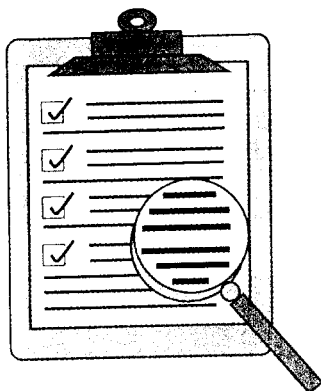


# ALERT



## NASD Takes Significant Enforcement, Surveillance Actions In 1995

For the NASD®, 1995 was a year in which it vigorously carried out its responsibilities of regulating the broker/dealer profession and the securities market it operates.

The mix of major cases brought by the NASD spanned the full extent of sales practice abuse and involved a wide range of securities products, including derivatives, mutual funds, and new equity securities offerings. A total of 908 cases were decided, resulting in expulsion from membership of eight firms and the suspension of nine others. Moreover, 412 registered persons were barred from the securities industry and another 196 were suspended. Monetary sanctions imposed totaled \$46.9 million. This figure includes \$17.1 million in restitution to investors.

During 1995, the NASD participated in several cooperative, coordinated regulatory programs with the Securities and Exchange Commission (SEC), the New York Stock Exchange (NYSE), and the North American Securities Administrators Association (NASAA). These efforts were designed to identify problem brokers, review their sales practices, and assess whether adequate hiring, retention, and supervisory practices were in place. Some 347 brokers from 101 securities firms were selected for review.

More broadly, the NASD continued to work side by side with state and federal law enforcement agencies, including the Federal Bureau of Investigation, the

*(Continued on page 2)*

### Broker Supervision Must Be Improved And Strengthened

## NASD Joins SEC, Others, In National Regulatory Sweep

On March 18, 1996, the final report was released of the Joint Regulatory Sales Practice Sweep conducted by the SEC, the NASD, the New York Stock Exchange (NYSE), and the North American Securities Administrators Association (NASAA). The main conclusion of the report shows that while many brokerage firms maintain satisfactory supervisory mechanisms, firms should take measures to improve and strengthen their hiring, retention, and supervisory practices.

From December 1994 through November 1995, participants in the Sweep conducted on-site examinations of 179 branch and main offices of 101 brokerage firms throughout the U.S., focusing on the sales practice activities of several hundred registered representatives with a history of disciplinary problems or customer complaints. The Sweep was designed to review the sales-practice activities of these registered representatives and the hiring,

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*(Significant Actions, from page 1)*

Internal Revenue Service, and U.S. Attorneys General. These cooperative efforts resulted in a number of criminal prosecutions, convictions, and imprisonment for sales practice and fraudulent abuses.

In late 1995, the NASD joined the SEC, the NYSE, the American Stock Exchange, the Chicago Board Options Exchange, and NASAA in signing a Memorandum of Understanding (MOU) to promote cooperation and coordination among the self-regulatory organizations and state securities commissions that have authority to examine the financial and business practices of securities firms. (See story on MOU in *Regulatory & Compliance Alert*, January 1996, page 4.)

## **Innovative Enforcement Programs**

Last year, the NASD completed a new

examiner training and performance support system. Designed to assist the regulatory staff to keep up with trends, the program uses computer-based training, performance support technology, and on-site mentors.

The program, designated CornerStone™, represents a radical departure from traditional training methods by providing examiners with on-line access to data bases on various securities-related products and furnishes "just-in-time" training capabilities available to users on demand. (See story on CornerStone elsewhere in this issue of *RCA*.)

The NASD also introduced a National Regulatory Plan to provide for timely identification of high-risk firms, individuals, practices, and new products and to prescribe an appropriate regulatory response that cuts across individual District and Department boundaries.

## **Market Surveillance Upgraded**

The NASD automated market surveillance system improved significantly in 1995 with the implementation of RADAR, the Research and Data Analysis Repository. Made possible by new Nasdaq® technology, RADAR consists of a market surveillance "superstation" that combines a powerful workstation interacting with a local data base using local applications.

RADAR provides immediate access to market data and other related information, sharply increasing the speed and flexibility with which large quantities of data are analyzed. Whenever Nasdaq's StockWatch Automated Tracking (SWAT) system detects unusual price or volume movements in a stock's trading, RADAR assists surveillance analysts by pinpointing the identity of the securities firms responsible for the trading, the exact time when trades occurred, how

much was bought or sold and for whose account. RADAR is a major enhancement to NASD surveillance capabilities and its investor protection programs.

### Mediation Program Underway

To complement its dispute resolution services and provide an alternative to litigation, the NASD in 1995 launched a mediation program. Currently, the NASD operates the most active arbitration forum in the securities industry for

dispute resolution, now processing about 86 percent of cases filed. During the first six months of the mediation program, more than 80 percent of cases submitted resulted in settlements.

Further, cases now are resolved within an average of 30 days from the parties' agreement to mediate.

Mediation may become as popular as arbitration because it is as fair, simple, and more cost-effective than arbitration.

It provides the parties, investors, and members, with a way to resolve disputes more quickly and less expensively. By design, it is less formal than arbitration or litigation, does not impose a decision, and creates a non-adversarial environment controlled by the disputing parties. The mediator facilitates negotiations between the parties in a flexible format determined by them, with a view toward a mutually acceptable resolution of their dispute. □

## National Regulatory Sweep *(from page 1)*

retention, and supervisory practices of their brokerage-firm employers. It was undertaken as a follow-up to the May 1994 Large Firm Project Report that revealed certain supervisory weaknesses and areas that called for improvement.

John E. Pinto, Executive Vice President of Regulation for the NASD, stated that, "The current Sweep complements the 1994 Large Firm Project, as well as the NASD's current examination priorities." For example, Pinto said that, "For 1996, all 14 NASD District Offices will use criteria substantially similar to that applied during the Sweep, to focus on problem representatives and the branch offices and main offices that they work from during sales practice examinations."

Key findings of the Joint Regulatory Sales Practice Sweep include:

- Some firms are willing to employ registered representatives with a history of disciplinary actions or customer complaints.
- Many branches seem to conduct only the minimum background review required by self-regulatory organization (SRO) rules before hiring a registered representative.
- Many branch supervisors carry out inadequate or no routine review of customer securities transactions made by registered representatives.

- Although one-half of the branches examined engage in some type of cold-calling activity, almost 50 percent of these did not fully comply with applicable laws or regulations governing telemarketing.
- Approximately one-fifth of the examinations resulted in enforcement referrals, and an additional one-fourth resulted in the issuance of letters of caution or deficiency letters. The most common findings were inadequate supervision and deficient supervisory procedures.

### Recommendations

Based on the results of the Sweep, the NASD, SEC, NYSE, and NASAA made recommendations regarding hiring practices, supervision of registered representatives, and compliance with cold-calling requirements.

In particular, it is recommended that firms:

- Adopt more stringent pre-hiring procedures for registered representatives, including obtaining satisfactory explanations of customer complaints or regulatory actions.
- Involve their legal and compliance departments in the decision to hire a registered representative with a history of compliance problems.

- Place registered persons with a recent disciplinary history under enhanced supervision for a certain time period and adopt special procedures designed to supervise such representatives.
- Encourage and enhance supervisory vigilance by tying part of a branch manager's compensation to his or her effective supervision and compliance efforts.
- Ensure that telemarketers and registered persons are adequately trained in and fully understand the rules and regulations that govern cold-calling activities. In this area, regulators will ensure that firms' cold-calling practices are comprehensively reviewed and consider if it is appropriate to add to their minor rule-violation plans violations of SRO cold-calling rules.

### Regulator Initiatives

According to the Report, regulators should accelerate their focus during examinations on evaluating the supervision of registered representatives, and SROs will also remind members of their supervisory obligations. After one year, regulators will conduct follow-up examinations of firms that have been the subject of disciplinary actions involving serious sales-practice abuses, supervision breakdowns, or other egregious activity that cause investor harm. Further, regulators may require as part

of overall sanctions imposed in enforcement actions that firms prepare and submit a report that includes the steps taken to address the abusive practices.

Broker/dealers also can expect SROs to publish information reminding their members of important regulatory responsibilities that were focused on during the Sweep. For example, the NASD will issue reminders to its members covering:

- Hiring procedures for registered representatives.
- Designation of principals for Offices of Supervisory Jurisdiction (OSJs).
- Annual compliance reviews.

- Annual OSJ inspections.

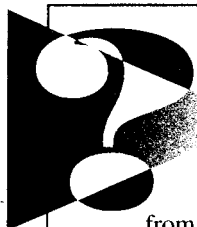
Speaking about the Sweep at the recent Securities Industry Association Compliance and Legal Conference, Daniel M. Sibears, Director of Regulation at the NASD said that, "Although the examination of problem representatives has been and will continue to be a key regulatory priority for the NASD, firms themselves should be the first line of defense in this area by bolstering hiring practices, determining whether they already employ representatives with a history of disciplinary actions or customer complaints, and determining whether heightened supervisory procedures are appropriate to

guard against violations and investor harm."

Sibears also said that, "The Sweep is representative of the close working relationships between securities regulators, and is indicative of the coordinated regulatory and examination approaches being undertaken."

If you have questions about the Report, call Daniel M. Sibears, Director, NASD Regulatory Policy, at (202) 728-6911. For a copy of the Joint Regulatory Sales Practice Sweep Report, contact Jennifer Scardino, SEC, at (202) 942-0020. □

## Advertising



### "Ask The Analyst About Electronic Communications"

During the past year, the NASD has fielded numerous inquiries from member firms regarding communications with the public disseminated through electronic media such as the Internet or commercial on-line services.

In addition, the NASD recently included electronic media in the definitions of "advertisement" and "sales literature" which are in its Rules of Fair Practice. (See *Notice to Members 95-74*, September 1995, and *Regulatory & Compliance Alert*, October 1995.) As a result of these rule changes, members have submitted an increasing number of electronic communications to the NASD for review.

Members that use electronic communications in the course of their securities business must ensure that their supervisory procedures appropriately cover these activities. In a broader context, firms should establish specific policies

that address how and under what circumstances their associated persons are permitted to use electronic communications for any business purpose at any time. Members may use the following questions and answers, which address some of the most frequently asked questions about electronic media, in updating their procedures for supervising these communications.

Because this is an evolving area of regulation, the questions and answers identify several electronic media issues currently under consideration. The NASD is working with its members, the Securities and Exchange Commission (SEC), and other regulators and industry groups on further interpretations. The NASD intends to address unresolved concerns, as well as other electronic media issues that may arise, in future communications.

*Q. My firm intends to create an Internet World Wide Web site. What are the regulatory implications and*

*concerns?*

**A.** An Internet World Wide Web site is generally a form of advertising. The site's content is subject to the general and specific standards for communications with the public in Article III, Section 35 of the NASD Rules of Fair Practice as well as relevant (SEC) and Municipal Securities Rulemaking Board (MSRB) rules. A site on a commercial on-line service such as America Online or Microsoft Network would also generally be considered an advertisement.

As with any communication with the public, advertising on the Internet is subject to the approval, recordkeeping, and filing requirements in the Rules of Fair Practice.

Since a user can navigate through the Internet and skip from section to section, a member must ensure that all material disclosures and disclaimers in its site are complete and easily recognized. For example, a member

may need to repeat risk disclosure in different sections of a site in order to ensure that this information is available to all potential users.

If the site can be viewed by anyone, regardless of his or her location, a member firm considering this form of advertising should contact the individual state securities administrator offices for information regarding the need to register in those states.

*Q. Does the NASD have separate guidelines for members to use in preparing sales material for the Internet or other on-line services?*

**A.** No. Currently, the NASD does not have separate guidelines for use in preparing advertising material for on-line services. As noted above, these electronic communications are subject to the same standards as other forms of communication with the public.

If members have questions about prospectus delivery under the federal securities laws, the NASD encourages them to obtain a copy of the October 6, 1995, SEC Release, *Use of Electronic Media for Delivery Purposes* (Release No. 33-7233). This Release provides general guidance and a detailed question-and-answer section about prospectus delivery via electronic media.

*Q. What is the NASD's view regarding the following methods of electronic communication?*

### **Bulletin Boards**

**A.** Communications posted by members or their associated persons on electronic bulletin boards and/or message boards would be considered advertisements because such material can be viewed by anyone with access to these services. A registered principal must review and approve all advertisements before use. In addition, electronic bulletin board or message board adver-

tisements may be subject to filing with the NASD, depending on the content.

### **Group Electronic Mail**

**A.** An identical electronic message sent to multiple individuals is considered sales literature subject to the prior, written approval of a registered principal. As with written sales literature, group electronic mail (E-mail) may include form letters, brochures, research reports, and market commentary. NASD filing requirements may apply to group E-mail, depending on the content.

### **Individual E-mail**

**A.** In lieu of written correspondence, registered persons also may use E-mail to send personalized letters to individual clients. When these electronic letters pertain to the solicitation or execution of securities transactions, the rules require their review and endorsement by a registered principal. Unlike advertising or sales literature, this review and endorsement may occur after the correspondence has been sent. In addition, NASD sales literature filing requirements do not apply to individual E-mail transmissions. However, E-mail correspondence relating to securities transactions must comply with the content standards included in Article III, Section 35 of the Rules of Fair Practice, as well as any other applicable rules.

### **Chat Rooms**

**A.** The NASD considers a chat room to be a public forum using an electronic medium. As interactive, extemporaneous conversations, chat rooms are not generally considered correspondence, sales literature, or advertising. However, as with other oral communications, registered persons and members firms are accountable under the Rules of Fair Practice and the federal securities laws for what they say regarding securities products or services when participating in chat rooms. Obviously, misleading or fraudulent statements are prohibited.

*Q. Can "broker/dealer use only" material be publicly posted on the Internet?*

**A.** No. Unless the member can control access to the "broker/dealer use only" material so that only registered persons can receive it, anything transmitted over the Internet or an on-line service to subscribers is a public communication and therefore subject to the standards, filing requirements, and approval and record-keeping requirements in NASD rules.

*Q. Is my firm responsible for the content and filing of sites that my site may link to, even if these linked sites were not created by my firm?*

**A.** The NASD is still considering the extent of a member's responsibility for sites to which that member has chosen to link. However, a member must not link to a site that the member knows contains misleading information about the member's products or services. Members must exercise the same care in choosing links as they would in referring customers to any outside source of information.

If a member's site must be filed with the NASD and the member's site includes information promoting a link to another site, or urging the user to view a linked site, the NASD will likely require that the member provide the linked information for review.

*Q. How should members file electronic communications with the NASD?*

**A.** Members must file a hard copy of each page in the site or program. Members may provide an Internet address or diskettes to assist in the review of the program. Please assure the submission is complete by identifying all "hyperlinked" screens within a site or program. Members may identify hyperlinks by underlining or highlighting the linked text. The NASD is exploring ways to accept submissions in electronic form as well.

*Q. If the NASD has already reviewed a computer program or Web site and the member changes one section, must the member resubmit the entire piece?*

**A.** No. If the changes do not affect other areas of a program or site, only the revised section must be resubmitted. For example, a member may have filed with the NASD and received approval for a site featuring sections for a number of different mutual funds. If the member sponsoring the site revises the growth fund section, only that part of the site must be refiled. To facilitate the review, members are asked to include the Advertising Regulation Department ref-

erence number for the original submission in their cover letters.

*Q. Is Securities Investor Protection Corporation (SIPC) disclosure required in an Internet or commercial on-line service site?*

**A.** Yes. Because Internet or commercial on-line sites are a form of advertising, SIPC disclosure should be included unless the SIPC By Laws specifically exempt the advertising from including this disclosure.

**The NASD recognizes the complexity and expense of producing electronic**

**communications. Consequently, the Advertising Regulation Department staff is available to offer assistance with any electronic communications. Members are invited to direct any further inquiries in this area to the Advertising Regulation Department at (202) 728-8330. □**

#### Rule Interpretations

## MSRB Rule G-38 Gets SEC Nod Regarding Contractual Agreements With Consultants

MSRB Rule G-38, recently approved by the SEC and effective March 18, 1996, requires municipal securities broker/dealers to enter into written agreements when using consultants and to disclose such arrangements to issuers and to the public through disclosure to the Municipal Securities Rulemaking Board (MSRB). The NASD already has begun examining for member compliance with Rule G-38, and is aggressively enforcing the Rule and related Rule G-37 that addresses political contributions.

Rule G-38 defines a consultant as any person used by a municipal securities broker/dealer to obtain or retain municipal securities business through direct or indirect communication with an issuer on behalf of the broker/dealer where the communication is undertaken in exchange for, or with the understanding of, receiving payment for that service. The definition specifically excludes "municipal finance professionals" as defined in Rule G-37(g)(iv) because they are covered by Rule G-37 requirements.

The definition also excludes any professionals, such as lawyers, accountants, engineers, etc., engaged by the broker/dealer solely to perform substantive work in connection with municipal securities business, as long as their payment is for those services.

For example, the exclusion would apply to a lawyer retained to conduct a legal analysis on a particular transaction contemplated by the dealer, or to review local regulations; an accountant retained to conduct a tax analysis or to scrutinize financial reports; or an engineer retained to perform a technical review or feasibility study. However, an attorney or other professional used as a finder for municipal securities business would be considered a consultant under Rule G-38.

The definition of consultant also extends to third parties who initiate contact with broker/dealers to offer their services to obtain or retain municipal securities business. The definition does not distinguish the circumstances where the broker/dealer initiates contact and where

the third party does so. The standard is whether that person is used by the broker/dealer to obtain or retain municipal securities business with the understanding of receiving payment.

Broker/dealers who use consultants must have a written agreement to indicate that a consultant agreement exists. Minimally, the agreement must include the name, company, role, and compensation arrangement of each of the firm's consultants, and must be in effect before the consultant engages in any direct or indirect communication with an issuer on behalf of the broker/dealer.

#### **Disclosure To Issuers And MSRB**

Broker/dealers must provide written information about their consulting arrangements to any issuer with which it engages or proposes to engage in municipal securities business. The written disclosure must include at least, the name, company, role, and compensation arrangement with the consultant(s). Broker/dealers must make this written disclosure *prior* to the issuer's selection

of a firm to handle the municipal securities business sought, regardless of whether the broker/dealer making the disclosure ultimately is the firm that obtains or retains that business.

Broker/dealers must submit quarterly reports to the MSRB concerning all consultants used for their municipal securities business. For each consultant, broker/dealers must report, in a prescribed format, the consultant's name, company, role, and compensation arrangement, and the dollar amount of any payment made during the quarterly reporting period.

If a payment made in the reporting period is related to the consultant's efforts for the broker/dealer that resulted in particular municipal securities business, the broker/dealer must identify separately that business, the dollar amount of the payment, and whether the municipal securities business was completed during that reporting period or a previous one.

In addition, if the broker/dealer continues to use an identified consultant, i.e., has a continuing arrangement with the consultant, the broker/dealer must report information about that connection each quarter, without regard to whether compensation was paid to the consultant in the reporting period.

#### **Related Changes To Rule G-37**

With Rule G-38's approval, changes were made to Rule G-37 that deleted requirements regarding consultants. Simultaneously, MSRB Form G-37 was redesignated Form G-37/G-38 and reporting requirements under Rules G-37 and G-38 are in the new form.

Broker/dealers must submit two copies of Form G-37/G-38 to the MSRB. Also, as with Rule G-37, broker/dealers must submit these reports to the MSRB by certified or registered mail, or another equally prompt means that provides a sending record. The MSRB will make

these documents available for public inspection and photocopying at its Public Access Facility in Alexandria, Virginia.

The quarterly due dates are the same as those now required under Rule G-37, i.e., within 30 calendar days after the end of each calendar quarter, which corresponds to January 31, April 30, July 31, and October 31.

New Form G-37/G-38 also includes revisions to the Rule G-37 political contribution reporting requirements. For each contribution, these include a required notation of the contributor's category, e.g., municipal finance professional or executive officer, the amount of the contribution, and a separate section for reporting of payments to political parties that are distinct from contributions to issuer officials.

#### **Related Changes To MSRB Recordkeeping Requirements**

With the approval of Rule G-38, the MSRB amended Rules G-8 and G-9 that concern recordkeeping and record retention. Amendments to Rule G-8 require broker/dealers to maintain (i) a listing of the name, company, role, and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement; (iii) a listing of the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of the issuers and a record of disclosures made to issuers concerning each consultant used by the firm to obtain or retain municipal securities business with each issuer; and (vi) the date of termination of any consultant arrangement. Amended Rule G-9 requires these records be held for six years.

Members should review their internal procedures and assure that they cover adequately all aspects of Rules G-37

## **Financial Advisers And Muni Securities**

Members should remember that the definition of municipal securities business in Rule G-37(g)(vii)(C) includes financial advisory services. Consequently, Rule G-23 requires that each financial advisory relationship shall be evidenced in writing prior to, upon, or promptly after, the inception of that relationship. This item is reportable on Form G-37/38 when the agreement is entered into and thereafter each time the issuer makes a primary offering. Members should review all the provisions of Rule G-23 and the related Rule G-37 sections before engaging in financial advisory services. □

and G-38. The NASD is aggressively examining for member compliance with all aspects of Rules G-37 and G-38, and violations likely will result in formal disciplinary action. Therefore, all firms engaging in municipal securities transactions, including those without underwriting business, should take all steps necessary to ensure compliance relative to political contributions and consultants.

If you have questions, call Samuel Luque, Associate Director, Compliance Department, at (202) 728-8472. □

## FIPS Celebrates Its Two-Year Anniversary

April 11, 1996 marked the second anniversary of the Nasdaq Fixed Income Pricing System (FIPS<sup>SM</sup>). FIPS was designed by The Nasdaq Stock Market<sup>SM</sup> to facilitate over-the-counter trading and surveillance of high-yield corporate debt securities rated BB+ or below by Standard & Poor's.

The goals in the creation of FIPS parallel those that led to the birth of The Nasdaq Stock Market: to increase information and transparency in the marketplace, thereby encouraging investment and economic growth. Although FIPS is no longer new, the NASD<sup>®</sup>, through its Market Surveillance Department, reminds members that they have specific compliance responsibilities regarding trade reporting and quotation obligations.

### Trade Reporting Requirements

Currently, transactions in the top 50 bonds in FIPS should be reported within five minutes of execution. While all transactions in other FIPS bonds must be reported by end of day, participants are encouraged to report trades as promptly as possible.

The responsibility for trade reporting is described in the FIPS Rules, Part IV (a) and (b). Parts IV (a)4(C) and (b)4(C) call for trade reporting the unit price,

excluding commissions, markups, mark-downs, and accrued interest. As part of its regulatory program, the Market Surveillance Department has determined that certain firms are reporting prices in FIPS that include such charges. When FIPS rules are not followed, the NASD pursues appropriate disciplinary action. Members must ensure that they are complying with all FIPS trade reporting rules, particularly with respect to symbol, price, and volume information and the timeliness of reports.

### Quotation Obligations

It is imperative that FIPS dealers enter quotations (on the bid, ask, or both sides) in FIPS securities where they are acting as a dealer. FIPS dealers may enter the quotations under the dealer's name or through a FIPS broker. FIPS brokers must enter all quotations received from FIPS dealers. The Market Surveillance Department continuously reviews the trading activity of FIPS participants to determine whether quotations are appropriate for specific firms. FIPS participants are reminded to review their own trading activity, and to enter quotations in FIPS securities when acting as a dealer.

Failure to comply with any of the FIPS rules or requirements also may be considered conduct inconsistent with just

and equitable principles of trade, a violation of Article III, Section 1 of the NASD Rules of Fair Practice. The Market Surveillance Committee authorizes disciplinary action and levies significant fines against firms that violate FIPS rules.

### Supervision

Article III, Section 27(b)(1) of the NASD Rules of Fair Practice states that "each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable rules of this Association." The NASD brings disciplinary actions for inadequate supervision as well as for substantive violations of its rules. Members must ensure that they have written supervisory procedures that address FIPS compliance obligations.

If you have questions regarding FIPS rules or complaints about activity in FIPS, please call James C. Dolan in the NASD Market Surveillance Department at (301) 590-6460. □

## NASD Interprets Short-Sale Rule

The following are recently issued NASD staff interpretations concerning the application of the NASD short-sale rule to non-exempt market makers in certain situations. Specifically, following are descriptions of two trading scenarios, along with the NASD staff's interpretation as to how the NASD short-sale rule should be applied in each situation.

### Scenario No. 1:

A broker/dealer (MM) is a market maker in the common stock of XYZ, which is a Nasdaq National Market<sup>®</sup> security. The inside market in XYZ is 5 bid, 5 1/32 offer. MM is short XYZ as a result of bona fide market-making activity. The primary market maker test has become effective, and MM is not a primary market maker (PMM). MM receives a market order to buy 1,000

shares of XYZ on a down bid. Under the NASD short-sale rule, MM cannot sell the shares at the 5 1/32 offering because MM is short, MM is not a PMM, XYZ has a down bid, and the price to the buyer is less than 1/16th above the best inside bid.

### NASD Response:

Notwithstanding Interpretation B to Section 48 of the NASD Rules of Fair



Practice, in instances where the inside spread for a Nasdaq National Market security is narrower than 1/16th, the staff believes it would not be a violation of the NASD short-sale rule if a non-exempt market maker were to effect a short sale at the offer price to satisfy legitimate buying interest from a customer, provided that the best inside offer was disseminated before the market maker received the order to buy from the customer. Similarly, to the extent there is a broadcast order to sell in SelectNet<sup>SM</sup>, priced less than 1/16 above the best inside bid, the staff believes it would not be a violation of the NASD short-sale rule if a non-exempt market maker were to effect a short sale at the price of such broadcast SelectNet order to satisfy legitimate buying interest from a customer, provided that the SelectNet order was broadcast before the market maker received the order to buy from the customer.

Members should keep in mind, however, that Interpretation C to the NASD short-sale rule provides that "members' activities to circumvent the rule through indirect actions . . . are antithetical to the purposes of the rule." Accordingly, it would be a violation of the rule for a market maker to bring about or cause the spread to narrow in a "down-bid situation" (e.g., lowering its offer or entering a broadcast SelectNet order) for the purpose of facilitating the

execution of a short sale for its own account at a price less than a 1/16 above the inside bid.

#### Scenario No. 2:

A broker/dealer (MM) is a market maker in the common stock of XYZ, which is a Nasdaq National Market security. The market in XYZ is 10 bid, 10 1/4 offer. MM is short XYZ, MM is not a PMM, and there is a down bid in XYZ. MM provides an opportunity for price improvement to certain qualified market and marketable limit orders by looking at its limit-order book to see if it can find a limit order that enables it to price improve some or all of the qualified order. MM receives a market order to buy 1,000 shares of XYZ, which order qualifies for price improvement opportunity. If MM did not offer an opportunity for price improvement, this market order would be filled at the 10 1/4 offering, and MM would be in compliance with the NASD short-sale rule because it would have sold XYZ short at a price at least 1/16 above the down bid.

But MM, in an effort to better serve its customers, offers this order an opportunity for price improvement. There is a resting limit order in MM's limit order file to sell 1,000 shares of XYZ at 10 1/32. Under MM's price improvement service, the incoming market order to buy would be filled by MM at 10 1/32. Under the NASD short-sale rule, MM

apparently could not do this because MM is short, MM is not a PMM, the short sale would be effected on a down bid, and the sale would not be at a price at least 1/16th above the best inside bid.

#### NASD Response:

The staff does not believe it would be a violation of the NASD short-sale rule if a non-exempt market maker were to effect a short sale for its own account at a price less than 1/16th above the inside bid when the inside bid is a down bid if this short sale is effected in connection with matching two customer orders inside the best bid or offer, provided both customer orders are executed at the same price.

The above is only an interpretive position expressed by NASD staff. Under NASD procedures, any final determination regarding the application of NASD rules rests with the District Business Conduct Committees, the NASD Market Surveillance Committee, the National Business Conduct Committee, and, ultimately, the NASD Board of Governors.

Direct questions concerning the short-sale rule to NASD Market Surveillance at (800) 925-8156, or Thomas Gira, Office of the General Counsel at (202) 728-8957. □

## SEC Updates Trading Practices Rules Affecting Foreign Securities Distributions

Since issuing its Statement of Policy (Statement) in 1993 announcing the availability of exemptions from its Trading Practices Rules, the SEC has granted several exemptions for distributions of foreign securities in the United States. The Statement and its further interpretation provide exemptions for certain foreign issuers on a

class and individual transaction basis.

In order to oversee the public distribution of securities, the SEC in 1955 adopted a series of regulations governing trading practices—SEC Rules 10b-6, 10b-7, and 10b-8, under the Securities Exchange Act of 1934. These Trading Practices Rules are

designed to prevent persons with an interest in a securities distribution from improperly influencing the price of the offering.

Until recently, the SEC's position with respect to distributions of foreign securities in the United States was that, the Rules apply to all distribution partici-

pants and their affiliated purchasers, wherever they are located or effect transactions. However, the SEC now believes that the application of the Rules to transactions made abroad often conflict with foreign customs and market practices, and impose compliance burdens and costs on foreign issuers and underwriters and their affiliated purchasers. Consequently, the SEC has attempted to ameliorate these effects by granting exemptions to foreign issuers on a class and individual transaction basis.

### Foreign Issuer Exemptions

In its Statement, the SEC announced that on written application and approval, individual and class exemptions from the Trading Practices Rules would be available to issuers of distributions of foreign securities in the United States.

These exemptions facilitate multinational distributions of actively traded securities of highly capitalized foreign issuers that otherwise would be prohibited by the Rules during distributions of foreign securities in U.S. markets. The exemptions are subject to specific terms and conditions regarding security eligibility criteria, notice, disclosure, recordkeeping, and transaction reporting obligations.

To date, the SEC has granted several foreign issuer class exemptions—German Issuers<sup>1</sup>, French Issuers<sup>2</sup>, United Kingdom Issuers and Certain Securities Traded on SEAQ International<sup>3</sup>, and Dutch issuers<sup>4</sup>. Details of each exemption are in the following *Federal Register* releases. Individual transaction exemptions, which are specific and generally apply to a particular distribution, also have been granted. These exemptions have

appeared in SEC No-Action letters.

Questions about this subject may be directed to the NASD Compliance Department at (202) 728-8221. □

<sup>1</sup> *Letter regarding Distributions of Certain German Securities*, Securities Exchange Act Release No. 33022 (October 6, 1993), 58 FR 53220.

<sup>2</sup> *Letter regarding Distributions of Certain French Securities*, Securities Exchange Act Release No. 34176 (June 7, 1994), 59 FR 31274.

<sup>3</sup> *Letter regarding Distributions of Certain United Kingdom Securities and of Certain Securities Traded on SEAQ International*, Securities Exchange Act Release No. 35234 (January 10, 1995), 60 FR 4644.

<sup>4</sup> *Letter regarding Distributions of Certain Dutch Securities*, Securities Exchange Act Release No. 36412 (October 19, 1995), 60 FR 55391.

## Board Approves Modifications To Primary Market Maker Exemption

The NASD Board approved a modification to the Primary Market Maker (PMM) exemption to the NASD short-sale rule that would delete the provision that allows a market maker to become a PMM in an issue by registering in the stock and refraining from quoting the issue for five days.

Article III, Section 49 of the Rules of Fair Practice (the PMM Rule) provides that a market maker can become a PMM by registering in a stock and refraining from entering quotes in the issue for five days (Five-Day Quote Delay Rule). If the market maker commences quoting the issue on the sixth day, it is a PMM in that stock until the next PMM review. Thereafter, to retain the PMM designation, the market maker must meet the PMM standards for the next review period. This provision of the PMM standards was originally put into the Rule to ensure that market makers were not registering in a stock to take advantage of momentary short-selling opportunities.

This modification to the PMM rule was approved due to concerns that the Five-Day Quotation Delay Rule could be used by firms to circumvent the application of the PMM standards, and inflate the percentage of stocks in which they are a PMM above the 80 percent level, thereby entitling them to be a PMM for all IPOs and issues that they register in during the next month.

NASD staff filed this proposal with the SEC on March 26.

For further information on the short-sale rule, contact Thomas Gira, Office of the General Counsel, at (202) 728-8957. □

## Compliance Questions & Answers

The Compliance Department frequently receives inquiries from members. To better inform members on matters of common interest, the Compliance Department provides this question-and-answer feature through the *Regulatory & Compliance Alert*.

*Q. What information is required on the customer confirmation when a broker/dealer acts in a principal capacity in a reported security?*

**A.** Securities and Exchange Commission (SEC) Rule 10b-10, the confirmation rule, requires broker/dealers acting in a principal capacity in transactions in reported securities to disclose on the customer confirmation the reported trade price, the net price to the customer, and the difference between the reported trade price and the price to the customer (i.e., the amount of any markup, markdown, or similar remuneration). If there is no difference between the reported trade price and the price to the customer, then indicate "0" or "none."

Reported securities include Nasdaq National Market® and listed securities meeting New York or American Stock exchange listing requirements and selected securities listed on regional stock exchanges and reported under the Consolidated Tape Association Plan.

The same disclosure requirements apply to transactions effected in Nasdaq SmallCap Market™ securities (see Schedule D, Part XI, Section 3 of the NASD By-Laws) and to riskless principal transactions in reported securities in which the broker/dealer is a market maker in the security. If the broker/dealer is not a market maker in a riskless principal transaction in a reported security or a Nasdaq SmallCap Market security, the confir-

mation must disclose only the net price to the customer and the amount of any markup, markdown, or similar remuneration.

*Q. What is the required haircut percentage a broker/dealer must apply to SEC Rule 144A equity securities that are held in the firm's proprietary account?*

**A.** Rule 144A securities of a domestic issuer may be treated the same as those securities that can be publicly offered and sold without registration, and that are deemed to have a ready market for purposes of SEC Rule 15c3-1.

*Q. Do the same haircut percentages apply to SEC Rule 144A equities, convertible debt, and nonconvertible debt securities of domestic issuers if the securities are PORTAL® eligible? (PORTAL is the acronym for Private Offerings, Resale, and Trading through Automated Linkage).*

**A.** Yes, provided that a ready market condition exists for the security. Although a Rule 144A security is PORTAL eligible, this does not mean that a ready market exists in that security for net capital purposes. If the existence of a ready market condition can be established, the securities would be haircut the same way as securities that can be publicly offered and sold without registration under SEC Rule 15c3-1.

*Q. Is a broker/dealer permitted to pay transaction-based compensation directly to a Subchapter S corporation on behalf of a registered employee who is a shareholder of the Subchapter S corporation?*

**A.** No. Article III, Section 25 of the NASD Rules of Fair Practice generally

prohibits a member from paying any transaction-based compensation to a non-member that may be acting as an unregistered broker/dealer.

*Q. If a broker/dealer offers a settlement with regulators or others, should the amount be booked to the firm's balance sheet?*

**A.** Yes. When a broker/dealer makes an offer of settlement, including an acceptance, waiver, and consent (AWC) to a District Business Conduct Committee (DBCC), a capital charge must be taken at the time the "offer" is made, usually in the form of a reserve. If the offer is refused, the reserve entry would be reversed.

*Q. If a broker/dealer has been the subject of an adverse court judgment, should the amount be reflected as a charge to the firm's net capital?*

**A.** An adverse judgment against a firm is, at a minimum, a contingent liability and should be included in aggregate indebtedness. The judgment should be an immediate charge to capital unless an opinion from outside counsel discusses why the judgment will be reversed on appeal. The Compliance Department and the SEC Division of Market Regulation must review any such opinion. In some states or cases, a bond is required when a judgment is appealed. The cost of the bond would be a capital charge. If the bond is collateralized, and the collateral is an asset of the member, the carrying value should be treated as a deduction from net worth. However, the judgment would be a charge to capital if no appeal is undertaken, or if the judgment is appealed, the opinion of outside counsel noted above is not provided.

*Q. Is new account information required for 401(k) plans, pension plans, etc.? If so, should the information be gathered and retained for the plan or the individual plan participants?*

**A.** New account documentation is required for each account. However, for 401(k) plans, pension plans, etc., generally there is a trustee that has a fiduciary responsibility to the plan and is authorized to act on behalf of the beneficial owners. In these cases, the new account form would contain the trustee's name and would not reflect individual names. The trustee is considered the customer of the broker/dealer, not the individual participants.

*Q. If a member wishes to maintain fidelity bond coverage in excess of the minimum insurance requirement and includes a deductible provision, is there a charge to net capital under Article III, Section 32?*

**A.** A member is permitted to include a deductible provision in the fidelity bond of up to the greater of \$5,000 or 10 percent of the minimum insurance requirement. Anything in excess of this amount is a charge to net capital. This illustrates this concept:

Net capital requirement	\$100,000
Minimum required coverage	\$120,000
Face of the Bond	\$500,000
Deductible	\$50,000
Less Maximum Allowed Deductible Provision	\$12,000
Equals Excess Deductible Charge to Net Capital	\$38,000

*Q. Are there any exemptions for broker/dealers from registration with the SEC Lost & Stolen Securities Program?*

**A.** Yes, there are three possible exemptions. They are: (1) exchange floor broker/dealers; (2) broker/dealers that handle only global or uncertificated securities; and (3) broker/dealers whose

business does not involve handling of securities certificates, i.e., broker/dealers with no involvement in the sale, purchase, pledge, transfer, or safekeeping of certificated securities.

Typically, there are only a limited number of broker/dealers that could qualify for the last exemption. These are broker/dealers that handle only limited partnership interests and/or mutual funds that do not provide investors with negotiable certificates, and self-styled mergers and acquisition specialists. **This exemption is not available to firms that introduce their business on a fully disclosed basis.**

*Q. Are these exemptions available to new broker/dealers? How does a broker/dealer that meets one of the criteria get an exemption?*

**A.** No. All three exemptions apply only if the broker/dealer has been registered in the program and, in the past six months, did not handle securities certificates. After the six-month period, a broker/dealer requesting an exemption must write to the Securities Information Center (SIC) in Boston, Massachusetts, stating the scope of its business and that the firm's policy prevents it from accepting any certificates. SIC then will verify that the broker/dealer has not accessed the system in the last six months and grant an exemption from the program.

*Q. Once a firm has filed a Form BDW for withdrawal as a broker/dealer, is it required to remain in net capital compliance and to continue to file FOCUS reports? When do these requirements end?*

**A.** SEC Rule 15c3-1 has no special provisions for a firm that has filed a Form BDW. Firms that have filed a BDW are required to file all FOCUS reports that have a due date prior to the date the withdrawal becomes effective. The withdrawal will generally become

effective 60 days after the SEC receives the filing.

*Q. If an introducing firm has less money on deposit with its clearing firm than its clearing agreement requires, is the difference required to be recorded as a liability or as a charge to net capital?*

**A.** Neither. The difference between the amount required to be on deposit and the actual amount on deposit with the clearing firm should not be recorded as a liability or as a charge to net capital. The actual amount of money on deposit should be reflected as an asset on the firm's balance sheet and included in net worth (and thus in net capital).

*Q. What is the minimum net capital requirement for a member firm that transacts business through an omnibus account at another member firm?*

**A.** In an omnibus arrangement, both parties to the arrangement are clearing broker/dealers. The minimum net capital requirement is \$250,000.

*Q. Is it a violation of the NASD Rules of Fair Practice for an associated person to fail to honor a NYSE arbitration award?*

**A.** A Resolution of the Board of Governors, *Failure to Act Under Provisions of Code of Arbitration Procedure*, states that it may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice for a member or associated person to fail to honor an arbitrator's award properly rendered pursuant to the Uniform Code of Arbitration under auspices of the NASD, the NYSE, the Municipal Securities Rulemaking Board (MSRB), etc.

*Q. If a firm's securities business is limited to mutual funds and closed-end investment companies, is the firm required to join SIPC?*

A. Yes. The Securities Investor Protection Act (SIPA), Section 3(a)(2)(A), states that a firm is not required to join SIPC if the broker/dealer business consists *exclusively* of distribution of shares of registered *open-end* investment companies or unit investment trusts, or if the broker/dealer is in the business of rendering investment advisory services to one or more registered investment companies

or insurance company separate accounts. SIPA does not exempt a firm that sells shares of *closed-end* registered investment companies, and such a firm would therefore be required to join SIPC.

*Q. Do the provisions of MSRB Rule G-37 concerning political contributions apply to contributions to a candidate for a federal office?*

A. Yes, if the candidate is an "official of an issuer" as defined in the Rule. Rule G-37 defines the term "contribution" in terms of elections for federal, state, or local office. □

## Appeals Court Reviews Liability Of Qualified Independent Underwriters In Public Offerings

A U. S. Court of Appeals has recently issued an opinion on the liability of qualified independent underwriters in public offerings that are subject to Schedule E to the NASD By-Laws. Schedule E requires a qualified independent underwriter to conduct due diligence and provide a pricing opinion in offerings where a conflict of interest or affiliation exists between the issuer and an underwriter participating in the distribution.

Raffensperger, Hughes & Co., Inc., the qualified independent underwriter in the case, moved for summary judgment in District Court as defendant in a class action suit brought by investors in a \$20 million offering of Firstmark Corporation short-term notes by an NASD member subsidiary of Firstmark. Raffensperger, acting solely as qualified independent underwriter for a fee, argued that it was not an underwriter for purposes of the Securities Act of 1933 because it had not offered, purchased, sold, or distributed Firstmark securities. The District Court denied the summary judgment motion and Raffensperger certified the case for provisional appeal to the U.S. Court of Appeals for the Seventh Circuit.

The Court of Appeals reviewed the matter *de novo* and held that Raffensperger, acting in its role as the qualified

independent underwriter, was *subject to Section 11 liability under the 1933 Act for the entire offering of securities*, even though the underwriter did not actually underwrite or distribute any of the securities in the offering.

The Court of Appeals reasoned that the question of whether a person is covered by Section 11 is determined by the scope of the term of "participation." Section 11 of the 1933 Act applies to "any person" who "participates or has direct or indirect participation" in the "distribution of any security." The Court found that although Raffensperger had not engaged in sales of any Firstmark securities, the member was within the scope of Section 11 once its actions as a qualified independent underwriter caused it to either "participate in," have a "direct or indirect participation in," or have a "participation in the direct or indirect underwriting of" the purchase of securities with a view to distribution, offer, or sale.

The Court found that Raffensperger's obligations as a qualified independent underwriter were "necessary to the distribution of [the Firstmark] securities" and that Raffensperger was subject to Section 11 liability. The Court also stated that Raffensperger performed "the protective function envisioned by the 1933 Congress with respect to the entire

Firstmark offering." Thus, the Court reasoned, the entire offering indeed was underwritten by Raffensperger.

### Rationale Behind Decision

In reaching its decision, the Court focused on the NASD requirements in Schedule E, citing the sub-provision in the qualified independent underwriters definition that requires members to agree to undertake Section 11 liability, and the accompanying footnote indicating that the SEC and NASD are of the opinion that Section 11 liability attaches to qualified independent underwriters. The Court gave considerable weight to the fact that the NASD and SEC agree that qualified independent underwriters are subject to Section 11 liability, and pointed out that the SEC has not used its authority under the 1933 Act to abrogate or amend Schedule E.

Until the Raffensperger decision, neither the NASD, SEC, nor a court had issued a determination about the scope of a qualified independent underwriter's liability under Section 11 of the 1933 Act.

The Corporate Financing Committee has pointed out that the facts of this case were somewhat different from that often seen in Schedule E transactions involving qualified independent underwriters, i.e., Raffensperger was hired for a fee to

act only as qualified independent underwriter and did not sell or distribute any of the securities in the offering. This is distinguished from the much more common occurrence of a qualified independent underwriter acting in such capacity ancillary to its other duties as manager or co-manager of the offering, and as an active participant in the sale of securi-

ties in the offering. In those situations, the qualified independent underwriter rarely receives compensation for its additional role. The Committee has established a subcommittee to review the overall implications of the Court's decision on all qualified independent underwriters operating under various fact patterns and arrangements.

For more information on this subject, call Charles L. Bennett, or Richard J. Fortwengler, NASD Corporate Financing Department at (301) 208-2700. □

## SEC Says Under Firm-Quote Rule Common Stock, Units, Warrants Of An Issuer Are Not Same Security

For purposes of the Firm-Quote Rule (Securities Exchange Act Rule 11Ac1-1), the SEC Market Regulation Division concludes that a single issuer's common stock, units, and warrants are not to be treated as the same "subject security." Thus, a market maker is not allowed to decline an order sent to it at its quote in one of the issuer's securities, on the basis that it just traded in another related security and was about to update its quotes in all of the related securities.

A broker or dealer is excepted from the Firm-Quote Rule [see subparagraph (c)(3)(ii)(B)] if at the time an order in a subject security is presented, the responsible broker/dealer is effecting a transaction in that security, and immediately after completing the transaction, the broker/dealer communicates to the NASD a revised bid or offer that supersedes a previously displayed bid or offer.

Based on the SEC interpretation, a member making markets in the common stock, warrants, and units of the same issuer may not avail itself of this exception if, for instance, it is presented with an order for the warrants while in the process of effecting a transaction in the common stock and updating the common stock's quotes. Since the common stock and warrants are not the same subject security, when an order is presented for the warrants, the order for the warrants must be executed at the displayed quote in the warrant to comply with the Firm-Quote rule. The member may avail itself of the "stock ahead" exception to the Firm-Quote rule only with respect to the security it effected a trade in, i.e., the common stock.

For more information on this subject, call Market Surveillance, at (800) 925-8156. □

## Labor Department Issues Guidance To Registered Reps About Pension Investment Education

The U.S. Department of Labor recently released a draft interpretive bulletin that furnishes guidance regarding circumstances under which the provision of investment-related information to individuals covered by retirement savings plans, including 401(k) plans, will *not* constitute giving "investment advice" under the

Employee Retirement Income Security Act (ERISA).

The bulletin provides important guidance to registered representatives who also furnish investment advisory services. It will help them to determine when activities designed to educate and assist plan participants in making

informed investment decisions will not cause registered representatives to become fiduciaries in connection with a plan because they give investment advice to participants for a fee or other compensation.

The growth in the number of participant-directed individual account

pension plans and the number of investment options available to participants under such plans have resulted in an increased need to provide participants, whose investment decisions will directly affect their income at retirement, with information to help them make appropriate investment decisions. Many employers and service providers are reluctant to provide investment-related information to plan participants because of concerns that giving such information may be seen, in some situations, as “rendering investment advice for a fee or other compensation,” thereby giving rise to fiduciary status and potential liability under ERISA for investment decisions of plan participants.

In response to these concerns, and to encourage pension investment education, the Department of Labor interpretive bulletin points out safe harbors under ERISA for plan sponsors and service providers who provide participants with four types of investment information and materials: (1) plan information; (2) general financial and investment information; (3) asset allocation models; and (4) interactive investment materials.

### Investment Education

The Department of Labor identifies these examples of investment-related information and materials that may be given to plan participants without such information constituting the rendering of investment advice. Because these information categories do not contain specific or individualized investment advice or recommendations, service providers can furnish this educational material to participants without being exposed to potential liability under ERISA:

- Plan information—May be provided about the benefits of plan participation and of increasing contributions to the plan, the impact of pre-retirement withdrawals on retirement income, the terms and operation of

the plan, and investment alternatives under the plan. However, information may not be given regarding the appropriateness of any individual investment option for a particular participant.

- General financial and investment material—May be provided if it has no direct relationship to investment alternatives available to participants under a plan or to individual participants, such as information that informs a participant about general financial and investment concepts; historic differences in rates of return between different asset classes; effects of inflation; estimating future retirement income needs; determining investment time horizons; and assessing risk tolerance.
- Asset allocation models—May be provided. These models furnish a participant with models of asset allocation portfolios of hypothetical individuals with different time horizons and risk profiles. These enable a participant to assess the relevance of an asset allocation model to his or her individual situation. This result would not be affected by the fact that a plan offers only one investment alternative in a particular class identified in an asset allocation model.

The following conditions apply to the use of such models:

- (a) The models must be based on generally accepted investment theories that take into account the historic returns of different asset classes over defined time periods.
- (b) All material facts and assumptions on which such models are based must accompany the models.
- (c) To the extent that an asset allocation model identifies or matches any specific investment alternative available under the plan with a generic asset class identified in the

model, all investment alternatives of that general asset class available under the plan must be similarly identified or matched.

- (d) The models must be accompanied by a statement indicating that, in applying any particular asset allocation model to his or her individual situation, the participant should consider other assets, income, and investments in addition to his or her interest in the plan.

- Interactive investment materials—Questionnaires, worksheets, software, and similar materials may be provided to a participant to furnish the means to estimate future retirement income needs and to independently assess the impact of multiple asset allocation models on retirement income. Use of such materials is subject to the four conditions listed above that apply to the use of asset allocation models. In addition, there must be an objective correlation between the asset allocations generated by the materials and the information and data supplied by the participant.

The draft interpretive bulletin is available on the Internet at <http://www.dol.gov/dol/pwba>, *see* “What’s New in PWBA.”

For further information about the Department of Labor interpretive bulletin, call the Pension and Welfare Benefits Administration, U.S. Department of Labor, at (202) 219-8671; Daniel M. Sibears, Director, Regulation, at (202) 728-6911; or Mary Revell, Senior Attorney, Regulation, at (202) 728-8203. □

# NASD Implements New Trading And Market-Making Surveillance Program

As part of its National Regulatory Plan, the NASD has implemented its new Trading and Market Making Surveillance Program (Surveillance Program), which is designed to ensure that there is appropriate nationwide regulatory attention directed to high-risk firms, practices, and individuals. Effective January 1996, the Surveillance Program calls for focused, annual on-site examinations of the 105 firms that collectively account for 90 percent of combined reported volume in The Nasdaq Stock Market, in exchange-listed securities traded over-the-counter (OTC), and in non-listed OTC securities for compliance with market-making and trading related rules. The program's goal is to improve overall accuracy and timeliness of trade reports, and to detect, investigate, and take enforcement action for violations, where appropriate.

The Surveillance Program examinations will focus primarily on compliance with all trade reporting rules and regulations, and on the adequacy of firms' supervisory procedures in these areas. Selected examinations also will include a review for limit orders and short sales compliance. These examinations traditionally have been performed by NASD District Offices, who will continue to examine all other members for compliance with trade reporting rules.

However, the Surveillance Program centralizes the responsibility for examinations of the 105 Tier I firms in the Market Surveillance Department in Rockville, Maryland, which will work with examiners in District Offices across the country who have been assigned to Market Surveillance and who will conduct examinations in their geographical areas. Examiners have received extensive specialized training in various trading and market-making rules, regulations, and requirements to best ensure comprehensive, effective

inspections. In addition to the surveillance and enforcement objectives of the program, Market Surveillance representatives will continue to visit members as part of ongoing efforts to address training and educational needs, discuss preventative compliance, and consider concerns or questions firms may have.

Every on-site examination will include an extensive review of the firm's trade reporting practices to determine if the member is making accurate and timely trade reports. In addition, a comprehensive review of the firm's supervisory procedures will be conducted to determine whether the firm has developed, implemented, and enforced procedures reasonably designed to achieve compliance with all trade reporting and market-making rules and regulations pertinent to the firm's daily operations.

In addition to the mandatory focus on the firm's accuracy and timeliness of trade reports, the on-site examination also will review for purposeful inaccurate and untimely trade reporting, and may include one or a combination of the following areas for which internal surveillance reports indicate a need for further review—late reports; late block trade reports; price override reports; quote/trade comparisons; pre-opening and after-hour trades; correct use of modifiers and/or status codes; and the Automated Confirmation Transaction System (ACT<sup>SM</sup>) Rules.

Members should review Schedules D and G of the NASD By-Laws, and the following *Notices to Members* (NTM) for assistance in developing procedures designed to ensure compliance with various trade reporting rules and regulations:

- NTM 92-26—SEC Approval Of Trade Reporting For Regular Nasdaq Securities.

- NTM 92-39—Confirmation Disclosure Requirements For Transactions In Nasdaq SmallCap Stocks.
- NTM 93-9—SEC Approves Amendments To NASD® Rules Governing Transaction Reporting.
- NTM 93-25—SEC Approves New Trade-Reporting Requirements for Late-Trade Reports.
- NTM 93-62—Requirements Governing Real-Time Trade Reporting In Over-The-Counter Equity Securities.
- NTM 93-83—SEC Approves New Trade-Reporting Requirements For Pre-Opening Transactions And Convertible Debt Transactions.
- NTM 94-71—SEC Approves Amendments To Trade Reporting Requirements For Trades Executed Outside Normal Market Hours.
- NTM 94-81—SEC Approves NASD Proposal To Require CQS Market Maker Participation in ITS/CAES and CAES.

If you have any questions regarding the program or trade reporting rules, please contact your local District Office, or the Market Surveillance Department at (800) 925-8156. □



# CRD Redesign Will Require Members To Review U-4, U-5 Filing Procedures For Employment Address

Member firms that go online with the Central Registration Depository (CRD<sup>SM</sup>) Redesign in June 1996 must review procedures for completing Forms U-4 and U-5 filings to ensure that the "Office of Employment Address" field is completed accurately, indicating the physical work location of the individual for whom the form is filed.

The newly revised forms contain a field for office of employment address, defined as "the address where the applicant is physically located for business purposes." Thus, the address must reflect *where the employee works*.

The office of employment address does not necessarily mean the branch office or Office of Supervisory Jurisdiction (OSJ) to which a registered individual is

designated if the person's work location is elsewhere, i.e., home or other business location. Additionally, furnishing a physical work location *does not* automatically require the registration of that location as a branch office. Member firms affiliated with insurance companies and firms that consider their registered representatives as independent contractors often do not complete the field—office of employment address—accurately.

The NASD District Office with jurisdiction over registered persons is based partly on the person's physical work location. For example, investigations into matters reported on Form U-5, Terminations for Cause (TCs), are conducted by District Offices. CRD will route such TCs to District Offices based

on the reported office of employment address. However, the TC may be misrouted if the address reported by the member firm is incorrect.

Currently, the NASD Regulatory Systems Department reviews Form U-5 filings and routes the TC to a District Office based on the representative's home address. This minimizes the number of misrouted reports. When the CRD Redesign is implemented, routing will be automatic and based on the address reported in the office of employment address field.

If you have questions about this subject, call your Quality & Service Team at (301) 590-6500, or your local NASD District Office. □

## NASD Implements CornerStone Examiner Training And Performance Support System

As part of an ongoing effort to provide Regulation Business Line staff with state-of-the-art training and job support tools, the NASD developed CornerStone<sup>SM</sup>, a system that represents a radical departure from traditional training methods. Developed in conjunction with DLS Group, a Denver-based consulting firm, the CornerStone initiative, which began in 1992, incorporates information from NASD member and employee surveys that supports the NASD decision to revamp its training program to take the maximum advantage of technology and cutting-edge training techniques. Although the NASD is known for having the best examiner training program in the industry, it was time to redesign the program to help examiners and others involved in regulation keep pace with trends in the rapidly changing securities industry.

CornerStone is a combination of print-based training, computer-based training, instructor-led, and on-the-job training, as well as mentoring and automated tools, including the Automated Examination Modules and Procedures. The new training will be used primarily by new examiners. However, the performance support aspects are being used by more experienced NASD examiners in order to sharpen their existing skills and to assist them in performing their jobs more efficiently and effectively.

### Training New Examiners

Training new examiners is accomplished in stages. First, new examiners are assigned to senior level examiners who act as mentors in their Districts. The mentor is responsible for guiding the new examiner through his or her training. While mentoring once

was an informal process used throughout all Districts, now it is a structured program that includes a formal training program for all mentors.

Once a trainee is assigned to a mentor, they work together to develop the new examiner's training plan. The next step is for the trainee to take a series of foundation courses that introduce new examiners to the fundamentals they need to know to do their job effectively. These foundation courses include training on SEC financial rules, brokerage operations, product lines, and business activities.

Following the foundation courses, the student completes the computer-based training (CBT). The CBT was developed to simulate real-life examinations. The best practices of the most

experienced NASD examiners across the country have been captured in the CBT data base. This permits trainees to walk through the examination process online, guided and assisted by these experts in making decisions on how to proceed with their examination/investigation.

At the conclusion of the five CBT lessons, and after taking three on-line tests, the trainees attend the Examiner Workshop. The Workshop is the final step in CornerStone, where examiners are brought together and assigned to teams to conduct two complex simulated examinations. Throughout CornerStone, new examiners are also conducting on-the-job training activities (OJT) that are coordinated by their mentors. These OJT activities allow examiners to practice the skills they are learning and will be expected to demonstrate on the job while working with their mentors.

An important feature of CornerStone is the automated performance support tools available to examiners as part of the CornerStone Electronic Desktop. One of these applications/tools is the

Automated Examination Modules and Procedures (AEM). The AEM application moves the print-based NASD examination modules and procedures online, making them accessible during on-site examinations via laptop computers.

With easy access to all the examination modules and procedures, examiners can focus their attention on the substantive job of analysis and review. The computer will take care of the repetitive administrative tasks and provide "just-in-time" access to valuable reference information and other regulatory information data.

One of the information data bases that is part of the CornerStone Electronic Desktop is an intensive product definition and knowledge system that provides examiners on-line access to information on securities products. Examiners can immediately obtain information on everything from derivatives to foreign securities, municipals, and money market instruments. The tool includes a glossary of terms and a capability for users to make annotations.

John E. Pinto, Executive Vice President, says, "CornerStone is not only a cutting-edge training and performance support system for the securities industry, but for business in general. It has far greater capacity and capability than we ever imagined when we first thought of the idea a few years ago. CornerStone incorporates the knowledge and best practices of NASD experts nationwide, thus enabling the NASD to do an even more effective job of regulating its members. It also gives our staff the ability to more fully develop their expertise and professional potential."

The NASD CornerStone system recently received an Award of Excellence for Outstanding Human Performance Technology by the International Society for Performance Improvement, a professional organization.

If you have questions regarding CornerStone, call Jim Price, Regulatory Systems, at (301) 590-6136. □

Plan Will Provide Testing/Training Centers In 50 States

## NASD Expands Broker Testing Facilities To Fit New Continuing Education Requirements

Through a formal partnership with Sylvan Learning Systems, Inc., the NASD will increase substantially the number of centers available to test, train, and certify the nation's 510,000 registered brokers. Initial training and testing in Sylvan centers should begin during this quarter.

Currently, the NASD owns and operates 53 test centers across the country. In order to accommodate the expected 336,590 test and training sessions to be given in 1996, the partnership with

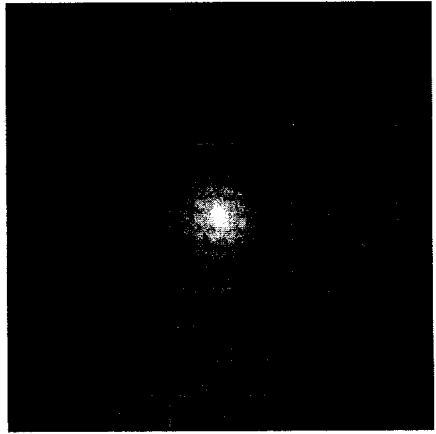
Sylvan eventually will increase the number of centers to about 250 secured facilities in all 50 states and U.S. territories.

New continuing education requirements implemented in mid-1995 by the securities industry call for an across-the-board increase in training required for brokers—resulting in more than a 30 percent increase in the number of sessions to be given in 1996. These new rules require registered brokers to complete a computer-based training program

within 120 days of the second, fifth, and tenth anniversary dates of their initial registration.

According to Mary L. Schapiro, President of NASD Regulation, Inc., "Some brokers were required to travel hundreds of miles to sit for examinations and continuing education training sessions administered through the 53 NASD test centers. To broaden access—both domestically and overseas—to as many training and testing centers as possible, we have now

# NASD Sanction Guidelines



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## Introduction

*NASD Sanction Guidelines* is published so that members may become more familiar with some of the typical securities industry violations that occur and the disciplinary sanctions that may result.

Originally disseminated by the NASD® National Business Conduct Committee (NBCC) for use by the various NASD District Business Conduct Committees and the Market Surveillance Committee (the Committees), the attached guidelines help the Committees decide on appropriate remedial sanctions in NASD disciplinary proceedings. However, the purpose of these guidelines is not to prescribe fixed sanctions for particular violations. Rather, they serve as a guide for the Committees in an effort to achieve greater consistency, uniformity, and fairness when imposing sanctions. These guidelines are not required sanctions and should not be viewed as absolute. The Committees may impose sanctions that are above or below the range recommended in the guidelines depending on the aggravating and mitigating factors present in each case, which should be detailed in the Committee decision. Developed for the most frequent violations, the guidelines include factors for consideration in determining sanctions and a discussion of the range of appropriate sanctions.

Depending on mitigating or aggravating factors present in individual cases, sanctions may be increased or decreased beyond the limits set forth here. The range of monetary sanctions in each case is intended to be applied in the aggregate rather than per individual violation. However, cases involving numerous violations should warrant higher sanctions. As such, a lesser or greater number of violations in each individual case should be reflected as a mitigating or aggravating factor in all sanction determinations.

Where appropriate, the guidelines include a recommendation that the monetary sanction fine away ill-gotten gains or, preferably, effect restitution in conjunction with

the imposition of a remedial fine. When harm to public customers is part of the violative activity, restitution is generally recommended where the customers are clearly identifiable. Orders requiring restitution to such customers or other appropriate persons are encouraged to the extent practicable. The NASD may assess interest on amounts ordered as restitution, generally accruing from the date of the last violation. Interest rates are set at the prime rate plus three percentage points.

The NBCC recognizes that suspensions measured in business days rather than calendar days may drastically alter the length of the suspension imposed. The NBCC considered this factor in developing its recommendations as to lengths of suspensions. Generally, recommendations for the imposition of suspensions for 30 days or less are measured in business days while recommendations for suspensions of more than 31 days are measured in calendar days.

A significant consideration in determining appropriate sanctions for each type of violation listed on the following pages is the respondent's history of similar misconduct. This reflects the NBCC's belief that a primary objective of the NASD disciplinary process is to deter future violations by imposing progressively escalating sanctions on repeat violators. In imposing sanctions, Committees may also consider disciplinary action taken by other regulatory bodies. Additionally, the NBCC believes that if a member firm discovers misconduct and takes action to rectify the situation, for example, by making the customer whole or disciplining its employee, the Committee may consider this action as a mitigative factor in imposing sanctions against the firm.

These guidelines are revised periodically and are intended to supersede prior sanction guidelines, whether published in a booklet or discussed in *NASD Notices to Members*.

# Advertisements And Sales Literature<sup>1</sup>—Misleading Or Failure To Comply With Specific Standards<sup>2</sup> Article III, Sections 35 And 35A Of The Rules Of Fair Practice<sup>3</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension <sup>4</sup> , Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Failure To Comply With Specific Standards;</i> <i>Inadvertently Misleading</i> —\$2,500 to \$10,000 plus restitution and/or disgorgement of amounts earned or connected with the ads in question.	<i>Failure To Comply With Specific Standards</i> —In a case involving few negligent or inadvertent failures to comply with specific standards, no suspension is typically warranted.
2) Failure to cease using advertisement or sales literature after being advised by the NASD staff to do so.		
3) Absence of reasonable explanation for misconduct.		
4) Evidence indicating respondent's conduct was intentional or reckless rather than merely negligent; consider whether respondent attempted to verify information conveyed to the public.	<i>Intentionally Or Recklessly Misleading</i> —\$10,000 to \$25,000 plus restitution and/or disgorgement of amounts earned or connected with the ads in question.	In a case involving intentional or reckless failure to comply with specific standards (including past failures), consider suspending all sales literature/ads by the firm up to one year, and thereafter imposing a pre-use filing requirement for a definite period and/or a requirement to obtain an NASD staff "no objection" letter on proposed ads or sales literature. Also consider suspending the person responsible for such failures for up to 60 days.
5) Number of advertisements and/or sales literature involved; consider whether advertisements and/or sales literature received wide circulation.		
6) Extent of the misleading features or the specific standards not met.		<i>Inadvertently Misleading Ads Or Sales Literature</i> —In a case involving an inadvertent misleading ad or sales literature, consider suspending ads/sales literature for up to 60 days and/or imposing a pre-use filing requirement for a definite period and/or a requirement to obtain an NASD staff "no objection" letter on proposed ads or sales literature.
7) Demonstrable harm or injury to the investing public from the misconduct.		<i>Intentionally Or Recklessly Misleading Ads Or Sales Literature</i> —Where intentionally or recklessly misleading ads or sales literature was used, consider suspending all ads/sales literature by the firm for up to five years. Also consider suspending the responsible person for up to two years and the firm's ability to effect transactions in type of securities involved in advertisement for up to six months. In a case of reckless or intentional use of several misleading advertisements or sales literature, consider longer suspensions or expelling the firm and barring the person responsible.
8) Prompt correction of misleading or noncomplying advertisement or sales literature.		
9) Demonstrated new corrective procedures or controls to prevent recurrence.		
10) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-12.

<sup>2</sup> This guideline is appropriate for disciplinary actions that name as respondents member firms or associated persons who have circumvented the firm's procedures or the NASD's Rules.

<sup>3</sup> NASD Conduct Rules 2210 and 2220 in revised NASD Manual.

<sup>4</sup> Suspension from ability to effect transactions in type of securities involved refers to all securities (e.g., equities, bonds), not only the particular security in question.

## Advertisements And Sales Literature<sup>1</sup>—Pattern Of Failure To File Or Late Filing Article III, Sections 35 And 35A Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Fifth Late Filing</i> — \$2,500 to \$5,000. <sup>3</sup>	In cases involving an inadvertent late filing, do not suspend the firm, any principal, or the person responsible for the advertisement or sales literature.
2) Absence of reasonable explanation for a pattern of failing to file and/or timely filing.		In an egregious case, consider imposing a pre-use filing requirement for a definite period for advertisements or sales literature. Also consider suspending for one to five days the responsible principal and/or the associated person(s) responsible for the pattern of untimely filings and/or failures to file.
3) Evidence indicating respondent attempted to avoid regulatory scrutiny of the advertisements.		A firm's failure to file or file timely sales literature or advertisements pursuant to the staff's spot-check request should be sanctioned by following the suggested guidelines for "Failure to Respond."
4) Evidence indicating an intentional disregard of filing requirements rather than mere inadvertence.		
5) Number of advertisements and/or sales literature involved; consider whether advertisements and/or sales literature received wide circulation.		
6) Number of consecutive instances of a failure to file and/or untimely filings.		
7) The amount of time late (where filing was untimely).		
8) Previous history of failure(s) to file at all or on a timely basis.		
9) Demonstrated corrective action and/or procedures or controls to prevent recurrence.		
10) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-12.

<sup>2</sup> NASD Conduct Rules 2210 and 2220 in revised NASD *Manual*.

<sup>3</sup> NOTE: Previous late advertising/sales literature filings within the latest 12-month period should have received the following treatment:

1. First late filing—Warning letter written by the staff.
2. Second late filing—Letter of Caution or Letter of Future Observance and Compliance.
3. Third late filing—Acceptance, Waiver and Consent (AWC) and \$500 fine.
4. Fourth late filing—AWC and \$1,000 fine.



## Arbitration Award—Failure To Honor Or Honor In A Timely Manner

Principal Considerations In Determining Sanctions	Monetary Sanction <sup>1</sup>	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Failure To Honor</i> — \$2,500 to \$10,000.	In cases involving failure to honor the award, suspend the respondent firm or individual until the arbitration award is satisfied (by payment or settlement) plus at least 30 additional days.
2) Amount of the arbitration award.	<i>Failure To Honor In A Timely Manner</i> —\$1,000 to \$7,500.	In cases involving failure timely to honor the award, impose on respondent firm or individual a five-business-day suspension.
3) Evidence of respondent's good faith attempt to substantially satisfy the award in whole or part, including a partial payment.		
4) The promptness of any such good-faith effort after the issuance of the arbitration award.		
5) Other aggravating or mitigating factors.		

<sup>1</sup> May consider lower sanctions where respondent has demonstrated a good-faith effort to pay.

## Backing Away Violations

### Article III, Section 6 Of The Rules Of Fair Practice<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Previous disciplinary history or prior similar misconduct.	<i>First Violation</i> —Fine of up to \$1,000 <sup>2</sup> .	In egregious cases, or those with evidence of manipulative intent, consider a suspension as a market maker in the subject security(ies).
2) Number, size, and character of transactions involved.	<i>Second Violation</i> —Fine of \$1,000 to \$10,000.	
3) Number of securities involved.	<i>Subsequent Violations</i> —Fine of \$10,000 to \$100,000.	
4) Adequacy of supervisory procedures and controls at the time of the violation, including training/educational initiatives.	Restitution to aggrieved parties.	
5) Absence of reasonable explanation for occurrence.		
6) Whether violation was negligent, intentional, or reckless.		
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Potential for benefit or monetary gain.		
9) Evidence of manipulative intent.		
10) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Conduct Rule 3320 in revised NASD *Manual*.

<sup>2</sup> For first violation, may consider lesser sanction where mitigating circumstances are evident.

## Bulletin Board Updates In Foreign Securities/ADRs Outside Of Permissible Hours

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions <sup>1</sup>
1) Prior or other similar misconduct.		
2) Number of days involved.	<i>Based on number of violations within a calendar year.<sup>2</sup></i>	In egregious cases, or those with evidence of manipulative intent, consider a suspension as a market maker.
3) Number of securities involved.	<i>Third Violation<sup>3</sup>—Letter of Acceptance, Waiver and Consent (AWC), and \$250 fine.</i>	
4) Absence of reasonable explanation for occurrence.		
5) Whether violation was negligent, intentional, or willfully disregarded reporting requirements.	<i>Fourth Violation—AWC and \$500 fine.</i>	
6) Demonstrated new corrective measures or controls to prevent recurrence.	<i>Fifth Violation—AWC and \$1,000 fine.</i>	
7) Other aggravating or mitigating factors.	<i>Sixth Violation—AWC or Formal Complaint.<sup>4</sup></i>	

<sup>1</sup> Whenever a fine, suspension, or bar is imposed, a censure should be included in the sanctions.

<sup>2</sup> Each day a firm has one or more updates outside the prerequisite hours, it is usually counted as one violation, depending on the circumstances.

<sup>3</sup> First Violation—De minimis Letter (NASD staff is authorized to issue disciplinary letters following its daily review of the exception report). Second Violation—Letter of Caution.

<sup>4</sup> See Principal Considerations to determine sanction amount; fines will not be imposed until after the firm has received a Letter of Caution.

## “Churning” Or Excessive Trading<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct; indications of potential future misconduct.	The amount of any commissions, concessions, or profits to the respondent and firm plus \$5,000 to \$50,000.	In a case involving excessive trading in one customer's account, suspend respondent representative in all capacities for up to 60 days. More serious misconduct (such as more accounts, attempts to conceal the churning, attempts to lull the investor, or untruthfulness about the transactions) may warrant a longer suspension or a bar.
2) The number of customer accounts, excessive transactions, and the time period involved. <sup>2</sup>	In cases involving customer loss, consider restitution to customers and suspending respondent for a specific duration and thereafter until restitution is made.	Consider requiring requalification by examination.
3) The amount of account turnovers.		
4) The extent of harm or damage to customers.		
5) Amount of commissions or other benefits to respondent.		
6) Attempts to lull customers or conceal misconduct.		
7) Evidence of misrepresentation or forgery.		
8) Degree of control by respondent (over investment decisions).		
9) Prompt and voluntary restitution by the respondent.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> This guideline also is appropriate for mutual fund-related violations, including switching and failure to take advantage of break points.

<sup>2</sup> Where the violations found by the Committees involve only unsuitable recommendations based on frequency of transactions, without findings of all elements of proof required for churning, see the Suitability Sanction Guideline.

## Continuing Education—Failure To Comply<sup>1</sup> Part XII Of Schedule C To The NASD By-Laws<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanctions <sup>3</sup>	Suspension, Bar, Or Other Sanctions
<ol style="list-style-type: none"> <li>1) Prior or other similar misconduct.</li> <li>2) Whether violation was intentional/reckless or resulted from a mistaken understanding as to the rule's requirements.</li> <li>3) Nature and extent of responsibilities of inactive person(s).</li> <li>4) Other aggravating or mitigating factors.</li> </ol>	<p><b>Individual</b>—Amount of commissions or compensation earned while registration was inactive plus \$500 to \$5,000.</p> <p><b>Firm</b>—\$1,000 to \$10,000.</p>	<p><b>Individual</b>—Require requalification. Inadvertent violations should not result in a suspension. In an egregious case, such as where there is intentional misconduct and/or repeat violations, suspend individual for 30 days or more. In particularly egregious cases, consider a bar.</p> <p><b>Firm</b>—In cases involving one violation of limited duration or inadvertent violations, impose monetary sanction only. In cases involving repeat violations where the firm has taken no corrective actions and appears unwilling to comply, consider a suspension of up to five days. In egregious cases, such as those where the firm knowingly allowed a person with lapsed registration to act in a registered capacity and/or in cases with other aggravating factors, consider suspension or bar/expulsion of the firm and/or responsible principal.</p>
<p><b>Violations By Individuals</b></p> <ol style="list-style-type: none"> <li>1) Whether person attempted to comply with requirements.</li> <li>2) Length of time functioning with inactive registration.</li> <li>3) Amount of commissions or compensation earned while registration was inactive.</li> <li>4) Attempts to conceal failure to comply with continuing education requirements.</li> <li>5) Whether individual misled employer firm.</li> </ol>		
<p><b>Violations By Firms</b></p> <ol style="list-style-type: none"> <li>1) Demonstrated corrective measures to prevent and detect recurrence.</li> <li>2) Lack of appropriate written supervisory procedures or other compliance efforts within the firm.</li> <li>3) Amount of commissions or compensation paid to inactive person(s).</li> <li>4) Length of time and number of persons allowed to function while registration had lapsed.</li> <li>5) Length of time before firm discovered registration lapse.</li> </ol>		

<sup>1</sup> This guideline is intended to apply to individuals who have not complied with the regulatory element or firm element and are acting in a registered capacity and to firms that have employed one or more individuals whose registration has lapsed for non-compliance with continuing education requirements and who continue to work in registered capacities.

<sup>2</sup> NASD Membership and Registration Rule 1120 in revised NASD Manual.

<sup>3</sup> Lesser sanctions should be imposed for an initial violation. Increasingly severe sanctions should be imposed for repeat violations.

## Continuing Education—Firm Element<sup>1</sup> Part XII Of Schedule C To The NASD By-Laws<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Firm And/Or Responsible Principal</i> — \$2,500 to \$20,000.	In cases involving one violation of limited duration or inadvertent violations, limit to monetary sanctions only.
2) Corrective action taken by firm to prevent recurrence.		In cases involving multiple violations or a violation of extended duration, where the firm has taken no corrective actions and appears unwilling to comply, consider a suspension of up to five business days for the firm and/or responsible principal and requiring demonstrated compliance with requirements of Schedule C.
3) Whether conduct was intentional or resulted from a mistaken understanding as to the rule's requirements.		
4) Extent of continuing education program, if any, in place at the firm. Whether firm has completed training needs analyses and developed written training plans.		In egregious cases, such as those involving intentional misconduct, consider suspending or barring/expelling firm and/or responsible principal.
5) Number of registered individuals denied access to continuing education.		
6) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is intended to apply to member firms that have not developed sufficiently and/or made available to registered employees continuing education programs and continue to transact business.

<sup>2</sup> NASD Membership and Registration Rule 1120 in revised NASD *Manual*.

## Conversion Or Improper Use Of Funds Or Securities<sup>1,2</sup> Article III, Section 19 Of The Rules Of Fair Practice<sup>3</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	Restitution of the amount converted or misappropriated; plus a fine of five times the amount converted, with a \$5,000 minimum.	Regardless of amount converted, bar respondent in all capacities. If mitigation is clearly demonstrated, consider suspension of respondent in all capacities for six months to two years and thereafter until restitution is paid, requalification by examination, and proof of restitution.
2) Attempts to conceal conversion, misappropriation, or misuse.		
3) Forgery of documentation or customer's signature.		
4) Duration of period the securities or funds were converted or misused.	For improper use not rising to level of conversion, \$2,500 to \$20,000.	For improper use not rising to the level of conversion, consider suspension of respondent in all capacities for six months to two years, and thereafter until restitution is paid, requalification by examination, and proof of restitution.
5) Essentially "stealing" versus a mistaken belief of authority to use.		
6) Value of converted, misappropriated, or misused funds or securities (loss to customer(s)).		
7) Prompt and voluntary restitution; clear evidence that the funds or securities were returned to the customer(s).		
8) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-25.

<sup>2</sup> Consistent with local law enforcement policies and in all cases of \$10,000 or more, every effort should be made to refer cases to appropriate criminal and regulatory authorities, including but not limited to state insurance commissioner and state securities regulator.

<sup>3</sup> NASD Conduct Rule 2330 in revised NASD Manual.

# Customer Reserve Account (Customer Protection Rule) Violations

## SEC Rule 15c3-3

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$1,000 to \$20,000. <sup>1</sup>	<b>Firm</b> —Where substantial or frequent deficiencies exist, consider suspending the firm in all aspects of business for 1 to 30 business days.
2) Extent of Rule 15c3-3 deficiencies or inaccuracies.	Repeated violations should carry individual fine on Financial	<b>Individual</b> —Also consider suspending the Financial Principal for 1 to 30 days where substantial or frequent deficiencies exist. Violations suggesting willful disregard of rules should result in bar for Financial Principal and/or responsible supervisor.
3) Duration of deficiencies or inaccuracies.	Principal and/or responsible supervisor.	
4) Number of deficiencies or inaccuracies during period.		Consider requiring requalification by examination.
5) Extent of any unlawful use of customer's funds or securities.		Technical or inadvertent violations should not result in suspension of the individual or the firm.
6) Extent of unwarranted risk/exposure to customer funds or securities.		
7) Attempts to conceal deficiencies or inaccuracies.		
8) Willful disregard of rule requirements.		
9) Genuine dispute with rule requirements.		
10) Demonstrated new corrective measures or controls to prevent recurrence.		
11) Other aggravating or mitigating factors.		

<sup>1</sup> In cases involving egregious misconduct and/or repeated violations, consider a higher monetary sanction.



## Discretion Without Customer's Written Authority<sup>1</sup> Article III, Section 15 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	The amount of any commissions, profits, or other benefits to the respondent, plus \$2,500 to \$10,000.	In cases involving limited transactions and the failure to reduce oral discretion to writing, a suspension or bar is not appropriate. In cases involving numerous violative discretionary transactions, attempts to conceal discretionary activity, substantial customer losses, or other intentional/reckless violative conduct, consider suspending respondent in all capacities for 10 to 30 business days.
2) Number of transactions in which respondent used discretion without written approval.		
3) Amount of commissions or other benefits to respondent.		
4) Extent of customer loss or damages; consider restitution paid to the customer.		
5) Explanation for not reducing oral discretion to writing.		
6) Evidence that failure to reduce oral discretion to writing resulted from negligence or oversight.		
7) Intentional, reckless, or willful disregard of requirements.		
8) Other mitigating or aggravating factors.		
As to the firm, see the Supervision Sanction Guideline.	Also consider requiring requalification by examination.	

<sup>1</sup> If transactions were executed without written or oral authority, see the Unauthorized Transactions Sanction Guideline.

<sup>2</sup> NASD Conduct Rule 2510 in revised NASD Manual.

# Disqualified Persons—Allowing To Be Associated Prior To Approval<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Underlying misconduct that resulted in statutory disqualification.	<i>Firm And Supervisory Principals</i> —\$5,000 to \$50,000, plus disgorgement of any income earned by the firm.	<i>Firm And Supervisory Principals</i> —Suspension or bar should be considered for principals responsible, particularly where they knowingly allowed a disqualified person to become associated.
2) Prior or other similar misconduct.		
3) Length of time functioning as associated person; was MC-400 application pending?	<i>Disqualified Person</i> —\$5,000 to \$50,000, plus disgorgement of any income earned.	<i>Disqualified Person</i> —Where disqualified person negligently or knowingly engaged in securities business before approval, consider bar or suspension.  Consider requiring requalification by examination.
4) Nature and extent of person's activities and responsibilities.		
5) Incidental or widespread use of unapproved persons.		
6) Remedial action taken upon discovery of persons.		
7) Extent of supervisory procedures in place at time of violation to prevent and detect problem, including nature and extent of background check.		
8) Source of discovery—SRO or firm.		
9) Explanation offered by firm and statutorily disqualified person.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-4.

## Disqualified Persons—Failure To Discharge Supervisory Obligations<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$5,000 to \$50,000 fine may be individual or joint and several for the firm and responsible supervisor.	Consider suspension in all principal capacities of principal responsible for supervision for up to one year for egregious cases. If disqualified person is involved in egregious misconduct about which the supervisor knew or should have known, consider bar in principal capacity for supervisors.
2) Extent of inadequacy of written supervisory procedures and controls.		
3) Extent of any failure to comply with supervisory representations made in the MC-400 application.		
4) Extent of any misconduct by the disqualified person.		
5) Absence of any reasonable explanation for supervisory failure.		
6) Demonstrated new corrective measures or controls to prevent recurrence.		
7) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-4.

# Engaging In Prohibited Municipal Securities Business

## MSRB Rule G-37<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	Fine respondent firm gross amount of commissions, underwriting fees, or other profits earned in the underwriting. In cases involving egregious misconduct, add additional fine of up to \$50,000.	In cases involving a single, unintentional prohibited underwriting, or other prohibited activity, no suspension of the firm or individual respondent is generally warranted.  In cases involving several prohibited underwritings, or reckless conduct on the part of the firm, consider suspending the firm from engaging in a municipal securities business with prohibited issuers for up to two years beyond the time proscribed by Rule G-37 and consider suspending the responsible individual(s) from acting as municipal principal(s) for a similar time period.
2) Whether respondent knew or should have known of political contribution giving rise to prohibition against engaging in further municipal securities business with the issuer.		
3) Position in firm of person making contribution.		
4) Amount of the political contribution made.		
5) Position of the official to whom the political contribution was made.	Fine individual \$10,000 to \$50,000, plus commissions or other profits earned in the underwriting.	In cases involving intentional misconduct on the part of the firm, consider barring the firm from engaging in any future business with prohibited issuers or the involved official and barring the responsible individual(s) from acting as municipal principal(s), or from acting in all principal capacities.
6) Steps taken to prevent future business with prohibited issuers.		
7) Nature of the prohibited municipal securities business in which respondent(s) engaged.		
8) Number and size of prohibited underwritings involved.		
9) Nature and extent of procedures in place designed to ensure compliance, including procedures for reporting and approving political contributions.		
10) Internal discovery, prompt reporting of contribution on Form G-37, and reporting of misconduct.		
11) Whether conduct was intentional and/or reckless or negligent.		
12) Steps taken to obtain return of contribution.		
13) Other aggravating or mitigating factors.		

<sup>1</sup> MSRB Rule G-37, by its own terms, prohibits dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, any municipal finance professional, and any political action committee controlled by the dealer or any municipal finance professional.

## Escrow Violations—Prohibited Representations In Contingency Offerings; Transmission Or Maintenance Of Customer Funds In Underwritings (SEC Rule 10b-9) And (SEC Rule 15c2-4)

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
<ol style="list-style-type: none"> <li>1) Prior or other similar misconduct.</li> <li>2) Number of contingency offerings involved.</li> <li>3) Number of purchasing customers involved.</li> <li>4) Amount of commission and/or other underwriting compensation retained by respondent.</li> <li>5) Absence of meaningful supervisory control.</li> <li>6) Evidence of willful/knowing or reckless disregard of rule.</li> <li>7) Recision or subsequent return of customer funds.</li> <li>8) Whether respondent is affiliated with the issuer or entity to which customer funds were improperly released.</li> <li>9) Extent of release of subscription funds from escrow before the contingency occurred.</li> <li>10) Other aggravating or mitigating factors.</li> </ol>	<p><i>Broker/Dealer And Issuer Not Affiliated</i>—\$1,000 to \$10,000</p> <p><i>Broker/Dealer And Issuer Affiliated</i>—\$2,500 to \$20,000.</p>	<p><i>Broker/Dealer And Issuer Not Affiliated</i>—No suspension should be imposed in cases involving no intentional scheme to circumvent the rules, no prior similar misconduct, one offering, and no overreaching.</p> <p>In egregious cases, consider suspending responsible individual and/or the firm in one aspect of the firm's business, such as underwriting, for 5 to 10 business days. Also consider requiring requalification by examination.</p> <p><i>Broker/Dealer And Issuer Affiliated</i>—Consider suspension of up to one year and requiring requalification by examination.</p> <p>In cases involving violations of SEC Rule 10b-9, consider requiring a recision offer.</p>
<p><b>SEC Rule 10b-9</b></p> <ol style="list-style-type: none"> <li>1) Extent of failure to satisfy the contingency described in the prospectus or offering circular.</li> <li>2) Respondent's use of non-bona fide sales to give the appearance that the contingency was satisfied.</li> </ol>		
<p><b>SEC Rule 15c2-4</b></p> <ol style="list-style-type: none"> <li>1) Whether a proper escrow or trust account was established.</li> <li>2) Extent of any failure promptly to transmit customer funds.</li> </ol>		

## Excess Spread Violations Schedule D, Part VI, Sections 2(d) To The NASD By-Laws<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Based on number of violations within a 12-month period.<sup>2</sup></i>	
2) Number of days involved.		
3) Number of securities involved.	<b>Second Violation<sup>3</sup></b> — Letter of Acceptance, Waiver and Consent (AWC) and \$1,000 fine.	
4) Size of excess spreads.		
5) Absence of reasonable explanation for occurrence.	<b>Third Violation</b> —AWC and \$2,000 fine.	
6) Whether violation was negligent or intentional, or respondent willfully disregarded reporting requirements.	<b>Fourth Violation</b> — AWC and \$3,000 fine.	
7) Demonstrated new corrective measures or controls to prevent recurrence.	<b>Fifth Violation</b> —AWC or formal complaint and \$5,000 to \$25,000. <sup>4</sup>	
8) Volatility/extraordinary conditions.		
9) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Marketplace Rule 6330 in revised NASD Manual.

<sup>2</sup> Each day that a firm has one or more excess spread violations usually counts as one violation, depending on the circumstances.

<sup>3</sup> First violation—Letter of Caution.

<sup>4</sup> See Principal Considerations to determine sanction amount.

## Failure To Display Minimum Size In Nasdaq® Securities Schedule D, Part V, Section 2(a) To The NASD By-Laws<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>First Violation</i> —Fine of up to \$1,000. <sup>2</sup>	In egregious cases, consider suspension as a market maker in the subject security(ies).
2) Number of securities involved.	<i>Second Violation</i> —Fine of \$1,000 to \$2,500.	
3) Absence of reasonable explanation for occurrence.	<i>Subsequent Violations</i> —Fine of \$2,500 to \$5,000. <sup>3</sup>	
4) Whether violation was intentional/reckless or negligent.		
5) Demonstrated new corrective measures or controls to prevent recurrence.		
6) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Marketplace Rule 4613 in revised NASD Manual.

<sup>2</sup> For first violation, consider lesser sanction or warning letter where mitigating circumstances are evident.

<sup>3</sup> In egregious cases, consider highest fines.

# Failure To Respond Or Completely Or Completely; Failure To Respond In A Timely Manner To Requests Made Pursuant To Article IV, Section 5 Of The Rules Article III, Section 1 And Article IV, Section 5 Of The Rules Of Fair Practice<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Failure To Respond Or Respond Truthfully</i> —\$20,000.	<i>Individual</i> —Where the record contains evidence of actual or constructive service of the request for information, but the individual did not respond in any manner, or did not respond truthfully or completely, a bar should be standard. Where mitigation exists, or the person did not respond timely, consider suspension of six months to two years.
2) Evidence of willful attempts by respondent to delay investigation, conceal information, or provide misleading information.	<i>Failure To Respond Completely</i> —\$10,000 to \$20,000.	Consider requiring requalification by examination.
3) Absence of a reasonable explanation why respondent failed to provide the requested information or provided inaccurate or misleading information.	<i>Failure To Respond In Timely Manner</i> —\$1,000 to \$20,000.	<i>Firm</i> —Where respondent firm intentionally or recklessly provided false information or refused to provide the information, expulsion of the firm should be standard. If mitigation exists, consider suspending the firm for one month to two years.
4) Documentation of any effort by respondent to comply with request; degree of regulatory pressure required to obtain a response.		In instances of failure to respond in a timely manner, consider the number of requests, the amount of time taken to respond, the degree of regulatory pressure required, and the adequacy of the response. Consider suspending appropriate individual(s) and/or firm for period of 1 to 30 business days.
5) Regulatory importance of the information not produced.		
6) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Conduct Rule 2110 and Procedural Rule 8210 in revised NASD Manual.



## False Or Inaccurate Reports (FOCUS Or Other) To The NASD

Principal Considerations In Determining Sanctions	Monetary Sanction <sup>1</sup>	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<p><i>Firm And/Or Responsible Principal</i>— \$1,000 to \$20,000.</p>	<p>In cases involving unintentional inaccuracy, do not suspend either the firm or the Financial Principal. However, consider requiring the Financial Planer to retake the FINOP exam.</p> <p>Where materially inaccurate reports were intentionally prepared, consider a bar of the Financial Principal and/or expulsion from the firm. Also consider requiring the Financial Principal to retake the FINOP exam.</p>
2) Number of reports involved.		
3) Nature and extent of inaccuracy or falsity.		
4) Absence of reasonable explanation for inaccuracy or falsity.		
5) Whether inaccurate or false report was intentional or unintentional (resulting from, for example, an erroneous capital computation).		
6) Prior report inaccuracies.		
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Other aggravating or mitigating factors.		

<sup>1</sup> Where violation is in connection with other violations, for example, net capital or failure to give telegraphic notice, sanctions should not be cumulative. Do not duplicate sanctions.

# Fixed Income Pricing System—Participant And Quotation Obligations

## FIPS<sup>SM</sup> Rules—Parts III & IV<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>First Violation</i> —Fine of up to \$1,000. <sup>2</sup>	Requalification by examination may be warranted based on circumstances of misconduct.
2) Compliance history with respect to other applicable rules.	<i>Second Violation</i> —Fine of \$1,000 to \$10,000.	In an egregious case, consider suspending or barring an individual and/or restricting the firm from dealing or brokering FIPS securities.
3) Number, size and character of related transactions.	<i>Subsequent Violations</i> —Fine of \$10,000 to \$100,000.	
4) Absence of reasonable explanation for occurrence.		
5) Whether violation was negligent, or whether respondent intentionally or willfully disregarded the FIPS rules.		
6) Adequacy of supervisory procedures and controls at the time of the violation, including training/educational initiatives.		
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Potential for benefit or monetary gain.		
9) Other mitigating or aggravating factors.		

<sup>1</sup> NASD Marketplace Rules 6230 and 6240 in revised NASD Manual.

<sup>2</sup> For first violation, consider lesser sanction where mitigating circumstances are evident.

## FOCUS Reports, Late Filing SEC Rule 17a-5<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Fifth Late Filing</i> <sup>2</sup> — \$2,500 to \$5,000.	For a fifth late filing which involves unintentional misconduct, do not suspend either the firm or the Financial Principal.
2) Number of late FOCUS Reports involved.		
3) Number of days late.		
4) Absence of reasonable explanation for habitual lateness.		In egregious cases, consider suspending all solicited retail business by the firm for 1 to 20 business days; also consider suspending the Financial Principal for 1 to 10 business days.
5) Habitually late because attempting to delay reporting of recordkeeping, operational, or financial deficiencies.		
6) Inattention or willful disregard of reporting requirements.		In egregious cases, consider requiring requalification by examination.
7) Prior late FOCUS Report filings.		
8) Demonstrated new corrective measures or controls to prevent recurrence.		
9) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is intended to apply to late filings of FOCUS Reports Parts I, II, and IIA.

<sup>2</sup> NOTE: Late FOCUS filings (Part I, II, or IIA) within the last 12-month period generally receive the following treatment.

1. First late filing—Warning letter written by the staff.
2. Second late filing—Letter of Caution or Letter of Future Observance and Compliance.
3. Third late filing—Acceptance, Waiver and Consent (AWC) and \$500 fine.
4. Fourth late filing—AWC and \$1,000 fine.

## Forgery And/Or Falsification Of Records<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$5,000 to \$50,000.	In egregious cases, a bar should be considered. In cases where there is no harm to customer and/or firm and other mitigating factors exist, a lesser sanction may be considered.
2) Number of documents forged or falsified.		
3) Mistaken belief of express or implied authority.		
4) Nature and extent of injury (or benefit) to customer(s) or firm.		
5) Nature of document(s) forged or falsified.		
6) Period of time over which forgeries/falsifications occurred.		
7) Attempts to conceal misconduct.		
8) Whether the misconduct occurred in connection with conversion of securities, money, or other items of value.		
9) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is intended to address activity that occurred without authority of any kind (oral or written) and/or in instances in which the respondent acted in bad faith.

# Free-Riding And Withholding

## Article III, Section 1 Of The Rules Of Fair Practice<sup>1</sup>—Interpretation Of The Board Of Governors

### Principal Considerations In Determining Sanctions

- 1) Prior or other similar misconduct.
- 2) Number of "hot issue" offerings involved.
- 3) Number of customer accounts involved.
- 4) Type of restricted accounts involved.
- 5) Whether respondent knew or should have known accounts were restricted.
- 6) Whether respondent owns or has beneficial interest in the restricted accounts.
- 7) Amount of commissions or other benefits to respondent.
- 8) Attempt to conceal activity.
- 9) Absence of meaningful supervisory controls on free-riding.
- 10) Prior disciplinary history of entire firm; adequacy of firm compliance policies.
- 11) Mistaken belief that the account was not restricted.
- 12) Awareness of likelihood that issue would be "hot."
- 13) Whether violation was inadvertent or amount involved was minimal.
- 14) Other aggravating or mitigating factors.

### Monetary Sanction

If the respondent is the restricted buyer, the amount of "transaction profit"<sup>2</sup> to the respondent, plus \$1,000 to \$15,000.

If the respondent is the selling member firm and/or an associated person of the member, the amount of any commissions plus \$1,000 to \$15,000.

If the restricted buyer is not subject to NASD jurisdiction, "transaction profit" may be added to fine for respondent selling member and/or associated person. In egregious cases or those with evidence of willful conduct, consider a greater fine including, if applicable, three times the "transaction profit."

### Suspension, Bar, Or Other Sanctions

In cases involving one "hot issue" and one restricted account, no suspension should result. In more egregious cases, consider suspending respondent representative (buyer or seller) for 5 to 10 business days and the respondent member in one aspect of the firm's business, most likely a firm's participation in underwritings, for 5 to 10 business days. Consider longer suspension or bar in cases involving an intentional circumvention of the rule by selling to or buying for an account in which the respondent has a beneficial interest. Consider requiring requalification by examination.

<sup>1</sup> NASD Conduct Rule 2110 in revised NASD Manual.

<sup>2</sup> "Transaction profit" means the greater of the immediate after-market unrealized profit (the price determined to be the immediate aftermarket price times the number of shares minus the public offer price) or the actual profit realized.

## Guaranteeing A Customer Against Loss Article III, Section 19(e) Of The Rules Of Fair Practice<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$2,500 to \$10,000, plus commissions to the respondent resulting from transactions.	In cases involving one guarantee to one customer and little or no loss to the customer, a suspension of the respondent is not warranted.
2) Degree of customer's claimed reliance on the guarantee.		More serious misconduct, including instances that involve more guarantees or customer loss as a result of reliance on the guarantee, should result in a suspension of 10 to 30 business days.
3) Degree of sophistication of customer(s).	In an egregious case, also consider requiring restitution to the customer of the loss amount.	In cases involving a pattern of such misconduct—or ignorance of applicable rule—requalification by examination may be warranted.
4) Evidence of resultant losses, if any, to customer.		
5) Whether respondent has paid restitution to customer(s).		
6) Whether guarantee was used as inducement for customer transactions; timing of guarantee.		
7) Amount of commissions to respondent resulting from transactions.		
8) Number of transactions involved.		
9) Dollar amount of the guarantee.		
10) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Conduct Rule 2330 in revised NASD Manual.

## Late Reporting Of Customer Complaint Information

### Article III, Section 50 Of The Rules Of Fair Practice<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Third Late Reporting</i> <sup>2</sup> — Acceptance, Waiver and Consent (AWC) and \$500 fine.	In cases involving unintentional misconduct, do not suspend firm or responsible individual.
2) Number of instances of late reporting.		
3) Number of days late.		In egregious cases, suspension may be considered.
4) Absence of reasonable explanation for tardiness.	<i>Fourth Late Filing</i> — AWC and \$1,000 fine.	
5) Whether tardiness resulted from inattention or will- ful disregard of reporting requirements.	<i>Fifth Late Filing</i> —Fine of \$2,500 to \$5,000.	
6) Whether misconduct is habitual.		
7) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Conduct Rule 3070 in revised NASD *Manual*.

<sup>2</sup> First late reporting—Warning letter from staff.  
Second late reporting—Letter of Caution.

# Limit-Order Protection Rule

## Article III, Section 1 Of The Rules Of Fair Practice<sup>1</sup>—Interpretation Of The Board Of Governors

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Previous disciplinary history.	<i>First Violation</i> —Fine of up to \$1,000. <sup>2</sup>	In egregious cases, consider suspension of responsible individual and bar the firm from accepting limit orders if the firm's internal procedures are clearly inadequate.
2) Number, size, and character of related transactions.	<i>Second Violation</i> —Fine of \$1,000 to \$10,000.	
3) Absence of reasonable explanation for occurrence.		
4) Whether violation was negligent, intentional, or reckless.	<i>Subsequent Violations</i> —Fine of \$10,000 to \$100,000.	
5) Adequacy of supervisory procedures and controls at the time of violation, including training/educational initiatives.	Plus profits, if any, generated from relevant transactions or amount of customer loss.	
6) Demonstrated new corrective measures or controls to prevent recurrence.		
7) Other mitigating or aggravating factors.	In egregious cases, consider higher fines.  Restitution to aggrieved parties.	

<sup>1</sup> NASD Conduct Rule 2110 in revised NASD Manual.

<sup>2</sup> For first violation, consider lesser sanction where mitigating circumstances are evident.



## Locked/Crossed Market Schedule D, Part V, Section 2(e) To The NASD By-Laws<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
<b>Active Market Makers</b>		
1) Was call made by market maker before locking?	<i>First Violation</i> —Letter of Caution.	In egregious locked/crossed situations, formal actions should result.
2) Number of previous violations as the active market maker.	<i>Second Violation</i> —Fine of up to \$1,000.	
3) Whether there is a pattern by a particular trader of actively locking markets.		
4) Whether passive market maker's telephone was answered timely.	<i>Subsequent Violations</i> —Fine of \$1,000 to \$10,000.	
5) Whether passive market maker partially filled an order. If so, was call made when update did not occur timely?		
6) Whether passive market maker put caller on hold for an unreasonable period of time.	In egregious cases, consider higher fines.	
7) Whether there was news on subject security or its industry prior to locked/crossed condition.		
8) Whether SelectNet <sup>SM</sup> message was sent to passive market maker before locking the market.		
9) Whether there was cooperation between the parties involved.		
10) Other mitigating or aggravating factors.		
<b>Passive Market Makers</b>		
1) Whether passive market maker received a call.		
2) Number of previous violations as a passive market maker.		
3) Whether there is a pattern by a particular trader passively having his/her markets locked.		
4) Whether trader had machine problem. If so, did he/she report problem to Trumbull—When?		
5) Whether passive market maker completed active market maker's order.		
6) Whether there was a new or inexperienced trader on the desk.		
7) Whether there was news on subject security or its industry prior to locked/crossed condition.		
8) Whether there was cooperation between the parties involved.		
9) Other mitigating or aggravating factors.		

<sup>1</sup> NASD Marketplace Rule 4613 in revised NASD Manual.

## “Marking The Close” Violations<sup>1</sup> Article III, Section 5 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$5,000 to \$100,000.	Suspend respondent in all capacities for three months to three years, depending upon primary considerations.
2) Size of respondent's inventory protected or enhanced by misconduct.		Consider requirement of requalification by examination.
3) Amount of direct benefit to respondent, including increased valuation of inventory or avoidance of margin calls.		More serious misconduct, involving numerous transactions and/or attempts to conceal misconduct or untruthfulness about transactions, may warrant a longer suspension or a bar.
4) Duration of misconduct.		In an egregious case, consider suspending the firm as market maker in subject security(ies) for up to one year.
5) Number of marking-the-close transactions during the targeted duration.		
6) Whether the marking-the-close transactions are real or fictitious.		
7) Range of the fictitious price increase or decrease at the close.		
8) Number of affected securities.		
9) Whether conduct was willful.		
10) Damage to market integrity.		
11) The absence of supervisory controls to detect and prevent such misconduct.		
12) Attempts to conceal misconduct or untruthful explanations.		
13) Other aggravating or mitigating factors.		

<sup>1</sup> May also involve inadequate supervision and fraudulent activity.

<sup>2</sup> NASD Conduct Rule 3310 in revised NASD *Manual*.

## Markup/Markdown<sup>1</sup> Violations And Excessive Commissions Article III, Section 4 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	The gross amount of the excessive markup/markdown or excessive commissions, plus \$5,000 to \$50,000.	In cases involving limited excessive markups/markdowns or excessive commission and no prior pricing misconduct, a suspension may not be warranted. Consider requiring a demonstrated corrective action in the firm's markup policy/commission policy and/or requalification by examination for responsible persons.
2) Markup/markdown percentages (range) or amounts of excessive commissions.	Where appropriate, including where sales representative knew or should have known of violative activity and benefited from it, consider requiring restitution to customers of excess markups/markdowns or excessive commissions.	Where prior pricing misconduct or excessive markups/markdowns or commissions are egregious, consider suspension for up to three years or bar of the responsible employees. For the firm, consider suspension for a specific duration or suspension from effecting principal retail transactions for up to one year, or possible expulsion.
3) Number of securities, customers, and time period involved; pervasive misconduct.		
4) Number and dollar amount of excessive markup/markdown transactions or transactions involving excessive commissions.		
5) Prompt and voluntary restitution by respondent.		
6) Corrective revision by firm of its markup/markdown policies and practices.		
7) Recklessness or intent to defraud.		
8) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-30.

<sup>2</sup> NASD Conduct Rule 2440 in revised NASD *Manual*.

## Misrepresentations Or Material Omissions Of Fact<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Firm And/Or Individual</i> — Restitution of all commissions and other benefits from transactions, plus \$5,000 to \$50,000 fine.	Where materially inaccurate statements (or omissions) were negligently made and substantial loss resulted, consider a suspension of responsible individuals for 5 to 60 business days.  Consider a shorter suspension for the firm and a requirement for corrective action.
2) Whether part of a larger fraudulent scheme, such as a "boiler room" operation.		
3) Degree or extent of false and misleading character.		
4) Number of misrepresentations or material.	Consider requirement of offer of rescission or restitution (of purchase/sale amount) in appropriate cases.	Where aggravating factors exist, consider suspending individuals and/or firm for a longer duration and thereafter until restitution is made, particularly where multiple customers are victimized.
5) Number of customers involved.		
6) Extent of harm or injury to customer(s).		Where materially false statements (or omissions) were intentionally or recklessly made, consider suspending responsible individuals or the firm for at least three months or a bar/expulsion.
7) Whether the misrepresentation(s) and/or material omission(s) was intentional, reckless, or negligent.		
8) Whether respondent attempted to verify the information conveyed to customers; whether clearly designed to mislead.		
9) Other aggravating or mitigating factors.		

<sup>1</sup> This primarily includes, but is not limited to, false or misleading statements to induce purchases or sales of securities.

## Net Capital Violations

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct. <sup>1</sup>	\$1,000 to \$20,000 (jointly and severally to the firm and Financial Principal or other responsible party).	In a case involving one or two deficiencies, neither the firm nor the Financial Principal or other responsible party should be suspended. Where a substantial amount and/or frequency of deficiencies exist, consider suspending the firm in all aspects of business for 1 to 30 business days or in one business aspect, such as underwriting, for 1 to 30 business days.
2) Dollar amount of net capital deficiencies or inaccuracies.	Repeat violations should carry individual sanctions to firm and responsible individual(s).	Also consider suspending the Financial Principal or responsible party for 1 to 30 business days in a principal capacity. Consider requiring requalification by examination.
3) Period of deficiencies or inaccuracies.		Violations suggesting willful disregard of rules should result in lengthier suspensions or a bar for the Financial Principal or responsible party and/or supervisor. For egregious cases and/or repeated net capital violations, consider bar of responsible individuals and expulsion of firm.
4) Number of deficiencies or inaccuracies during period.		
5) Whether firm continued in business while knowing of deficiencies/inaccuracies or ceased business.		
6) Extent of risk/exposure to customers.		
7) Attempts to conceal deficiencies or inaccuracies. <sup>2</sup>		
8) Demonstrated corrective measures or controls to prevent recurrence.		
9) Genuine accounting dispute on asset or liability treatment.		
10) Other aggravating or mitigating factors.		

<sup>1</sup> As a general rule, even the first instance of a net capital violation by a firm should result in consideration of a formal complaint or an AWC.

<sup>2</sup> Including "parking" of inventory, inflated "mark-to-market" calculations, and other devices to conceal deficiencies.

## Outside Business Activities Article III, Section 43 Of The Rules Of Fair Practice<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$1,000 to \$25,000.	Where case involves egregious misconduct, such as where outside activity is similar to the employing firm's business, or activity presents a conflict of interest for the customer or employing firm, consider suspension of 1 to 30 business days. In cases involving an isolated instance of limited duration, no suspension or bar should be imposed.  Consider requiring requalification by examination.
2) Length of time engaged in outside activity prior to reporting.		
3) Similarity of outside activity to the employing broker/dealer's business.		
4) Willful disregard of requirements.		
5) Use of employer's premises for outside activities.		
6) Attempts to conceal the outside business activity.		
7) Prior oral notice to employer; acquiescence of employer.		
8) Whether outside activity presented real or perceived conflicts of interest for customers and/or employing firm.		
9) Other aggravating or mitigating factors.		

<sup>1</sup> NASD Conduct Rules 3030 in revised NASD Manual.

## Passive Market Making<sup>1</sup> SEC Rule 10b-6A

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or similar misconduct.	\$1,000 to \$100,000.	In egregious cases, particularly those involving intentional and/or manipulative conduct, consider suspending or barring the responsible individual and suspending or barring the firm from acting as a passive market maker.
2) Number of underwritings involved.	In egregious cases, consider higher fines.	
3) Size of transaction involved.		
4) Absence of reasonable explanation for occurrence.		
5) Whether violation was negligent or intentional/reckless; evidence of manipulative conduct.		
6) Adequacy of supervisory procedures or controls at the time of the violation, including training/educational initiatives.		
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Potential for benefit or monetary gain.		
9) Effect on market.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> These violations include, but are not limited to, bidding and purchasing activity, for instance, purchasing above the inside bid, maintaining a high bid at the open, not lowering bids in a timely manner, improperly upticking the bid, and not removing quotes in a timely manner upon exceeding the ADTV limit.

## Penny Stock Rules Violations SEC Rules 15g-1 through 15g-9

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct (e.g., unsuitability).	\$2,500 to \$20,000, plus amount of any commissions, markups, or profits to respondent.	<i>Firm/Individual</i> —For recidivist or first-time offender with multiple violations, suspension of up to two years from executing transactions in any penny stocks with customers.
2) Deliberate attempt to circumvent rule (i.e., capricious claims of exemption; misleading customers regarding Rule requirement).	<i>Willful Misconduct</i> —Fine of \$2,000 per violative transaction plus the sum of all commissions, markups, trading profits, and all other remuneration to firm and/or associated persons based on violative transactions.	<i>Willful Misconduct</i> —For willful violation or attempt to incur a substantial benefit for firm or associated person, consider suspension or bar of individual or firm from executing penny stock transactions with customers. Egregious cases should result in a bar in all capacities or expulsion of firm from membership.
3) Dollar amount of improper transactions; amount of commissions, markups, or other benefits to firm or associated persons based on improper transactions.		
4) Number of violative transactions.		
5) Knowledge, participation, and involvement of registered representative in handling of violative transaction.		
6) Lack of appropriate written supervisory procedures and other compliance efforts.	For egregious misconduct, require firm to offer rescission of violative trades to each customer.	
7) Extent of harm or injury to customers.		
8) Mistaken understanding of requirements followed by prompt voluntary restitution or rescission by the respondent.		
9) Other mitigating or aggravating factors.		



## Qualifications Exams—Cheating On Exams (Including Use Of An Impostor) Or Possessing Unauthorized Materials

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
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- 1) Prior or other similar misconduct.
- 2) Extent of warning that use and/or possession of unauthorized materials and/or cheating may result in a bar in all capacities.<sup>1</sup>
- 3) Whether an impostor was used.<sup>2</sup>
- 4) Attempts to conceal misconduct.
- 5) Other aggravating or mitigating factors.

A bar is standard where cheating or possession of unauthorized materials is demonstrated and supported by the record; if mitigation is documented (only in cases of unauthorized possession that do not rise to the level of cheating), the Committees may consider a lesser sanction, such as a suspension plus a monetary sanction.

<sup>1</sup> (a) Schedule C to the NASD By-Laws (Membership and Registration Rules in revised *NASD Manual*) prohibits applicants from receiving assistance while taking an examination; (b) study outlines provided by NASD Qualifications Department advise applicants that examinations are “closed book”; (c) examination pamphlet given to applicants advises that unauthorized materials may not be brought by the applicant into the testing center; (d) applicants taking an examination by computer must certify by prescribed keystrokes, to continue computer operation, that they will take the examination in the prescribed fashion and not receive assistance while taking the examination and, for paper examinations, applicants must sign certification before beginning examination; and (e) proctor instructions before examinations advise applicants that unauthorized materials are not allowed during the examination.

<sup>2</sup> In cases involving the use of an impostor, consider attempts to conceal misconduct, monetary payment, or other consideration paid to the impostor, cooperation with NASD investigation.

## Recordkeeping Violations<sup>1</sup> Article III, Section 21 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$1,000 to \$20,000.	In a case involving non-current records, do not suspend either the firm or the Financial Principal or responsible party.
2) Type of violation (inaccurate or non-current records).		Where a substantial number of unintentionally inaccurate records exist, consider suspending the firm in all aspects of business for 1 to 30 business days. Also consider suspending the Financial Principal for responsible party for 1 to 30 business days. Consider requiring requalification by examination.
3) Period of violation.		
4) Number of violations during period.		
5) Whether inaccurate or non-current records were intentionally prepared.		Where materially inaccurate records were intentionally prepared, consider a substantially longer suspension or a bar for the responsible individual and/or a longer suspension or expulsion of the firm.
6) Extent of unwarranted risk/exposure to customers.		
7) Attempts to conceal deficiencies.		
8) Demonstrated corrective measures or controls to prevent recurrence.		
9) Whether inaccurate or non-current records were prepared unintentionally; whether they resulted from misunderstanding or chronic sloppiness.		
10) Compliance with the telegraphic reporting requirements of SEC Rule 17a-11.		
11) Other mitigating or aggravating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rules G-8 and G-9.

<sup>2</sup> NASD Conduct Rule 3110 in revised NASD Manual.

## Registration Violations Schedule C To The NASD By-Laws<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>Firm And/Or Individual</i> —\$2,500 to \$50,000 fine; plus fining away commissions earned by unregistered or improperly registered representative.	<i>Firm</i> —In a case involving and inadvertent failure to register one or two principals or associated persons for a limited period, no suspension would be warranted. Repeat violations may call for a suspension of up to five business days where the firm has taken no corrective action and appears unwilling to comply with registration requirements. Similarly, suspension or bar should be considered where a principal of a firm knowingly permits a statutorily disqualified person to be associated without appropriate Statutory Disqualification Committee approval.
2) Whether a registration application had been filed (or an application was pending).		
3) Length of time functioning while unregistered/improperly registered.		
4) Knowledge of registration requirements.		
5) Frequent or inadvertent use of unregistered persons by the firm.		<i>Individual</i> —An inadvertent violation by an individual should not result in a suspension. Where an individual recklessly or knowingly violates registration requirements, consider a suspension of no less than 30 days or a bar.
6) Extent of supervisory procedures in place at time of violation to detect and prevent registration deficiencies.		Consider requiring requalification by examination for any principal or associated person.
7) Corrective action voluntarily taken by firm upon discovery of problem; procedures adopted to prevent recurrence.		
8) Nature and extent of unregistered person's responsibilities.		
9) Explanation for failure to properly register.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> NASD Membership and Registration Rules 1000-1120 in revised NASD Manual.

# Requests For Automated Submission Of Trading Data (Blue Sheets)—Failure To Respond In A Timely Manner<sup>1</sup> Schedule D, Part V, Section 4 To The NASD By-Laws<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction <sup>3</sup>	Suspension, Bar, Or Other Sanctions
1) Prior or similar misconduct.	<i>1 To 9 Days Late</i> — Letter of Caution.	
2) Demonstrated new corrective measures or controls to prevent recurrence.	<i>10 To 15 Days Late</i> — \$500.	
3) Whether violation was negligent, intentional, or reckless.	<i>16 To 30 Days Late</i> — \$1,000.	
4) Number of prior occurrences.		
5) Nature and extent of inaccuracies.		
6) Number of days late.		
7) Absence of reasonable explanation for habitual lateness.		
8) Number of pending regulatory requests outstanding.		
9) Adequacy of supervisory procedures and controls at the time of violation.		
10) Other mitigating or aggravating circumstances.		

<sup>1</sup> Any blue sheet submitted by a member firm more than 30 calendar days late generally is alleged to constitute a violation of Article IV, Section 5 of the NASD Rules of Fair Practice (NASD Procedural Rule 8210 in revised NASD Manual). A member firm with a history of late blue-sheet submissions generally is alleged to have violated Article IV, Section 5. The filing of an incomplete or inaccurate automated submission or the filing of a manual submission without prior exemptions generally is alleged to constitute a violation of Article IV, Section 5. Violations of Article IV, Section 5 of the Rules generally should be sanctioned in accordance with the guideline for violations of Article IV, Section 5.

<sup>2</sup> NASD Marketplace Rule 4615 in revised NASD Manual.

<sup>3</sup> In addition to any fine imposed above, a member firm that has: two violations in one calendar year may be fined \$500; three violations in one calendar year, \$1,000; four violations in one calendar year, \$2,500. If there are more than four violations in one calendar year, the violation may be alleged as a violation of Article IV, Section 5 of the NASD Rules of Fair Practice.

## Restrictive Agreement Violations

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
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- |   |                      |   |
|---|----------------------|---|
| 1) Prior or other similar misconduct.                           | \$2,500 to \$50,000. | Where a serious breach of the restrictive agreement can be shown, as suspension should be imposed. In egregious cases, a bar and/or expulsion is appropriate. |
| 2) Number of violations involved.                               |                      |   |
| 3) Nature and extent of violation.                              |                      |   |
| 4) Whether violation was intentional, reckless, or inadvertent. |                      |   |
| 5) Other mitigating or aggravating factors.                     |                      |   |

## SelectNet Text Messages Not Related To An Order/Transaction

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	<i>First Violation</i> —Letter of Caution to trader with copy to firm.	In egregious situations that were directed at impacting quote or size, suspension or bar should be considered.
2) Nature and content of message(s), ranging from innocuous to abusive and/or vulgar.	<i>Second Violation</i> —AWC and \$500 fine for trader and firm, jointly and severally.	
3) Whether order-entry price is related to prevailing market.	<i>Third Violation</i> —AWC and \$1,000 fine for trader and firm, jointly and severally.	
4) Adequacy of supervisory procedures and controls at the time of the violation, including training/educational initiatives.	<i>Fourth Violation</i> —AWC and \$2,000 fine for trader and firm, jointly and severally.	
5) Demonstrated corrective measures or controls to prevent recurrence.		
6) Other aggravating or mitigating factors.	<i>Subsequent Violations</i> —Fine of \$3,000 or more, jointly and severally for trader and firm.	

## Selling Away (Private Securities Transactions)<sup>1</sup> Article III, Section 40 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	The amount of any commissions, concessions, and other benefits to the respondent, plus \$5,000 to \$50,000. <sup>3</sup>	A suspension or a bar should be considered. If mitigation is present, such as where firm received oral notice and acquiesced, care must be taken to explain and document the reason(s) why a suspension should not be imposed.
2) Number of "selling away" transactions and customers involved as well as the duration of the violative action.		
3) Sales in enterprise where salesperson had a proprietary or beneficial interest.	Where respondent is affiliated with the issuer or has a beneficial interest in the transaction other than a commission, also include all sales proceeds received by the respondent directly or indirectly (possibly by requiring rescission offer of the entire contract amount to the investors).	Consider requiring requalification by examination.
4) Willful disregard of known requirements.		In more serious cases (including, but not limited to, those involving numerous sales, significant commissions, attempts to conceal, or issuer affiliation), a bar should be standard.
5) Use of employer's offices, facilities for private transaction(s).		
6) Attempts to conceal the "selling away" activity.		
7) Amount of commissions or benefits to respondent.		
8) Mitigation, such as oral prior notice to employer who orally acquiesced.		
9) Other aggravating or mitigating factors.		

<sup>1</sup> This guideline may also be used for violations of Article III, Section 28 of the Rules of Fair Practice, Transactions For or by Associated Persons (NASD Conduct Rule 3050 in revised NASD *Manual*). In addition to the principal considerations listed here, for violations of Article III, Section 28, the Committees also may consider whether the transaction adversely affected the interests of the employer firm. The range of monetary sanctions recommended is appropriate for violations of Article III, Section 28 by associated persons as well as by executing member firms. The other recommended sanctions also may be appropriate for violations of Article III, Section 28 by associated persons. In egregious cases, a suspension of the executing firm may be appropriate for violations of Article III, Section 28.

<sup>2</sup> NASD Conduct Rule 3040 in revised NASD *Manual*.

<sup>3</sup> Sanction considerations should not include whether the investment or enterprise was successful.

## Settling Customer Complaints Away From The Firm

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct	\$1,000 to \$50,000 plus commissions or order benefits to respondent.	A suspension or bar may be considered. If mitigation is present, such as where the firm received verbal notice and acquiesced, document why suspension is not warranted. In more serious cases, including, but not limited to, those involving numerous complaints settled away, deception of the member firm, or deception of the customer(s), a bar should be standard.
2) Nature of customer grievance.		
3) Sophistication of customer.		
4) Degree of deception of member firm; attempts to conceal.		Consider requiring requalification by examination.
5) Degree of deception of customer.		
6) Motive of registered person in settling.		
7) Willingness/resistance of member firm to settle matter with customer.		
8) Number of transactions/complaints settled away from firm.		
9) Whether registered person provided employer with verbal notice.		
10) Benefit to respondent.		
11) Other aggravating or mitigating factors.		



## Short-Sale Violations<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Previous disciplinary history.	<i>First Violation</i> —Fine of up to \$1,000. <sup>3</sup>	In egregious cases, consider a bar or suspension as a market maker or from conducting principal transactions.
2) Number of transactions.	<i>Second Violation</i> —Fine of \$1,000 to \$10,000.	
3) Size of transactions.	<i>Subsequent Violations</i> —Fine of \$10,000 to \$100,000.	
4) Absence of reasonable explanation for occurrence.	Plus profits generated from relevant transactions. <sup>4</sup>	
5) Whether violation was negligent, intentional, or reckless.	In egregious cases, consider higher fines.	
6) Adequacy of supervisory procedures and controls at the time of the violation, including training/educational initiatives.	Restitution to aggrieved parties. <sup>5</sup>	
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Potential for benefit or monetary gain.		
9) Other mitigating or aggravating factors. <sup>2</sup>		

<sup>1</sup> This guideline is intended to apply to violations in the following areas: Bid Test - Short Sale Rule, Article III, Section 48 of the Rules of Fair Practice (NASD Conduct Rule 3350 in revised NASD *Manual*); Mandatory Close-Out for Short Sales, Section 71 of the Uniform Practice Code (NASD Procedural Rule 11830 in revised NASD *Manual*); Interpretation of the Board of Governors re Prompt Receipt and Delivery of Securities, Article III, Section 1 of the Rules of Fair Practice (NASD Conduct Rule 2110 in revised NASD *Manual*); Marking Tickets - Books and Records, Article III, Section 21 of the Rules of Fair Practice (NASD Conduct Rule 3110 in revised NASD *Manual*); Trade Report Input, Section (a) of the ACT Rules (NASD Marketplace Rule 6110 in revised NASD *Manual*); and Filings on Form NS-1 - Short-Interest Reporting, Article III, Section 41 of the Rules of Fair Practice (NASD Conduct Rule 3360 in revised NASD *Manual*).

<sup>2</sup> In cases involving the delinquent filing of a Form NS-1, consider the number of days late.

<sup>3</sup> For first violation, consider lesser sanctions where mitigating circumstances are evident. In cases involving violations of Article III, Sections 21 (Marking Tickets - Books and Records) and 41 (Short-Interest Reporting), consider Minor Rule Violation letter where mitigating factors warrant.

<sup>4</sup> In cases involving delinquent or inaccurate Forms NS-1, if appropriate, fine imposed need not include profits generated.

<sup>5</sup> In cases involving delinquent or inaccurate Forms NS-1, it may not be appropriate to order restitution.

## SOES<sup>SM</sup>—Market-Maker Use SOES Rule c(2)(D)

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or similar misconduct.	<i>First Offense (10 Orders Or Fewer)</i> —Letter of Caution.	In an egregious case, consider suspending the firm as a SOES Order-Entry Firm for 30 days to 9 months; suspending responsible associated persons for five days to three months; and, consider a separate supervisory charge. In particularly egregious cases involving multiple repeat offenses, harsher sanctions could include barring as a SOES Order-Entry Firm.
2) Number of securities involved.		
3) Number of orders involved.	<i>First Offense (More Than 10 Orders) And Subsequent Offenses</i> —\$100 to \$250 per security and \$100 to \$500 per order.	
4) Number of accounts involved.		
5) Number of days involved.		
6) Size of transactions.		
7) Absence of reasonable explanation for occurrence.		
8) Absence of meaningful supervisory controls.		
9) Demonstrated new corrective measures or controls to prevent recurrence.		
10) Other mitigating or aggravating factors.		

# SOES—Non-Public Customer Orders<sup>1</sup>

## SOES Rule c(3)(C), Article II, Section 1(f) Of The Rules Of Fair Practice And Notice To Members 88-61

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or similar misconduct.	<i>First Offense (10 Orders Or Fewer)</i> —Letter of Caution.	In an egregious case, consider suspending the firm as a SOES Order-Entry Firm for 30 days to 9 months; suspending responsible associated persons for five days to three months; and, consider a separate supervisory charge. In particularly egregious cases involving multiple repeat offenses, harsher sanctions could include barring as a SOES Order-Entry Firm.
2) Number of securities involved.		
3) Number of orders involved.	<i>First Offense (More Than 10 Orders) And Subsequent Offenses</i> —\$100 to \$250 per security and \$100 to \$500 per order.	
4) Number of accounts involved.		
5) Number of days involved.		
6) Size of transactions.		
7) Absence of reasonable explanation for occurrence.		
8) Absence of meaningful supervisory controls.		
9) Demonstrated new corrective measures or controls to prevent occurrence.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> Such orders would include:

1. Orders for the firm's own accounts.
2. Orders for other broker/dealers.
3. Orders for the account of an associated person (or his/her immediate family) who has physical access to a terminal capable of entering orders into SOES.

## SOES—Physical Security Of SOES Terminal SOES Rule b(3)(D)

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or similar misconduct.	<i>First Offense (10 Orders Or Fewer)</i> —Letter of Caution.	In an egregious case, consider suspending the firm as a SOES Order-Entry Firm for 30 days to 9 months; suspending responsible associated persons for five days to three months; and, consider a separate supervisory charge. In particularly egregious cases involving multiple repeat offenses, harsher sanctions could include barring as a SOES Order-Entry Firm.
2) Number of securities involved.		
3) Number of orders involved.	<i>First Offense (More Than 10 Orders) And Subsequent Offenses</i> —\$100 to \$250 per security and \$100 to \$500 per order.	
4) Number of accounts involved.		
5) Number of days involved.		
6) Size of transactions.		
7) Absence of reasonable explanation for occurrence.		
8) Absence of meaningful supervisory controls.		
9) Demonstrated new corrective measures or controls to prevent recurrence.		
10) Other mitigating or aggravating factors.		

**SOES—Split Orders**  
**SOES Rule c(3)(C) And Notice To Members 88-61**

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or similar misconduct.	\$100 to \$250 per security; \$100 to \$500 per order.	Absent significant mitigating circumstances, suspend the firm as a SOES Order-Entry Firm for 30 days to 9 months; suspend responsible associated persons for five days to three months; and, consider a separate supervisory charge. In particularly egregious cases involving multiple repeat offenses, harsher sanctions could include a bar as a SOES Order-Entry Firm.
2) Number of securities involved.		
3) Number of orders involved.		
4) Number of accounts involved.		
5) Number of days involved.		
6) Size of transactions.		
7) Absence of reasonable explanation for occurrence.		
8) Absence of meaningful supervisory controls.		
9) New corrective measures or controls to prevent recurrence are demonstrated.		
10) Other mitigating or aggravating factors.		

# Suitability<sup>1</sup>

## Article III, Section 2 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	The amount of any commissions, concessions, or profits to the respondent and firm, plus \$5,000 to \$50,000.	In cases involving numerous recommendations of clearly unsuitable securities and no prior similar misconduct, consider suspending the respondent in all capacities for 10 to 30 business days.  Consider requiring requalification by examination.
2) Amount of commission or other benefits to respondent.		
3) Extent of harm or injury to customers.		
4) Number of unsuitable recommendations involved.	Where appropriate, consider requiring restitution of customer losses.	
5) Attempts to conceal misconduct by misstating customer information.		
6) Honest misunderstanding of the customer's financial resources, other security holdings, and investment objectives.		
7) Investment experience, sophistication, and resources of customer(s).		
8) Prompt and voluntary restitution by the respondent.		
9) Other mitigating or aggravating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-19. Note that there need not be a loss for unsuitability to be found.  
<sup>2</sup> NASD Conduct Rule 2310 in revised NASD Manual.

# Supervision<sup>1</sup>

## Article III, Section 27 Of The Rules Of Fair Practice<sup>2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$5,000 to \$25,000. <sup>3</sup>	Suspend responsible individual 10 to 30 business days and do not suspend the firm. In egregious cases, consider limiting activities of appropriate branch office or department and barring individual from acting in supervisory or principal capacity.
2) Extent of inadequacy in written supervisory procedures and controls.	Consider sanctions for firm and responsible individual(s) independently rather than jointly and severally.	Consider requiring requalification by examination.
3) Absence of any reasonable explanation for the inadequacy in written procedures.		
4) Extent of supervisor's periodic review and follow-up.		
5) "Red flag" warnings that should have alerted firm and/or principal to intensify supervision, such as the disciplinary history of the supervised person.		
6) Extent of any inadequacy in the actual supervision of the employee(s).		
7) Absence of any reasonable explanation for the supervisory failure.		
8) Extent of employee misconduct.		
9) Demonstrated new corrective measures or controls to prevent recurrence.		
10) Prompt and voluntary restitution.		
11) Other mitigating or aggravating factors.		

<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-27 and for failure to establish and maintain adequate supervisory procedures.

<sup>2</sup> NASD Conduct Rule 3010 in revised NASD Manual.

<sup>3</sup> Where there is a pattern of multiple violations, substantially higher fines should be considered, i.e., \$25,000 to \$50,000.

## Trades Executed During A Trading Halt Article III, Section 42 Of The Rules Of Fair Practice<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Previous disciplinary history.	\$1,000 to \$100,000 plus profits generated from relevant transactions. <sup>2</sup>	In cases involving more than one trade or larger monetary amounts, suspend responsible individual for up to 30 business days. In more egregious cases, consider bar of responsible individual.
2) Knowledge of the trading halt.		
3) Absence of reasonable explanation for occurrence.	Restitution to aggrieved parties.	
4) Motive for trading during the trading halt.		
5) Market relationship to issue traded.		
6) Adequacy of supervisory procedures and controls at the time of the violation, including training/educational initiatives.		
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Potential for benefit or monetary gain.		
9) Number of violative transactions.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> NASD Conduct Rule 3340 in revised NASD *Manual*.

<sup>2</sup> For first violation, consider lesser sanction where mitigating circumstances are evident.



## Trade-Reporting Violations Schedules D And G To The NASD By-Laws<sup>1</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Previous disciplinary history.	<i>First Violation</i> —Fine of up to \$1,000. <sup>2</sup>	In egregious cases, or those with evidence of manipulative intent, consider a bar or suspension as a market maker, or from conducting principal transactions and/or higher fines.
2) Number of days involved.	<i>Second Violation</i> —Fine of \$1,000 to \$10,000.	
3) Number of securities involved.		
4) Number, size, and character of transactions involved.	<i>Subsequent Violations</i> —Fine of \$10,000 to \$100,000.	
5) Absence of reasonable explanation for occurrence.		
6) Type of trade-reporting violation.		
7) Whether violation was negligent, intentional, or reckless.		
8) Effect on market price discovery data.		
9) Demonstrated new corrective measures or controls to prevent recurrence.		
10) Adequacy of supervisory procedures and controls at the time of the violation, including training/educational initiatives.		
11) Potential for benefit or monetary gain.		
12) Other mitigating or aggravating factors.		

<sup>1</sup> NASD Conduct and Marketplace Rules in revised NASD *Manual*.

<sup>2</sup> For initial violations, consider a Minor Rule Violation letter or lesser sanction where mitigating circumstances are evident.

## Unauthorized Transactions<sup>1,2</sup>

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	The amount of any commissions, concessions, or profits to the respondent, plus \$5,000 to \$50,000.	In cases involving customer losses and/or sizeable commissions, suspend respondent representative in all capacities for 5 to 30 business days. In egregious cases, consider a bar.
2) Number of unauthorized transactions or customers involved; length of time during which misconduct occurred.	Consider requiring restitution of customer losses or offer of rescission to the customer.	Consider requiring requalification by examination.
3) Amount of commissions or other benefits to respondent.		
4) Extent of customer injury.		
5) Extent of threat to investing public that respondent may repeat misconduct.		
6) Attempt to conceal misconduct or lull customers.		
7) Misunderstanding of authority or terms of customer orders.		
8) Prompt and voluntary restitution by the respondent.		
9) Timeliness of customer notification or complaint.		
10) Other mitigating or aggravating factors.		

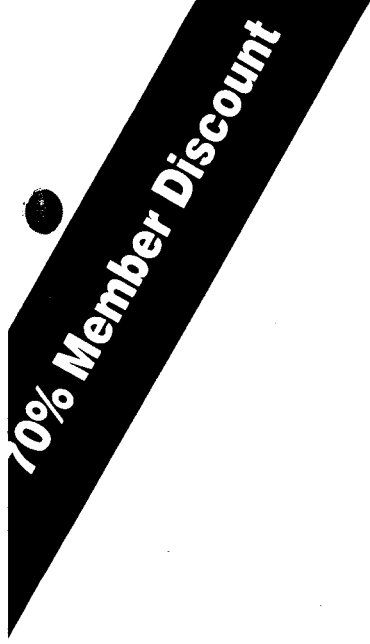
<sup>1</sup> This guideline is also appropriate for violations of MSRB Rule G-19.

<sup>2</sup> See also Discretion Without Client's Written Authority Sanction Guidelines.

## Unregistered Securities—Sales Of

Principal Considerations In Determining Sanctions	Monetary Sanction	Suspension, Bar, Or Other Sanctions
1) Prior or other similar misconduct.	\$2,500 to \$50,000 plus amount of any commissions, markups, or profits to respondent.	In cases involving knowing or reckless conduct or repetitive offenses, consider bar, or suspending respondent for an appropriate period and thereafter until restitution to customers is completed.
2) Whether respondent knew or should have known of absence of registration exemption.	Where respondent is the beneficial owner of the unregistered securities, also include all sales proceeds received by the respondent directly or indirectly (possibly by requiring a rescission offer to the investors).	Consider requiring requalification by examination.
3) Attempt to comply with any exemption from registration.		
4) Number of offerings/issues involved.		
5) Number of purchasing customers involved.		
6) Number, share volume, and dollar amount of transactions involved.		
7) Profits realized by respondent.		
8) Additional benefits realized where seller/respondent is owner of the unregistered securities being sold (or affiliated with the owner).		
9) Rescission offers or subsequent return of customers' funds.		
10) Demonstrated corrective measures or controls to prevent recurrence.		
11) Internal discovery and reporting of misconduct.		
12) Other aggravating or mitigating factors.		

Enclosed is your complimentary copy of the

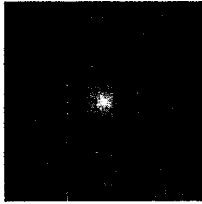


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If you have questions about this subject, direct them to your Quality & Service Team, or to John Linnehan, Director of Continuing Education, at (301) 208-2932.

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## COMPLIANCE SHORT TAKES/RULE FILINGS

Beginning with this issue of *Regulatory & Compliance Alert*, the regularly scheduled feature—Compliance Short Takes—will be expanded to include citations to SEC releases approving NASD rule filings as well as a list of NASD rule filings pending with the SEC. This information is current as of April 4, 1996.

The SEC approved a proposed change to Schedule C of the By-Laws that would allow persons in good standing with Canadian securities regulators to qualify as general securities representatives (Series 7) by successfully completing one of two modified general securities representative examinations (Series 37 or 38) developed by the New York Stock Exchange (NYSE).

The amendment to Schedule C coordinates with a comparable one recently approved by the SEC for the NYSE, and will permit dually registered NYSE/NASD members and NASD-

only members to use the modified general securities representatives examinations.

Approved by the SEC in Rel. No. 34-36825 (2/9/96); 61 F.R. 6052 (2/15/96).

□

**The Prompt Receipt and Delivery of Securities Interpretation (Interpretation) was amended to provide that members may rely on "blanket" or standing assurances as to stock availability under certain circumstances to satisfy their affirmative determination requirements under the Interpretation.**

Specifically, under the amended Interpretation, a member can rely on a "blanket" or standing assurance that securities will be available for borrowing on settlement date, provided that the information used to generate the blanket or standing assurance is less than 24

hours old, and that the member delivers the security on settlement date. The amended Interpretation also provides that, should a member relying on a blanket or standing assurance fail to deliver the security on settlement date, the NASD will consider such conduct to be inconsistent with the terms of the Interpretation, absent mitigating circumstances adequately documented by the member. Direct questions concerning this amendment to the Interpretation to Market Surveillance, at (800) 925-8156, or Thomas Gira, Office of General Counsel, at (202) 728-8957.

Approved by the SEC in Rel. No. 34-36859 (2/20/96); 61 F.R. 7127 (2/26/96).

□

Effective May 15, 1996, under amendments to the NASD Uniform Practice Code, members that participate in the sale or purchase of limited partnership

securities must use standardized transfer forms. The new arrangement does not apply to limited partnership securities traded on The Nasdaq Stock Market or a registered national securities exchange. Although only NASD members must use the forms, the NASD has worked closely with various transfer agents and industry groups to build a consensus favoring use of the forms industry-wide. For more information, see *Notice to Members 96-14*, March 1996.

Approved by the SEC in Rel. No. 34-36783 (1/29/96); 61 F.R. 3955 (2/2/96).



**Based on an amended plan filed with the SEC regarding Rule 17a-5, certain member firms have been notified that they no longer need to file a monthly Focus I report, but must continue to file a quarterly Focus IIA report.**

Nothing in this amendment exempts a broker/dealer from the requirement to maintain current books and records. Member firms must continue to prepare financial statements and compute net capital not less than monthly. Documentation regarding computation of net capital must be kept for not less than three years, the first two years in an accessible place. If you have questions about this subject, call Samuel Luque, Compliance, at (202) 728-8472.

Approved by the SEC in Rel. No. 34-36780 (1/26/96); 61 F.R. 3743 (2/1/96).



Section 65 of the Uniform Practice Code Rule was amended to require that a registered clearing agency use electronic facilities for account transfers.

Approved by the SEC in Rel. No. 34-36955 (3/11/96); 61 F.R. 11070 (3/18/96).



## Rule Filings Pending With The SEC

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

File Number  
SR-NASD

96-09—Amend Schedule D, Part II to recommend that issuers distribute interim reports and consider technological methods to communicate other information to registered and beneficial shareholders. Published for comment in Rel. No. 34-37010 (3/21/96); 61 F.R. 13909 (3/28/96).

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 F.R. 11913 (3/22/96).

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 Article III, Section 2 of the 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 F.R. 54530 (10/24/95). Republished for comment in Rel. No. 34-36973 (3/14/96); 61 F.R. 11655 (3/21/96).



*Rule Filings That Have Not Been Published By The SEC For Comment*

File Number  
SR-NASD

96-15—Amend Schedule A to the By-Laws to modify the exception for interest and dividend income from gross revenue for assessment purposes.

## Do You Need To Register With The NASD?

To avoid violating federal regulations, firms and/or individuals not registered with the NASD that engage in a narrow range of activities, e.g., mergers and acquisitions, private placements to institutional investors, may need to register with the SEC as a broker/dealer and become an NASD member. If you are engaged in these activities, check with your firm's legal counsel to determine if broker/dealer registration and NASD membership is necessary.

96-14—Amend Article IV, Section 5 of the Rules of Fair Practice to require members to provide information in response to requests by other regulators for regulatory information.

96-02—Delete Article V and Amend Articles VII and X of the By-Laws to reconfigure the Board of Governors and establish a national Nominating Committee.

95-61—Amend Article III, Sections 26 and 29 of the 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.

95-40—Amend The Portal Rules, Schedule I to the NASD By-Laws to adopt a pilot program for reporting transactions in PORTAL securities.



Call the SEC Public Reference Room, at (202) 942-8090, or the NASD Office of General Counsel, at (202) 728-8294, for copies of rule filings, the SEC release containing the rule proposal that was published for comment, and the SEC release approving the rule change.



## Violations

# NASD Bars Penny Stock Broker, Orders \$7.8 Million In Customer Restitution

The NASD ordered penny stock broker Franklin N. Wolf, former President and owner of F.N. Wolf & Co., Inc., to pay \$7.8 million in restitution to hundreds of investors who purchased penny stocks. Also fined \$250,000, Wolf was barred for life from the securities industry.

Announcing the case, NASD Regulation, Inc., President Mary L. Schapiro said, "We consider the violations so serious that ordering the almost \$8 million in restitution and barring Wolf from the securities industry for life are necessary to protect the investing public and serve as a deterrent to anyone thinking about taking advantage of investors now or in the future."

The disciplinary action also named Richard T. Sullivan, Vice President and Director of Compliance for F.N. Wolf & Co., who was fined \$10,000, censured, and suspended from acting in any supervisory capacity in the securities industry for one year. Sullivan will have to requalify by examination to regain his status as a general securities principal.

Even though Wolf Financial and Wolf & Co. filed for bankruptcy court protection in August 1994, this action is important because the restitution ordered by the NASD will allow the affected investors to recapture some of their money. (See *Regulatory & Compliance Alert*, October 1994, page 12.)

### Penny Stock Violation

The NASD disciplinary action concerned F.N. Wolf's sales of Nacoma Consolidated Industries, Inc., an over-the-counter security, in violation of Penny Stock Rules established by the SEC. The penny stock disclosure and sales-practice rules are designed to protect investors by reducing high-pressure sales tactics and increasing customer

awareness of the sale by broker/dealers of penny stocks. After an extensive investigation, the NASD found that Wolf made more than 2,500 sales of Nacoma to customers without complying with requirements of the Penny Stock Rules.

During a six-month period, F.N. Wolf sold more than 2.5 million shares of Nacoma to customers, generating \$7.8 million in proceeds. The SEC's Penny Stock Rules require that prior to each retail sale, a customer must be provided with a written determination regarding the sale, which the customer then must sign and return, confirming that the security in question is a suitable investment. Furthermore, the firm must obtain written authorization from the customer to purchase a specific penny stock. The SEC says this rule is designed to regulate the sales practices of broker/dealers active in the market for low-priced securities that are not listed on Nasdaq® or the stock exchanges, and is intended to be a "means reasonably designed to prevent fraud."

The NASD also found that Wolf and Sullivan failed to establish, or enforce, adequate supervisory procedures requiring compliance with the Penny Stock Rule.

According to the NASD findings, Wolf understood the requirements of the highly publicized Penny Stock Rule, despite his protests that he did not comprehend the Rule's implications. Furthermore, Wolf was responsible for making the final decision to market Nacoma to his customers. The NASD also decided that Wolf "well knew that compliance with the Penny Stock Rule would effectively kill the lucrative plan which had been set up for Nacoma."

Finally, the NASD found that given the gravity of Wolf's misconduct and his extensive disciplinary history, the public's best interest could be served only by barring him from the securities industry for life.

The case was decided by the District Business Conduct Committee for District 10 in New York, and affirmed on appeal by the NASD National Business Conduct Committee. These Committees are responsible for disciplining members and their associated persons who fail to comply with NASD rules and related securities laws. The decision stems from an investigation conducted by the NASD New York District Office.

This enforcement action is part of an ongoing effort by the NASD to eradicate abusive sales practices in the sale of penny stocks to investors.

Wolf has appealed his case to the SEC. □

# NASD Expels Hibbard Brown & Co., Inc. From Membership; Fines Firm \$10 Million

The NASD expelled Hibbard Brown & Co., Inc. from membership, levied a \$10 million fine, and imposed other sanctions against Hibbard Brown, Richard P. Brown (Brown), its president, and DeJuan Stroud, its compliance officer, for defrauding retail customers in the sale of the securities of two public companies.

Pursuant to the disciplinary action taken by the NASD Market Surveillance Committee, Hibbard Brown (currently in Chapter 11 bankruptcy), Brown, and Stroud submitted Offers of Settlement whereby they consented to findings of facts and violations, although neither admitted the allegations in the complaint. Sanctions imposed against Hibbard Brown include a censure, expulsion from membership in the NASD, and a \$10 million fine.

Brown was censured, barred from association with any member in any capacity, and barred from directly or indirectly owning more than 5 percent interest in any Nasdaq® company or serving as an officer, director, or control person of a Nasdaq company. Brown was fined \$300,000.

Stroud was censured, barred from association with any member in any principal capacity, suspended from association with any member of the NASD in any capacity for one year, and fined \$25,000.

All of the funds recovered from regulatory fines assessed by the NASD against Hibbard Brown, Brown, and Stroud will be deposited in a special settlement pool, and will be administered through the bankruptcy proceeding to be used to compensate investors.

Hibbard Brown and Brown consented to findings that from September through

October 1990, Hibbard Brown, Brown, and others, directly or indirectly, willfully or recklessly, engaged in a manipulative, fraudulent, and deceptive scheme connected with transactions of First National Realty Associates, Inc. (FNRA) common stock. During this time, Hibbard Brown, Brown, and others sold FNRA stock to customers in 6,305 principal transactions at unfair prices not reasonably related to the prevailing market price for the securities, and failed to disclose this fact to customers. These excessive charges to customers were 100 percent to 145 percent above the prevailing market price of these securities.

Hibbard Brown and Brown also consented to findings that from January 17 through February 15, 1990, Hibbard Brown, acting through Brown and/or others associated with the firm, sold Linkon Corporation (LKON) common stock in 3,551 principal transactions to customers at fraudulently excessive prices not reasonably related to the prevailing market price, and failed to disclose this to customers. The customers were charged excessive markups of 140 percent over the prevailing market price of the securities.

Hibbard Brown and Stroud consented to findings that Hibbard Brown failed to make filings with the SEC as required by Securities Exchange Act Rule 13d-1(b)(1) when Hibbard Brown owned securities exceeding 10 percent of the outstanding shares of FNRA. Stroud was responsible for reviewing the firm's trading positions to determine if such filings were required.

Hibbard Brown, Brown, and Stroud also consented to findings that they failed to establish, maintain, and enforce written supervisory procedures to detect and deter the conduct alleged

in the complaint.

Additionally, Hibbard Brown consented to findings that it failed to disclose to its customers that it controlled or was under common control with FNRA; that its representatives told or implied to customers that FNRA and LKON common stock was being offered "at the market" when Hibbard Brown dominated and controlled the market for both stocks and had no reasonable grounds to believe that a market existed for either FNRA and LKON other than those made, created, or controlled by Hibbard Brown.

Furthermore, Hibbard Brown consented to findings that it sold FNRA and LKON common stock, underlying FNRA and LKON warrants, prior to FNRA and LKON updating post-effective amendments registering those securities; that it failed to preserve and maintain records related to commission payments to its representatives; and that Hibbard Brown permitted an individual that was not active in its investment banking or securities business to remain in a registered capacity.

As the last part of the settlement agreement, Hibbard Brown and Brown also agreed to withdraw their appeals of an SEC administrative proceeding in the U.S. Court of Appeals for the Third Circuit. In this case, the SEC affirmed a 1994 NASD disciplinary action that expelled Hibbard Brown as a NASD member, ordered it to pay \$8.7 million in restitution to defrauded customers, and barred Brown in all capacities.

John E. Pinto, Executive Vice President, Regulation, said that "This enforcement action by the NASD is a victory for every investor who was defrauded by Hibbard Brown. The interests of the investing public have been well served



by the severe sanctions imposed in this matter. And although the firm is now

under the protection of the bankruptcy court, this fine increases the portion of

the bankruptcy proceeds that will be used to pay investors." □

Sale Of Mutual Fund Holding Mortgage-Backed Derivatives Is Involved

## Piper Jaffray Inc. To Pay \$1.25 Million In Fines For Inadequate Disclosures, Improper Sales Practices

The NASD imposed a \$1.25 million fine against Piper Jaffray Inc. in connection with the firm's marketing and sale of the Piper Jaffray Institutional Government Income Portfolio, a proprietary open-end mutual fund managed by Piper Capital Management Inc. The fund held volatile mortgage-backed derivatives.

In addition to the fine, Piper Jaffray was censured and has undertaken to hire an independent consultant to review and recommend modifications regarding the firm's practices and procedures that relate to mutual fund sales.

Without admission or denial, Piper Jaffray consented to the NASD findings that from 1991 to mid-1994 the firm's registered representatives recommended and sold the Piper Jaffray Institutional Government Income Portfolio without adequately disclosing facts material to investors about the characteristics and safety of the fund. Piper Jaffray also did not ensure that its advertising and sales literature provided adequate disclosure of the fund's changing nature, characteristics, and increased risk. Consequently, Piper Jaffray's customers were not adequately informed that the fund's increased holdings in mortgage-backed derivatives and use of leverage also increased the risk. In addition, Piper Jaffray recommended and sold the fund to customers for whom it was an unsuitable investment.

Piper Jaffray agreed to pay the NASD \$1 million of the \$1.25 million fine within 30 days following a final decision. The NASD will waive payment of the remaining \$250,000 of the fine when it is satisfied that the firm

has paid that sum to an independent consultant for a review of Piper Jaffray's practices and procedures concerning mutual fund sales, as well as costs incurred to implement the consultant's recommendations.

In imposing sanctions against Piper Jaffray, the NASD considered that the firm and its affiliates have agreed to pay—as resolution of a class-action lawsuit brought on behalf of certain fund customers—\$67 million in restitution to investors. In addition, Piper Jaffray has allocated \$1.7 million to improve its supervisory and compliance procedures.

"Not only will the NASD be paid one of its larger fines, but the work of the independent consultant that Piper Jaffray will retain is of critical importance. This underscores the NASD's on-going commitment to protect individual investors from sales practice abuses in connection with the sale of mutual funds by our member firms," said John E. Pinto, Executive Vice President, Regulation. Pinto praised the cooperative efforts of the NASD and the Minnesota Department of Commerce. "This was a very difficult, complex investigation in mortgage-backed derivatives involving thousands of pages of documents and extensive interviews. By combining our efforts with the State of Minnesota, we were able to maximize our effectiveness in achieving our shared goal of protecting the investing public, while avoiding unnecessary regulatory duplication."

The Piper Jaffray Institutional Government Income Portfolio was introduced in 1988, with an investment objective of "high current income con-

sistent with the preservation of capital." Initially, the fund consisted almost exclusively of U.S. Treasury notes and government agency mortgage pass-through securities. However, by September 1993, mortgage-backed derivatives represented 51 percent of the market value of the fund's portfolio and 77 percent of its net assets.

This change significantly increased the fund's risk. Regardless, Piper Jaffray continued to make recommendations that emphasized the fund's "No. 1" performance ranking, its Triple-A credit rating, the limitation of its holdings to government guaranteed securities, and its purported safe and conservative nature. However, Piper Jaffray failed to disclose adequately that the fund's increased holdings in volatile mortgage-backed derivatives and use of leverage significantly increased risk, as well as potential return. In early 1994, customers sustained significant, unanticipated losses when interest rates rose and there was a disruption in the market for certain of the fund's mortgage-backed derivatives.

### Flawed Advertising Standards

Piper Jaffray also consented to findings that certain advertising and sales materials for the fund failed to meet NASD standards and that its registered representatives recommended and sold shares to customers for whom it was an unsuitable investment in view of their age, financial status, investment experience, and individual goals. □

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# NASD DISCIPLINARY ACTIONS

In November and December 1995, and January 1996, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

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

## November Actions

**Patrick Joseph Gabrielli, II (Registered Representative, Orinda, California)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for three business days, and suspended from effecting transactions for retail customers' accounts for six months. Without admitting or denying the allegations, Gabrielli consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customers considering their financial situations and needs. The findings also stated that Gabrielli effected purchases and sales of securities in the public customers' accounts without their knowledge or consent.

## December Actions

None

## January Actions

**Scott Charles Galbraith (Registered Representative, Stockton, California)** was suspended from association with any NASD member in any capacity for 90 days and required to requalify by exam. The sanctions were based on findings that Galbraith participated in the purchase of notes by investors without giving prior written notification to his member firm.

**Steven Douglas Graham (Registered Representative, San Jose, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$22,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Graham forged a public customer's signature to a disbursement request form and submitted it to his member firm, received a \$4,500 check, and attempted to convert the proceeds for his own use and benefit.

**James Gregory Greenwood (Registered Representative, Sparks, Nevada)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Greenwood failed to respond to NASD requests for information concerning a customer complaint.

**Carmine Manna, Jr. (Registered Representative, San Francisco, California)** was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Manna effected the purchase of shares of stock in the accounts of public customers without their prior knowledge or consent.

District 2—Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo) and southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories.

## November Actions

**J. Alexander Securities, Inc. (Los Angeles, California)** and **James Alexander (Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$14,641.50, jointly and severally. In addition, Alexander

was required to requalify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Alexander, caused the issuance of written notifications to customers that falsely disclosed that the firm was acting as agent for said customers when in fact, the firm was acting as principal for its own account.

**William A. Gray, Jr. (Registered Representative, Torrance, California)** 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, Gray consented to the described sanctions and to the entry of findings that he signed as a "Witness" on two life insurance applications attesting to the authenticity of the alleged signatures of public customers, although he did not witness the signing of these applications.

**Jimmy C. Kao (Registered Representative, West Covina, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$110,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kao consented to the described sanctions and to the entry of findings that he caused \$20,800 to be withdrawn from various joint and individual checking and savings accounts of public customers and converted the funds to his own use. The NASD also determined that Kao submitted to his member firm a Form U-4 with false responses to questions about his disciplinary history.

**Philip S. Peterman (Associated Person, Lemon Grove, California)** 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, Peterman consented to the described sanctions and to the entry of findings that he submitted to his member firm a Form U-4 that was received by the NASD that contained false responses to questions regarding criminal actions.

**Lester R. Riehman (Registered Representative, Temecula, California)** 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, Riehman consented to the described sanctions and to the entry of findings that he forged a customer's signature on a notice regarding replacement of life insurance or annuity to expedite the processing of paperwork necessary to transfer the customer's funds from a tax shelter annuity to an investment company trust without the customer's authorization.

## December Actions

**Thomas R. Alton (Associated Person, Alameda, California)** was fined \$50,000 and barred from association with any NASD member in any capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a November 1994 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Alton submitted to his member firm a Uniform Application for Securities Registration (Form U-4) wherein he gave false responses to questions about his disciplinary history. Alton has appealed this action to a U.S. Court of Appeals, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Darryl M. Fromson (Registered Representative, La Mesa, California)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Fromson consented to the described sanctions and to the entry of findings that he forged two public customers' signatures on two allocation/transfer election forms to expedite the processing of paperwork necessary to facilitate their purchase of a variable life insurance policy. According to the findings, Fromson took loans against their whole life insurance policy. Although the customers

had apparently approved of the transfer of funds, they had not authorized Fromson to sign their names on the forms.

**Mark Francis Hales (Registered Representative, Malibu, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,399.84. Without admitting or denying the allegations, Hales consented to the described sanction and to the entry of findings that he exercised discretionary authority and executed trades in the securities account of a public customer and failed to obtain the customer's written authorization to execute the transactions.

**Terry Hyder (Registered Representative, Fresno, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$38,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hyder consented to the described sanctions and to the entry of findings that he received from his member firm and deposited into his personal bank account five checks totaling \$18,000 that were drawn on a public customer's account without the customer's knowledge or consent. The findings also stated that Hyder forwarded a letter to his member firm allegedly written by the customer requesting that Hyder's name be added as a beneficial owner of the customer's account and that the address of record on this account be changed to Hyder's personal address.

**Lanny R. Stout (Registered Principal, Redlands, California)** was fined \$10,000, suspended from association with any NASD member in any capacity for 15 days, suspended for 90 days from participation in underwritings or private placements, and ordered to requalify by exam as a principal before acting again in that capacity. The NBCC imposed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Stout participated in a contingent offering of securities on a minimum-maximum basis and failed to return investor funds when the terms of the offering were not met. Stout also failed to transmit investor funds promptly to a separate bank escrow account and permitted the offering proceeds to be disbursed from the escrow account.

## January Actions

**Alberto Hernandez (Registered Representative, Los Angeles, California)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hernandez made false representations to his member firm concerning his prior employment with another member firm. Hernandez also placed an order on behalf of his member firm to purchase bonds while failing to submit the order ticket for approval by an officer of the firm. Furthermore, Hernandez failed to obtain delivery instructions from the customer and failed to obtain required approvals or sufficient customer information when he opened a new account for a public customer.

**Blair J. Taylor (Registered Representative, Los Angeles, California)** was fined \$27,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Taylor effected, or caused to be effected, the purchase of shares of stock for the account of a public customer without the customer's knowledge or consent. Taylor also failed to respond to NASD requests for information.

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

## November Actions

**Rex T. Austin (Registered Representative, Aurora, Colorado)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Austin submitted to the NASD a Form U-4 application that failed to disclose a criminal charge filed against him.

**Riley W. Barker (Registered Principal, Niwot, Colorado)** submitted an Offer of Settlement pursuant to

which he was fined \$12,500. Without admitting or denying the allegations, Barker consented to the described sanction and to the entry of findings that, in connection with a private placement limited partnership offering, he caused the disbursement of funds from an escrow account to the issuer before the required amount had been deposited. The findings also stated that Barker used building signs and stationery and distributed confirmations and newsletters that failed to comply with the requirements in Article III, Section 35 of the NASD Rules of Fair Practice.

**Elwanda Bell (Registered Representative, Roswell, New Mexico)** was fined \$41,500, barred from association with any NASD member in any capacity, and ordered to pay \$4,309.68 to her former member firm. The sanctions were based on findings that Bell obtained from a public customer a \$4,309.68 check for investment purposes and, contrary to the customer's instructions, deposited the funds into the account of an entity with which he was affiliated. In addition, Bell failed to respond to NASD requests for information.

**James G. Cook (Registered Principal, Del Norte, Colorado)** was fined \$2,500, required to requalify by exam in any capacity, and required to pay \$17,500 in restitution to customers. The sanctions were based on findings that Cook participated in the sale of promissory notes to three public customers outside the scope of his relationship with his member firm and without providing prompt written notice of these activities to his member firm.

**William C. Emerick (Registered Representative, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$34,590 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Emerick consented to the described sanctions and to the entry of findings that he made material misrepresentations to customers in connection with the solicitation of securities transactions. In addition, the NASD found that Emerick effected a transaction in the account of a public customer without the customer's authorization.

**Wayne Anthony Glennmeier (Registered Representative, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Glennmeier consented to the described sanctions and to the entry of findings that he obtained two checks totaling \$560.20 payable to customers of his member firm and caused the customers' endorsements to be placed on the checks without authorization. The NASD determined that Glennmeier placed his endorsement on the checks, without the authorization of the payee, and converted them to cash.

Furthermore, the NASD found that Glennmeier effected transactions in the accounts of two customers without receiving authorization from either customer before effecting the trades. The findings also stated that Glennmeier deliberately caused the address records of four customers of his member firm to contain false information to assure that none of these customers would receive correspondence from his firm that would have led to the detection of his activities. Glennmeier also failed to respond to NASD requests for information.

**Brian M. Gordon (Registered Representative, Englewood, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$8,500, suspended from association with any NASD member in any capacity for 10 days, and required to requalify by examination in any capacity in which he seeks to become associated with a member. Without admitting or denying the allegations, Gordon consented to the described sanctions and to the entry of findings that he caused the records of his member firm to be inaccurate by failing to indicate that he was affiliated with a business entity for which he had opened a securities account. In addition, the NASD found that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Gordon purchased a hot issue in this account.

**Vincent G. Ha (Registered Representative, Aurora, Colorado)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ha caused a document titled "irrevocable standby letter of credit" to be written on his

member firm's letterhead and distributed to an insurance company. The NASD found that the member firm had not authorized the issuance of this letter of credit, and that Ha was not authorized to execute the letter of credit on behalf of his member firm.

**Anthony J. Miranti (Registered Principal, San Diego, California)** was fined \$20,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam in any capacity in which he intends to associate with a member firm. In addition, Miranti was required to disgorge \$31,289 to the NASD. The sanctions were based on findings that a former member firm, acting through Miranti, effected principal retail transactions with public customers at prices that were unfair and excessive, in that the prices charged to the firm's customers ranged from 5.26 to 38.75 percent above the prevailing market price for the securities.

**Henry M. Shields (Registered Representative, Tucson, Arizona)** was fined \$35,000, barred from association with any NASD member in any capacity with a right to requalify after one year, and ordered to disgorge \$6,838 to the NASD. The sanctions were based on findings that Shields recommended and effected purchase and sale transactions in the account of a public customer without having reasonable grounds for believing the recommendations were suitable for the customer considering the type of account and the customer's financial situation and needs. In addition, Shields recommended and/or effected transactions in the same customer's account that were excessive in frequency in view of the nature of the account, its financial resources, and its investment objectives. Shields exercised discretion in a customer's account without obtaining written discretionary authority from the customer and without receiving written acceptance of the account as discretionary from his member firm. Shields also prepared and delivered to the customer a document that contained materially inaccurate and misleading information about a stock.

**Siege Lee Smith (Registered Representative, Westminster, Colorado)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed to respond to an NASD request for information regarding a customer complaint.

**Robert L. Stevens (Registered Principal, Denver, Colorado)** was fined \$10,000 and required to requalify by exam in any capacity. The sanctions were based on findings Stevens failed to supervise a registered representative's activities adequately regarding recommendations to customers.

**Donald K. Stunoff (Registered Representative, Scottsdale, Arizona)** was fined \$125,000, barred from association with any NASD member in any capacity, and required to pay \$70,643.45 in restitution to his member firm. The sanctions were based on findings that Stunoff withdrew about \$45,250 from the securities account of a public customer using an automated teller machine access card, without the consent of the customer. In response to an NASD request for information, Stunoff provided false documentation to the NASD that purported to authorize his withdrawal of funds from the customer's account that bore signatures that were purported to belong to the customer's daughters. Based on information obtained from the customer's daughters, neither of them signed the document, nor did they authorize anyone to make withdrawals from their father's securities account.

**Ernesto O. Torres (Registered Representative, Aurora, Colorado)** was fined \$10,000 and required to requalify by exam in any capacity. The sanctions were based on findings that Torres solicited the purchase of interests in two limited liability companies by three public customers of his member firm and was compensated by the limited liability companies for his solicitation efforts, without providing his member firm with prompt written notice of such activities.

## December Actions

None

## January Actions

**Scott Allen Atwood (Registered Representative, Sherwood, Oregon)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Atwood received

from public customers checks totaling \$4,268.26 for deposit in their investment accounts. Atwood failed to deposit timely the checks for their intended purposes and, instead, kept the checks in his possession until after his termination from his member firm. Atwood also failed to respond to NASD requests for information.

**Richard Thomas DeBrino (Registered Representative, Yakima, Washington)** 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, DeBrino consented to the described sanctions and to the entry of findings that he received from a public customer a \$5,000 check and added, or caused to be added, his name as a second payee to the check and deposited the check into a bank account under his control. The findings stated that subsequently an account was opened for the customer using a \$2,000 cashier's check purchased by DeBrino.

**John Peter Mazza (Registered Representative, Seattle, Washington)** 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, Mazza consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of securities, and in the course of dealing with the customers, violated his responsibility of fair dealing with his customers. The findings also stated that Mazza recommended the purchase of securities that were unsuitable for the customers in view of the facts disclosed by the customers as to their other security holdings, financial situations and needs, and the size and nature of the recommended transactions.

**Mid Continent Securities, Inc. (Arvada, Colorado) and Charlene Pratt (Registered Principal, Arvada, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$33,500, jointly and severally. Also, the firm was suspended from NASD membership for 45 days. Pratt was suspended from association with any NASD member in any principal capacity for 90 days and required to requalify by exam as a 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 Pratt, participated in two contingency offerings and, with respect to each working interest program, the escrow agreement set forth a minimum number of units required to be purchased to break escrow that was less than the number of units represented in the offering memoranda to be required to break escrow.

The findings also stated that the firm, acting through Pratt, broke escrow and released funds to the issuer before satisfying the minimum purchase contingency stated in the offering memoranda, and affiliates of the issuer purchased units before satisfying the minimum subscription contingency when the offering memoranda failed to include the disclosures necessary for such purchases to be deemed bona fide sales. The NASD also found that the firm, acting through Pratt, participated in the offering of interests in the two working interest programs after the expiration of the discretionary 90-day extension of the offering period permitted the issuer in the offering memoranda, when no reconfirmation offer with appropriate disclosures and amendments of the offering memoranda had occurred.

**Francis George Nenes, Jr. (Registered Principal, Glendale, Arizona)** submitted an Offer of Settlement pursuant to which he was fined \$2,500, suspended from recommending any security subject to Securities and Exchange Commission Rule 15g et. seq. for 60 days, and required to requalify as a general securities principal. Without admitting or denying the allegations, Nenes consented to the described sanctions and to the entry of findings that a member firm, acting through Nenes, effected securities transactions without complying with the requirements of SEC Rule 15g of the Securities Exchange Act of 1934. The suspension for Nenes began November 13, 1995, and concluded January 11, 1996.

**Paramount Investments International, Inc. (Denver, Colorado), Craig L. Edelmann (Registered Principal, Littleton, Colorado), and Thomas L. Gottschalk (Registered Principal, Arvada, Colorado).** The firm submitted an Offer of Settlement pursuant to which it was fined \$15,000; \$10,000 of which is payable jointly and

severally with Gottschalk. The firm also was suspended from NASD membership for five business days with the proviso that the firm may effect unsolicited sell transactions for its customers during the suspension period and must designate a new financial and operations principal. Gottschalk was suspended from association with any NASD member in any principal capacity for 10 business days and required to requalify by exam in any principal capacity. Edelmann was fined \$20,000, suspended from association with any NASD member in any principal capacity for 30 days, and required to requalify by exam in any principal capacity.

The NBCC imposed the sanctions against Edelmann and Gottschalk following appeal of a Denver DBCC decision. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that the firm, acting through Edelmann and Gottschalk, allowed an individual to function as an associated person of the firm when he or she was subject to a statutory disqualification and was ineligible to be associated with the firm. The firm's suspension begins May 20, 1996, and concludes May 24, 1996.

**Pruco Securities Corporation (Newark, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that certain agents solicited retail customers to purchase a variable life insurance product. Upon obtaining customer instructions to purchase the variable product, an order was entered to purchase a fixed life insurance product that was exchanged for a variable product when these agents became registered with the NASD.

**Steven J. Roennebeck (Registered Representative, Salt Lake City, Utah)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roennebeck failed to respond to NASD requests for information concerning his termination from a member firm.

**Jeffrey S. Schulman (Registered Representative, Tempe, Arizona)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schulman failed to respond to NASD requests for information concerning a customer complaint.

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

### November Actions

**Christopher H. Anderson (Registered Representative, Chesterfield, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he arranged for another registered individual to sign the name of a public customer on insurance applications. The findings stated that Anderson witnessed a customer's signature on an application and saw the customer on the date the application was written when he knew the owner had not signed the application.

**John Linck Bascomb (Registered Representative, Rock Island, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Bascomb consented to the described sanctions and to the entry of findings that he signed an insurance customer's name to insurance applications at the request of another registered representative. The NASD also found that Bascomb submitted variable life insurance applications to his member firm when he knew that the proposed insured had not signed the applications and witnessed the signing of insurance applications by a person other than the insured, and then attested that he had seen the insured on the date the application was written when he had not.

**Timothy Donald Evans (Registered Representative, Fergus Falls, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD

member in any capacity, and ordered to pay \$7,326.83 in restitution to his member firm. Without admitting or denying the allegations, Evans consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he signed the customer's name to a disbursement request form and an application for reimbursement form concerning an insurance policy. The findings also stated that Evans induced public customers to purchase life insurance policies by misrepresenting to the customers that after their initial deposit, no other additional premium payments would be required to keep the policy in force.

**Jeffrey Michael Hippler (Registered Representative, Waite Park, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$23,823.85, barred from association with any NASD member in any capacity, and required to pay \$4,764.77 in restitution to any party or parties entitled. Without admitting or denying the allegations, Hippler consented to the described sanctions and to the entry of findings that he received from a public customer \$1,496.55 in surrender checks endorsed by the customer to establish a new insurance contract. Instead, without the knowledge or consent of the customer, Hippler forged his wife's signature to the check, deposited the proceeds into his personal bank account, and converted the funds to his own use and benefit. The findings also stated that Hippler, without the knowledge or consent of a public customer, endorsed two checks totaling \$3,268.22 made payable to the customer, deposited the proceeds into his personal bank account, and converted the funds to his own use and benefit.

**Scott William Parks (Registered Representative, Eden Prairie, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,707.40 and suspended from association with any NASD member in any capacity for seven days. Without admitting or denying the allegations, Parks consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, he purchased and sold securities for their accounts.

### December Actions

**Donnell George Vaughn (Registered Representative, West Des Moines, Iowa)** and **Barry Alan Milton (Registered Representative, Indianola, Iowa)** were fined \$5,000, suspended from association with any NASD member in any capacity for 90 days, and required to pay \$597.56 to a former employee of his member firm. Milton was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. The NBCC imposed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that, at the instruction of Vaughn, Milton forged the endorsement of an employee of his member firm on the reverse side of two checks, which totaled \$737.14, and deposited the checks into his own business account. On the same date, Milton wrote a check to Vaughn on the same account for \$597.56, which was the amount of money Milton owed Vaughn. The check was endorsed and deposited into Vaughn's business account, and the balance of \$139.58 was retained by Milton.

### January Actions

None

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

### November Actions

**Jerry M. Roberson (Registered Representative, Dyersburg, Tennessee)** was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$70,573.04 in restitution to his member firm. The sanctions were based on findings that Roberson received from a public customer two IRA rollover checks totaling \$53,817.18 to invest in an annuity product through his member firm. Roberson failed and neglected to execute the purchase of the annuity on the customer's behalf, and, instead, endorsed the checks and converted funds for his own use and benefit without the customer's knowledge or consent. In addition, Roberson failed to respond to NASD requests for information.

**James S. Shore (Registered Representative, Knoxville, Tennessee)** submitted a Letter of Acceptance, Waiver and

Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity with the right to reapply for association with a member firm after one year. Without admitting or denying the allegations, Shore consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers, without having obtained previous written authorization from the customers and previous written acceptance of the accounts as discretionary by his member firm.

**William J. Townsend, Jr. (Registered Representative, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$110,000, barred from association with any NASD member in any capacity, and ordered to pay \$26,000 in restitution. Without admitting or denying the allegations, Townsend consented to the described sanctions and to the entry of findings that he disbursed, or caused to be disbursed, three checks totaling \$26,000 from the accounts of a public customer, forged the customer's signature to the checks, and converted the funds for his own use and benefit without the knowledge or consent of the public customer. The NASD also found that Townsend failed to respond timely to NASD requests for information.

### December Actions

**David C. Bellin (Registered Representative, Alexandria, Alabama)** 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, Bellin consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling \$33,700.96 to be credited to the customer's variable annuity account. The NASD found that Bellin failed and neglected to deposit the funds into the customer's account, and, instead, converted the funds for his own use and benefit without the customer's knowledge or consent.

**James N. Burrow (Registered Representative, Little Rock, Arkansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Burrow consented to the described sanction and to the entry of findings that he executed, or caused to be executed, six purchase and sale transactions for certain government agency securities at prices that were not reasonably related to the then-current market price for these securities. By engaging in such transactions, Burrow negligently assisted others to engage in a practice and artifice, commonly identified as "adjusted trading." The NASD also determined that Burrow was negligent in failing to independently determine the market price for the securities.

**Lemorie Carter, Jr. (Registered Principal, Birmingham, Alabama)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carter submitted 32 life insurance applications to his member firm under the names of two other registered representatives of his member firm that caused 18 commission checks to be issued in the representatives' names and forged their signatures on the checks without the registered representatives' knowledge or consent. Carter also failed to respond to NASD requests for information.

**Oliver D. Hollingsworth (Registered Representative, Broken Arrow, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hollingsworth consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received compensation without prior written notice to or approval from his member firm. The findings also stated that Hollingsworth engaged in a private securities transaction without prior written notice to and approval from his member firm. The NASD also found that Hollingsworth received from a public customer a \$10,000 check for investment in mutual funds. Hollingsworth mishandled the customer's fund in that he failed to make the investment as directed, and, instead, deposited the check into a checking account under his control, without the customer's knowledge or consent. In addition, the NASD determined that

Hollingsworth failed and neglected to disclose his ownership of an entity on his Form U-4.

**Leon Joyner (Associated Person, Louisville, Kentucky)** was fined \$45,000, barred from association with any NASD member in any capacity, and ordered to pay \$4,773.07 in restitution to his member firm's parent company. The sanctions were based on findings that Joyner received from public customers \$4,773.07 in cash and checks for payment of insurance premiums. Joyner failed and neglected to submit these funds on behalf of the customers and, instead, converted the funds for his own use and benefit, without the customers' knowledge or consent. Joyner also failed to respond to NASD requests for information.

**Michael J. Searls (Registered Representative, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Searls consented to the described sanctions and to the entry of findings that he effected a \$3,000 wire transfer from the account of a public customer to the bank account of a third party, without the public customer's knowledge or consent. The NASD also determined that, in connection with the wire transfer, Searls prepared a false letter of authorization to which he forged the public customer's signature.

### January Actions

**James R. Hornbrook (Registered Representative, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hornbrook consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving prior written notice to and receiving prior approval from his member firm. The NASD also found that Hornbrook misrepresented or failed to state certain material facts to public customers about these activities.

**Menka Z. Scott (Registered Representative, Knoxville, Tennessee)** was fined \$25,000, barred from association with any NASD member in any capacity, and must pay \$400 in restitution. The sanctions were based on findings that Scott received from a public customer \$400.90 in cash as payment for insurance policies, failed and neglected to submit the funds to her member firm, and, instead, converted the funds for her own use and benefit without the knowledge or consent of the public customer. Scott also failed to respond to an NASD request for information.

District 6—Texas

### November Actions

**Kelvin Leville Nash (Registered Representative, Irving, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$1,500 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Nash consented to the described sanctions and to the entry of findings that he made improper use of customer funds totaling \$10,000.

### December Actions

**Daniel Michael Arsenaault (Registered Representative, Keller, Texas)** was fined \$25,000, suspended from association with any NASD member in any capacity for 30 days, ordered to requalify in all capacities, and must disgorge \$12,000 in commissions. The sanctions were based on findings that Arsenaault effected unauthorized, excessive, and unsuitable transactions in the accounts of public customers at a loss of about \$19,914, without having reasonable grounds for believing that such transactions were suitable for the customers based on facts disclosed by the customers as to their security holdings, financial situations, and needs.

**Micah C. Douglas (Registered Representative, Kingwood, Texas)** was fined \$7,500 and suspended from association with any NASD member in any capacity for 45 days. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that Douglas failed to give his member firm prior written notice of outside business activities that consisted

of securities transactions conducted in the name of a company with his name. Douglas also made misrepresentations to public customers about himself and his company. Specifically, Douglas falsely represented that his company was registered with the SEC as a broker/dealer; was a full-service broker/dealer; that all of the transactions effected by the firm were guaranteed by his member firm; had Securities Investor Protection Corporation coverage, and had never been the subject of any complaint or investigation by a self-regulatory organization.

Douglas also made misrepresentations in connection with the sale of inverse floater notes in that he failed to disclose that the notes' yield would fluctuate inversely to prevailing interest rates. Douglas has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

### January Actions

**Benbrook Wheeler Securities, Ltd. (Houston, Texas)** and **W. Buckner Ogilvie, Jr. (Registered Principal, Houston, Texas)** were fined \$15,000, jointly and severally, and Ogilvie must requalify by exam in all capacities. The sanctions were based on findings that the firm and Ogilvie failed to maintain accurate books and records. The firm and Ogilvie also prematurely instructed an escrow agent to break escrow and disburse the funds to them, and failed to deposit and retain all customer funds in an escrow account. Also, the firm, acting through Ogilvie, failed to comply with its exemption under the Securities Exchange Rule 15c3-3 in that they had direct access to and took possession of customer funds and failed to maintain the requisite amount of net capital. The firm, acting through Ogilvie, also failed to renew an expired fidelity bond, failed to review and approve sales correspondence, and failed to conduct an annual review of a branch office.

**James Brian Bishop (Registered Representative, Dallas, Texas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bishop issued, or caused to be issued, personal checks drawn on insufficient bank funds that he delivered to his member firm or its clearing firm in purported settlement of securities transactions, thereby causing the firm to suffer a loss in excess of \$7,000. Bishop also reimbursed a public customer \$3,000 for losses allegedly incurred by the customer in securities transactions that Bishop had previously effected. Bishop also effected unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information.

**David Martin Burrows (Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$29,250 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burrows consented to the described sanctions and to the entry of findings that he received from a public customer an \$850 check and converted the funds for his own use and benefit. The NASD also found that Burrows engaged in a private securities transaction without giving prior written notice to and receiving approval from his member firm. The findings also stated that Burrows failed to respond to NASD requests for information.

**Cullum & Sandow Securities, Inc. (Dallas, Texas)** and **Richard L. Sandow (Registered Principal, Southlake, Texas)** submitted an Offer of Settlement pursuant to which the firm and Sandow were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to supervise adequately the activities of a registered individual.

**Nicholas Michael Diminico (Registered Representative, Houston, Texas)** was fined \$10,000. The sanction was based on findings that Diminico effected unauthorized purchases of a common stock in the accounts of public customers.

**Edward Arms Gaylord (Registered Representative, Holladay, Utah)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that Gaylord sold short, in his personal account, \$30,000,000 of U.S. Treasury Bonds on a when-issued basis and covered the short position in his account at a loss of \$382,762, resulting in a total debit balance in

his account of \$436,108, of which he failed and neglected to pay.

**John Carl Oberhausen (Registered Representative, Fort Worth, Texas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Oberhausen engaged in an outside business activity without providing written notice to his member firm. Oberhausen also failed to respond to an NASD request for information.

**Brent Yee Suen (Registered Representative, Dallas, Texas)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Suen consented to the described sanction and to the entry of findings that he prepared and delivered misleading letters to a mortgage company and financial services company in regard to his employment with his member firm to obtain a residential mortgage.

**Gilson J. Viator (Registered Representative, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$56,550 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Viator consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$6,310 and converted the funds to his own use and benefit. The findings also stated that Viator forged a public customer's signature to a \$5,000 refund check and failed to respond to NASD requests for information.

**Rossi Lamont Walter (Registered Representative, Dallas, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Walter consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of a public customer and improperly switched securities in such accounts through transactions consisting of the purchases and sales of shares of mutual funds with similar investment objectives.

**Worthington & Dunn Securities, Inc. (Dallas, Texas)** and **Jason Dru Dvorin (Registered Principal, Plano, Texas)** were expelled from NASD membership and Dvorin was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Dvorin, failed to maintain accurate books and records and filed a late and inaccurate FOCUS Part IIA report. Also, the firm, acting through Dvorin, held a customer's check while purporting to operate under the exemptive provisions of Rule 15c3-3 under the Securities Exchange Act of 1934 that would not permit the firm to do so, and failed to transmit promptly such check to an independent escrow agent. The firm, acting through Dvorin, maintained the registration of registered representatives who did not function as representatives of the firm and were not active in the investment banking or securities business of the firm, and failed to maintain subscription documents or any other documents reflecting the financial status and investment objectives of public customers. The firm, acting through Dvorin, also received compensation of \$11,000 in the form of an override, that was not disclosed to offerees and/or investors of fractional, undivided oil and gas interest.

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

### November Actions

**Dale A. Adcox (Registered Representative, Aiken, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,071.12, ordered to pay \$2,414.22 in restitution to his member firm, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Adcox consented to the described sanctions and to the entry of findings that he deposited checks totaling \$2,414.22 made payable to public customers into his bank account that were to be used for mutual fund investments and insurance premium payments. The NASD determined that Adcox failed to forward the funds for either purpose or return the funds to the customers.

**Marc J. Berman (Registered Representative, Los Angeles, California)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$42,291.35 in commissions to public customers. The sanctions were based on findings that Berman made recommendations to public customers to embark on a series of trades characterized by frequent short-term trading, options trading, speculative trading, and trading on margin without having reasonable grounds for believing that the recommendations were suitable for the customers based on their tax status, investment objectives, and financial situations. Berman opened a securities account at another member firm and failed to notify his member firm in writing of his intention to open the account or that he had opened it, and failed to notify the other firm of his association with this member firm.

**Robert Fitzgerald Craig (Registered Principal, Alpharetta, Georgia)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Craig failed to respond to NASD requests to appear and testify at a hearing involving an NASD complaint.

**Edward D. Davis (Associated Person, Fayetteville, North Carolina)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis failed to respond to an NASD request for information about his termination from a member firm.

**John N. Harman (Registered Representative, Orlando, Florida)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Harman consented to the described sanction and to the entry of findings that he solicited and recommended to public customers a limited partnership investment without having a reasonable basis for believing that the investment was suitable for the customers based on their financial situations and needs. In addition, the NASD found that Harman completed or caused to be completed a new account form for public customers that falsely stated their annual income, net worth, securities holdings, real estate holdings, and occupation, and had no reasonable basis for believing that the information was accurate, and knew, or should have known, that the information was false.

**Richard J. Higbee (Registered Representative, Wausau, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Higbee sold variable annuity contracts to public customers through the use of sales materials that were not approved by a principal of his member firm. In addition, Higbee failed to respond to an NASD request for information.

**Robert A. Hodgkiss, Jr. (Registered Representative, Cary, North Carolina)** was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The sanctions were based on findings that Hodgkiss made misrepresentations to a public customer in connection with a customer's purchase of securities.

**Jonathan Hyde (Registered Representative, Summit, New Jersey)** was fined \$20,000 and required to requalify by exam as a general securities representative. The sanctions were based on findings that Hyde acquired certain municipal bonds on behalf of his member firm that caused him to exceed the inventory dollar limit that had been imposed on him, and to prevent his member firm from discovering this fact, he employed a variety of devices and artifices in acquiring the municipal bonds by effecting purchases of municipal bonds but failing to prepare order tickets documenting the purchases. Hyde also failed to disclose to his member firm that he had an arrangement with a municipal bond trader employed by another member firm to repurchase bonds on behalf of his firm that he sold to the trader at a price that would provide the trader with a modest profit. In addition, Hyde paid \$1,350 to the municipal bond trader as compensation for his involvement in the bond repurchase arrangement.

**Raymond James & Associates, Inc. (St. Petersburg, Florida)** was ordered to pay \$44,745.66 in restitution to a public customer. The NBCC imposed the sanction following appeal of an Atlanta DBCC decision. The sanction was based on findings that the firm effected sales of various

limited partnerships in the secondary market on a principal basis with a public customer at prices that were not fair taking into consideration all relevant circumstances. In addition, the firm was acting as an integrated dealer and charged markups ranging from 15.8 to 52.8 percent above the prevailing market prices. This action has been appealed to the SEC, and the sanction is not in effect pending consideration of the appeal.

**Kerry P. Kennedy (Registered Representative, Northbrook, Illinois)** was fined \$25,000, suspended from association with any NASD member in any capacity for 180 days, and ordered to requalify by examination as a general securities representative. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Kennedy forged the signatures of two public customers on a margin agreement for a jointly held securities account.

**Phillip W. Key, Jr. (Registered Representative, Greensboro, North Carolina)** and **Harold B. Stancil, Jr. (Registered Representative, Greensboro, North Carolina)**. Key submitted an Offer of Settlement pursuant to which he was fined \$25,641.66. Stancil, in a separate decision, was fined \$16,412.35. Without admitting or denying the allegations, Key consented to the described sanction and to the entry of findings that Key and Stancil solicited for compensation investors who purchased notes, outside the scope of their employment with their member firms, without giving previous written notice to or receiving previous written permission from the firms.

**Keith B. Kiger (Registered Representative, Winston-Salem, North Carolina)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Kiger consented to the described sanctions and to the entry of findings that he engaged in six private securities transactions, outside the scope of his regular employment, without giving previous written notice to or receiving previous written approval from his member firm.

**Daniel M. McKeown (Registered Representative, Marietta, Georgia)** was fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$1,517.50 in commissions to the NASD. The sanctions were based on findings that McKeown effected or caused to be effected 10 transactions in the securities account of a public customer without the customer's knowledge or consent.

**Michael C. Sigmon (Registered Representative, Stone Mountain, Georgia)** 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, Sigmon consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request for information.

**Harold B. Stancil, Jr. (Registered Representative, Greensboro, North Carolina)** was fined \$16,412.35. The sanctions were based on findings that Stancil, outside the scope of his regular employment with a member firm, solicited investors who purchased \$138,424 in promissory notes for compensation, without giving previous written notice to, or receiving previous written permission from his member firm.

**William Truesdale, Jr. (Registered Representative, Altamonte Springs, Florida)** was fined \$40,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$118.35 to the NASD. The sanctions were based on findings that Truesdale effected or caused to be effected three transactions in the securities account of a public customer without the customer's knowledge or consent. In addition, Truesdale failed to respond to an NASD request for information.

**Julie S. Westberry (Registered Representative, Plantation, Florida)** was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Westberry caused \$6,991.80 to be withdrawn from the mutual fund account of a public customer, and used the funds to pay a life insurance premium of another public customer who was also an acquaintance of Westberry.

**Jack Ronald Wolff (Registered Principal, Blowing Rock, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 90 days and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Wolff consented to the described sanctions and to the entry of findings that his member firm effected transactions in nonexempt securities while the firm had insufficient net capital to comply with its required minimum under SEC Rule 15c3-1.

## December Actions

**Richard Alan Kess (Registered Principal, Seminole, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam as a general securities representative and as a general securities principal. Without admitting or denying the allegations, Kess consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the scope of his regular association with his member firm without giving prior written notice to and receiving written approval from his member firm. The NASD also found that Kess sent two letters to public customers that were not approved by his member firm and in one of the letters he represented that the customer would receive an annualized return of over 200 percent on an investment that they have not received. Kess' suspension began November 20, 1995, and concluded December 4, 1995.

**Donald C. Shedd (Registered Representative, Lakeland, Florida)** was fined \$10,000, ordered to disgorge \$1,600 in commissions, and required to requalify by exam as a general securities representative. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Shedd engaged in private securities transactions outside the regular course or scope of his association with his member firm and failed to give prior written notice to or receive prior written notice from the member firm.

## January Actions

None

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

## November Actions

**Daryl W. Barth (Registered Representative, Middleton, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$70,000, barred from association with any NASD member in any capacity, and required to pay \$9,130.75 in restitution to a member firm. Without admitting or denying the allegations, Barth consented to the described sanctions and to the entry of findings that he obtained from a public customer a check for \$52,300.73 with instructions to use the funds to purchase an annuity with a member firm. The NASD determined that Barth failed to follow the customer's instructions in that he used \$43,169.98 to purchase shares of a mutual fund and used \$9,130.75 for something other than the customer's benefit. The findings also stated that Barth failed to respond to NASD requests for information.

**Bradley J. Bennett (Registered Representative, Portage, Wisconsin)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bennett failed to respond to NASD requests for information about the circumstances surrounding a customer complaint received by the NASD.

**Steven E. Boyer (Registered Representative, Lewistown, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Boyer consented to the described sanctions and to the entry of findings that he obtained funds by misrepresentation in that he submitted to his member firm for reimbursement copies of checks that he had written but which he had not actually transmitted to the payees appearing on the checks. Boyer also failed to respond to NASD requests to

provide copies of certain specified bank account statements.

**James E. Coath (Registered Representative, Buffalo Grove, Illinois)** 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, Coath consented to the described sanctions and to the entry of findings that he recommended and effected, or caused to be effected, the purchase and sales of securities for the account of a public customer without having a reasonable basis to believe that such recommendations were suitable for the public customer based on the customer's investment objectives, financial situation, and needs.

**Ronald W. Gibbs (Registered Representative, Chicago, Illinois)** was fined \$50,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an October 1994 NBCC decision. The sanctions were based on findings that Gibbs participated in 37 private securities transactions while failing to give his member firm previous written notice of his intention to engage in such activities.

**Peter M. Hamder (Registered Representative, Sharpville, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$26,500 in restitution. Without admitting or denying the allegations, Hamder consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$26,500 to purchase securities and insurance products. The NASD determined that Hamder did not use the funds for their intended purpose. In addition, the NASD found that Hamder failed to respond to NASD requests for information.

**Hubert A. Hamm (Registered Representative, Oakfield, 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, Hamm consented to the described sanction and to the entry of findings that he obtained from public customers checks totaling \$5,301 to be applied to the customers' variable life insurance policies. The NASD found that Hamm failed to apply \$3,301 of the funds as requested and used them for some purpose other than for the customers' benefit.

**Michael B. Harty (Registered Representative, Menomonee Falls, Wisconsin)** submitted an Offer of Settlement pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$158,276.94 to public customers. Without admitting or denying the allegations, Harty consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing and neglecting to give written notice of his intention to engage in such activity to his member firm and to receive the firm's approval before engaging in such activity. The findings also stated that Harty failed to respond to NASD requests for information.

**Angus M. Kirchner, Jr. (Registered Representative, St. Clair Shores, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Kirchner consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to six public customers and received \$11,100 in compensation, without giving previous written notice to or receiving previous approval from his member firm.

**Joseph Michael Krygowski (Registered Representative, Pittsboro, Indiana)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Krygowski consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Raymond F. Lenardson (Registered Representative, Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any

NASD member in any capacity for 60 days, and required to requalify by exam before acting in a registered capacity. Without admitting or denying the allegations, Lenardson consented to the described sanctions and to the entry of findings that he failed to obtain a public customer's authorization before signing her name on an IRA rollover form.

**H. J. Meyers & Co., Inc. f.k.a. Thomas James Associates, Inc. (Rochester, New York), Jon M. Covington (Registered Representative, Chicago, Illinois), John W. Deisch (Registered Representative, Jersey City, New Jersey), Kraig Kuchukian (Registered Representative, Vernon Hills, Illinois), and Stephen N. Cella (Registered Principal, Chicago, Illinois)** submitted Offers of Settlement pursuant to which the firm was fined \$25,000 and required to comply with undertakings. Covington and Kuchukian were each fined \$5,000 and suspended from association with any NASD member in any capacity for five business days and Deisch was fined \$25,000 and barred from association with any NASD member in any capacity. Cella was fined \$15,000, suspended from association with any NASD member in any capacity for 10 business days, and suspended for an additional 180 days immediately thereafter from associating with any NASD member in any principal capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Covington, Deisch, Kuchukian, and Cella executed unauthorized transactions in the accounts of public customers. The NASD also found that Deisch failed to respond to NASD requests for information. In addition, the findings stated the firm, acting through Cella, failed to establish, maintain, or enforce written supervisory procedures or to otherwise supervise Covington, Deisch, and Kuchukian. The NASD determined that the firm, acting through Cella, failed to update Uniform Applications for Securities Industry Registration (Form U-4s) and failed to file accurate Uniform Termination Notices for Securities Industry Registration (Form U-5s) by failing to reflect on the forms consumer-initiated complaints.

**Peers Jens Nuesken (Registered Representative, Peoria, Illinois)** was fined \$10,000. The sanction was based on findings that Nuesken participated in outside business activities while failing and neglecting to provide prompt written notice to his member firm of such activities. Nuesken also prepared and sent to a public customer a letter regarding an investment without submitting the letter to his member firm for review and approval.

**John G. Pearce (Registered Principal, West Palm Beach, Florida)** was fined \$10,000, and suspended from association with any NASD member in any capacity for 90 days and thereafter until he satisfies an arbitration award. The NBCC imposed the sanctions following appeal of a Cleveland DBCC decision. The sanctions were based on findings that Pearce failed to pay an \$85,000 arbitration award. Pearce has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Jack Peiser (Registered Representative, Chicago, Illinois)** 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 two years, and required to pay \$1,340.38 in restitution to a member firm. Without admitting or denying the allegations, Peiser consented to the described sanctions and to the entry of findings that he failed to reflect accurately customers' intended contributions to their 403(b) plans in that the compensation copy he submitted to his member firm indicated larger contribution than the payroll copy submitted to the customers' employer, thus causing the firm to advance Peiser excessive commission payments of about \$1,340.38.

**Demetric Price (Associated Person, Sauk Village, Illinois)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Price failed to disclose on a Form U-4 that she had been charged with theft. Price also failed to respond to NASD requests for information.

**Dennis D. Roettger, Sr. (Registered Representative, Commerce Township, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay restitution. Roettger consented to the described sanctions and

to the entry of findings that he participated in the offer and sale of securities to five public customers and received \$15,780 in compensation, without giving previous written notice to and receiving previous approval from his member firm.

**Roberto R. Santos (Registered Representative, Dearborn, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Santos consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to six public customers and received \$2,240 in compensation, without giving previous written notice to and receiving previous approval from his member firm.

**Dale A. Simmons (Associated Person, Lansing, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Simmons sat for the Series 6 exam and, contrary to instructions given to him, had certain notes with material relevant to the exam with him in the room that were available for his inspection and review during the course of the exam.

**Pearl J. Sobocinski (Associated Person, Allen Park, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$10,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Sobocinski consented to the described sanctions and to the entry of findings that she participated in the offer and sale of securities to six public customers, and received \$4,360 in compensation, without giving previous written notice to and receiving previous written approval from her member firm.

**Richard Stanley Twardak (Registered Representative, Alsip, Illinois)** was fined \$110,000, barred from association with any NASD member in any capacity, and required to pay \$6,391.33 in restitution to member firms. The sanctions were based on findings that Twardak signed public customers' names to disbursement request forms without the knowledge or consent of the customers, resulting in a total of \$9,242.84 in loans from insurance policies owned by the customers. He applied \$2,848.21 to pay for other policies owned by the customers and then, without the customers' knowledge or consent, signed or caused the customers' names to be signed to checks issued by his member firm, deposited the checks in a bank account that he controlled or in which he had an interest, and retained \$6,585.52 for his own use and benefit. Twardak also failed to respond to NASD requests for information.

**Ralph J. Urban (Registered Representative, Mt. Clemens, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations, Urban consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to 13 public customers and received \$70,264 in compensation, without giving previous written notice to and receiving previous written approval from his member firm.

## December Actions

**Wilfred W. Alejandro (Registered Representative, Springfield, Ohio)** 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, Alejandro consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Lloyd H. Astrup (Registered Representative, Brighton, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$6,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Astrup consented to the described sanctions and to the entry of findings that he participated in a private offer and sale of securities to five public customers and received \$1,000 in compensation, and, in connection with this, failed and neglected to give prior written notice to or receive prior written notice from his firm.



**Ernest L. Beckwith (Registered Representative, Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$10,042 in restitution to a member firm. Without admitting or denying the allegations, Beckwith consented to the described sanctions and to the entry of findings that he deposited a \$14,500 personal check in his securities account to pay for a \$10,042 margin debt, while he had a balance in his checking account of only \$325, causing the \$14,500 check to be returned to the member firm.

**Ive C. Edwards, Jr. (Registered Principal, Southfield, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$85,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Edwards consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers and received \$76,010 in compensation on a private basis and failed and neglected to give prior written notice to and receive prior written authorization from his firm.

**Lawrence Arthur Horbinski (Registered Principal, New Berlin, Wisconsin), Katherine Ann Kalmer (Registered Representative, New Berlin, Wisconsin), and John Edward Kalmer (Registered Representative, New Berlin, Wisconsin)** were fined \$528,000, jointly and severally, and barred from association with any NASD member in any capacity. However, the fine may be reduced by a maximum of \$318,000 by any restitution they make to public customers. The sanctions were based on findings that Horbinski, J. Kalmer, and K. Kalmer engaged in private securities transactions without giving prior written notice to or receiving prior written approval from their member firm. Horbinski, K. Kalmer, and J. Kalmer also failed to respond to NASD requests for information.

**Jay C. Kaufman (Registered Representative, Buffalo Grove, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kaufman consented to the described sanctions and to the entry of findings that he obtained a total of \$9,792.85 in checks from a corporation that maintained 401(k) accounts at his member firm with instructions that the funds were to be promptly deposited into the accounts. Kaufman failed to follow the instructions in that he deposited the funds or caused them to be deposited into the operating account of a corporation in which he was president and had a beneficial interest and used the funds for some purpose other than the benefit of the retirement accounts.

**Michael Eugene Lange (Registered Representative, Gibson City, Illinois)** was fined \$32,000, barred from association with any NASD member in any capacity, and required to pay \$2,000 in restitution to customers. The sanctions were based on findings that Lange obtained from public customers a \$2,000 check to purchase securities, and, instead, without the customers' knowledge or consent, deposited the check into an account that he controlled or had an interest in and converted the funds for his own use and benefit. Lange also failed to respond to NASD requests for information.

**David A. MacLeod (Registered Representative, Ypsilanti, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, MacLeod consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers on a private basis, and in connection with this, failed and neglected to give prior written notice to or receive prior written authorization from his firm.

**Clyde Eugene Maxwell (Registered Representative, Waupun, Wisconsin)** submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$18,638.80 in restitution to a member firm. Without admitting or denying the allegations, Maxwell consented to the described sanctions and to the entry of findings that he obtained from public customers \$18,404 for investment purposes. Instead of using the funds as

instructed by the customers, and without their knowledge or consent, Maxwell retained the funds for his own use and benefit. Maxwell also offered and sold variable life insurance products to 18 public customers and made misrepresentations of material facts or failed to state material facts to the customers in that he told the customers that the variable life insurance required only a single payment when Maxwell knew, or should have known, that the variable life insurance products required continuing payments from the customers to keep the policies in force.

**Joseph Michael Naniewicz (Registered Representative, Shelby Township, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$110,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Naniewicz consented to the described sanctions and to the entry of findings that he caused \$46,215 from a customer's accounts to be used for the purchase of additional mutual fund shares and insurance policies for the customer without the customer's knowledge or consent. In addition, the findings stated that Naniewicz signed the customer's name to insurance policy loan request forms and mutual fund redemption forms and submitted the forms to his member firm without the customer's knowledge or consent.

**Yong Oh (Registered Representative, St. Petersburg, Florida)** was fined \$12,000, barred from association with any NASD member in any capacity, and ordered to pay \$2,000 in restitution to a member firm. The sanctions were based on findings that Oh changed the address for two public customers' account to his home address, requested that a check for \$2,000 be issued from the customers' account, that the check be made out to his wife, and that the check be mailed to Oh at his home address, all without the customers' knowledge or consent. Oh obtained the check, endorsed the check, deposited it or caused it to be deposited in an account in which he had a beneficial interest, and used the funds for some purpose other than the customers' benefit without their knowledge or consent.

**Michael Peter Pucci (Registered Representative, Milwaukee, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Pucci consented to the described sanctions and to the entry of findings that he received from a public customer \$2,590 with instructions to credit the funds towards her children's variable appreciable life insurance policies. The NASD determined that Pucci failed to follow the customer's instructions in that he failed to deposit the cash promptly with his member firm.

**Thomas M. Sexton (Registered Representative, Clarkston, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sexton consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to public customers and received \$4,095 in compensation on a private basis without giving prior written notice to or receiving prior written authorization from his member firm.

**Notricia D. Winborn (Registered Representative, Southfield, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Winborn consented to the described sanctions and to the entry of findings that she participated in the offer and sale of securities to public customers on a private basis, and received \$43,063 in compensation without giving prior written notice to or receiving prior written authorization from her member firm.

**Christine L. Zachos (Registered Representative, Walled Lake, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zachos consented to the described sanctions and to the entry of findings that she participated in the offer and sale of securities to public customers and received \$2,250 in compensation on a private basis without giving prior written notice to or receiving prior written authorization from her member firm.

## January Actions

**Michael Bartow (Registered Representative, Beach Park, Illinois)** was fined \$13,000, barred from association with any NASD member in any capacity, and ordered to pay \$2,600 in restitution to a member firm. The sanctions were based on findings that Bartow received from a public customer \$2,600 with instructions that the funds be deposited in the customer's variable appreciable life insurance policy. Bartow failed to follow said instructions and used the funds for some purpose other than for the customer's benefit. Bartow also failed to respond to NASD requests for information.

**Phillip Bommarito (Registered Representative, Albion, Michigan)** was fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a representative. The sanctions were based on findings that Bommarito participated in the sale of a fixed annuity product and failed to give prompt written notification of his outside business activities to his member firm.

**Melvin Louis Christian (Associated Person, Detroit, Michigan)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Christian participated in the offer and sale of securities on a private basis to public customers and failed to give prior written notice to or obtain prior written authorization from his member firm to engage in such activities. Christian also failed to respond to NASD requests for information.

**Timothy Leroy Colen (Registered Representative, Chicago, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Colen received from a public customer \$17,000 with instructions to use the funds to purchase securities. Colen failed to follow the instructions and used the funds for some purpose other than for the customer's benefit. Colen also failed to respond to NASD requests for information.

**Selwyn Keith Conley (Registered Representative, Detroit, Michigan)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Conley failed to respond to NASD requests for information.

**Minetta Hare (Registered Representative, Detroit, Michigan)** was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$20,600 in restitution to a member firm. The sanctions were based on findings that Hare received from public customers \$20,663.33 in cashier's and redemption checks with instructions to use the funds to purchase various securities and investments. Hare failed to follow the instructions and used the funds for some purpose other than for the customers' benefit. Hare also failed to respond to NASD requests for information.

**Robert L. Johnson (Registered Representative, Chicago, Illinois)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$124.20 in restitution to a member firm. The sanctions were based on findings that Johnson obtained from public customers \$124.20 in cash with instructions to pay the premium on their insurance policies. Johnson failed to follow the instructions and used the funds for some purpose other than for the customers' benefit. Johnson also failed to respond to NASD requests for information.

**Dennis George Laspesa (Registered Representative, Orland Park, Illinois)** was fined \$49,500, barred from association with any NASD member in any capacity, and ordered to pay \$5,863.23 in restitution to a member firm. The sanctions were based on findings that Laspesa received from a public customer checks totaling \$5,863.23 with instructions to use such funds to pay premiums on variable appreciable life policies. Laspesa failed to follow the instructions and used the funds for some purpose other than for the customer's benefit. Laspesa also failed to respond to NASD requests for information.

**Roger Allen Meyer (Registered Representative, Wheaton, Illinois)** was fined \$90,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. The sanctions were based on findings that Meyer participated in private securities trans-

actions and failed to provide prior written notice to or obtain prior written authorization from his member firm to engage in such activities.

**Phillip B. Phair (Registered Representative, Chicago, Illinois)** was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$71,480 in restitution to a member firm. The sanctions were based on findings that Phair obtained from public customers \$71,480 in checks and wire transfers with instructions to use the funds to purchase securities. Phair failed to follow the instructions in that he used the funds for some purpose other than for the customers' benefit.

**Robert W. Snider (Registered Representative, Bayport, Michigan)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Snider participated in the offer and sale of securities on a private basis to a public customer and failed and neglected to give prior written notice to or obtain prior written authorization from his member firm to engage in such activities. Snider also failed to respond to NASD requests for information.

**Joseph Anthony Stailey (Registered Representative, Taylor, Michigan)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stailey failed to respond to NASD requests for information.

**Charles Kenneth VanVliet (Registered Representative, Grand Rapids, Michigan)** was fined \$45,000, barred from association with any NASD member in any capacity, and required to pay \$34,735 plus interest in restitution to public customers. The sanctions were based on findings that VanVliet participated in private securities transactions and failed and neglected to give prior written notice to and obtain prior approval from his member firm to engage in such activities. VanVliet also failed to respond to NASD requests for information.

**John Henry Vecchioni (Associated Person, Bloomfield Hills, Michigan)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Vecchioni engaged in private securities transactions and failed and neglected to give prior written notice of and to obtain prior written approval from his member firm to engage in such activities. Vecchioni also failed to respond to NASD requests for information.

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

### November Actions

**Frederick R. Antonelli (Associated Person, 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 Antonelli arranged to have an imposter take the Series 7 exam for him and failed to respond to NASD requests to appear for an on-the-record investigative interview.

**John J. Becker, Jr. (Registered Representative, Elkton, Maryland)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on a supplemental insurance policy form without informing his member firm and without the knowledge or consent of the customer. Becker also failed to respond to NASD requests for information.

**Paul A. Cetrola (Associated Person, Staten Island, 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, Cetrola consented to the described sanction and to the entry of findings that he arranged to have an imposter take the Series 7 exam for him.

**Roy R. Cook, Jr. (Registered Representative, Allison Park, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined

\$6,300 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Cook consented to the described sanctions and to the entry of findings that he sold securities to members of the public and failed to provide previous written notification to his member firm of such activities.

**Thomas J. Fox (Registered Representative, McLean, Virginia)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without providing previous written notice to his member firm, Fox engaged in the offer and sale of a \$169,800 promissory note outside of the normal scope of his association with his member firm. Fox also failed to respond to NASD requests for information.

**Charles W. Griffin, Jr. (Registered Principal, West Chester, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and required to pay \$84,650 in restitution to customers. Without admitting or denying the allegations, Griffin consented to the described sanctions and to the entry of findings that he sold securities to investors and failed to give his member firm previous written notice describing the proposed transactions and his proposed role therein.

**Mark T. Johnson (Registered Principal, Baltimore, Maryland)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson failed to respond to NASD requests for information regarding customer complaints.

**Ricardo Johnson (Registered Representative, Eagleville, Pennsylvania)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson received from a public customer three checks totaling \$6,250 payable to his member firm to purchase an investment through the firm. Johnson added himself as payee, negotiated the checks, and retained the proceeds. Johnson also failed to respond to NASD requests for information.

**Jeffrey E. Kerstetter (Registered Representative, Vincentown, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kerstetter consented to the described sanctions and to the entry of findings that he signed customers' names at several places on applications for variable life insurance and related forms, as if such signatures were genuine, and he submitted the applications, forms, and funds to his member firm without disclosing to the firm that he, not the customer, had supplied the funds for the premium payment submitted with the respective application, and without disclosing that he had placed the purported signatures of the customers on the applications and related forms.

The NASD found that, in connection with three of the applications submitted by Kerstetter, after the insurance policy did not go into effect, his member firm issued checks payable to the respective customers refunding the initial premium submitted with the application. The NASD determined that Kerstetter obtained possession of each check and, without the customers' knowledge or consent, signed the respective customer's name on the back of each check, endorsed the checks himself, and negotiated the checks.

**Alex Krutyansky (Registered Representative, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Krutyansky arranged to have an imposter take the Series 7 qualification exam on his behalf and failed to respond to NASD requests for information.

**John Moschello (Associated Person, Staten Island, 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, Moschello consented to the described sanction and to the entry of findings that he arranged to have an imposter take the Series 7 qualification exam for him.

**Howard B. Nicklas (Registered Representative, Baltimore, Maryland)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nicklas prepared and submitted to a public customer an account statement that misrepresented the account's value and securities position. In addition, Nicklas failed to respond to NASD requests for information.

**Ernest R. Turbessi (Registered Representative, Jessup, Pennsylvania)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Turbessi falsified or caused to be falsified the purported endorsements of two policy holders on five checks totaling \$2,242.69 that had been issued by a member firm. Turbessi falsified the signature of a public customer on a disbursement request form requesting a policy loan that he submitted to his member firm. Turbessi also failed to respond to NASD requests for information.

### December Actions

**Jeffrey M. O'Rourke (Registered Representative, Pittsburgh, Pennsylvania)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that O'Rourke failed to respond to NASD requests for information about his termination from a member firm.

### January Actions

**The Chapman Co. (Baltimore, Maryland) and Nathan A. Chapman, Jr. (Registered Principal, Baltimore, Maryland)** submitted an Offer of Settlement pursuant to which they were fined \$30,000, jointly and severally. In addition, Chapman was suspended from association with any NASD member as a financial and operations principal for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chapman, effected transactions in non-exempt securities while failing to maintain its required minimum net capital. The findings also stated that the firm, acting through Chapman, prepared inaccurate computations of net capital and/or aggregate indebtedness and filed inaccurate FOCUS Part I reports. The NASD also found that the firm, acting through Chapman, failed to give timely notice of its net capital deficiencies.

**Cambodochine Dao (Registered Representative, Gaithersburg, Maryland)** submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dao consented to the described sanctions and to the entry of findings that he forged, or caused to be forged, a public customer's signature on two checks totaling \$2,002.42, negotiated the checks, and converted the proceeds for his personal use and benefit. The NASD also found that Dao failed to respond to NASD requests for information.

**Richard I. Kessler (Registered Representative, Staten Island, New York)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kessler consented to the described sanctions and to the entry of findings that, twice, he falsely claimed that he was the individual scheduled to take a Series 7 exam, presented identification bearing the individual's name, and took the exam for the individual.

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

### November Actions

**Thomas Anthony Cartolano (Registered Representative, Plainview, New York)** was fined \$10,000, ordered to pay \$8,073 in restitution to his member firm, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cartolano received from public customers

\$8,073 as premium payments, failed to deposit the funds into the customers' accounts and, instead, converted the funds for his own use and benefit. In addition, Cartolano failed to respond to NASD requests for information.

**Bryan L. Cohen (Registered Representative, Chappaqua, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to his member firm or a public customer. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he forged a public customer's signature on four personal checks totaling \$33,500 without the customer's knowledge or consent and converted the funds for his own use and benefit. The NASD also found that Cohen issued a personal loan guarantee to a public customer on his member firm's letterhead, without the firm's knowledge, consent, or approval. The findings stated that Cohen secured a loan policy for \$3,071.27 from a public customer's life insurance policy, forged the customer's signature on the check, and retained the funds for his own use and benefit without the customer's knowledge.

**Coleman & Company Securities, Inc. (New York, New York), Leo H. Boruchoff (Registered Principal, Riverdale, New York), and Robert DiMuro (Registered Principal, Rockaway, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$40,000, jointly and severally. Boruchoff was also suspended from association with any NASD member in any capacity for three business days and DiMuro was required to requalify by examination as a financial and operations 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 Boruchoff and DiMuro, in Regulation D offerings, did not transmit customer monies to an unaffiliated bank to hold in escrow for the investors, nor did it act as agent or trustee for a separate bank account. The findings stated that the firm, acting through Boruchoff and DiMuro, disbursed customer funds before the occurrence of the contingency as stated in the subscription agreements and invested customer funds in an investment in contravention of Securities and Exchange Commission (SEC) Rule 15c2-4.

The NASD also found that the firm, acting through Boruchoff and DiMuro, failed to refund promptly investor funds when the represented dollar amount had not been subscribed for or the number of securities were not sold at the price and within the time specified as disclosed in the respective subscription agreements. In addition, the NASD found that the firm, acting through Boruchoff, failed to establish, maintain, and enforce written supervisory procedures.

**Kenneth Patrick DiLeo (Registered Representative, Lakewood, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiLeo consented to the described sanctions and to the entry of findings that, without the consent or knowledge of the sales manager of his member firm, he signed the manager's initials on a trade cancellation. The NASD also found that DiLeo opened four customer accounts and effected transactions therein without the knowledge or authorization of public customers, and falsified information on his member firm's customer new account applications.

**Patrick A. Drollinger (Registered Representative, Bayside, New York)** was fined \$45,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Drollinger fabricated or caused to be fabricated fictitious monthly account statements and confirmations evidencing trades different than those actually executed in a public customer's account. Drollinger also mailed or caused to be mailed to the customer false account statements and false confirmations purporting to evidence the purchase of bonds in the customer's accounts. In addition, Drollinger failed to appear at the NASD for an on-the-record interview.

**Richard J. Eininger (Registered Representative, New York, New York)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Eininger issued

checks payable to himself and/or to cash totaling \$202,500 from the account of an affiliated company of his member firm, that he negotiated for his own use and benefit, without the firm's knowledge or approval. In addition, Eininger cashed a \$2,000 personal check at his member firm that was dishonored at his bank for insufficient funds. Eininger also failed to respond to an NASD request for information.

**Arthur N. Frischman (Registered Representative, North Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$46,643.72 in restitution to his member firm. Without admitting or denying the allegations, Frischman consented to the described sanctions and to the entry of findings that he secured unauthorized policy loans from the insurance policies of public customers and forged their signatures on the loan disbursement checks. The NASD found that Frischman then converted the customers' funds totaling \$46,643.72 for his own use and personal benefit.

**Jay A. Klein (Registered Representative, Laurence Harbor, New Jersey)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Klein misappropriated customer funds totaling \$4,617 received as insurance premiums and, instead, used the funds for his own personal use and benefit. In addition, Klein failed to respond to NASD requests for information.

**Donna K. Kmeta (Registered Representative, Dumont, New Jersey)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kmeta misappropriated and converted two \$10,000 checks received from public customers. In addition, Kmeta failed to appear for an NASD on-the-record interview and to respond to NASD requests for information.

**Mark Igor Krivoi (Registered Representative, Brooklyn, New York)** was fined \$71,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Krivoi received from a public customer checks totaling \$18,152.55 to open an Individual Retirement Account (IRA) account and purchase two annuity policies. Krivoi did not comply with the customer's instructions and caused the checks to be deposited in an unidentifiable account known only to him. In addition, Krivoi failed to appear at the NASD for on-the-record interviews concerning the customer complaints.

**Joseph Lombardo (Registered Representative, Staten Island, New York)** was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$18,132 in restitution to his member firm. The sanctions were based on findings that Lombardo requested and received from his member firm two checks totaling \$11,239 made payable to a public customer, forged or caused the customer's name to be forged on the checks, and converted the funds to his personal use, without the customer's previous knowledge or authorization. In addition, Lombardo failed to respond to NASD requests for information about his termination from a member firm.

**Frederick M. Moran (Registered Representative, Bayshore, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moran consented to the described sanctions and to the entry of findings that he was the manager of a portfolio that was identified as having an improper adjustment of a \$15 million position in U.S. Treasury strips. The findings stated that the firm showed that Moran put the proper valuation on the position, but submitted an accounting adjustment that modified the value of the position. In addition, Moran failed to respond to an NASD request for information.

**John A. Schmitz (Registered Representative, Huntington Station, New York)** was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$20,739.72 in restitution. The sanctions were based on findings that Schmitz recommended an investment to a public customer without having a reasonable basis to believe that the investment was neither consistent with the customer's investment objectives nor suitable for her based on her financial need. In addition, Schmitz misappropriated \$20,739.72 received

from a public customer intended for investment purposes by depositing the funds in an account belonging to his wife. Schmitz also participated in a private securities transaction without providing previous written notice to his member firm and without receiving previous written approval of his participation in the transactions.

**Mikhail Shoyket (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 Shoyket had someone else take the Series 7 exam on his behalf. In addition, Shoyket failed to respond to NASD requests for information.

**David Sumner (Registered Representative, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sumner consented to the described sanctions and to the entry of findings that he submitted eight fraudulent annuity applications for non-existent persons to his member to receive commission advances.

## December Actions

**Alberto Larraz (Registered Representative, Port Chester, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Larraz consented to the described sanctions and to the entry of findings that he attempted to criminally possess a forged instrument and, knowing the same to be forged and with the intent to defraud, deceive, and injure another, attempted to possess and utter a forged instrument.

**Jeffrey R. Wood (Registered Representative, East Windsor, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$87,000, barred from association with any NASD member in any capacity, and ordered to pay \$31,900 in restitution to six public customers. Without admitting or denying the allegations, Wood consented to the described sanctions and to the entry of findings that he caused 20 buy and sell transactions to be effected for the accounts of public customers without their prior knowledge or authorization. The NASD also found that Wood solicited public customers and conducted a securities business with these customers, without being registered to act in such a capacity.

## January Actions

None

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

## November Actions

**Richard R. Brooks (Registered Representative, Taunton, Massachusetts)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brooks withheld and misappropriated for his own use and benefit insurance customer funds totaling \$6,340.07, without the customer's knowledge or consent. In addition, Brooks failed to respond to NASD requests for information.

**Raymond M. Brown (Registered Representative, Manlius, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown failed to respond to NASD requests for information about his termination from a member firm.

**Charles Davis (Registered Representative, Jamaica Plain, Massachusetts)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis, without the knowledge or consent of his member firm or public customers, misappropriated customer funds totaling \$49,630.10. The funds were monies he received from investors to pay insurance premiums and purchase two

mutual funds. In addition, Davis failed to respond to NASD requests for information.

**Richard F. Marney (Registered Representative, Boca Raton, Florida)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Marney failed to respond to NASD requests for information about his termination from a member firm.

**Andrew Pedone (Registered Representative, Boonville, New York)** was fined \$1,000 and suspended from association with any NASD member in any capacity for two years. The NBCC imposed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that Pedone used a false name on an insurance policy to reinstate a customer's policy that had been canceled by his member firm due to nonpayment of premiums. Mr. Pedone's suspension began August 14, 1992, and concluded August 14, 1994.

**Dennis M. Smaka (Registered Representative, Oriskany, New York)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smaka, without the knowledge or consent of a public customer or his member firm, withheld and misappropriated \$16,000 in funds that he fraudulently withdrew from the customer's fixed annuities. In addition, Smaka failed to respond to NASD requests for information.

#### December Actions

**Carl P. Nykaza (Registered Representative, Trumbull, Connecticut)** was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$95,000 plus interest in restitution to a public customer. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Nykaza withheld and misappropriated \$155,000, which he received from a public customer for a securities investment, without the knowledge or consent of the public customer or his member firm.

#### January Actions

**Joseph D. Caieiro (Registered Representative, Somerville, Massachusetts)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without the knowledge or consent of policyholders, Caieiro withheld and misappropriated for his own use and benefit insurance dividend checks totaling \$3,400. Caieiro also failed to respond to NASD requests for information.

**Kieron D. Cole (Registered Representative, Cambridge, Massachusetts)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cole submitted fictitious loan requests on traditional life insurance policies for two policyholders wherein he obtained the checks, forged the policyholders' signatures, and converted the proceeds totaling \$7,500 for his own use and benefit. Cole also failed to respond to NASD requests for information.

**Henry D. Deshaies (Registered Representative, Massena, New York)** 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, Deshaies consented to the described sanctions and to the entry of findings that he forged disbursement forms and converted customer funds totaling \$1,969.95 for his own use and benefit.

**Trevor A. Garrick (Registered Representative, Dorchester, 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, Garrick consented to the described sanctions and to the entry of findings that he signed a public customer's name to a \$1,929.01 check made payable to the customer and converted the funds for his own use and benefit.

**Robert D. Gersh (Registered Representative, Burlington, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gersh consented to the described

sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Wolcott Kenyon (Registered Representative, Bridgewater, Connecticut)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Kenyon consented to the described sanctions and to the entry of findings that he failed to respond to formal written requests for information.

**Byung Ki Kim (Registered Representative, Scarsdale, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and ordered to requalify as a general securities representative. Without admitting or denying the allegations, Kim consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his relationship with his member firm, without providing prompt written notice to the firm.

**John C. McNeil, II (Registered Representative, Skaneateles, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McNeil consented to the described sanctions and to the entry of findings that he forged the signatures of public customers to refund checks totaling \$250 and converted the proceeds for his own use and benefit.

Market Surveillance Committee

#### November Actions

**Richard Allen Anders (Registered Representative, Austin, Texas), Anthony James Miranti (Registered Principal, San Diego, California), Jimmy William Villalobos (Registered Principal, La Mesa, California), and Kenneth Lee Moreland (Registered Representative, Austin, Texas).** Anders was fined \$330,000 and barred from association with any NASD member in any capacity. Miranti and Villalobos were each fined \$20,000 and suspended from association with any NASD member as general securities principals until they requalify as general securities principals, but in no event will the suspensions be less than 20 business days. Moreland was fined \$1,000, suspended from association with any NASD member for five business days or until he requalifies as general securities representative, and ordered to disgorge \$7,467.50 to a public customer. Anders engaged in an unregistered distribution of securities in its initial public offering and immediate aftermarket and employed manipulative and deceptive devices in the trading of securities. Anders also engaged in unlawful sales practices in connection with the purchase or sale of the stock by public customers. In addition, Anders failed to notify his member firm of a private securities transaction involving his purchase of 4,000 shares of stock from a public customer that he paid for with a check drawn on the account of a company he controlled.

Anders also failed to respond to NASD requests for information and Moreland received compensation from Anders in connection with his sale of shares of a security to a public customer that was outside the scope of his relationship with his member firm and without providing written notice to the firm that he received the monies. Miranti and Villalobos failed to establish, implement, and enforce supervisory procedures reasonably designed to assure compliance with the NASD rules and policies and the federal securities laws.

**Lehman Brothers, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to honor the quotations it caused to be disseminated through the Nasdaq system.

**South Richmond Securities, Inc. (New York, New York), Herman R. Garcia, Jr. (Registered Principal, Staten Island, New York), and Barbara Hosman (Registered Principal, Deer Park, New York)** submitted Offers of Settlement pursuant to which they were fined \$1.05 million, jointly and severally. In addition, the firm's registration was revoked and Garcia and Hosman were

barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Garcia, dominated and controlled the market for securities in which it was a market maker, and charged its customer markups ranging from five to 36.36 percent over the prevailing market price.

The NASD found that the firm and Garcia knew, had reason to know, or acted in reckless disregard of the fact that the prices the firm charged its customers for the securities were not fair and were not reasonably related to the prevailing market price and failed to disclose to customers that the prices at which the firm sold the securities were not fair and were not reasonably related to the prevailing market price. In addition, the findings stated that the firm, Hosman, and Garcia failed to implement, maintain, and enforce an effective supervisory system that would have enabled the firm to achieve compliance with the federal securities laws and the NASD Rules and Policies for markups.

#### December Actions

**Alex Folgen (Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Folgen consented to the described sanctions and to the entry of findings that he solicited sales of common stock to public customers that included improper price predictions, misrepresentations and omissions of material fact about the stock. The findings also stated that Folgen knew, or should have known, that the stock was not suitable for at least one customer who purchased shares based on his recommendation. The NASD also found that Folgen failed to respond to NASD requests to appear and provide testimony in connection with the NASD's investigation of the stock's market activity.

**Anthony G. Keshish (Registered Representative, Deer Park, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Keshish consented to the described sanction and to the entry of findings that he caused customer orders to purchase a common stock and warrants to be received and processed by his member firm at prices that were not fair.

**M. Rimson & Co., Inc. (New York, New York) and Moshe Rimson (Registered Principal, New York, New York).** The firm was fined \$10,000 and Rimson was fined \$5,000 and suspended from association with any NASD member as a general securities principal for 10 business days. The sanctions were based on findings the firm rendered knowing and substantial assistance in the unregistered distribution of shares of a common stock. The firm and Rimson also failed to establish and maintain written supervisory procedures to prevent or detect the violation.

#### January Actions

None

# NASD Regulatory & Compliance Alert Information

## Regarding Any Items in This Publication

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

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# NASD Member Compliance Support System

## Training Analysis and Planning Tool Release 2.0 For Continuing Education!

Release 2.0 of the NASD's Training Analysis and Planning Tool is available to members at a cost of **\$225 per copy**. The Tool is designed to help members comply with the January 1, 1996 Continuing Education Firm Element requirement to implement written Training Plans. The Training Analysis and Planning Tool is the first in a series of software aids that the NASD® will release as part of its Member Compliance Support System. Each of the software tools will be designed to help members **access, understand, and comply** with important NASD rules, regulations, and information.

**Now Available!**

Release 2.0 builds significantly on the functionality and capabilities of Release 1.0, and includes:

- Full and easy file conversion for plans created under Release 1.0.
- On-line database of vendors and training courses. You may add other vendors' courses or add your own internal courses.
- The ability to match individual training needs to the index of courses, based on training needs and your firm's issues.
- The ability to schedule and track the individual training plans you prepare.
- The ability to keep and track important dates, such as hire, termination, and initial registration and base registration.
- Greater plan management. You can now classify covered persons by groups, even create plans for non-covered persons.
- Increased on-line and print-report capabilities, including exception reporting.

**Release 2.0 requires this basic hardware:**

- a 486 IBM-compatible platform, although the system will operate on a 386 machine;
- a minimum of 4MB of RAM, preferably eight;
- a 3 1/2 or 5 1/4 inch floppy disk drive;
- Windows 3.1 or higher operating system, but not including Windows 95; and
- a standard 16-color display running in 640x480 resolution mode or higher.

**NASD**

National Association of Securities Dealers, Inc.

**Yes!** Please send me \_\_\_ copies of the Training Analysis and Planning Tool Release 2.0, at \$225 per copy. **Diskette size:** \_\_\_ 3 1/2" \_\_\_ 5 1/4"

Check made payable to the National Association of Securities Dealers, Inc.

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