may be directed to John Linnehan, Director, Continuing Education, at (301) 208-2932, or to your Quality & Service Team.

### New Center

The Training Center will be operating part-time, based on requests for appointments. It is located in the Nasdaq International, LTD, office at:

Nasdaq International, LTD  
6th Floor, Durrant House  
8/13 Chiswell Street  
London EC1Y 4XY

Tel.: (0171) 825 5515 in U.K.  
(44 171) 825 5515 outside U.K.

Fax: (0171) 374 4488 in U.K.

To make an appointment, call the Nasdaq International, LTD, office at the above number. Please note that only the CEP computer-based training will be delivered at this location. No qualification examinations will be administered in the London Center at this time.

### Discontinued Continuing Education Deferrals

Also effective July 1, NASD Regulation will no longer grant deferrals of Continuing Education Regulatory Element windows to registered representatives who reside in England, Scotland, or Wales. These registered representatives must complete their Regulatory Element computer-based training within 120 calendar days of the second, fifth, and tenth anniversaries of their initial registration date, or when required to reenter the CEP if they become subject to a significant disciplinary action. Registered representatives who reside in other European countries may satisfy their Regulatory Element requirement at the London Center or they may request a deferral of their obligation until new Centers are opened in Europe. Requests for a deferral should be made in writing to the firm's CRD Quality & Service Team. Deferral request must include the representative's name, CRD or Social Security number, and city and country of residence.

Questions concerning this Notice may be directed to John Linnehan, Director, Continuing Education, at (301) 208-2932, or to your Quality & Service Team at:

Quality & Service Team 1  
(301) 921-9499  
Quality & Service Team 2  
(301) 921-9444  
Quality & Service Team 3  
(301) 921-9445  
Quality & Service Team 4  
(301) 921-6664  
Quality & Service Team 5  
(301) 921-6665.



# NASD NOTICE TO MEMBERS 96-49

## Members Reminded To Report Address, Contact Changes To NASD

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

The Membership Department would like to remind members of the importance of keeping the names of executive representatives, as well as mailing addresses for branch offices, up-to-date. Making certain that the Central Registration Depository (CRD<sup>SM</sup>) is kept informed of changes in address and contact people, ensures that regular Notices and special mailings will be directed properly. It is especially important at this time because we are approaching the period for Fall elections.

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

To change the address for mailings sent to *branch offices*, or to update the contact name, a properly executed Schedule E of Form BD must be sent to CRD. Notifications submitted 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 the NASD Corporate Secretary. The form to use for this purpose is included with this Notice. You may submit the original or a photocopy to:

Joan Conley  
Corporate Secretary  
National Association of  
Securities Dealers, Inc.  
c/o Membership Department  
9513 Key West Avenue  
Rockville, MD 20850-3389.



# EXECUTIVE REPRESENTATIVE FORM

Date: \_\_\_\_\_

NASD Member Firm: \_\_\_\_\_

Firm CRD #: \_\_\_\_\_

The NASD Member Firm referenced above designates (name) \_\_\_\_\_,  
CRD # \_\_\_\_\_, as *Executive Representative* to the NASD as of  
(date) \_\_\_\_\_. This person is a member of the firm's senior management and is a registered  
principal with the firm.

Name of person preparing this form: \_\_\_\_\_

Telephone number: \_\_\_\_\_

**Return this form to:**

Joan Conley, Corporate Secretary  
Executive Representative Program  
c/o Membership Department  
National Association of Securities Dealers, Inc.  
9513 Key West Avenue  
Rockville, MD 20850-3389

# NASD NOTICE TO MEMBERS 96-50

## Supervisory And Other Obligations Related To Use Of Electronic Media

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

NASD Regulation, Inc. (NASD Regulation) recently has observed a correlation between sharp increases in the volume of electronic messages relating to certain low-priced securities and dramatic increases in the price, volatility, and volume of these securities. Often, these messages are sent without attribution to a large, undifferentiated universe of Internet or on-line subscribers and contain unverified or unverifiable information concerning the merits of particular securities. This development, along with the potential that associated persons may use the Internet or other electronic media to communicate messages concerning particular securities to the investing public, raises important regulatory issues.

While NASD Regulation is not concerned about member use of the Internet or other electronic media for legitimate purposes, we are issuing this *Notice to Members* to emphasize to members their supervisory and regulatory responsibilities, as well as their obligations to customers, when dealing with stocks promoted on the Internet or other electronic media, and their supervisory obligations with respect to the use of such media by their associated persons. In addition, this *Notice to Members* solicits comment on current practices in the use of electronic media to communicate with customers and the investing public generally concerning the merits of particular securities, with a view to determining the need for further specific guidance concerning supervisory responsibilities or regulatory action.

Questions or comments concerning this Notice may be directed to Mary Revell, Assistant General Counsel, NASD Regulation, at (202) 728-8203.

### Electronic Communications

Members must ensure that

communications with the public disseminated through electronic media comply with the approval, record-keeping, and filing requirements of NASD® Rules. For more information, see "Ask the Analyst About Electronic Communications" in the April 1996 issue of the *NASD Regulatory & Compliance Alert* for a detailed description of the applicability of NASD Rules to various methods of electronic communication, including World Wide Web sites, bulletin boards, group and individual e-mail, and chat rooms. Members should also review *Notice to Members 95-74*, which announced the amendment of the definitions of "advertisement" and "sales literature" in NASD Rules to include electronic messages. Members are reminded that all communications with the public, regardless of the medium, are subject to the antifraud provisions of the federal securities laws, SEC rules, and NASD Rules. In this connection, we would clarify that e-mail directed only to an individual customer, like a piece of written correspondence sent to an individual customer, is not "advertisement" or "sales literature" subject to NASD Rule 2210 (formerly Article III, Section 35 of the NASD Rules of Fair Practice).

### Suitability

NASD Rule 2310 (formerly Article III, Section 2 of the NASD Rules of Fair Practice) provides that in recommending to a customer the purchase, sale, or exchange of any security, a member must have reasonable grounds for believing that the recommendation is suitable for such customer on the basis of the facts available, including the customer's other security holdings, financial situation, and needs. If a principal source of a member's information about a recommended security is the Internet, on-line communications, or other electronic medium, the member should consider the need for further

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investigation or research before recommending the security. In general, members should review carefully the appropriateness of transactions in such securities, and should encourage customers to learn about such securities before investing in them.

Special care should be taken where a member or associated person transmits via e-mail, television, radio, or other electronic medium messages concerning a particular security to a broad universe of investors of varying financial sophistication, experience, and resources. In such circumstances, the suitability of the security should be determined with respect to each customer who responds to the message before effecting a transaction. Further, consideration should be given to the desirability of including a notice in the electronic transmission alerting the recipients of the message to the need to assess the security in the context of each customer's individual circumstances.

### **Disclosure Of Material Adverse Facts And Interests To Customers**

When a registered representative recommends the purchase or sale of a security to a customer, he or she must not only avoid affirmative misstatements, but also must disclose material adverse facts about which the salesperson is, or should be, aware. This obligation includes disclosing any conflicts of interest that could influence the salesperson's recommendation or the customer's decision to purchase or sell the security. Particular care should be taken with respect to the accuracy and completeness of information concerning securities that have been promoted on the Internet or other electronic media.

### **Supervision**

Members that use electronic media to communicate with customers and investors as to the merits of particular

securities must ensure that their supervisory procedures appropriately cover these activities. In a broader context, members should consider the need for specific policies that address how and under what circumstances their associated persons are permitted to use such electronic media to communicate with investors. The need for supervision is particularly acute where the communication medium permits the transmission of anonymous messages to "chat rooms" or "bulletin boards" sponsored by various on-line services connected to the Internet.

Members are reminded that their internal controls and supervisory procedures should be designed to ensure that associated persons do not misuse electronic communications systems or engage in any misconduct while on-line. NASD Regulation currently is conducting a review of the need for further explicit guidance or regulatory action regarding the supervisory responsibilities of member firms in this respect.

### **Questions**

The NASD intends to conduct in the near term a survey of its members with regard to the use by members of the Internet and on-line services. We expect the survey to be completed and the results to be compiled by the third quarter of 1996. Independent of this survey, the NASD is soliciting comment from members on the questions listed below, which are directed specifically to electronic communication with investors by members and associated persons and related supervisory issues. Members are asked to send written comments in response to these questions, by September 15, 1996, to:

Joan Conley  
Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500.

1. In what ways do member firms and their associated persons use electronic media to communicate information concerning securities to their customers?
2. In what ways are these electronic media used to communicate such information to investors or members of the public who do not have an established customer relationship with the member?
3. What sorts of policies and procedures have been adopted by member firms with respect to access by associated persons to on-line services and other electronic media? What policies and procedures apply to communication with customers via e-mail, including any access restrictions or restrictions as to the nature of the message communicated?
4. What mechanisms have been put in place or considered to assure that policies and procedures in this area are being followed?
5. Specifically, to the extent that associated persons are permitted access to electronic media such as the Internet, what kind of record-keeping and supervisory procedures are used with respect to any messages that are sent?
6. To what extent do policies and procedures differ with respect to communications relating to securities in which the member makes a market or holds a position?
7. To what extent are members aware of the use of electronic media by others to attempt to influence the price of a security? Would prophylactic regulatory measures be appropriate or useful in limiting the occurrence of this activity, and if so, what kind?

# NASD NOTICE TO MEMBERS 96-51

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of June 28, 1996

## Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

As of June 28, 1996, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

Symbol	Name	Coupon	Maturity
APSO.GA	Apple South Inc	9.750	6/1/06
CNC.GB	Conseco Inc	10.500	12/15/04
PENT.GA	Penn Traffic Company	10.250	2/15/02
TOS.GD	Tosco Corp	7.625	5/15/06
WWCA.GA	Western Wireless Corp	10.500	6/1/06
PNF.GH	Penn Traffic Co New	10.650	11/1/04
HVY.GA	Harveys Casino Resorts	10.625	6/1/06
PNET.GA	Pronet Inc	10.875	9/15/06
DMN.GA	Dimon Inc	8.875	6/1/06
OS.GA	Oregon Steel Mills Inc	11.000	6/15/03
ALLY.GA	Alliance Gaming Corp	12.875	6/30/03
GASI.GA	Greenwich Air Services	10.500	6/1/06
JCAC.GA	JCAC Inc	10.125	6/15/06
FMO.GA	Federal Mogul Corp	7.500	1/15/98
WYN.GA	Wyndham Hotel Corp	10.500	5/15/06
COLA.GA	Collins & Aikman Products Co	11.500	4/15/06

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to trade-reporting rules should be directed to James C. Dolan, NASD Market Surveillance, at (301) 590-6460.



# NASD RULE FILING STATUS

Rule Filing Status  
As Of June 21, 1996

Following is a list of rule filings by the NASD® regarding broker/dealer regulation that are pending at the Securities and Exchange Commission (SEC) or recently approved. The information set forth below is current as of June 21, 1996. Copies of rule filings (and any amendments thereto), the SEC release publishing the rule proposal for comment, and the SEC release approving the rule change are available from the SEC Public Reference Room, call (202) 942-8090 or, call Kristine Gwilliam, NASD Office of General Counsel, at (202) 728-8821 (in certain cases a fee may be required). NASD rule changes are not effective until the date approved by the SEC.

## Rule Filings That Have Not Been Published For Comment

### 96-21

Amend the By-Laws for mandatory electronic filing of registration-related filings.

### 96-19

Adopt amendments to Forms U-4 and U-5.

### 95-61

Amend NASD Rules 2830 and 2820 (formerly Article III, Sections 26 and 29 of the NASD Rules of Fair Practice) to regulate the receipt by members and their associated persons of cash and non-cash compensation for the sale of investment company and variable contract securities.

## Rule Filings That Have Been Published For Comment But Have Not Been Approved By The SEC

### 96-20

Amend the By-Laws to make them consistent with the Delegation Plan. Published for comment by the SEC

in Rel. No. 34-37282 (6/6/96); 61 FR 29777 (6/12/96).

### 96-17

Amend Rule 2720 of the NASD Conduct Rules to define "Bona fide independent market" and "Bona fide independent market maker." Published for comment by the SEC in Rel. No. 34-37223 (5/17/96); 61 FR 26239 (5/24/96).

### 96-15

Amend Schedule A to the By-Laws to modify the exception for interest and dividend income from gross revenue for assessment purposes. Published for comment by the SEC in Rel. No. 34-37169 (5/6/96); 61 FR 21517 (5/10/96).

### 96-14

Amend NASD Rule 8210 (formerly Article IV, Section 5 of the NASD Rules of Fair Practice) to require members to provide information in response to requests by other regulators for regulatory information. Published for comment by the SEC in Rel. No. 34-37150 (4/29/96); 61 FR 20299 (5/6/96).

### 95-63

Amend the Rules of Fair Practice to adopt a new section to regulate the conduct of a broker/dealer on the premises of a financial institution. Published for comment in Rel. No. 34-36980 (3/15/96); 61 FR 11913 (3/22/96).

### 95-40

Amend NASD Rule 5300—The Portal Market (formerly Schedule I to the NASD By-Laws) to adopt a pilot program for reporting transactions in PORTAL securities. Published for comment by the SEC in Rel. No. 34-37317 (6/17/96).

### 95-39

Amend Rules of Fair Practice to

apply the Rules of Fair Practice to exempted securities (except municipal securities), including government securities, and amend NASD Rule 2310 (formerly Article III, Section 2 of the NASD Rules of Fair Practice) to adopt a new Interpretation of the Board of Governors—Suitability Obligations to Institutional Customers. Published for comment in Rel. No. 34-36383 (10/17/95); 60 FR 54530 (10/24/95). Republished for comment in Rel. No. 34-36973 (3/14/96); 61 FR 11655 (3/21/96).

### **Rule Filings Recently Approved By The SEC**

#### **96-18**

Amend Code of Arbitration Procedure to extend the effectiveness of

Large and Complex Cases (Rule 10334). Accelerated approval granted the SEC in Rel. No. 34-37154 (4/30/96); 61 FR 20301 (5/6/96).

#### **96-16**

Plan of Allocation and Delegation setting forth the purpose, function, governance, procedures, and responsibilities of the NASD, NASD Regulation, Inc., and The Nasdaq Stock Market, Inc. Temporary accelerated approval granted by the SEC in Rel. No. 34-37107 (4/11/96); 61 FR 16948 (4/18/96).

#### **96-09**

Amend NASD Rules 4310 and 4320 (formerly Schedule D, Part II of the NASD By-Laws) to recommend that issuers distribute interim reports and consider technological methods to

communicate other information to registered and beneficial shareholders. Published for comment by the SEC in Rel. No. 34-37010 (3/21/96); 61 FR 13909 (3/28/96). Approved by the SEC in Rel. No. 34-37163 (5/2/96); 61 FR 21216 (5/9/96).

# DISCIPLINARY ACTIONS

## Disciplinary Actions Reported For July

NASD Regulation, Inc., has taken disciplinary actions against the following firms and individuals for violations of NASD Rules; securities laws and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, July 15, 1996. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

### **Firms Fined, Individuals Sanctioned**

**George E. Dullnig and Co. (San Antonio, Texas) and George R. Dullnig (Registered Principal, San Antonio, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$25,000, jointly and severally. Dullnig also was suspended from association with any NASD member as a general securities principal for 30 business days and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Dullnig, failed to disclose on customer confirmations the amount of remuneration it received concerning the sale of securities. The NASD also found that the firm, acting through Dullnig, failed to establish and maintain a system to supervise the activities of an individual and failed to maintain adequate written supervisory procedures to prevent and detect private securities transactions and outside business activities.

**Gateway Financial Group, Inc. (Boca Raton, Florida), Lisa K. Paige (Registered Principal, Boca Raton, Florida), Joseph J. Giuliano (Registered Principal, Hallandale,**

**Florida), and Howard A. Cass (Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which the firm and Paige were fined \$10,000, jointly and severally. The firm was suspended from participating in the private placement of securities for one year and ordered to disgorge \$25,000 in commissions. Paige was suspended from association with any NASD member as a general securities principal for 30 days and ordered to requalify by exam as a general securities principal. Cass was fined \$5,000, suspended from association with any NASD member as a general securities principal for 30 days, suspended from association with any NASD member as a general securities sales representative for 15 days, ordered to requalify by exam as a general securities sales representative, and ordered to disgorge \$29,000 in commissions. Giuliano was fined \$5,000, suspended from association with any NASD member as a general securities principal for 15 days, suspended from association with any NASD member as a financial and operations principal for 10 days, and ordered to requalify by exam as a general securities principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Paige and Cass, participated in a best efforts, private placement offering in which the offering memorandum and subscription agreement contained material omissions and/or was materially false and misleading. The findings also stated that the firm, acting through Paige and Giuliano, failed to establish and promptly transmit customer subscription funds to a bank escrow account. The NASD found that the firm, acting through Paige and Giuliano, failed to terminate an offering

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and return investor funds when it did not receive the required minimum amount, when the offering period was extended, and when sales of half-units were made to investors. The NASD also determined that Paige and Giuliano failed to disclose the firm's participation in an offering when asked by the NASD staff.

#### **Firms And Individuals Fined**

**A.R. Baron & Co., Inc. (New York, New York)** and **Andrew Bressman (Registered Principal, New York, New York)** submitted an Offer of Settlement pursuant to which they were fined \$11,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm and Bressman failed to respond fully to NASD requests for information.

**Nolan Securities Corporation (Salisbury, Connecticut), Terrence M. Nolan (Registered Principal, Southampton, New York), and Anthony P. Hoag (Registered Principal, Lakeville, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$22,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Nolan and Hoag, sold shares of stock that traded at a premium in the secondary market to restricted persons.

**Taylor, Pruitt & Sylvester, Inc. (Houston, Texas), Charles Weldon Taylor, Jr. (Registered Principal, Houston, Texas), Alvin Pruitt, Jr. (Registered Principal, Houston, Texas), and Jerry Moore Hill (Registered Principal, Dallas, Texas)** 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 sanction and to the entry of findings that the firm, acting through Taylor, Pruitt, and Hill, conducted a securities business while failing to maintain its minimum required net capital.

#### **Firms Fined**

**BOSC, Inc. (Tulsa, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it allowed eight individuals to maintain their representative registrations with the firm when they were not actively engaged in the securities business of the firm.

**Madison Financial Group, Inc. (Chicago, Illinois)** submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it conducted a securities business while failing to maintain its minimum required net capital. The NASD also found that the firm failed to comply with the terms of its restrictive agreement with the NASD.

**Stratton Oakmont, Inc. (Lake Success, New York)** was fined \$20,000 and ordered to submit to the NASD, and thereafter utilize in its settlement agreements, a form of Offer of Settlement containing non-disclosure and confidentiality clauses, if any, acceptable to the NASD. The firm also is required, upon request by the NASD in connection with the NASD's investigative duties, to identify customers that should be released from settlement agreements that impose conditions on a customer's ability to

provide information to the NASD. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a New York District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm prepared, utilized, and executed agreements when settling customer complaints that preclude, restrict, or condition customers' ability to cooperate with the NASD in connection with its investigation of customer complaints. The firm also failed to release a public customer from the restrictive provisions of a settlement agreement that precluded, restricted, and/or conditioned the customer from cooperating in an NASD investigation.

This action had been appealed to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal.

**Walnut Street Securities, Inc. (St. Louis, Missouri)** submitted an Offer of Settlement pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to enforce its written supervisory procedures with respect to the issuance of a signature guarantee stamp and otherwise failed to supervise adequately the activities and registration of a registered representative to detect and prevent the improper use of customer funds by the representative. The firm also failed to maintain adequate supervisory procedures addressing the supervision of outside business activities of its associated persons.

**W.B. McKee Securities, Inc. (Phoenix, Arizona)** was fined \$20,000. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions

were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and failed to file a FOCUS Part I report revealing the deficiency. The firm also failed to maintain accurate books and records.

#### **Individuals Barred Or Suspended** **Erik Joseph Anderson (Registered Representative, Peoria, Illinois)**

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, Anderson consented to the described sanctions and to the entry of findings that Anderson recommended the purchase and/or sale of options contracts to public customers without having a reasonable basis for believing that the options transactions were suitable for the customers based on the information disclosed to him concerning the customers' investment objectives, financial situations, and needs.

Furthermore, the NASD determined that at the time Anderson recommended the opening transactions in the options contracts to public customers, he did not have reasonable basis for believing that the customers had such knowledge and experience in financial matters that they could be reasonably expected to be capable of evaluating the risks of the recommended transactions, and be financially able to bear the risks of the recommended positions in the options contracts. The NASD also determined that Anderson failed to respond to NASD requests for information.

**David Bahr (Registered Representative, Newport Beach, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$174,000 and barred from association with any

NASD member in any capacity. Without admitting or denying the allegations, Bahr consented to the described sanctions and to the entry of findings that he received from public customers \$20,000 for investment purposes, failed to invest the funds, and used \$18,000 of the funds for his own benefit. The findings also stated that Bahr solicited and entered securities transactions for public customers and received compensation while in an unregistered capacity. The NASD found that Bahr sold shares of stock to a public customer and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his role therein, and whether he would receive selling compensation in connection with the transactions.

**Jason Brian Barshop (Registered Representative, Malibu, California)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution to customers. The sanctions were based on findings that Barshop participated in a private securities transaction and failed to provide prior written notification to his member firm. Barshop also failed to respond to NASD requests for information.

**Patricia A. Battista (Associated Person, Aurora, Colorado)** submitted an Offer of Settlement pursuant to which she was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Battista consented to the described sanctions and to the entry of findings that while seated, before the Series 7 exam began, she was found in possession of materials pertaining to the exam.

**Robert Joseph Becker (Registered Representative, Dallas, 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 one week, and required to requalify by exam. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer.

**William H. Berrier, III (Registered Representative, Knoxville, Tennessee)** submitted an Offer of Settlement pursuant to which he was fined \$15,100 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berrier consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer without the customer's knowledge or consent. The NASD also found that Berrier failed to respond to NASD requests for information.

**William Christopher Boettcher (Registered Representative, Columbia, Missouri)** 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, Boettcher consented to the described sanctions and to the entry of findings that he forged customers' signatures on insurance applications and submitted the applications to his member firm without the knowledge or consent of the customers.

**Cathi O'Neill Collins (Registered Representative, Omaha, Nebraska)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Collins failed to respond to NASD requests for information about her termination from a member firm.

**Michael Sami Daoud (Registered Representative, Weston, 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, Daoud consented to the described sanctions and to the entry of findings that he misused customer funds totaling \$80,000 intended for investment in a mutual fund.

**Thomas N. Dawson, III (Registered Representative, Naples, Florida)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Dawson consented to the described sanction and to the entry of findings that he engaged in private securities transactions that were outside the regular course or scope of his employment with his member firm and failed to provide written notice to, or obtain approval from his member firm.

**Craig Irwin Deitchman (Registered Representative, Brooklyn, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Deitchman failed to appear at the NASD for on-the-record interviews about his activities and affiliations with an unregistered broker/dealer.

**Robert Martin Dickerson (Registered Representative, San Francisco, California)** was fined \$20,000, suspended from association with any NASD member in any capacity for 90 days, and ordered to requalify by exam in any capacity. The NBCC imposed the sanctions following review of a San Francisco DBCC decision. The sanctions were based on findings that Dickerson maintained securities accounts with two

member firms without notifying his member firm of the accounts and without notifying the other firms of his association with his member firm. In contravention of the NASD Board of Governors Free-Riding and Withholding Interpretation, Dickerson purchased securities that traded at a premium in the immediate aftermarket. Dickerson also failed to respond to NASD requests for information in a complete and timely manner.

**Wayne Thomas Drinkwine (Registered Representative, Eastport, New York)** was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$41,254.22 in restitution to a customer. The sanctions were based on findings that Drinkwine received from a public customer checks totaling \$45,654.22 for investment purposes, failed to deposit the funds in the customer's account and, instead, endorsed the checks and converted the funds for his personal use. Drinkwine also failed to appear at the NASD for on-the-record interviews about his termination from a member firm.

**James G. Earle, Sr. (Registered Representative, Knoxville, Tennessee)** submitted an Offer of Settlement pursuant to which he was fined \$110,000, barred from association with any NASD member in any capacity, and required to pay \$22,955.10 in restitution to customers. Without admitting or denying the allegations, Earle consented to the described sanctions and to the entry of findings that he received from public customers a \$22,955.10 check for a new individual retirement account. The NASD determined that Earle failed to establish the account and, instead, deposited the check into an account that he controlled, thereby converting the funds for his own use and benefit without the customers' knowledge or consent. The findings also stated that Earle prepared and

provided to public customers a false account statement and a false IRS form that represented that the funds had been invested on the customers' behalf.

**Christopher Frederick Fallon (Registered Representative, Bridgeport, Connecticut)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fallon failed to appear at the NASD for on-the-record interviews about a customer complaint.

**Dwain P. Fugate (Registered Representative, Erie, Pennsylvania)** 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 restitution to customers. Without admitting or denying the allegations, Fugate consented to the described sanctions and to the entry of findings that he received \$61,879 from public customers to be applied to the payment of insurance policy premiums. The NASD determined that Fugate converted the funds for his own use and benefit and then provided the policy holders with false statements showing that the funds had been applied to the payment of their policy premiums.

**Donald L. Gilberg (Registered Representative, Pittsburgh, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Gilberg consented to the described sanctions and to the entry of findings that he placed the signature of public customers on a life insurance enrollment form, a consent and disclosure letter, and a withdrawal authorization form without the customers' knowl-

edge or consent and submitted the forms to his member firm as if the signatures were genuine.

**Richard R. Gorton (Registered Representative, Dracut, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$3,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam. Without admitting or denying the allegations, Gorton consented to the described sanctions and to the entry of findings that he signed a customer's name to life insurance checks totaling \$421.13, deposited the checks in his personal bank account, withdrew the funds, and placed the cash in an envelope in the customer's file.

**Robert A. Grunburg (Registered Principal, Marina Del Rey, California)** was fined \$5,000, suspended from association with any NASD member as a principal for 30 days, and required to requalify by exam as a principal. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Grunburg approved newspaper advertisements that contained misleading or exaggerated statements about the ranking of mutual funds and failed to file the advertisements with the NASD within 10 days of the first use of the advertisements as required. Furthermore, Grunburg entered into a special sales concession arrangement with another member firm relating to the sale of mutual funds on an oral basis with no written agreement executed and without disclosing this fact in the funds' prospectuses. Grunburg also failed to establish and maintain adequate written supervisory procedures.

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

**Mark Eugene Hendrickson (Registered Representative, Bothell, Washington)** 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 two years. Without admitting or denying the allegations, Hendrickson consented to the described sanctions and to the entry of findings that he submitted a false and inaccurate Uniform Application for Securities Industry Registration (Form U-4) to his member firm which failed to disclose a felony charge and conviction.

**Patrick A. Jalbert (Associated Person, Naugatuck, Connecticut)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jalbert withheld and misappropriated for his own use and benefit \$1,474 in customer funds representing property and premium payments, without the knowledge or consent of his member firm or the customers. Jalbert also failed to respond to NASD requests for information.

**Catherine Ann Jensen (Registered Representative, Manhattan Beach, California)** submitted an Offer of Settlement pursuant to which she was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that she exercised effective control over the account of a public customer and recommended to the customer the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the size and frequency of the recommended transactions and the customer's other security holdings, financial situation, and needs.

Jensen's suspension began June 17, 1996, and concluded July 8, 1996.

**Lamar Nathan Jensen (Registered Representative, Kirkland, Washington)** submitted an Offer of Settlement pursuant to which he was fined \$90,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that he recommended to and effected for public customers investments and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his role therein, and whether he would receive selling compensation in connection with the transactions. The findings also stated Jensen failed to forward customer funds to the issuer and, instead, deposited the funds into a bank operating account over which he had control.

**Daniel Morris Kantrowitz (Registered Representative, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 120 days, ordered to pay \$3,625 in restitution to a member firm, and required to requalify by taking the Series 7 exam. Without admitting or denying the allegations, Kantrowitz consented to the described sanctions and to the entry of findings that he engaged in manipulative, deceptive, and fraudulent conduct in trading a common stock. According to the findings, Kantrowitz, as a means of compensating a customer, arranged to sell 29,000 shares of the stock to the customer at the then current bid price of 3/8, which he then repurchased from the customer at 5/8.

**Mariusz Kazimierczyk (Registered Representative, Manchester, Massachusetts)** was fined \$50,000 and

barred from association with any NASD member in any capacity. The sanctions were based on findings that Kazimierczyk misappropriated customer funds totaling \$10,000 for his own use and benefit.

**Rodney I. Lee (Registered Representative, Lynchburg, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$2,500, suspended from association with any NASD member in any capacity for three months, and required to pay \$10,000 in restitution to an individual. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he borrowed \$10,000 from a public customer and misrepresented to the customer that he would repay the loan. The NASD found that Lee wrote two checks totaling \$10,225 and when the customer attempted to cash the checks, his bank would not honor them due to insufficient funds.

**Garry C. Loomis, Sr. (Associated Person, Lisbon, Connecticut)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Loomis made personal use of customer funds. Loomis also failed to respond to NASD requests for information.

**Timothy L. Meyer (Registered Representative, Westlake, Louisiana)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$785.75 in restitution to a member firm. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he received from public customers a \$1,263 check representing insurance premiums, failed to submit the full amount to his member firm and, instead, converted

\$785.75 of the funds for his own use and benefit without the customers' knowledge or consent. The findings also stated that Meyer submitted a completed insurance application to his member firm on a public customer's behalf and signed the customer's name to the application without the knowledge or consent of the customer. The NASD also found that Meyer failed to respond to NASD requests for information.

**Pashko Mrnaci (Registered Principal, Yonkers, 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, Mrnaci consented to the described sanction and to the entry of findings that he took the Series 7 exam for another individual.

**Craig L. Niebuhr (Registered Representative, Murray, Utah)** submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for five business days, required to disgorge \$12,000 to the NASD, and required to requalify by exam as a general securities sales representative. Without admitting or denying the allegations, Niebuhr consented to the described sanctions and to the entry of findings that he maintained a securities account with a member firm other than his employer and executed transactions in this account, but failed to notify his member firm of this account in writing. The findings also stated that Niebuhr participated in business activities outside the scope of his relationship with his member firm without providing prompt written notice to the firm. The NASD also determined that Niebuhr sold shares of a security to another individual for compensation without providing prior written notice of, and without receiving

approval from his member firm to participate in this transaction.

**Stephen M. Phelps, Sr. (Registered Representative, Rustburg, Virginia)** 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, Phelps consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about his termination from a member firm.

**Wendy Kay Probstfield (Registered Representative, Yacolt, Washington)** submitted an Offer of Settlement pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Probstfield consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information about her termination from a member firm.

**Atiq Ur Rahman (Associated Person, Pasadena, California)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rahman participated in private securities transactions while failing to provide prompt written notification to his member firm before participating in such transactions. Rahman also failed to respond to NASD requests for information.

**Donald K. Railsback (Registered Representative, Salt Lake City, Utah)** 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 continue paying restitution pursuant to previous agreement. Without admitting or denying the

allegations, Railsback consented to the described sanctions and to the entry of findings that while acting in a fiduciary capacity with respect to funds entrusted to him for management and investment, he invested the funds in a manner contrary to the instructions and expectations of the beneficial owners and used a portion of the funds for his own benefit.

**James Arthur Revels (Registered Representative, San Diego, California)** submitted an Offer of Settlement pursuant to which he was fined \$4,672.50 and suspended from recommending any transactions in penny stock for two years. Without admitting or denying the allegations, Revels consented to the described sanctions and to the entry of findings that he effected \$12,705 in penny stock transactions for public customers in contravention of SEC Rule 15g.

**Nancy L. Rizza (Registered Representative, Quincy, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rizza consented to the described sanctions and to the entry of findings that, without the knowledge or consent of her member firm, she misappropriated \$3,680.03 from the firm's account.

**David A. Roth (Registered Representative, Centreville, Virginia)** 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, Roth consented to the described sanctions and to the entry of findings that he falsified account statements of public customers by reflecting corrections that had not occurred.

**David F. Sowers (Registered Representative, Coralville, Iowa)** 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, Sowers consented to the described sanctions and to the entry of findings that he obtained \$130,000 from life insurance policies of three public customers without their knowledge or authorization. The NASD determined that Sowers used the funds to pay premiums on several insurance policies owned by a public customer and retained \$3,000 to reimburse himself for personal funds he had used to pay premiums on insurance policies owned by the customer.

**William Douglas Stirrat (Registered Representative, Creve Coeur, Missouri)** 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, Stirrat consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling \$52,039.01 to pay life insurance policy premiums. The NASD determined that Stirrat did not apply the funds as instructed and instead, deposited the checks into his personal or business bank accounts and used some of the customer's funds for personal expenses.

**Beatrice Lynn Stonebanks (Registered Representative, Los Lunas, New Mexico)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$100,000, barred from association with any NASD member in any capacity, and must pay \$792,000 in restitution to four entities. Without admitting or denying the allegations, Stonebanks consented to the

described sanctions and to the entry of findings that she obtained \$792,000 from four entities by representing that such funds would be used to purchase certificates of deposit. Contrary to such representations, Stonebanks deposited the funds for her own benefit into one or more bank accounts of an entity she solely or jointly controlled. The findings also stated that Stonebanks conducted a business through an entity that represented itself and functioned as a broker/dealer without complying with the broker/dealer registration provisions of the Securities Exchange Act of 1934.

**Kevin Marshall Sylvia (Associated Person, San Luis Obispo, California)** was fined \$32,500, barred from association with any NASD member in any capacity, and ordered to pay \$2,500 in restitution to a customer. The sanctions were based on findings that Sylvia received from a public customer \$2,500 for the purchase of stock, failed to purchase the stock and, instead, cashed the check and converted the funds. To conceal the conversion, Sylvia fabricated a customer confirmation statement that falsely represented the stock had been purchased for the customer when in fact, the shares had not been purchased for the customer and no such account existed. Sylvia also failed to respond to NASD requests for information.

**Michael P. Tchou (Registered Representative, North Potomac, Maryland)** 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, Tchou consented to the described sanctions and to the entry of findings that he withdrew \$600 from a cash drawer under his control as an employee at a bank and converted the funds for his own use.

**Gene Todd (Registered Representative, Chula Vista, California)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Todd failed to appear at the NASD for on-the-record interviews.

**Juan Bautista Torres (Registered Representative, Bronx, New York)** was fined \$25,091.65 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Torres collected from policyholders \$91.65 for premium payments, failed to deposit the funds in the policyholders' accounts and instead, converted the funds for his own use. Torres also failed to respond to NASD requests for information.

**Andrew V. Vellios (Registered Representative, Brooklyn, New York)** was fined \$58,500, barred from association with any NASD member in any capacity, and ordered to pay \$7,764 in restitution to a member firm. The sanctions were based on findings that Vellios submitted to his member firm 31 insurance policy applications, 29 that were for fictitious persons or for persons who did not reside or work at the addresses listed on the application, and checks which were all dishonored by the banks. Submission of the false applications and checks to his member firm caused Vellios to receive approximately \$7,764 in commissions to which he was not entitled. Vellios also failed to respond to NASD requests for information.

**David Keith Weaver (Registered Principal, La Junta, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, required to disgorge \$60,251.82, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations,

Weaver consented to the described sanctions and to the entry of findings that he participated in soliciting the purchase of shares of stock outside the scope of his employment with his member firm without providing prior written notice to the firm of his participation in such activities. The NASD also found that Weaver failed to provide full and complete responses to NASD requests for information.

**Richard W. Wells, Sr. (Registered Representative, Rockwall, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$41,800, suspended from association with any NASD member in any capacity for 10 business days, and required to pay \$41,800 in restitution which will be credited towards the fine. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he recommended the purchase of warrants to a public customer without having reasonable grounds to believe that the transaction was suitable for the customer in light of the speculative nature of the security, the customer's age, financial status, needs, and investment objectives. The findings also stated that Wells effected the purchase of the warrants on margin in a customer's account without having been authorized to effect margin transactions and without a duly executed margin agreement. The NASD found that Wells effected unauthorized transactions in another customer's account without the customer's knowledge or consent, exercised control over the account, and recommended the unauthorized transactions without having reasonable grounds to believe that such recommendations were suitable for the customer in light of the nature of the options, the size and frequency of the transactions, and the customer's financial situation, needs and investment objectives.

**Richard W. Wells, Sr. (Registered Representative, Rockwall, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$15,000, ordered to disgorge \$11,774.50 in commissions, required to pay \$12,686.50 in restitution to customers, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he effected options transactions in the accounts of public customers without obtaining the appropriate documentation and the necessary account approval. The findings also stated that Wells effected unsuitable options transactions in these accounts.

**Franklin N. Wolf (Registered Principal, New Vernon, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$500,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wolf consented to the described sanctions and to the entry of findings that he effected transactions in a common stock at prices that were unfair and not reasonably related to the prevailing market price of the securities and engaged in fraudulent and deceptive practices in connection with the transactions.

**Willie Lee Wyatt (Registered Representative, Gary, Indiana)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wyatt received \$1,932.15 from a public customer with instructions to use the funds for variable insurance policies. Wyatt failed to follow said instructions and used the funds for a purpose other than the benefit of the customer.

**Robert Zakian (Registered Representative, Scottsdale, Arizona)** sub-

mitted 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 with the right to reapply after two years in any representative capacity and in any principal capacity after five years. Without admitting or denying the allegations, Zakian consented to the described sanctions and to the entry of findings that while taking the Series 24 exam, he used unauthorized exam materials.

#### **Individuals Fined**

**Michael J. Dormanen (Registered Principal, Tucson, Arizona)** was fined \$15,000, ordered to disgorge \$4,478.08 to the NASD, and ordered to pay \$2,076.45 in restitution to a customer. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Dormanen recommended the purchase of securities on margin to a customer without having reasonable grounds for believing that the recommendations were suitable for the customer.

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

**Craig F. Edelman (Registered Representative, Littleton, Colorado)** was fined \$20,000 and required to disgorge \$1,837 to the NASD. The sanctions were based on findings that Edelman caused transactions to be effected in the account of a public customer and received commissions for these transactions prior to his effective registration with the NASD. Edelman also failed to disclose a felony conviction on his Form U-4.

**Dennis Patrick Hipps (Registered Representative, Pacifica, California)** submitted an Offer of Settlement pursuant to which he was fined \$45,000. Without admitting or deny-

ing the allegations, Hipps consented to the described sanction and to the entry of findings that he recommended to a public customer the purchases and sales of mutual funds without having reasonable grounds for believing that the recommendations were suitable for the customer based on the customer's security holdings, financial situation, needs, and the number of transactions.

**Jose Padilla (Registered Principal, Denver, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Padilla consented to the described sanction and to the entry of findings that he failed to supervise adequately the activities of a registered representative to detect and prevent excessive trading. Padilla also failed to establish, maintain, and enforce written procedures to supervise the activities of registered representatives to prevent and detect excessive trading activity.

**Erik Wilhelm Wachtmeister (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Wachtmeister consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide prompt, written notification to his member firm of his participation in such activities.

**Bradley D. Whitener (Registered Representative, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Whitener consented to the described sanction and to the entry of findings that he effected unauthorized transactions for the account of a public customer.

#### **Firm Expelled For Failure To Pay Fines, Costs, And/OR Provide Proof Of Restitution In Connection With Violation**

**Regency Capital Group, Inc.,**  
Glendale, California

#### **Firms Suspended**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 (formerly Article IV, Section 5 of the NASD Rules of Fair Practice) and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**William G. Ceas & Company,**  
Barrington, Illinois (May 31, 1996)

**Hampton Capital Management,**  
Stamford, Connecticut (May 31, 1996)

**John Thomas Kerbey, Co.,** Laporte,  
Texas (May 31, 1996)

**Morstrat Securities,** Tustin,  
California (June 17, 1996)

**Ridgewood Capital Fundings,** New  
York, New York (May 31, 1996)

#### **Suspension Lifted**

The NASD has lifted suspension from membership on the date shown for the following firm, because it has complied with formal written requests to submit financial information.

**International Capital Markets Group, Inc.,** Chicago, Illinois (May 24, 1996)



**Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**Paul M. Byatt**, Irving, Texas

**Michael A. Doherty**, San Antonio, Texas

**Jonathan Hyde**, Murry Hills, New Jersey

**Cynthia D. Phillips**, Woodland Hills, California

**Alberto W. Vanderrije**, New York, New York

**Salvatore A. Venezia**, Castle Rock, Colorado

**Sandra S. Venezia**, Castle Rock, Colorado

**Individual Whose Registration Was Canceled/Suspended Pursuant To NASD Rule 9622 For Failure To Pay Arbitration Awards**

The date the suspension commenced is listed after each entry.

**Steven O. Sparks**, Thousand Oaks, California (June 12, 1996)

**Hull Trading Co., L.L.C. Fined And Suspended As Order-Entry Firm From SOES**

NASD Regulation, Inc. (NASD Regulation) announced that it has taken disciplinary action against Hull Trading Co., L.L.C., of Chicago (HULL). HULL was sanctioned for violating Small Order Execution System (SOES<sup>SM</sup>) rules by improperly using SOES to unwind a stock basket at the market's opening on expiration of the Nasdaq-100<sup>®</sup> (NDX) option and the Russell 2000 (RUT) option in an attempt to sell each security underlying the NDX and the RUT at its opening price.

"Any type of questionable trading activity surrounding the expiration of the Nasdaq-100 and any other derivative products will be identified and thoroughly reviewed. The potential harm from such trading activity cannot be tolerated as investors must be able to rely unconditionally on the quality of information relating to prices disseminated on The Nasdaq Stock Market<sup>SM</sup>," said Mary L. Schapiro, NASD Regulation President.

Pursuant to disciplinary action taken by the Market Surveillance Committee, HULL submitted a Letter of Acceptance, Waiver and Consent (AWC) in which it consented to findings of facts and violations while neither admitting nor denying the allegations therein. Sanctions imposed against HULL include a censure; a fine of \$500,000; a suspension from utilizing SOES as an order-entry firm for a period of six months; an undertaking to revise its written supervisory procedures in the OTC area of the firm; and, for a period of six months from the date this AWC is accepted by NASD Regulation, provide a report to the Market Regulation Department on the day before expiration describing the unwinding of any stock basket transactions or program trading scheduled to occur on expiration of the NDX and RUT.

Specifically, HULL consented to findings that on the September 1994 expiration Friday of the NDX and RUT, HULL effected 144 transactions through SOES in 110 securities in an attempt to sell the securities at the opening price of each security. HULL's efforts to sell those securities at the opening price were successful in 70 securities. HULL also consented to findings that on the October 1994 expiration Friday of the NDX, it effected 98 transactions through SOES in 98 securities also in an attempt to sell the securities at the opening price

of each security. HULL's efforts to sell those securities at the opening price were successful in 56 securities. HULL engaged in the opening-of-day transactions, as described above, in an attempt to sell securities at the opening price for each security.

The settlement price of the NDX and the RUT is based on the opening price of the stocks underlying the options on the date of expiration. HULL had determined to hedge certain risks connected with its NDX and RUT options activity by purchasing small amounts of the stocks underlying the NDX and RUT with the intent of unwinding these stock baskets at the market's opening on expiration in an attempt to obtain the opening price of the securities underlying the NDX and the RUT options. HULL determined that it would be best able to obtain the opening price by entering sell orders through SOES, even though such transactions were being entered for the firm's index portfolio account, a "non-public customer." HULL's improper use of SOES to unwind these stock baskets at the market's opening on expiration, resulted in HULL selling the securities at the opening price in 70 and 56 of those stocks underlying the NDX upon its expiration on September 16, 1994, and October 21, 1994, respectively. Such trading activity is contrary to high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110 (formerly Article III, Section 1 of the NASD Rules of Fair Practice).

In addition, HULL consented to findings that during the period from September 1 through October 31, 1994, it executed 385 orders through SOES for the account of its Index Portfolio Account, a non-public customer in violation of NASD Rule 4730 (formerly Section (c)3.(C) of the Rules of Practice and Procedure for SOES) and NASD Rule 2110,

with each transaction constituting a separate and distinct violation. Hull also consented to findings that during the period from September 1 through October 31, 1994, HULL, on 25 occasions, entered transactions into SOES that exceeded the SOES maximum order-size requirements for orders entered into SOES in violation of NASD Rule 4730 and NASD Rule 2110.

Finally, HULL consented to findings that it failed to establish, maintain, and enforce supervisory procedures

that would have enabled it to assure compliance with the federal securities laws and rules, and the rules of the Association to deter and detect the conduct described above in violation of NASD Rules 2110 and 3010 (formerly Article III, Sections 1 and 27 of NASD Rules of Fair Practice).

“As evidenced by the sanctions imposed in this action, this type of improper trading activity will be met with severe sanctions. The review of trading at the opening of the market on the expiration of certain options

for possible fraud, manipulation, marking-the-opening, and other improper trading activity is an important part of our overall surveillance responsibilities,” said James M. Cangiolo, Senior Vice President, Market Regulation.

The Market Regulation Department’s Options/Derivatives Surveillance Section investigated this matter.



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The *Federal Register* carries the full text of proposed rules and regulations along with names, addresses, and telephone numbers of agency contacts. During the comment period, the public has the opportunity to support, object to, or suggest changes to the proposed regulations. After considering all comments, Federal agencies publish the new, final rules in the *Federal Register*. The codified text of all final rules is published in the CFR.

The new brochure shows how these valuable reference sources work together to ensure that the public, as well as businesses, professional associations, attorneys, state and local governments, researchers, educational institutions, and others, stay up-to-date on changes to the regulatory requirements of the Federal Government. The brochure describes the entire family of *Federal Register* and CFR publications and subscription services and includes an order form. Addresses and phone numbers of area Federal Depository Libraries are also included in the brochure.

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tion Manager, Superintendent of Documents Office, at (202) 512-1656.

## **Member Firm Examination Module Wins Award**

NASD Regulation, Inc., was honored recently for its CornerStone Examiner Training Program and Performance Support System, a combination of print- and computer-based training, along with classroom and on-the-job education. This program is augmented by mentoring and automated tools, including the Automated Examination Modules (AEM) and procedures.

AEM allows NASD Regulation's national compliance and examination staff to conduct on-site examination of members using a laptop computer, applying software that contains all NASD Regulation examination policies and procedures along with on-line product information. This helps the examiner to manage every step of the process, from focusing the exam to writing the final report.

AEM was awarded first prize for Outstanding Custom Application at the recent Windows World Open Conference in Chicago. CornerStone was recognized as the Outstanding Human Performance Support System for 1996 by the International Society of Performance Improvement, a leading international association dedicated to improved productivity and performance in the workplace. NASD Regulation developed CornerStone in conjunction with a Denver-based consulting company, DLS Group Inc., which also shared in the awards.

## **New Technology For Tracking Insider Trading Violations Wins Award**

NASD Regulation's new Research and Data Analysis Repository (RADAR) system was honored recently by the Smithsonian Institu-

tion, in conjunction with *Computerworld*, as part of the annual Computeworld Smithsonian Awards Program. NASD Regulation received the award for developing "data warehouse technology that reduces the time required to gather information about a potential insider trading violation from weeks to minutes, helping to ensure a level playing field for all investors."

The RADAR system, a \$4.5 million project that went on-line in December 1995, provides immediate access to market data and other related information, dramatically increasing the speed and flexibility with which large quantities of data are analyzed. RADAR assists market surveillance analysts by rapidly pinpointing the identity of the securities firms responsible for the trading, the precise time at which the trades took place, how much was bought or sold, and for whose account.

All of NASD Regulation's materials submitted to the Smithsonian have been made part of the Institution's Permanent Research Collection, and are available on the World Wide Web at <http://innovate.si.edu>. NASD Regulation's award was part of the 1996 Innovation Collection *In The Workplace* series for Finance, Insurance, and Real Estate.

### Year 2000 Compliance Project

As the year 2000 approaches, every company in every industry is facing the formidable challenge of ensuring that their computer systems will continue to operate successfully after December 31, 1999. Computers use dates to perform many important functions such as sorting, comparing, validating, and calculating. Dates are imbedded virtually in every conceivable level of computing, from mainframes, to personal computers, to network devices, and they can be found in microcode, operating sys-

tems, compilers, utilities, database management systems, applications, and data files.

Because of high costs of storage and processing capacity limitations in the early days, most computers have been programmed to operate based on two-digit year field, i.e., 96 rather than 1996. If a program were to compute the duration between, say 1996 and 1998, it would simply subtract 96 from 98 to find two years. In the year 2000, however, things are not so easy. When the two digits change to "00," subtracting from zero will give a negative number which, of course is an incorrect answer. This faulty logic will result in either "hard failures," where systems will "crash," or "soft failures," where systems will produce wrong answers (potentially worse, because they may go undetected and produce some very troublesome repercussions.)

The dimensions of this challenge are enormous. Estimated costs for correcting the problem are still very rough and increase steadily, as follows:

- The estimated cost for the United States Government is \$50 to \$70 billion.
- Worldwide total estimate is \$600 to \$900 billion.
- The unit cost ranges from \$1 to \$3 per line of code (it started at \$0.45).

The scope of this project for the NASD organization will include the following:

- An assessment of the extent of the Year 2000 problem in all three business entities: NASD, NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.
- The development of a strategy, a

methodology, and a detailed plan for the correction of the problem.

- The conversion of all the appropriate systems to be made Year 2000 compliant.

Likewise, members should be taking similar steps to assess the impact of the Year 2000 on their business and operations.

Generally, there are three alternatives that organizations should consider as they try to decide whether they should spend money to make a particular application Year 2000 compliant:

- **Retire** applications whose functionality is no longer needed.
- **Replace** applications that are technically obsolete but whose functionality is still critical.
- **Convert** applications that are still vital.

As you might imagine, there are a number of sites on the World Wide Web that try to help make the task of converting systems to Year 2000 compliance a little easier. The most popular one is the *Year 2000 Home Page*, which works as a central clearing house for date-change solutions. You can locate the Year 2000 Home Page at <http://www.year2000.com/>.

The NASD will continue to provide its members with information and updates as issues develop.

Questions regarding this information may be directed to Jack Samarias, Vice President, Technology at (301) 590-6633.