

ALERT



NASD Regulation Board Approves New Organizational Structure

NASD Regulation, Inc., President Mary Schapiro recently announced that the NASD Regulation Board unanimously approved an organizational structure for NASD Regulation to regulate the more than 5,400 firms in the industry today as well as The Nasdaq Stock MarketSM (Nasdaq[®]), and to enforce the rules and regulations governing both. These changes represent the most fundamental restructuring of the industry's largest self-regulatory operation since the National Association of Securities Dealers, Inc. (NASD[®]) was founded more than 50 years ago.

The organizational structure also follows the strategic direction of the NASD Select Committee on Structure and Governance

(the Select Committee), headed by former U.S. Senator Warren Rudman of New Hampshire, and addresses many of the key recommendations of the Committee's landmark Report (see box on page 3).

The new organizational structure consists of the following departments and offices.

Elisse Walter, former General Counsel of the Commodity Futures Trading Commission and Deputy Director of the Securities and Exchange Commission's (SEC) Division of Corporation Finance, will serve as Chief Operating Officer for NASD Regulation and Executive Vice President for Legal and Regulatory Policy.

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Nasdaq's New President Named, Extensive Experience In Technology And Knowledge Of Financial Markets

In June, Alfred R. Berkeley, III, became President of The Nasdaq Stock Market, Inc. (Nasdaq). The appointment of Berkeley, who was Managing Director and Senior Banker of the Corporate Finance Department of Alex. Brown & Sons Incorporated in Baltimore, Maryland, was confirmed on May 9 by the 15-member Nasdaq Board of Directors.

"Al Berkeley was the unanimous choice of the search team and our Board," said

Richard M. DeMartini, Chairman of the Nasdaq Board of Directors, and President and Chief Operating Officer of Dean Witter Capital. "Our key constituents—investors, Nasdaq-listed companies, and member firms—will benefit by having someone at the helm of Nasdaq who truly understands the needs of marketplace participants and the vital role Nasdaq plays as an economic force in facilitating job creation and capital formation."

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She will have direct responsibility for General Counsel, Disclosure and Investor Protection, and Technology Services, as well as indirect responsibility for the remaining NASD Regulation departments and offices.

Member Regulation Department—headed by Executive Vice President John Pinto, Member Regulation will continue to perform broad-based cause and routine examinations of member firms. Member Regulation will also take over qualifications testing and the rapidly expanding areas of preventive compliance and continuing education. The department will house the Office of District Office Oversight and Coordination, headed by newly appointed Vice President Daniel M. Sibears, and focus heavily on the critically important District oversight function, ensure that

national standards are being followed by all District Offices, and that customer complaints and examinations are current.

Enforcement Department—will act under the policy and case management direction of Barry Goldsmith who, as SEC Chief Litigation Counsel, prosecuted many of the SEC's most significant cases, including Michael Milken, Drexel Burnham Lambert, Victor Posner, Mark Belzberg and First City Financial Corp., and Paul Bilzerian. The decision to separate regulation and enforcement recognizes that the complexity and size of the NASD disciplinary process requires a dedicated, distinct enforcement operation. The existing enforcement team of attorneys and examiners who have served very successfully as a strike force on complex and multi-District cases will be part of the larger department.

Market Regulation Department—which is headed by Senior Vice President James Cangiano, will continue to perform surveillance of Nasdaq market trading. It also will provide a liaison function with Nasdaq, which, like NASD Regulation, is today an independent subsidiary of the NASD.

Office Of Dispute Resolution—will consist of the former Arbitration Department and a new Office of Hearing Officers, which was a key recommendation of the Select Committee. The hearing officers will oversee the disciplinary hearing process, which includes administering the disciplinary pre-hearing and motion process and overseeing discovery and the procedural aspects of disciplinary proceedings.

Linda D. Fienberg, a former partner in the law firm of Covington & Burling in

Washington, recently joined NASD Regulation as Executive Vice President in charge of the Office of Dispute Resolution. Fienberg will also serve as Chief Hearing Officer.

Technology Services Office—headed by Senior Vice President Wendell Jones, will consolidate the considerable technology activity today in NASD Regulation and will ensure appropriate application of technology to regulation and surveillance activities.

Disclosure And Investor Protection Office—headed by newly appointed Senior Vice President Clark Hooper, will be responsible for the myriad ways the NASD and its member firms intersect with the investing public, including the Central Registration Depository (CRDSM) and its public disclosure program. This office will work closely with Technology Services on the CRD redesign project. The existing Corporate Financing and Advertising/Investment Companies Regulation Departments, which each have strong investor-driven disclosure components to their regulatory responsibilities, also will be included in this office. Efforts already underway to coordinate NASD's Internet-related activities will continue to be managed from this office, including surveillance of advertising on the Internet, creating an NASD Regulation Web site, and exploring alternatives for making CRD available to investors and other regulators online.

General Counsel Office—headed by Vice President Alden Adkins, the newly appointed General Counsel, will consolidate rulemaking and legal interpretation functions of NASD Regulation, as well

(New President from page 1)

More than 130 executives were identified as potential candidates by the search firm employed by the Nasdaq Board.

as the appellate disciplinary program.

Disciplinary Policy Office—headed by Vice President Steve Luparello, who served Mary Schapiro as Chief of Staff when she chaired the CFTC and as Counsel when she was an SEC Commissioner. His office will be responsible for case review and serve as NASD Regulation's liaison with the District committees on disciplinary policy. The office will also serve as liaison to coordinate and oversee the development and implementation of a national regulatory plan.

In addition to approving the structure of the New Corporation, the NASD Regulation Board also approved an

This produced a pool of 14 candidates that, after extensive review, was narrowed to five finalists, each of whom

increase of 131 new positions, including 78 new positions for the examination program within Member Regulation. According to Schapiro, these additional resources are crucial to our ability to carry out the primary regulatory mandate assigned the NASD by Congress. Schapiro said, "The Board and I believe that this new structure puts to work for investors and for member firms, a unique combination of organizational focus, enhanced resources, and a heightened commitment to effective regulation and strong enforcement." □

was interviewed in depth by the search committee of the Board.

NASD Amends By-Laws To Correlate With Restructuring

In late-June, via the ballot enclosed with *Special Notice to Members 96-35*, members approved amendments to the NASD By-Laws to make them consistent with the "Plan of Allocation and Delegation of functions by NASD to Subsidiaries" (Delegation Plan, see related box). The amendments permit the NASD to continue the restructuring necessary to implement the principles articulated in the Select Committee's report.

In January 1996, the NASD Board created the new NASD Regulation subsidiary to provide regulation and member and constituent services, with the NASD retaining general oversight responsibility for the effectiveness of the self-regulatory and business operations of the NASD and its subsidiaries and final policymaking authority. In mid-December 1995, via the ballot in *Notice to Members 95-101*, members approved By-Law changes to implement the Select Committee proposals to restructure and reduce the size of the NASD Board to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards. The SEC granted a temporary approval of the proposed restructuring and a new NASD rule that allows NASD Regulation and Nasdaq to act on behalf of the NASD as stated in the Delegation Plan. □

"Al Berkeley brings a rare combination of technology, corporate, and investment banking experience to the leadership of the world's fastest growing major stock market," said Joseph R. Hardiman, President and Chief Executive Officer of Nasdaq's parent, the NASD®. "His qualifications and experience will serve all market participants well as he carries out his responsibilities to see that Nasdaq anticipates and meets the challenges presented by the continuing evolution of electronic commerce; that Nasdaq's technology continues to be state-of-the-art and sufficient to handle its increasing volume; and that Nasdaq continues to be the market of choice for the world's leading growth companies."

In the 1970s, Berkeley, while at Alex. Brown, was one of the first securities analysts in the nation to recognize the importance of the emerging software industry. His research on this industry won him a coveted Institutional Investor All-American award.

"Nasdaq's growth will continue as the market employs new technology," said Berkeley, a charter member of an industry advisory group formed in 1991 to advise Nasdaq on technology issues. "Harnessing emerging technologies will make markets even more accessible to a broad range of investors, help innovative companies raise the money they need, and ensure a fair market for all participants."

Berkeley's appointment is part of an ongoing reorganization of the NASD as it implements the recommendations of an NASD-created Select Committee on Structure and Governance chaired by former U.S. Senator Warren Rudman of New Hampshire. The recommendations, adopted by the NASD Board of Governors last fall, called for separating the operation of the Nasdaq market from the NASD's regulatory functions. As a result, Nasdaq will be an operating sub-

subsidiary of the NASD, as will the newly created subsidiary NASD Regulation, Inc., headed by Mary L. Schapiro, former Chairman of the Commodity Futures Trading Commission (CFTC) and former Commissioner and Acting Chairman of the SEC.

"I can't think of better leaders to take the NASD into the next century than Mary Schapiro, Al Berkeley, and Rick Ketchum, Executive Vice President and Chief Operating Officer of the NASD parent. With these key positions now in very capable hands, coupled with the sweeping changes we have made at the NASD over the last six months, this is an appropriate time for succession planning for my position to begin," said Hardiman. "Since the maximum 10-year commitment I publicly made to the NASD will draw to a close in 1997, I intend to ask the NASD Board to begin that process this summer."

"Al Berkeley's appointment represents an important milestone in implementing the Rudman Committee recommendations for the NASD and The Nasdaq Stock Market," said Michael W. Brown, Microsoft's Chief Financial Officer and a member of the Nasdaq Board of Directors. "His strong technology background will be a real asset for Nasdaq operations."

Another Nasdaq Board member, James F. Rothenberg, President and Director of Capital Research and Management Company, said "Al Berkeley's superb understanding and knowledge of technology will be invaluable to Nasdaq and to all it serves as it continues on its evolutionary path into the next century."

"Al Berkeley is good for Nasdaq because he is a strategic and visionary thinker with leadership qualities that will further strengthen investor confidence in the efficiency and integrity of The Nasdaq Stock Market," said Edward L. Goldberg, also a member of

the Nasdaq Board and Executive Vice President, Operations, Systems, and Telecommunications at Merrill Lynch & Co. "In addition, he will play a vital role in attracting dynamic, high-growth companies to Nasdaq, companies that are the hallmark of this market."

For the last five years, Berkeley has been Managing Director and Senior Banker in the Corporate Finance Department of Alex. Brown & Sons, where his primary expertise involved large computer software and electronic commerce companies.

From January 1989 to July 1991, Berkeley took a leave of absence from Alex. Brown and joined Safeguard Scientifics where he served on its Executive Committee and as Chairman of a number of its subsidiaries including Rabbit Software and Micro Decision Ware. He also served on the boards of Compucom and Tangram Systems.

As a Managing Director in Alex. Brown's merger and acquisition department from 1987 to 1989, Berkeley helped develop the firm's technology practice. From 1985 to 1987, Berkeley served as head of Information Services for the firm. In that capacity, he was responsible for all corporate information services, including the firm's back office and front office technology. Berkeley began his career at Alex. Brown in 1972 as a research analyst. He became a general partner of the firm in 1983.

Berkeley has also served on the boards of three Nasdaq National Market® companies: Computer Language Research, Inc., Cognos Incorporated, and IMNET Systems Inc.

Berkeley served as a captain in the United States Air Force from 1968 to 1972. He is a graduate of The Wharton School at the University of Pennsylvania (MBA, 1968) and the University of Virginia (BA, 1966). □

Mary Schapiro Asks States To Help Avoid Regulatory Overlap And Address Major NASD Regulation Initiatives

One way to build on the success of capital markets is to strengthen the regulatory partnership among self-regulatory organizations, the SEC, and the states, according to NASD Regulation President Mary Schapiro.

"The industry, like the markets themselves, runs on investor trust and confidence. Where we can extend a helping hand to our members in the form of compliance tools, improved communication and disclosure, better service—instead of just holding up a stop sign or taking an enforcement action—we should do so."

Schapiro, speaking before the North American Securities Administrators Association (NASAA) spring conference in Washington, DC, urged regulators to make a concerted and continuous effort to coordinate examinations and to avoid regulatory duplication. "Regulators, as much as securities firms, benefit from coordinated exam planning. All of us have far too much on our plates to waste resources layering on redundant examinations."

She believes that regulators can be effective without limiting the creativity or competitiveness of their members. "In virtually all instances, creativity and competition provide greater services and

benefits to investors. In this regard, we must avoid the tendency to view regulation in zero sum terms—whatever is good for the public must be bad for the industry. That's simply not the case."

Lending A Hand

Schapiro asked state regulators to provide ongoing assistance to NASD Regulation in three areas:

1. Generating state and local interest in cases that warrant criminal prosecution. "I think we're all in agreement that monetary and other sanctions are no substitute for criminal prosecution," she said. "The courts can be the most effective vehicle for dealing with fraud and other egregious violations of customer trust. The threat of jail time for misappropriation of customer funds needs to be real. The simple reality is that the threat of criminal conviction fosters compliance.

2. Cooperating in joint enforcement efforts. "A precedent for successful joint efforts has been established with the Piper Jaffray case—an extremely complex and labor-intensive investigation involving mortgage-backed derivatives.... It took staff and resources from both the NASD and NASAA to deliver the monetary sanction totaling almost \$2 million—and more important-

ly, the \$67 million restitution fund for investors."

3. Disclosing information about members to the public. The NASD will begin increased public disclosure of CRD information in 1997, including pending arbitrations, arbitrations settled for \$10,000 or more, customer complaints settled for \$10,000 or more, and pending customer complaints of \$5,000 or more.

Schapiro endorsed deleting from a broker's record after two years those customer complaints that go nowhere or that are settled for less than \$10,000. "When you clean off the jaywalking violations and dormant complaints, you shed more light on the information that can really help the public make effective choices with respect to researching a broker's credentials." □

Members Have Specific Obligations In Locked And Crossed Markets

The NASD believes it is important that all members fully understand their obligations under SEC and NASD Rules when executing orders in a particular Nasdaq security, when the market in that security is locked or crossed. In par-

ticular, the question has arisen about a member's responsibility to trade at its quotation when it "passively" locks or crosses the market. The term passively locking or crossing means that the member did not initiate the quotation change

that results in a locked or crossed market. NASD Rule 4613 [formerly NASD By-Laws, Schedule D, Part V, Section 2(e)] prohibits a market maker in most circumstances from entering:

- a bid that equals or is greater than the asked quote of another market maker; or
- an asked quote that is equal to or less than a bid of another market maker. Before a market maker can enter a locking or crossing quote, the market maker must make reasonable efforts to avoid the situation by executing transactions with all market makers whose quotations would be locked or crossed.

Members have asked whether this obligation to execute is limited only to the market maker that “actively” locks the market, or whether it applies equally to the “passive” market maker. Under the NASD’s firm-quote obligation, “a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations...” Thus, both firms must trade at their stated quotations.

NASD and SEC Rules do not recognize a passively locking market maker as an

exception to the firm-quote rule. It is a misinterpretation of the phrase “a market maker whose quotations are causing a locked or crossed market” to conclude that the firm that initiated a locking or crossing quotation change is the only firm responsible for transacting at its quotation. The word “causing” is not limited to the market maker that moved the quotation; “causing” a locked market involves two quotes, the bid and the asked. When a locked or crossed market occurs, the bid side and the asked side “cause” the locked or crossed market.

For example, suppose that Market Makers A and B are quoting 20 – 20 1/8 in security ABCD. Market Maker B believes that the market will decline and wants to change its quote to 19 3/4 – 20. If Market Maker B changes its quote while Market Maker A remains at 20 – 20 1/8, the inside market for ABCD will be 20 bid – 20 asked, a locked market. During the time that the market is locked, if a seller directs a sell market order to “passive” Market Maker A, the member must execute the trade at its

quoted price of 20 bid. Likewise, if a buyer directs a buy order to “active” Market Maker B at its asked quote of 20, Market Maker B is obligated under the NASD and SEC firm-quote rules to trade at that price.

As in all locked or crossed market situations, the NASD will determine whether the firm that initiated the locked or crossed market complied with NASD Rule 4613 requirements to take reasonable steps to avoid the situation by executing a transaction with the market maker whose quote is being locked. For the purpose of determining which party violated the locked or crossed market rule, the NASD will examine all of the facts and circumstances involved in the situation, and determine which member is culpable. The NASD also will enforce strictly members’ firm quote obligations in the context of locked or crossed markets.

If you have any questions concerning this issue, please contact Market Regulation at (800) 925-8156. □

NASD Proposal Requires Members To Respond To SRO Requests

When a self-regulatory organization asks for information as part of an investigation, market surveillance, or enforcement action, the NASD wants to ensure that its members provide it. That’s the premise behind a rule change recently proposed by the NASD. It was published for comment in the May 6 *Federal Register*.

The amendment would allow the NASD Board of Governors, any District Business Conduct Committee, and the Market Surveillance Committee to require members to report to other SROs on the record or informally. These groups could also investigate the books, records, and accounts of members or associated individuals in connection with the information requests.

The change specifically applies to regulatory requests from SROs with which the NASD has information-sharing agreements through the Intermarket Surveillance Group. Other SROs already have similar regulations. □

Regulation M Will Streamline Trading Practices Rules

The SEC recently published for comment a proposed regulation that would create a simpler, more flexible framework to govern trading practices

by issuers in derivatives and other persons participating in a distribution.

“The proposals are designed to reduce

regulatory burdens on issuers, underwriters, and other offering participants by focusing restrictions on potentially manipulative conduct in

connection with the pricing of an offering, while retaining core investor safeguards,” according to the SEC release. The SEC comment period was initially set to end on June 17.

Proposed new Regulation M would replace SEC Rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21. Regulation M, which consists of six rules, would simplify trading practices rules by, among other things:

- Eliminating restrictions on actively traded securities.
- Reducing the period of trading restrictions for many other securities and focusing that period on the pricing of

the offering.

- Expanding the scope of Nasdaq passive market making.
- Eliminating trading restrictions on derivative securities during a distribution of an underlying security.
- Narrowing substantially the restrictions on debt securities.
- Deregulating rights offerings.
- Allowing routine dissemination of research reports, transactions in baskets of securities, exercises of call options, and transactions complying with Rule 144A under the Securities Act.

- Creating a de minimis exception for transactions that are unlikely to have market impact.
- Allowing greater flexibility for issuer plans and odd-lot programs.
- Creating a more flexible framework for stabilizing transactions.
- Shortening the regulated period for short sales in connection with a public offering.

Inquiries regarding this proposal should be directed to the SEC. □

Member Firms Have Obligations Under SEC Rule 17a-3 When Granting “Stops”

Member firms are encouraged to review their compliance and supervisory procedures with respect to the documentation of “stops” granted upon the acceptance of customer orders as required by SEC Rule 17a-3. A stop is a term and condition of an order whereby a member firm grants price protection on a portion of the order, as negotiated by the member firm and the customer, while the member firm works to fill the remainder of that order. Accordingly, stops given by member firms are required to be documented pursuant to SEC Rule 17a-3, which requires that broker/dealers maintain a memorandum of each order and

any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted, and that such memorandum shows, among other things, the terms and conditions of that order. The Market Surveillance Committee recently imposed sanctions on a member firm for violating SEC Rule 17a-3 where the member firm failed to document stops granted in connection with the acceptance of customer orders. Failure to document stops undermines NASD Regulation’s regulatory ability to evaluate and verify a firm’s order execution practices in connection with customer orders.

The Committee wishes to advise members of their obligations to document stops and all other terms and conditions or instructions associated with the acceptance of customer orders, as required by SEC Rule 17a-3, and strongly recommends that they review their compliance and supervisory procedures in this area.

For more information on this matter contact Michael J. King, Chief Counsel, Market Regulation, at (301) 590-6445, or Market Regulation Market Services at (800) 925-8156. □

Compliance Questions & Answers

Q. Which date should be used in arriving at the percentage haircut category on prerefunded municipal bonds?

A. The prerefunded date should be used, as opposed to the maturity date, when haircutting prerefunded municipal bonds. “Prerefunding” is a procedure in

which a bond issuer floats a second bond to pay off the first bond at the first call date. The proceeds from the sale of the second bond are invested in securities (usually Treasuries) that will mature at the first call date of the first bond issue.

Q. What is the haircut on municipal securities that are traded flat or in default as to principal or interest?

A. Pursuant to SEC Rule 15c3-1(c)(2)(vi)(B), municipal securities are normally haircut anywhere from 0 to 7 percent, based on the length of time to

maturity. Bonds traded flat or in default as to principal or interest may not, however, use this standard haircut schedule. A broker/dealer that can demonstrate a ready market for the bonds in default may haircut those bonds (after marking to the market) pursuant to SEC Rule 15c3-1(c)(2)(vi)(J). A broker/dealer that cannot provide evidence of the marketability of such securities must treat them as nonmarketable and deduct 100 percent of the carrying value.

Q. Does commercial paper fall within the definition of "debt security" for the reporting purposes of SEC Rule 10b-10?

A. Section 3(a)(10) of the Exchange Act of 1934 defines "security." Generally, securities are notes, bonds, debentures, stock, or options. Excluded from the definition is "any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited."

If the commercial paper has a maturity less than 270 days, it does not qualify under the Exchange Act as a security. Therefore, it does not qualify under SEC Rule 10b-10 as a "debt security" and therefore SEC Rule 10b-10 does not apply.

Q. What are "SEC fees" and how are they calculated?

A. The Securities Exchange Act of 1934, Section 31 requires all national securities exchanges to pay the SEC a fee equal to 1/300th of one percent of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange. It also requires every registered broker and dealer to pay the SEC a similar fee for sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of

indebtedness) transacted by the broker or dealer otherwise than on such an exchange. No payment is required for any calendar year in which such payment is less than \$100. The SEC may exempt any sale of securities or any class of sales of securities. NASD members are billed annually by the SEC, based on information filed on Form X-17A-5 Schedule 1.

Q. Several rules and interpretations refer to "national exchange" or "national securities exchange." How is this defined? Are foreign exchanges, like the Vancouver Stock Exchange, included in this definition?

A. The term national exchange or national securities exchange is defined as those entities registered with the SEC pursuant to Section 6 of the Exchange Act. Foreign exchanges do not qualify as national exchanges. Securities traded exclusively on these exchanges are considered foreign securities.

Q. Can a broker/dealer give or lend the proceeds of a subloan to an affiliate and still comply with the provisions of Appendix D of SEC Rule 15c3-1?

A. Appendix D requires that the cash proceeds received from a subordinated loan be used by the broker or dealer as "part of its capital and shall be subject to the risks of the business." The regulation intends that the proceeds of a subloan be used in the broker/dealers business, not that they be passed on to an affiliate. The use of the term "part of its [the broker/dealers] capital" is referring to net capital. Therefore, passing on the proceeds to an affiliate violates the intent of this regulation.

Q. Can a party that is not a financial institution enter into a revolving subloan agreement (Form SL-7) with a broker/dealer?

A. Pursuant to the sub-loan instructions, "Any lender entering into a revolving

subordination agreement with a member must be a financial institution which in the ordinary course of business engages in the lending of funds to broker/dealers." A financial institution is generally defined as any entity that as a normal course of business issues their own commercial paper (such as a bank, a foreign bank, or a savings association).

Q. Can securities originally issued pursuant to Rule 144 be used to collateralize a Secured Demand Note?

A. Yes, under certain conditions. Appendix D of SEC Rule 15c3-1 states that securities "which are fully paid for and which may be publicly offered or sold, without registration under the Securities Act of 1933, and the offer, sale and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note." Once Rule 144 securities have been held for the requisite number of years, and per an opinion of counsel, can be registered without restriction, they are considered freely tradable. Therefore, these securities can be used as collateral for a Secured Demand Note. Securities collateralizing a Secured Demand Note must be registered in the name of the broker/dealer or the name of its nominee or custodian.

Q. Can an unregistered broker (representative) handle "call backs"?

A. Yes. Unregistered brokers (representatives) may confirm trades but may not accept initial customer orders or any changes to existing customer orders.

Questions regarding this referenced subject may be directed to the Member Regulation Compliance Department at (202) 728-8221. □

Correction of Prior Q & A

The April 1996 edition of this publication contained a Q & A on customer confirmation requirements, but incorrectly included a sentence at the end of the first paragraph stating, "If there is no difference between the reported trade price and the price to the customer then indicate '0' or 'none'." SEC Rule 10b-10 only requires reporting the difference, if any, between the reported price and the price to the customer, and does not require a "0" or "none" indication. The relevant part of the Q & A should have been as follows:

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, if any, between the reported trade price and the price to the customer (i.e., the amount of any markup, markdown, or similar remuneration).

Rule Would Permit Quotation Of DPPs In OTC Bulletin Board

The NASD recently filed a rule change with the SEC to permit the quotation of direct participation programs (DPPs) in the OTC Bulletin Board (OTCBB®) and to require the reporting of DPP transactions through the Automated Confirmation Transaction (ACTSM) Service. Under the proposal, nonfirm prices and unpriced indicators of interest would be displayed on the OTCBB and

reports of secondary market transactions in DPPs would be submitted between 8 a.m. and 1:30 p.m. on the next business day (T+1) after the date of execution, although they can be reported within 90 seconds of the trade.

"It is hoped that this change will centralize a fragmented market and provide it with greater transparency," says Richard

Fortwengler, Associate Director of Corporate Financing, NASD Regulation.

The proposal appeared in the April 25 *Federal Register*. Questions may be directed to Richard Fortwengler, Associate Director, NASD Regulation Corporate Financing at (301) 208-2744. □

Treasury Reduces Reporting Burden On Banks

To reduce the burden imposed on financial institutions by the Bank Secrecy Act and increase the cost effectiveness of its counter-money laundering policies, the U.S. Department of Treasury recently adopted an interim rule that eliminates the requirement to report transactions in currency in excess of \$10,000 between depository institutions and certain classes of "exempt persons." The interim rule, which applies to currency transactions that occurred after April 30, took effect May 1.

One category of person subject to mandatory exemption is "any business or category of business the reports on which have little or no value for law enforcement purposes." Treasury is using that provision to treat as an exempt person any corporation whose common stock is listed on The Nasdaq Stock Market as a Nasdaq National Market security, the New York Stock Exchange, or the American Stock Exchange. If such an exchange-listed company has a corporate charter, it is deemed a corporation for purposes of the interim rule.

Also exempt is a transaction between a depository institution and another depository institution.

Written comments on the interim rule, which must be received by August 1, should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182-2536, Attention: Interim CTR Exemption Rule. □

Members Must Report Large Option Positions

The Market Regulation Department again reminds members of their obligations to comply with NASD conduct rules governing options position reporting requirements. The Market Surveillance Committee recently instituted disciplinary actions against member firms for failing to report large option positions in violation of the rules.

Options Position Reporting

Rule 2860 (5) of the NASD conduct rules (formerly Article III, Section 33 (5)(A) of the NASD Rules of Fair Practice) is applicable to all "standardized" option positions (a standardized option is a call or put option that is traded on a national securities exchange) established by "access" firms or their customers and all "conventional" option positions (a conventional option is any call or put option that is traded over the counter as opposed to a standardized or listed stock option) established by members or their customers (access firms are NASD members that conduct a business in exchange-listed options but which are not members of any of the options exchanges upon which the options are listed or traded). Specifically, the Rule requires members to submit a report to the NASD Regulation if a member's account, a customer's account, or an

associated person's account establishes an aggregate options position of 200 or more option contracts of the put class and the call class on the same side of the market covering the same underlying security or index. (The term "class" means all option contracts of the same type of option covering the same underlying security or index.)

In aggregating options on the "same side of the market," long calls in any class of options should be combined with short puts of the same class and short calls should be combined with long puts to determine whether a reportable position exists. Long and short positions for the same class should not be netted or combined (e.g., 200 contracts long in WXYZ and 200 contracts short in WXYZ in the same account should both be reported since each is 200 contracts. However, 100 contracts long in WXYZ and 100 contracts short in WXYZ in the same account should not be reported since the contracts should not be combined and each are less than 200 contracts). All conventional standardized options of 200 or more contracts in the same class should be aggregated for reporting option positions.

A position report form should be filed in each of the following situations:

- A long and/or short position of 200 or more contracts of the put class and the call class on the same side of the market is established in the account.
- There is an increase in a previously reported position (e.g., from 250 contracts to 275 contracts).
- There is a decrease in a previously reported position to a position of less than 200 contracts (e.g., from 250 contracts to 199 contracts). Once a position has been reduced to less than 200 contracts, no subsequent position reports would have to be filed until the account once again established a long and/or short position of 200 or more contracts of the put class and the call class on the same side of the market.

Questions concerning this Rule, or requests for a copy of the position report form and instructions, may be directed to Joseph Alotto, Market Regulation, at (301) 590-6845. Additional information concerning option position reporting can be found in NASD *Notice to Members 94-46*. □

Members Review Your Supervisory Procedures

Member Firms are encouraged strongly to review compliance and supervisory procedures with respect to the reporting of option positions. The Market Surveillance Committee recently imposed sanctions on several member firms for violations of NASD Rule 2860 (5) in that the members failed to file a report with respect to customer and firm accounts that held 200 or more conventional and/or standardized options. The Committee determined that failure to report large option positions undermines the NASD Regulation's regulatory ability to pursue possible violative activity.

Members are reminded of their obligations to report large option positions of 200 contracts or more to NASD Regulation Market Regulation. Questions concerning this matter should be directed to Joseph Alotto, Market Regulation, at (301) 590-6845. Additional information concerning option position reporting can be found in NASD *Notice to Members 94-46*.

Recent Cases Provide Compliance Guidance

What you don't know could hurt you... That's why *Regulatory and Compliance Alert* is publishing the following summaries of recent cases involving securities violations:

Court OKs Payment For Order Flow

The Minnesota Supreme Court recently ruled in favor of Charles Schwab & Co. in three class-action cases alleging that the broker's acceptance of payments for order flow breached its fiduciary duties. The case hinged on whether the potential consent requirements of Minnesota law could end order-flow payments, which are allowed under federal law. Federal law pre-empts state regulation, the recent ruling indicated, when a conflict exists.

In its decision, the court noted that order-flow payments are a useful, competitive tool.

SEC Upholds NASD Sanctions

The SEC recently sustained NASD sanctions against Mayer Amsel, the principal trader and salesman for A.T. Brod & Co. Inc., an NASD member firm. The NASD censured Amsel, barred him in all capacities, and fined him \$100,000 for parking stock from his firm's trading account in fictitious and inactive accounts. Although he admitted to the NASD charges, Amsel had argued that the NASD's decision should be set aside because a member of the NASD District Business Conduct Committee was biased against him and because the sanctions were excessive.

Prudential Wins \$2.5 Million Award

A three-member NYSE arbitration panel recently awarded Prudential Securities Inc. more than \$2.5 million in compensatory and punitive damages. The suit alleged that PaineWebber Inc. raided Prudential's Gainesville, Florida, office by recruiting seven key employees, including four account executives. PaineWebber noted that none of the four

brokers had employment contracts with Prudential, giving them "every right to choose their new place of employment."

PaineWebber is contemplating an appeal.

Gruntal Gets \$200,000 Fine

The NASD in April censured and fined Gruntal & Co., Inc. \$200,000 for trading ahead of its customers' limit orders, late reporting of trades, and failing to adequately supervise in these areas. "The NASD will not tolerate instances where a member places its own interests ahead of those of its customers," said John Pinto, Executive Vice President, NASD Department of Member Regulation.

Gruntal also agreed to reimburse the customers who may have been disadvantaged by these practices.

Stratton Fined For Fraud

In April, Stratton Oakmont, Inc., of Lake Success, New York, received a \$325,000 NASD fine for fraud and other violations in its capacity as lead underwriter in the initial public offering of IPS Health Care. The NASD also suspended and fined \$50,000 the firm's head trader and manager of its trading department, Steven P. Sanders.

"By violating the integrity of the capital-raising process, Stratton abused underwriting procedures and benefited at its customers' expense," said Mary L. Schapiro, President, NASD Regulation, Inc.

Broker Should Have Disclosed Information

The NASD in May censured and fined Reynolds Kendrick Stratton, Inc., and eight of its brokers \$415,000 for failing to disclose "crucial, negative information" about Worldwide Collections Fund, Inc., to investors. In 1992, RKS's San Francisco office sold more than 1

million shares of Worldwide in 500 separate transactions without disclosing material negative news. "Every broker's first responsibility is to his or her clients and to give them the information they need to make a sound investment," says Mary L. Schapiro, NASD Regulation, Inc.

The NASD also suspended the eight brokers for up to four months.

Customers To Receive Restitution For Excessive Markups

In May, the NASD fined Josephthal, Lyon & Ross, Inc. nearly \$350,000 and ordered it to pay more than \$225,000 in restitution to customers who were victimized by excessive markups. In connection with these violations, Josephthal's Chairman and Chief Executive Office, Dan David Purjes, was censured, and its head trader, Frank Garriton, was suspended for 15 business days and fined \$10,000.

In July and August of 1991, Josephthal charged its customers markups of between 5.26 percent and 41.7 percent over the firm's contemporaneous cost in 387 separate transactions of the common stock of ACTV, Inc.

Court Says Dean Witter "Shut Its Eyes"

The U.S. Court of Appeals for the Seventh Circuit recently concluded that Dean Witter was liable for a fraudulent scheme effected by two former employees in its Boca Raton, Florida office. The two employees—John Kenning and John Carpenter—pleaded guilty in federal district court in 1986 to defrauding investors, "admitting the fraud which constituted the basis for this civil suit," the court said. The Kenning-Carpenter Ponzi scheme lasted more than 30 months without detection by Dean Witter.

The court found evidence for a reasonable jury "to determine that had Dean Witter not shut its eyes to the various

fraud signs available to it, as it did, then the whole scheme could have been detected and shut down by Dean Witter far earlier....”

Feher Faces Maximum Of 256 Years In Prison

Arthur Feher, former Chairman and Chief Executive Officer of Members Services Corp., in May became the first person to be convicted by the SEC for 1933 Securities Act Regulation S violations. Feher faces a maximum sentence of 265 years in prison and maximum fine of \$4,629,000 for 27 counts of securities fraud, the illegal sale of unregistered stock, mail fraud, wire fraud, money laundering, and obstruction of an SEC investigation. His sentencing is scheduled for August 26.

Regulation S offers a limited exemption from the federal registration requirements for stock sold to overseas purchasers.

Court Upholds NYSE Sanction Against Broker

The U.S. Court of Appeals for the Sixth Circuit affirmed the disciplinary sanc-

SEC Dismisses Appeal By Rosario Ruggiero

The SEC concluded that the NASD acted properly in barring Rosario Ruggiero from association with a member firm.

In 1990, the SEC charged Ruggiero with antifraud and other securities law violations after he allegedly manipulated the market price of various securities. Ruggiero contested the allegations, but in a 1995 trial, the District Court concluded that he must be enjoined from future securities law violations. Although the injunctive order was entered February 28, 1995, Ruggiero failed to file an amended Form U-4.

The NASD notified Ruggiero's current employer, Tripp & Co. Inc., of the injunction on March 23 and asked that an amended Form U-4 be filed. On May 31, after commencement of these proceeding, Tripp filed an amended form disclosing the injunction. When the NASD denied Tripp's application to retain its membership if it continued to employ him, Ruggiero appealed to the SEC.

tions imposed on a broker who allegedly recommended unsuitable investments and made unauthorized margin transactions in his customers' accounts. The New York Stock Exchange censured Timoleon Nicholaou, a former broker with Merrill Lynch, Pierce, Fenner & Smith, suspended him from membership for one year, and ordered that he be

supervised by his branch manager for one year following the suspension. The SEC sustained the sanctions, although it set aside certain findings against Nicholaou.

In his appeal, Nicholaou claimed that the NYSE's action fell outside the statute of limitations. □

NASD Doesn't Have To Verify Validity Of Information

The U.S. District Court for the Eastern District of Michigan recently dismissed claims by former Prudential Securities brokers "as an unsuccessful attempt to create a private cause of action for the violation of NASD rules where none exists." The NASD does not have to verify the accuracy of the written state-

ments that appear on Forms U-4 or U-5, the court concluded.

The brokers contended that the NASD did not comply with its own regulations by failing to review and investigate the accuracy of information on U-4 and U-5 forms. They alleged that, "Prudential

purposefully amended the U-4 and U-5 forms to reflect broker violations, when, in fact, this information should have been reported as company violations." □

NASD Revises *Sanction Guidelines*

The NASD announced revisions to the *NASD Sanction Guidelines (Guidelines)*. The *Guidelines* were first published in May 1993 so that members could become familiar with typical securities industry violations that occur

and the disciplinary sanctions that may result. The recently revised *Guidelines* were printed in the April 1996 *Regulatory & Compliance Alert*.

As originally published, the *Guidelines*

addressed more than 40 types of violations, and were disseminated by the NASD Regulation National Business Conduct Committee (NBCC) for use by the NASD Regulation District Business Conduct Committees and the NASD

Regulation Market Surveillance Committee. The *Guidelines* have helped the Committees decide on appropriate remedial sanctions in NASD disciplinary proceedings.

The NBCC recently reviewed the *Guidelines* to revise the current publication and add additional guidelines where appropriate. The *Guidelines* now address more than 50 types of violations and reflect recent developments in the disciplinary process.

The *Guidelines* do not provide predetermined, fixed sanctions for particular violations. Instead, they serve as a guide for Committees to achieve greater consistency, uniformity, and fairness when imposing sanctions. Committees may,

however, impose sanctions that are above or below the range recommended in the *Guidelines*, depending on the aggravating and mitigating factors of each case. The *Guidelines* were developed for the most frequent violations, and include factors for determining sanctions and a discussion of the range of appropriate sanctions.

A respondent's history of similar misconduct is a key factor in determining appropriate sanctions for each type of violation listed in the *Guidelines*. It is the NBCC's belief that a primary objective of the NASD disciplinary process is to deter future violations by imposing increased sanctions on repeat violators.

The revised *Guidelines* supersede

Guidelines previously published by the NASD and apply to disciplinary matters in which complaints are filed on or subsequent to April 15, 1996. The *Guidelines* previously published by the NASD shall apply to all disciplinary proceedings in which complaints were filed before April 15, 1996.

Additional copies of the *Guidelines* are available for purchase at \$35 each (\$10 each for employees of NASD member firms) by contacting NASD MediaSourceSM at (301) 590-6578 for credit card orders or by writing to: NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403. Please make checks payable to the National Association of Securities Dealers, Inc. □

Advertising



“ASK THE ANALYST”

“Ask the Analyst” provides member firms a forum to pose questions to NASD Regulation, Inc., staff on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication; however, we will respond to all questions, here, or by contacting you directly. If you have any questions or comments, please contact Advertising Regulation at (202) 728-8330. We look forward to hearing from you.

This “Ask the Analyst” focuses on questions asked by participants at the NASD Regulation's Spring Securities Conference held in Chicago in May 1996.

General

Q. What are NASD Regulation's views on distributing projected performance

results to potential, sophisticated investors during a sales meeting if the potential investors will be prohibited from taking the results with them or writing them down?

A. A member firm must not distribute projected performance results to investors regardless of their sophistication level or the member firm's ability to prevent the investors from retaining such results. NASD Rules (formerly the Rules of Fair Practice) strictly prohibit the inclusion of projections in communications with the public.

Q. Regarding dates of first use, do the rules require the actual date, including month, day, and year, to be included in advertisements or can a member disclose only the month and year?

A. This question relates to two separate Rule requirements, one pertaining to information provided by a member when it files communications with NASD Regulation for review and one pertaining to the content of the submissions. Pursuant to the filing requirements, a member firm must indicate the date of first use or the intended date of first use for each item of advertising or sales literature submitted to NASD Regulation. NASD Regulation uses this information to monitor the timeliness of members' submissions in accordance with the filing requirements. In general, member firms should indicate as specifically as possible, the actual day, month, and year the piece was, or will be, published or distributed.

With respect to content, members need not include the date of first use in advertisements, which include communications

broadcast or published in the media. However, the Rules require that sales literature set forth the date on which it is first published, circulated, or distributed. Sales literature includes, but is not limited to, form letters, telemarketing scripts, research reports, performance reports, video tapes, seminar scripts, or any other marketing material distributed by a member firm to more than one person. If a member cannot determine the precise date of first use for an item of sales literature, the month and year only may be used.

Q. Can a registered representative show or reference an "internal use only" piece in presentations to the public, assuming the piece has been filed with NASD Regulation and found consistent with standards? Assume also that the representative would not actually give the piece to the public, but merely use it as part of a presentation.

A. The answer to this question depends on how the material was first submitted to NASD Regulation for review. If a member firm is aware that information in a particular internal-use-only communication will be shown or presented to the public, this fact must be disclosed to NASD Regulation when the material is submitted. For example, the member firm's cover letter should disclose that the presentation is directed primarily to registered representatives, but it may also be shown to, or discussed with, the public.

According to the Rules, NASD Regulation reviews internal-use-only material taking into consideration the intended audience of the communication (i.e., registered individuals) and the context in which the communication will be used. A change of audience or context would constitute a material change to a previously reviewed communication. Material changes to a communication that has already been reviewed and found consistent with standards by NASD Regulation may necessitate resubmission. For example, a member may choose to voluntarily submit to NASD Regulation an internal-use-only

piece regarding mutual funds; however, if the firm then decides to use the same piece with members of the public, resubmission would be necessary for compliance with the filing requirements. For more information, see NASD Rule 2210 (formerly Article III, Section 35(c) of the Rules of Fair Practice) and "Ask the Analyst," *Regulatory & Compliance Alert*, January 1996, page 12.

Q. Must a registered principal review research reports?

A. Research reports are a type of sales literature and, as such, must be approved before use, and in writing, by a registered principal.

Securities Business In Financial Institutions

Q. Suppose a member firm conducts a securities business in a bank and intends to prepare a joint communication with the bank. Assuming the member firm can assure that its part of the communication complies with the Rules, what responsibility, if any, does the member firm have for the bank's portion of the piece? For example, would the member be responsible for a discussion of mutual funds and government securities offered by the bank trust department to its trust clients?

A. The member firm bears responsibility for those portions of the communication that promote its securities business. In the example, the member firm would not be responsible for the bank trust department's discussion of securities in the joint communication. However, the Rules obligate the member firm to assure that the communication clearly distinguishes those securities products and services the member firm offers from those offered by the bank trust department.

Electronic Media

Q. Can Advertising Regulation review a World Wide Web (WWW) site on an expedited basis (i.e., within three business days or other negotiated turnaround time)?

A. Advertising Regulation has discretion to accept any submission for review on an expedited basis. However, depending on the length, complexity, and level of compliance of the proposed site, an expedited review may be impractical. The Advertising Regulation staff invites members to contact them regarding the review of on-line sites as soon as the need for such a review becomes apparent.

Q. If a full-service broker/dealer uses a WWW site describing the services it provides, including references to mutual funds from its fund family, is this considered mutual fund advertising and must it be filed within 10 days of first use?

A. If the site merely mentions the fact that the member firm offers mutual funds, it would not have to be submitted for review to NASD Regulation. However, if the site goes on to describe the funds and/or discuss them by name, then the material would require filing as a mutual fund advertisement. As discussed in the April 1996 *Regulatory & Compliance Alert*, communications made generally available on the WWW or commercial on-line services constitute advertisements.

Investment Companies

Q. Would a press release intended to generate publicity about a merger of two member firms have to be filed with NASD Regulation if it contained a brief discussion of the mutual funds and variable annuities offered by the companies?

A. Although the primary purpose of the press release is to generate publicity about the merger, the discussion of investment company securities would subject the material to filing with NASD Regulation within 10 days of first use. However, if the member firms limited the press release to discussions of the merger, with only a passing reference to the fact that the firms offer mutual funds and variable annuities, the press release would not have to be submitted. □



Advertising Regulation Seminars

STRAIGHT FROM
THE SOURCE

Find out how to comply with NASD advertising regulations.

Join us this fall in Washington, D.C. for a practical, hands-on advertising regulation seminar. Throughout this seminar, you will learn the do's and don'ts of financial services advertising. The seminars are led by advertising regulation experts—the people who work with advertising compliance everyday.

Topics covered will include:

- Internet and Electronic Communications
- Mutual Funds
- Variable Annuity and Life Insurance Products
- Filing Requirements
- Disciplinary Actions

To accommodate increased demand for this program, we are holding a condensed version of the Washington, D.C. seminar in San Diego on October 30. It will be held in conjunction with the NASD Regulation Fall Securities Conference October 31 to November 1, 1996.

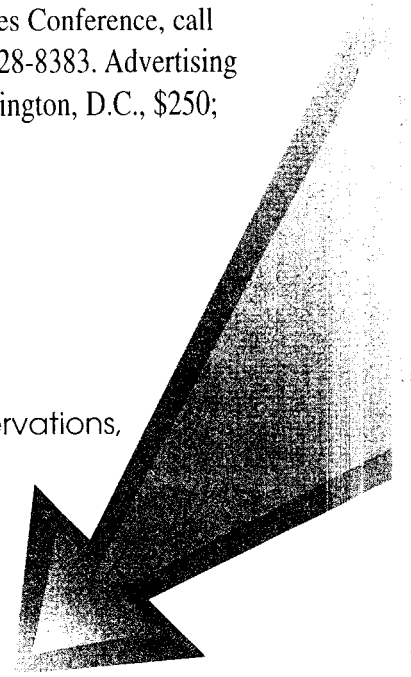
Please note, attendance will be limited for both seminars, so watch your mail for our registration brochures. For more information on the Advertising Regulation seminar, call Joyce Gregory at (202) 728-8330. For more information regarding the Fall Securities Conference, call Rosemarie Kennedy at (202) 728-8383. Advertising Regulation seminar fees: Washington, D.C., \$250; San Diego, \$175.

Get your advertising regulation questions answered!

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Renaissance Mayflower Hotel
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For D.C. hotel reservations,
call (202) 347-3000.

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Hyatt Regency La Jolla
San Diego, CA
For San Diego hotel reservations,
call (800) 233-1234.

When calling for reservations, please refer to "NASD Regulation Conference."



Legislation

Securities Reform Bills Moving Through Congress

The House and Senate recently passed legislation on securities reform. The House Commerce Committee on June 19, 1996, approved the Fields' bill, HR 3005, 407-8. Along with provisions on margin and mutual fund regulation, the bill contains a requirement for coordinated broker/dealer examinations by regulators.

The House bill also preempts state registration requirements for mutual funds, companies that are listed on the Nasdaq National Market, New York Stock Exchange, or American Stock Exchange, or that have \$10 million in assets and two years of audited financials. Also, it would require an SEC study of how to attain uniform

state broker/dealer registration.

The "Securities Investment Promotion Act of 1996" was introduced in the Senate on May 23, 1996, and passed the Senate on June 27, 1996 by unanimous consent. Among other provisions, the Senate bill:

- shifts registration of small investment advisers to the states;
- incorporates a variety of proposals to modernize mutual fund regulation, which were originally proposed in the House bill;
- includes the "Small Business Incentive Act" of the last Congress to

ease capital raising for small businesses; and

- contains a variety of other provisions from the House bill, including state preemption of Nasdaq National Market, New York Stock Exchange and American Stock Exchange and mutual funds, and a requirement for coordinated examinations by regulators.

If you have questions about either the House or Senate bill, call John Komoroske, NASD Congressional/State Liaison, at (202) 728-8475. □

Rules

NASD RULE FILING STATUS

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

Rule Filings That Have Not Been Published For Comment

96-21—Amend the By-Laws for mandatory electronic filing of registration-related filings.

96-19—Adopt amendments to Forms U-4 and U-5.

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

96-20—Amend the By-Laws to make them consistent with the Delegation Plan. Published for comment by the SEC in Rel. No. 34-37282 (06/06/96); 61 FR 29777 (06/12/96).

96-17—Amend Rule 2720 of the NASD Conduct Rules to define "Bona fide independent market" and "Bona fide independent market maker." Published for comment by the SEC in Rel. No. 34-37223 (05/17/96); 61 FR 26239 (05/24/96).

96-15—Amend Schedule A to the By-Laws to modify the exception for interest and dividend income from gross revenue for assessment purposes. Published for comment by the SEC in Rel. No. 34-37169 (05/06/96); 61 FR 21517 (05/10/96).

96-14—Amend Article IV, Section 5 of the Rules of Fair Practice (Rule 8210) to require members to provide information in response to requests by other regulators for regulatory information. Published for comment by the SEC in Rel. No. 34-37150 (04/29/96); 61 FR 20299 (05/06/96).

95-61—Amend Article III, Sections 26 and 29 of the Rules of Fair Practice (Rules 2830 and 2820) 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.

95-63—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. 34-369890 (03/15/96); 61 FR 11913 (03/22/96).

95-40—Amend The PORTAL Rules, Schedule I to the NASD By-Laws (Rule 5300) to adopt a pilot program for reporting transactions in PORTAL securities. Published for comment by the SEC in Rel. No. 34-37317 (06/17/96).

95-39—Amend Rules of Fair Practice to apply the Rules of Fair Practice to exempted securities (except municipal securities), including government securities, and amend 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 FR 54530 (10/24/95). Republished for

comment in Rel. No. 34-36973 (03/14/96); 61 FR 11655 (03/21/96).

Rule Filings Recently Approved By The SEC

96-18—Amend Code of Arbitration Procedure to extend the effectiveness of Large and Complex Cases (Rule 10334). Accelerated approval granted the SEC in Rel. No. 34-37154 (04/30/96); 61 FR 20301 (05/06/96).

96-16—Plan of Allocation and Delegation setting forth the purpose, function, governance, procedures, and responsibilities of the NASD, NASD

Regulation, and Nasdaq. Temporary accelerated approval granted by the SEC in Rel. No. 34-37107 (04/11/96); 61 FR 16948 (04/18/96).

96-09—Amend Schedule D, Part II (Rules 4310 and 4320) to recommend that issuers distribute interim reports and consider technological methods to communicate other information to registered and beneficial shareholders. Published for comment by the SEC in Rel. No. 34-37010 (03/21/96); 61 FR 13909 (03/28/96). Approved by the SEC in Rel. No. 34-37163 (05/02/96); 61 FR 21216 (05/09/96).

How NASD Rules Are Adopted

Have you ever wondered how an NASD rule change is implemented? Here's a description developed by the Office of General Counsel for NASD Regulation.

1. A rule proposal is developed by the NASD staff as part of a regulatory initiative, at the direction of one of the NASD Committees, or in response to a particular regulatory issue. Rule proposals are usually developed in consultation with an NASD Committee. These Committees are composed of securities industry representatives and other individuals with expertise in a particular subject (e.g., Corporate Finance, Investment Companies, or Bank Broker/Dealers).

2. The Committee may decide to publish the proposed rule for member comment in a *Notice to Members*, which requires the approval of the NASD Regulation, Inc., Board of Directors. All comment letters are analyzed by NASD Regulation staff. The analysis by the

staff, any recommendations on addressing the comments, and a copy of all comment letters are submitted to the Committee for review. The Committee may decide to:

- forward the proposal to the NASD Regulation Board for approval with or without modification;
- amend the proposal and recommend to the NASD Regulation Board that it be published again for member comment; or
- report to the Board that the Committee decided not to take further action.

3. When recommending approval of a rule proposal, the Committee provides the NASD Regulation Board with an Action Item that includes the background, intent, and reasons for particular provisions of the proposed rule. The Committee's deliberations and rule language provide the basis for the

Action Item. If the NASD Regulation Board does not agree with a rule proposal, it can refuse to approve it or return the proposal to the Committee for further consideration.

4. The NASD Regulation Board adopts a resolution approving the proposed rule with an instruction to make a filing with the SEC. The NASD Regulation Board has the authority to modify the proposed rule without consulting with the originating Committee.

5. If the rule proposal raises significant policy issues, the rule proposal must be reviewed and approved by the NASD Board of Governors (the parent company of NASD Regulation) before filing it with the SEC.

6. NASD Regulation staff prepares and submits a rule filing to the SEC that includes the rule language, description of the provisions of the rule language, and a discussion of any comment letters.

7. *The SEC reviews the rule filing to determine if the language is clear and understandable, the description and rule language are consistent, the rule is consistent with the requirements of the Securities Exchange Act of 1934, and the rule is consistent with other NASD and SEC rules, as well as other federal and state statutes. The SEC may ask the NASD to clarify definitions or descriptions, as well as explain how a rule will be enforced.*

8. *The NASD Regulation staff responds to SEC comments and questions by providing additional information, refining or adding to arguments, or amending the rule language. If there are significant issues involved, the response is developed by consulting with the Committee liaison and, if appropriate, the Committee chairperson. If the response involves a substantive change to the intent or language of the rule, it must be approved by the Committee and the NASD Regulation Board.*

9. *The SEC publishes the proposed rule change for public comment in the Federal Register once all SEC staff issues are resolved. The NASD responds to any public comment letters*

following the same hierarchy described in Step 8. If SEC staff issues are not satisfied, the process described in Step 11 governs.

10. *The SEC approves the proposed rule change if it believes the proposal meets statutory requirements and no new issues require a response. The approval order reflects comments and responses exchanged during the process.*

11. *If issues raised by the SEC cannot be resolved regarding the terms or intent of a proposed rule, several scenarios can occur:*

- If the SEC is not satisfied with the rule proposal and believes that the proposal does not meet statutory standards, the SEC (before or after publication for comment) will request that the NASD modify or withdraw the proposal and will explain its reasons for opposing the rule change. If the NASD refuses to modify or withdraw the proposed rule change, the SEC must initiate formal disapproval proceedings by publishing a notice in the *Federal Register* seeking comment on why the proposed rule change should not be disapproved, which can be ini-

tiated simultaneously with a request for public comment on the proposal.

- If the SEC is not satisfied with the rule proposal but the proposal meets statutory standards, the SEC will publish the proposed rule for comment in the *Federal Register*. To resolve outstanding issues, the SEC can make specific requests for public comment in the *Federal Register*. If substantial public opposition is not received and no substantive objection remains, the SEC will subsequently approve the proposed rule.

12. *Upon SEC approval, NASD takes steps to implement the rule by publishing a Notice to Members describing the rule and its effective date. To ensure members comply with the rule, NASD Regulation incorporates compliance reviews into its routine and cause examination programs, and may develop specific surveillance techniques.*

Any questions about the NASD rulemaking process can be directed to the NASD Regulation OGC at (202) 728-8294. □

NASD DISCIPLINARY ACTIONS

In February, March, April, and May 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

February Actions

Rick Randall Blair (Registered Representative, Nevada City, 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 10 business days. Without admitting or denying the allegations, Blair consented to the described sanctions and to the entry of findings that Blair exercised discretion in the account of a public customer without obtaining written authority from the customer and approval of his member

firm. The NASD also found that Blair failed to respond to NASD requests for information.

Steven T. Okamoto (Registered Principal, Foster City, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member as a registered securities principal, and required to requalify as a registered representative. Okamoto also was suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Okamoto consented to the described sanctions and to the entry of findings that he created 10 fictitious branch office audit reports when a corresponding supervisory branch exam had not been conducted.

Okamoto's suspension began June 5, 1995, and concluded August 5, 1995.

March Actions

Leonard John Ialeggio (Registered Representative, Danville, California) was fined \$15,000 and ordered to requalify by exam as a general securities representative. The NBCC affirmed the sanctions following the appeal of

a San Francisco DBCC decision. The sanctions were based on findings that Ialeggio submitted expense vouchers to his member firm's parent company and received payment for travel expenses totaling \$9,868.50 to which he was not entitled. Ialeggio also induced the company to pay \$35,000 for his country club dues, a payment to which he was not entitled.

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

April Actions

Darren J. Upchurch (Registered Representative, Wilmington, North Carolina) 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, Upchurch consented to the described sanctions and to the entry of findings that he converted \$51,185 in funds from a public customer.

Gale Kathleen Vaillancourt (Registered Representative, San Francisco, California) 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, Vaillancourt consented to the described sanctions and to the entry of findings that she created a letter to a public customer on her sales manager's stationery, signed her sales manager's signature on the letter, and mailed it to the customer without the sales manager's knowledge.

Kenneth R. Winton (Registered Representative, Redding, California) 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, Winton consented to the described sanctions and to the entry of findings that he effected the purchase of securities for the account of a public customer that was unsuitable based on her age and financial position. The findings also stated that Winton effected unapproved private securities transactions and engaged in undisclosed outside business activities.

Gerald E. Donnelly (Registered Representative, Lafayette, California) was fined \$25,000, suspended from association with any NASD member in any capacity for 16 business days, and required to requalify by exam before reassociating with any NASD member. The SEC affirmed the sanctions following appeal of a March 1995 NBCC decision. The sanctions were based on findings that Donnelly recommended and effected the purchase and sale of securities in the accounts of public customers that were excessive and unsuitable. Donnelly also exercised discretionary power in the accounts without obtaining prior written authorization from the customers and without his member firm's acceptance of the accounts as discretionary.

Dane Stephen Faber (Registered Principal, Sausalito, California) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Faber consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer that were unsuitable for the customer based upon the facts disclosed by her as to her other security holdings, financial situation, and needs, and in light of the size and frequency of the transactions.

May Actions

None

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

February Actions

Daniel Jon Benjamin (Registered Representative, Diamond Bar, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Benjamin consented to the described sanctions and to the entry of findings that he received from a public customer a \$70,000 check to purchase mutual fund shares. The findings stated that Benjamin deposited the check into his personal securities account and used the money to purchase another mutual fund. The NASD also found that Benjamin forwarded to the customer a falsified account statement that purported to evidence the purchase of shares of the mutual fund for the customer's account, however, Benjamin failed to purchase the shares of the fund or to return the money to the customer, and converted the funds for his own use.

Chadwick Financial Group, Inc. (Santa Monica, California) and **Timothy M. Hazzard (Registered Principal, Santa Monica, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$25,840, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Hazzard, induced the purchase of limited partnership interests in violation of Section 10(b) of the Exchange Act of 1934 and Rule 10(b)

promulgated thereunder, in that it used a sales script that failed to disclose the risks associated with the investment. The findings also stated that the firm, acting through Hazzard, permitted non-registered persons to discuss investment products with prospective customers and to prequalify customers.

March Actions

Matthew L. Carragher (Registered Representative, San Diego, California) was fined \$72,500, barred from association with any NASD member in any capacity, and ordered to reimburse his member firm \$9,500. The sanctions were based on findings that Carragher received from public customers checks totaling \$10,500 for investment purposes. Carragher cashed the checks; however, the customers never received confirmations or account statements referencing these purchases and Carragher forwarded a falsified statement to one of the customers. Carragher failed to purchase the shares or to return the money to the customers and converted the funds for his own use. Carragher also failed to respond to NASD requests for information.

Rosemary Eskridge (Associated Person, South Pasadena, California) was fined \$41,312.50, barred from association with any NASD member in any capacity, and ordered to reimburse a public customer \$4,262.50. The sanctions were based on findings that Eskridge solicited a customer to purchase shares of stock and instructed the customer to mail her a \$4,262.50 check to purchase the stock. The customer agreed and mailed the check to Eskridge. Eskridge told the customer that she had not received the check, instructed the customer to deliver \$4,262.50 cash to her to consummate the purchase transaction, and told the customer that she would return the check to him as soon as she had received it. Eskridge converted the cash for her own use and subsequently received the check but did not return it to the customer. Eskridge also failed to respond to NASD requests for information.

William Norris Herred (Registered Representative, Santa Barbara, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and ordered to reimburse customers \$22,427.14. Without admitting or denying the allegations, Herred consented to the described sanctions and to the entry of findings that he charged retail securities customers more than a fair markup, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order, and the value of any service he may have rendered. Herred also failed to disclose to the customers that the markups were unfair.

Michael S. Lerner (Registered Principal, Woodland Hills, California) was fined \$20,000 and barred from association with any NASD member. The sanctions were based on findings that Lerner failed to respond to NASD requests for information concerning its investigation of certain sales scripts used in connection with the sale of a limited partnership offering.

Long Duc "Michael" Nguyen (Registered Representative, Westwood, California) was fined \$80,000, barred from association with any NASD member in any capacity, and ordered to reimburse a public customer \$2,000. The sanctions were based on findings that Nguyen received from a public customer \$2,000 to purchase stock and submitted a falsified account statement to the customer showing that he deposited \$2,000 and purchased shares of stock for \$1,687.50. Nguyen failed to purchase the shares of stock or return the money to the customer and converted the funds for his own use. Nguyen also falsified a customer's signature on a subscription agreement and a pension administrator transfer form. Nguyen then forwarded the documents to his member firm to authorize the withdrawal of \$80,000 from a public customer's IRA account and the purchase of shares of a restricted stock to obtain \$6,800 in commissions without the customer's knowledge or consent. Nguyen also failed to respond to NASD requests for information.

Jeffrey J. Norminton (Associated Person, Newport Beach, California) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Norminton caused \$95,000 to be transferred from the securities account of an

institutional customer at his member firm to another member firm without the customer's knowledge or consent. Norminton also failed to respond to NASD requests for information.

John A. Stedman (Registered Representative, San Diego, California) was fined \$90,000, barred from association with any NASD member in any capacity, and ordered to reimburse a public customer \$14,000. The sanctions were based on findings that Stedman received from a public customer a \$14,000 check for investment purposes. Stedman did not purchase the stock for the customer, but, instead, cashed the check and converted the funds for his own use. Stedman also failed to respond to NASD requests for information.

Aldyth Stika (Registered Representative, Laguna Beach, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stika failed to respond to NASD requests for information regarding its investigation of unauthorized trading.

Gibrain W.A. Verdult (Registered Representative, San Juan Capistrano, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Verdult failed to respond to NASD requests for information about an NASD investigation regarding the possible mishandling of a customer's account.

April Actions

Stephen Cutrone, Sr. (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,831.25 and suspended from recommending any penny stock transactions as defined by SEC Rule 3a51-1, for one year. Without admitting or denying the allegations, Cutrone consented to the described sanctions and to the entry of findings that he effected penny stock transactions, and in connection with such transactions, failed to provide to each customer a document containing the information in the required penny stock risk disclosure document. The findings stated that Cutrone also failed to disclose to each customer the inside bid and offer quotation and the number of shares to which the bids and offer applied, disclose to each customer the aggregate amount of compensation he received in connection with such transactions, and deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15c-9.

Todd Michael Ficeto (Registered Representative, Marina Del Rey, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$9,541 and suspended from recommending any penny stock transactions for two years. Without admitting or denying the allegations, Ficeto consented to the described sanctions and to the entry of findings that he effected penny stock transactions, and, in connection with such transactions, failed to provide to each customer a document containing the required information set forth in the penny stock risk disclosure document. The findings also stated that Ficeto failed to disclose to each customer the inside bid and offer quotation and the number of shares to which the bids and offer applied, and the aggregate amount of compensation he received in connection with certain penny stock transactions, and failed to deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15c-9.

Paul Douglas King (Registered Principal, Tustin, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$17,000. Without admitting or denying the allegations, King consented to the described sanction and to the entry of findings that he participated in private securities transactions without having provided prior written notification to his member firm.

Lawrence R. Klein (Registered Representative, Westlake Village, California) was barred from association with any NASD member in any capacity with the right to reapply for association with an NASD member after five years. The SEC affirmed the sanction following appeal of a June 1995 NBCC decision. The sanction was based on findings that Klein caused \$17,000 to be wired from the joint account of public customers and used the funds to, among other things, repay monies he owed to a third party. Klein also forged the customers' signatures on

an authorization to transfer federal funds and directed his member firm's clearing firm to effect the unauthorized transfer of funds.

Michael A. Niebuhr (Registered Representative, La Costa, California) was fined \$15,000, which can be offset upon demonstration that he has paid \$4,414 in restitution to a customer. Niebuhr was also suspended from association with any NASD member in any capacity for 90 days and thereafter until restitution has been paid in full. The SEC affirmed the sanctions following an appeal of a October 1994 NBCC decision. The sanctions were based on findings that Niebuhr violated Section 5 of the Securities Act of 1933 by offering and selling unregistered stock to public customers. Niebuhr also received shares of stock at no cost, purportedly as a bonus, and recommended and sold those shares to a customer without disclosing certain material information to the customer. Niebuhr failed to disclose that he was selling his own stock at the same time he was recommending that the customer purchase it, that the shares that would fill the customer's purchase orders were those he owned in his personal account, and that he had received those shares at no cost.

F. Sarah Pollard (Registered Representative, La Jolla, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$8,480.95, suspended from recommending any penny stock transactions for two years, and suspended from associating with any NASD member as a general securities principal for 18 months. Without admitting or denying the allegations, Pollard consented to the described sanctions and to the entry of findings that she effected \$62,920 in penny stock transactions. The NASD found that, in connection with such transactions, Pollard failed to provide to each customer a required document containing penny stock risk disclosure information, to disclose to each customer the inside bid and offer quotation and the number of shares to which the bids and offer applied, to disclose to each customer the aggregate amount of compensation he received in connection with such transactions, and failed to deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15c-9.

Richard W. Talley (Registered Principal, Santa Barbara, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$17,000. Without admitting or denying the allegations, Talley consented to the described sanction and to the entry of findings that he participated in private securities transactions without having provided prior written notification to his member firm.

Talley King & Co., Inc. (Irvine, California) and **Paul Douglas King (Registered Principal, Irvine, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally, and ordered to pay restitution of \$2,056.86. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through King, engaged in the sale of restricted common stock in the secondary market on a principal basis to customers at prices that were not fair in contravention of the Board of Governors' Interpretation with respect to the NASD Mark-Up Policy. These sales resulted in markups ranging from 32 to 36 percent as measured against the firm's cost. The NASD also found that the firm, acting through King, permitted an individual to act as a representative of the firm without being properly registered with the NASD.

Toluca Pacific Securities, Corp. (Burbank, California) and **Peter J. Blowitz (Registered Representative, Burbank, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Blowitz, effected securities transactions and/or induced or attempted to induce the purchase or sales of securities while failing to maintain minimum required net capital. The NASD also found that, while purporting to operate within the exemptive provisions of subparagraph (k)(2)(i) of the SEC Customer Protection Rules, the firm, acting through Blowitz, deposited \$507,232.90 for mutual fund orders placed by public customers into the firm's checking account rather than the Special Account for the Exclusive Benefit of Customers.

The findings also stated that the firm, acting through Blowitz, failed to transmit promptly to the mutual fund \$50,000 received from public customers.

Mark C. Whitver (Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$4,048.45 and suspended from recommending any transactions in penny stocks for one year. Without admitting or denying the allegations, Whitver consented to the described sanctions and to the entry of findings that he effected 10 transactions in a penny stock that amounted to approximately \$19,286.25. The NASD found that, in connection with such transactions, Whitver failed to provide to each customer a document containing the information set forth in the penny stock risk disclosure document, disclose to each customer the inside bid and offer quotation and the number of shares to which the bids and offer applied, disclose to each customer the aggregate amount of compensation he received in connection with such transactions, and deliver to each customer a written suitability statement prepared in accordance with SEC Rule 15c-9.

May Actions

Albert T. Carazolez (Registered Representative, San Diego, California) and **John Morris (Registered Principal, Del Mar, California)** were each fined \$5,000. Carazolez was also suspended from association with any NASD member as a general securities representative for 20 business days and ordered to pay \$5,411.76 in restitution to public customers. Morris was suspended from association with any NASD member as a general securities principal for 15 business days and required to requalify by exam as a general securities principal should he seek to become associated in such capacity. The sanctions were based on findings that Carazolez recommended transactions for the accounts of public customers without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the frequency of the recommended transactions; the risks associated with the transactions; and the customers' financial situations, objectives, circumstances, and needs. Morris failed to follow his member firm's written supervisory procedures or to respond adequately to red flags to ensure compliance with applicable NASD rules by Carazolez.

L.P. Charles & Company, Inc. (Los Angeles, California) was fined \$20,000. The sanction was based on findings that the firm effected securities transactions while failing to maintain its minimum required net capital.

Daniel Mills Waltz (Registered Representative, Covina, California), **Todd Michael Anzaldo (Registered Representative, Monarch Beach, California)**, and **Mary Elizabeth Jackson (Registered Representative, Beverly Hills, California)** were each fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Waltz, Anzaldo, and Jackson failed to respond to NASD requests for information in connection with the NASD's investigation of possible sales-practice abuses concerning limited partnerships offered through a member firm.

Westmark Securities Corporation (Santa Monica, California) and **Ronald D. Catto (Registered Principal, Los Angeles, California)** were fined \$22,500, jointly and severally, and Catto was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Catto, effected securities transactions while failing to maintain sufficient net capital. The firm and Catto also failed to respond to NASD requests for information.

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

February Actions

Russell B. Anderson (Registered Representative, Orem, Utah) was fined \$20,000 and required to requalify by exam as a general securities sales representative. The sanctions were based on findings that Anderson effected seven transactions in the securities accounts of five customers without obtaining authorization from these customers prior to each of these transactions.

Deedra Kay Brown (Registered Representative, Phoenix, Arizona) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown exercised discretion in a customer account without obtaining written discretionary authority from the customers or written acceptance of the account as discretionary from her member firm. Brown also forged two customers' signatures to a margin agreement purporting to authorize the use of margin in the customers' joint account and effected margin transactions in the account, all without the customers' authorization and consent. Brown also failed to respond to NASD requests for information.

Jerome J. Novosad (Registered Representative, Westminster, Colorado) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Novosad failed to respond to NASD requests for information regarding his termination from a member firm.

Michael I. Pinsler (Registered Representative, Chicago, Illinois) was fined \$10,000 and barred from association with any NASD member in any capacity with the right to reapply in two years. The sanctions were based on findings that Pinsler failed to disclose on his Uniform Application for Securities Industry Registration (Form U-4) that he pleaded guilty to and had been convicted of a felony drug offense.

March Actions

Regency Capital Group, Inc. (Glendale, California) and **Cynthia D. Phillips (Registered Principal, Woodland Hills, California)** were fined \$25,000, and required to disgorge \$4,736, both jointly and severally. Phillips was required to requalify by exam as a general securities principal and as a general securities sales representative. The sanctions were based on findings that the firm, acting through Phillips, effected riskless principal retail transactions with customers in securities when the firm was not a market maker in these securities. The firm was required to confirm these transactions to its customers and disclose in writing the total amount of any markup, markdown, or similar remuneration received. The firm, acting through Phillips, sent confirmations to its customers that failed to comply with the provisions of Securities and Exchange Commission (SEC) Rule 10b-10(a)(8)(i)(A) and effected transactions at prices that were unfair and excessive in that the total prices charged to customers ranged from 6.74 to 9.69 percent above the firm's contemporaneous cost for these securities. The firm, acting through Phillips, effected securities transactions without complying with the requirements of SEC Rule 15c. The firm, acting through Phillips, also failed to maintain adequate written supervisory procedures and failed to respond to NASD requests for information within the time periods requested and without showing good cause for failure to provide the requested information in a timely manner.

Steven W. Taylor (Registered Representative, Longmont, Colorado) was suspended from association with any NASD member in any capacity for 90 days and required to requalify by exam in any capacity in which he seeks to act in the securities industry. The sanctions were based on findings that Taylor caused purchases of securities to be effected in the accounts of public customers for the sole benefit of another customer who paid for the securities and was the sole beneficial owner of these securities when the customer's account had been restricted by Taylor's member firm in accordance with Regulation T of the Federal Reserve Board. Taylor failed to notify his member firm or otherwise caused his member firm's records to reflect that the customer was the beneficial owner of the securities purchased in the account of the customers. Taylor also failed to cause his ownership of this account to be reflected on the firm's books and records.

April Actions

Richard L. Bourke (Registered Representative, Scottsdale, Arizona) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for five business days and required to make monthly payments of \$250 to his former member firm. Without admitting or denying the allegations, Bourke consented to the described sanctions

and to the entry of findings that he failed to pay an \$11,872.75 arbitration award.

Patrick Allen Chestnut (Registered Representative, Wenatchee, Washington) 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, Chestnut consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about a customer complaint.

Lawrence Gale Epstein (Registered Representative, Mercer Island, Washington) submitted an Offer of Settlement pursuant to which he was fined \$25,000. Without admitting or denying the allegations, Epstein consented to the described sanction and to the entry of findings that he effected, or caused to be effected, securities transactions in the account of public customers without obtaining prior written discretionary authorization from the customers and without the acceptance of these accounts as discretionary by his member firm. The NASD also found that, in connection with the sale of notes to public customers, Epstein failed to disclose to the customers information that would have been material to their decision to invest. The findings also stated that Epstein recommended to public customers the purchase of securities without having reasonable grounds for believing such recommendations were suitable for the customers considering their other securities holdings and their financial situations, objectives, and needs.

Franklin-Lord, Inc. (Scottsdale, Arizona) and William S. Mentis (Registered Principal, Scottsdale, Arizona) were fined \$10,000, jointly and severally, and Mentis was required to requalify by exam as a principal. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that the firm, acting through Mentis, failed to designate a registered principal with authority to carry out the firm's supervisory procedures pertaining to trading.

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

Clinton Hugh Holland, Jr. (Registered Principal, Salem, Oregon) was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by exam as a registered principal. The SEC affirmed the sanctions following appeal of a January 1995 NBCC decision. The sanctions were based on findings that Holland recommended to a public customer the purchase of speculative or high-risk securities without having reasonable grounds for believing that such recommendations were suitable for the customer, considering the size and nature of the transactions, the concentration of speculative securities in the account, and the customer's financial situation, circumstances, needs, and objectives.

This action has been appealed to a United States Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

John Edward Malosh (Registered Representative, Corvallis, Oregon) submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Malosh consented to the described sanctions and to the entry of findings that he unlawfully gained entrance to an individual's unoccupied residence and removed from the premises \$850,000 in stock certificates, bonds, and jewelry belonging to the individual. The NASD found that Malosh opened an account at his member firm using his wife's maiden name and submitted three of the individual's bonds for redemption. The findings stated that Malosh used an alias name and posed as the grandson of the individual, opened an account at a broker/dealer, and executed a limited trading authorization allowing him to negotiate stock certificates and bonds on behalf of the individual. The NASD determined that the application used to open this account and the limited trading authorization both contained the individual's forged signature. After opening the account, Malosh submitted nine bonds valued at \$190,000, for redemption to the broker/dealer.

Christopher Rickey Millard (Registered Representative, Loomis, California) submitted a Letter of Acceptance,

Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Millard consented to the described sanctions and to the entry of findings that he unlawfully gained entrance to the unoccupied residence of a public customer and removed from the premises without the knowledge or permission of the customer, stock certificates, bonds, and jewelry belonging to the customer that were worth more than \$850,000. The findings also stated that Millard opened an account using a fictitious name and submitted three bonds belonging to the customer that had a value of \$25,890 for redemption.

Paramount Investments International, Inc. (Denver, Colorado) and Terrence A. Buttler (Registered Principal, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. The firm was also fined \$62,500, suspended from NASD membership for 10 days with the proviso that the firm may effect unsolicited liquidating transactions, suspended from participating in any offering of securities subject to SEC Rules 10b-9 and 15c2-4 for six months, and required for 12 months to file all advertisements and sales literature with the NASD Advertising Department before use. Buttler was suspended from association with any NASD member in any principal capacity for three days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm used sales literature that failed to conform to NASD standards and breached its restriction agreement with respect to inventory levels, making markets in over-the-counter securities not listed on Nasdaq®, and operating a branch office without approval.

The findings also stated that the firm conducted a securities business while failing to maintain required net capital and filed FOCUS Part I reports that contained inaccurate net capital computations. The NASD determined that the firm failed to demonstrate supervisory review of transactions in which the firm's customers purchased stock, and failed to maintain accurate and complete books and records. The NASD also found that the firm, acting through Buttler, participated in an offering of securities that was subject to a minimum investment amount contingency in which an impermissible escrow arrangement was employed, modified the share price and minimum share and dollar amount contingencies after the offering began and after investor funds had been received without a reconfirmation offer or a new offering document, and released investor funds before receipt of the minimum contingency amount.

The suspensions began May 20, 1996.

May Actions

D.E. Frey & Company, Inc. (Denver, Colorado), Stanley Baker (Registered Principal, Aurora, Colorado), and Brian O'Toole (Registered Representative, Littleton, Colorado) submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. O'Toole was fined \$12,500, required to pay \$59,921.79 in restitution to customers, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by exam as a general securities sales representative. Baker was fined \$5,000, suspended from association with any NASD member as a general securities principal for five business days, and required to requalify by exam as a general securities principal. In addition, Baker is required to hire a management consultant familiar with the securities industry to review the supervisory and operations procedures in place in the branch office in which he is the branch office manager to determine their adequacy and ability to detect possible violations of securities rules and regulations. The consultant will perform this review and will prepare a report to submit to the NASD. Based on the findings of this report, Baker will begin to implement any recommended changes to the supervisory and operations procedures in this branch office.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that O'Toole effected transactions in the discretionary account of public customers that were excessive in size or frequency in view of the financial resources and character of these customers' securities account. The find-

ings also stated that O'Toole effected transactions on margin in the customers' account and incurred margin debts that were excessive. According to the findings, these transactions were implicitly recommended to these customers by O'Toole without having reasonable grounds for believing that the recommendations were suitable for these customers. Furthermore, the NASD found that O'Toole exercised discretion in the customers' account without having this account accepted by his member firm in writing as a discretionary account. The NASD determined that the firm, acting through Baker, failed to adequately supervise O'Toole's activities to detect and prevent the excessive trading effected by O'Toole. In addition, the NASD found that the firm failed to establish, maintain, and enforce written procedures to supervise the activities of registered representatives to prevent and detect excessive trading activity.

Franklin-Lord, Inc. (Scottsdale, Arizona) and John E. Cathcart (Registered Principal, Scottsdale, Arizona). The firm was fined \$10,000 and suspended from NASD membership for five days. Cathcart was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam as a general securities representative and a general securities principal. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a July 1994 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Cathcart, filed seven inaccurate Uniform Applications for Broker Dealer Registration (Form BD) with the NASD and failed to comply with the terms of its restriction agreement with the NASD. In addition, the firm, acting through Cathcart, effected municipal securities transactions before paying the required registration fee to the Municipal Securities Rulemaking Board (MSRB) and without having a qualified municipal securities principal.

Gilbert Marshall & Company (Greeley, Colorado) and Michael A. Usher (Registered Principal, Greeley, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$25,000, jointly and severally. In addition, the firm was suspended from recommending any penny stock transactions, as defined by Securities Exchange Act Rule 3a51-1, for two years and required to establish and maintain written supervisory procedures adequate to ensure compliance with the penny stock rules. Furthermore, the firm must employ a compliance assistant to assist the firm's Compliance Officer, and Usher is required to requalify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the sale of a penny stock, the firm, acting through Usher, failed to complete, or cause to be completed, written suitability statements for the purchasing customers and failed to obtain manually signed and dated copies of the written suitability statements from the purchasing customers.

The findings also stated that the firm, acting through Usher, failed to obtain, or require associated persons to obtain, from customers written agreements to purchase specific quantities of stock before effecting the subject transactions, failed to provide to customers a copy of the Penny Stock Risk Disclosure Document, and failed to obtain manually signed and dated written acknowledgments of receipt of the document. In addition, the NASD determined that the firm, acting through Usher, failed to disclose and confirm in writing the current inside bid and offer quotations of the penny stock and failed to disclose and confirm the aggregate amount of compensation received by the firm and its associated persons. Furthermore, the findings stated that the firm, acting through Usher, failed to provide monthly statements with market and price information, written statement of price determination, and a conspicuous legend and failed to establish, maintain, and enforce adequate written supervisory procedures to ensure compliance with penny stock rules.

Lester H. Lane (Registered Principal, Englewood, Colorado) was fined \$25,000. The sanction was based on findings that Lane received compensation from a third party for services provided pursuant to a consulting agreement without providing his member firm with prompt written notice of such outside business activity.

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

February Actions

David Lee Heinemeyer (Registered Representative, Bismarck, North Dakota) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Heinemeyer failed to respond to NASD requests for information regarding his termination from a member firm.

Scott A. Weldon (Registered Representative, Chanhassen, Minnesota) 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, Weldon consented to the described sanctions and to the entry of findings that he received from a public customer \$10,000 to purchase an annuity. Weldon did not apply the funds as instructed and, instead, without the knowledge and consent of the customer, deposited the funds into his personal bank account and converted the funds to his own use and benefit.

March Actions

Robert Dean White (Registered Principal, Excelsior, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that a member firm, acting through White, conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that White, acting on behalf of the firm, failed to prepare certain books and records accurately.

April Actions

John Jay Coleman (Registered Representative, Overland Park, Kansas) submitted an Offer of Settlement pursuant to which he was fined \$18,317.85, barred from association with any NASD member in any capacity, and required to pay \$3,663.57 in restitution. Without admitting or denying the allegations, Coleman consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling \$3,663.57 for investment purposes, endorsed the checks, and converted the funds to his own use and benefit. The findings also stated that Coleman sent a letter to the same customer containing material misstatements and omissions about a purported purchase of mutual funds that had in fact not been made on the customer's behalf. Coleman also failed to respond to NASD requests for information.

Terri Jo Neff (Registered Representative, Brooklyn Park, Minnesota) 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, Neff consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, he changed their addresses of record with his member firm to his home address or post office boxes under his control. The NASD found that Neff requested loans against insurance policies in the names of these customers and converted the loans totaling \$21,215.34 by depositing the loan checks into his bank account and used the proceeds for his own use and benefit.

Linda Marie Oberg (Registered Representative, Fridley, Minnesota) submitted an Offer of Settlement pursuant to which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Oberg consented to the described sanctions and to the entry of findings that she took advantage of clearing firm over purchases of securities on behalf of her member firm by diverting the over purchases into her personal securities accounts and subsequently selling the over purchases resulting in profits totaling \$2,058.30.

Oberg's suspension began May 1, 1996, and concluded May 30, 1996.

Reuben Clarence Quanbeck (Registered Representative, Grand Forks, North Dakota) submitted a Letter of Acceptance, Waiver and Consent pursuant to

which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$388,000 in restitution. Without admitting or denying the allegations, Quanbeck consented to the described sanctions and to the entry of findings that he converted customer funds totaling \$388,000 by intercepting checks made payable to his member firm.

May Actions

Timothy Lee Morrison (Registered Representative, St. Louis, Missouri) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that he failed to respond to NASD requests for information about his termination from a member firm.

Brian Edward Reipke (Registered Representative, Minneapolis, Minnesota) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Reipke, without the knowledge or consent of public customers, completed redemption forms to redeem \$60,000 worth of shares held by the customers and converted the proceeds of redemption checks by endorsing the checks and depositing them into an account beneficially owned by him and used the proceeds therefrom. Reipke also failed to respond to NASD requests for information.

Stephen Kwasi Opoku (Registered Principal, Coon Rapids, Minnesota) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Opoku failed to respond to NASD requests for information about his termination from a member firm.

Thomas Warner Graham (Registered Representative, Sioux City, Iowa) 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 60 days. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he received from two public customers \$283.18 to pay their monthly insurance premiums. According to the findings, Graham did not apply these monies as instructed and, instead, without the customers' knowledge and consent, deposited the cash into his personal bank account and issued checks from his account to his member firm for the premiums that were returned for insufficient funds. The NASD also found that Graham failed to return the monies to one of the customers until a later date, and failed to send the premium amounts to his member firm until a later date at which time the monies were deducted from his commissions account and used to pay premiums due for one of the customer's insurance policy.

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

February Actions

Gary P. Goodner (Registered Representative, Oklahoma City, Oklahoma) 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, Goodner consented to the described sanctions and to the entry of findings that he engaged in outside business activities without having provided written notice to his member firm.

Leon Hawkins (Registered Representative, Huntsville, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$150,000, barred from association with any NASD member in any capacity, and ordered to pay \$35,498.69 in restitution to public customers. Without admitting or denying the allegations, Hawkins consented to the described sanctions and to the entry of findings that he received from public customers \$35,498.69 as premium payments for insurance policies. The NASD found that Hawkins failed to apply the payments to the policies as directed, and, instead, converted the funds by endorsing and cashing the checks without the customers' knowledge or consent.

David P. Jones (Registered Representative, Nashville, Tennessee) was fined \$170,000, barred from association with any NASD member in any capacity, and ordered to

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.

pay \$1,120,389.88 in restitution to the appropriate parties. The sanctions were based on findings that Jones received from public customers \$1,120,389.88 in checks and cash to purchase investments on behalf of the customers. Jones failed and neglected to deposit the funds into the customers' accounts, and, instead, converted the funds to his own use and benefit by depositing the funds into a bank account that he controlled. Jones prepared fictitious account statements for the affected public customers, attempting to conceal the conversions. Jones also failed to respond to NASD requests for information.

John T. King (Registered Principal, Knoxville, Tennessee) 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, King consented to the described sanctions and to the entry of findings that he engaged in the sale of unregistered securities and prepared and distributed sales literature that omitted or misstated material facts. The NASD also found that King engaged in private securities transactions without prior written notice to and approval from his member firm.

Randy J. Landry (Registered Representative, Youngsville, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,120 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Landry consented to the described sanctions and to the entry of findings that he executed the unauthorized purchase and sale of shares of stock in the account of a public customer, without the customer's knowledge or consent.

Patterson Icenogle, Inc. (Tulsa, Oklahoma) and Mark D. Icenogle (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which they were fined \$25,000, jointly and severally. The firm was suspended from soliciting retail transactions in penny stocks for six months and Icenogle was suspended from association with any NASD member in any capacity for one week and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Icenogle, engaged in sales of securities without having a reasonable basis for believing that the prices charged to public customers were fair. The findings also stated that the firm, acting through Icenogle, received excessive commissions, up to 25 percent on each sale transaction of common stocks, and failed to reflect these transactions on the books and records of the firm. The NASD found that the firm, acting through Icenogle, failed

to issue confirmation statements to the purchasers of the aforementioned stock. Furthermore, the NASD determined that the firm, acting through Icenogle, engaged in securities transactions with public customers on a principal basis at prices that were not fair, with markups exceeding 10 percent over the firm's contemporaneous cost.

Also, the NASD found that the firm, acting through Icenogle, engaged in securities transactions with public customers, whereby Icenogle interpositioned his personal trading account between public customers, thereby causing customers to pay him a secret profit, in addition to the commissions charged to such customers. The findings also stated that the firm, acting through Icenogle, failed and neglected to disclose on confirmation statements sent to public customers the difference between the price charged to public customers and the firm's contemporaneous purchase price.

The NASD determined that the firm, acting through Icenogle, failed to accurately report to the NASD the highest price at which it sold and the lowest price at which it purchased securities, the total volume of sales executed in the securities business, whether the trades establishing the highest price at which the securities were sold represented an execution with a customer or with another broker/dealer, and, the amount of markup in the price on the sale of the securities. The NASD also found that the firm, acting through Icenogle, failed and neglected to transmit sales reports promptly to the NASD regarding the last sales of common stocks, and, failed to submit timely trade order tickets for sale transactions, thus causing the firm's books and records to be inaccurate.

Davis W. Wetmore (Registered Principal, Bellaire, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for 60 days, and suspended from association with any NASD member in a principal capacity for six months.

Wetmore also must requalify by exam as a general securities representative. Without admitting or denying the allegations, Wetmore consented to the described sanctions and to the entry of findings that he engaged in a series of purchase and sale transactions for U.S. government agency securities and agreed to execute, and caused to be executed, such transactions at prices that were not reasonably related to the then-current market price for the securities. The NASD also found that Wetmore was negligent in failing to make a reasonable effort to determine the market prices for the securities and engaged in a practice commonly identified as adjusted trading. The findings stated that Wetmore failed to reflect on the books and records of his member firm that the transactions were not effected at the then-current market prices and that the adjusted sale price on the first leg of each adjusted trade was conditioned upon the subsequent purchase at a further inflated or adjusted price. The NASD also determined that Wetmore failed to reflect on the books and records of his member firm the identity of the true contra-party on government agency trades by interpositioning another member firm between the two parties.

Westcap Securities, L.P. (Houston, Texas), Alan F. McIntyre (Registered Principal, Germantown, Tennessee), and Mark M. Salter (Registered Principal, Houston, Texas) submitted Offers of Settlement pursuant to which the firm was fined \$75,000. McIntyre was fined \$50,000, barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. Salter was fined \$20,000, suspended from association with any NASD member in any capacity for one week, suspended from association with any NASD member in any principal capacity for three months, and required to requalify as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that McIntyre effected purchase and sale transactions on behalf of a public customer involving certain U.S. government agency securities, in which he failed and neglected to disclose to the board of directors and senior officers that the purchase and sale prices for the securities were not reasonably related to the then-current market prices for the securities.

The NASD also found that the firm, McIntyre, and Salter used other individuals as conduits between McIntyre and the firm. The findings stated that Salter, acting on behalf of the firm, and McIntyre, recouped losses incurred in these transactions by selling other U.S. government agency securities at prices in excess of the then-current market price. The NASD also determined that McIntyre, the firm, and Salter failed to reflect on the books and records of the firm that these transactions were not effected at the then-current market prices and that the adjusted purchase price on the first leg of each adjusted trade was conditioned upon a subsequent sale at a further inflated or adjusted price. McIntyre, the firm, and Salter also caused false and misleading confirmations to be mailed to a customer. The NASD also found that McIntyre caused the falsification of the books and records of a public customer in that realized losses on sales by the customer were concealed and the new securities purchased were recorded at inflated prices, and, in so doing, McIntyre caused third parties with an interest in these accounts to be misled regarding the performance of the investments under the control of the customer. The findings also stated that McIntyre falsified a trade ticket for a purchase by incorrectly indicating on the trade ticket that the transaction was a \$2,100,000 purchase of bonds and falsified the trade blotters of the member firm.

March Actions

Jody M. Felterman (Registered Representative, Patterson, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$220,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Felterman consented to the described sanctions and to the entry of findings that he received from public customers \$6,235,123 for investment purposes and failed and neglected to make the investments. The NASD found that Felterman converted a portion of the funds to his own use and benefit without the customer's knowledge or consent. The NASD also determined that, in connection with the aforementioned activities, Felterman made material misrepresentations to the customers to induce the purchase of securities. The findings also stated that, in connection with a check-kiting scheme, Felterman failed and neglected to deposit funds timely into securities accounts, deposits which he caused to be reflected on his firm's cash receipts blotter and customer ledgers, thus causing his member firm's books and records to be inaccurate. Felterman also failed to respond to NASD requests for information.

John M. Mayberry (Registered Principal, Oklahoma City, Oklahoma) 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 two weeks. Without admitting or denying the allegations, Mayberry consented to the described sanctions and to the entry of findings that he issued sales literature to public customers without obtaining prior written authorization from his member firm. The NASD also found that, in connection with the sales literature, Mayberry omitted certain material facts.

April Actions

Richard J. Bickerstaff (Registered Representative, Metairie, Louisiana) submitted an Offer of Settlement pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bickerstaff consented to the described sanctions and to the entry of findings that he charged commissions and markups on a series of purchase and sale transactions on behalf of the State of Louisiana, Department of Insurance, in violation of the terms of an agreement with the Department. The findings also stated that Bickerstaff failed and neglected to disclose in writing to his member firm the existence of, and his ownership interest in, an entity through which he provided investment advisory services and through which he received compensation. The NASD also found that Bickerstaff failed to respond fully and adequately to an NASD request for information.

Preston C. Bynum (Registered Representative, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000 and barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Bynum consented to the described sanctions and to the entry of findings that he obtained from his member firm's account three checks totaling \$23,500 that he improperly used to make payments on personal loans of a board member of a Florida utilities authority in order to influence the board member to direct municipal financing underwritings to his member firm. The NASD also determined that Bynum failed to respond to NASD requests for information.

Larry D. Kellett (Registered Principal, Jonesboro, Arkansas) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kellett engaged in a private securities transaction without prior written notice to and approval from his member firm. Kellett recommended and engaged in a purchase transaction on behalf of public customers without having reasonable grounds for believing that this recommendation and resultant transaction was suitable for the public customers based on their financial situations, investment objectives, and needs. Kellett also failed to respond to NASD requests for information.

May Actions

John B. Bible (Registered Representative, Baton Rouge, Louisiana) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for two weeks, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Bible consented to the described sanctions and to the entry of findings that he received from a public customer six checks totaling \$1,477.27 to invest in a mutual fund. The findings stated that Bible mishandled the customer's funds, in that he failed and neglected to execute the purchase for the customer. The NASD also found that Bible failed to respond accurately and timely to NASD requests for information.

Michael L. Chaudron (Registered Representative, Johnson City, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Chaudron consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$41,112.14 for investment purposes. The NASD found that Chaudron mishandled the customers' funds, in that he improperly retained the checks and failed and neglected to invest the funds for the customers. The findings also stated that Chaudron prepared a fictitious account statement to reflect that an annuity had been purchased for a public customer when, in fact, no such purchase had been made. The NASD also determined that Chaudron improperly retained possession of four stock certificates that had been intended for deposit into the accounts of public customers.

Devon Resources Financial Corporation (Tulsa, Oklahoma), Catherine W. Yox (Registered Principal, Tulsa, Oklahoma), W. Jeffrey A. Haver (Registered Representative, Richmond, Ontario Canada), and James M.C. Haver (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership and required to demonstrate that all monies due to public customers have been paid. Yox, W. Haver, and J. Haver were each fined \$7,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Yox, W. Haver, and J. Haver, failed to make refund offers totaling \$33,592.52 to public customers pursuant to the terms of a Letter of Acceptance, Waiver and Consent. The findings also stated that the firm, acting through Yox, W. Haver, and J. Haver, caused the firm's books and records to be falsified and hindered the investigative efforts of the NASD in that refund offers addressed to the customers were placed in the firm's files when, in fact, no such offers were sent.

Robert E. McDaniel (Registered Principal, South Palm Beach, Florida) was fined \$10,000 and suspended from association with any NASD member in any principal

capacity for two years. The NBCC affirmed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that McDaniel paid a representative of another member firm \$32,546.69 in commissions for mutual fund sales and reinvestments without the prior oral or written authorization of their member firms.

Robert O. Mullins (Registered Representative, Nashville, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$150,000, barred from association with any NASD member in any capacity, and required to pay \$167,690.77 in restitution. Without admitting or denying the allegations, Mullins consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$206,491 for investment purposes, failed and neglected to submit the full amount of the funds on behalf of the customers and, instead, converted \$167,690.77 of the funds for his own use and benefit without the customers' knowledge or consent. The findings also stated that Mullins prepared fictitious account statements to reflect purchases of municipal bonds for a public customer that were, in fact, not purchased.

Aubrey D. O'Connor (Registered Principal, Houston, Texas) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, O'Connor consented to the described sanctions and to the entry of findings that he knowingly or recklessly failed to determine independently the market price for a purchase and sale transaction for certain government agency securities between an individual and a member firm. The NASD determined that, in so doing, O'Connor participated in, and furthered, the fraudulent transaction. Furthermore, the findings stated that O'Connor failed to reflect on his member firm's books and records that this transaction was not effected at the then-current market price.

District 6—Texas

February Actions

Daniel Joseph Avant (Registered Representative, Spring, Texas) was fined \$2,500 and suspended from association with any NASD member for seven days. The SEC affirmed the sanctions following appeal of a March 1995 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Avant failed to pay a \$28,000 NASD arbitration award timely.

March Actions

Paul McCulloch Byatt (Registered Representative, Irving, Texas) was fined \$1,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam. The sanctions were based on findings that Byatt failed to respond timely to NASD requests for information about his financial transactions with a public customer.

Robert Neal McWilliams (Registered Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that McWilliams, during the Series 7 exam, failed to adhere to PROCTOR® Certification and Training center instructions in that he made use of handwritten notes relating to the exam's subject matter.

Melissa Ann Myers (Registered Representative, Houston, Texas) was fined \$42,630 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Myers instructed her member firm to issue a \$4,526 check to her from her account. After requesting the check, Myers requested that the funds be wired to her bank account. Subsequent to the wire transfer, Myers received a \$4,526 check from her member firm, cashed it, and converted the funds for her own use and benefit. Myers also failed to respond to NASD requests for information.

April Actions

Steve Dewitt Walker (Registered Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following review of a Dallas DBCC decision. The sanction was based on findings that Walker received assis-

stance while taking the Series 7 exam by having in his possession notes and formulae pertaining to securities matters.

May Actions

Danny Ray Bannister (Registered Representative, Lewisville, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bannister failed to respond to NASD requests for information about a customer complaint. In addition, Bannister effected an unauthorized trade in a public customer's account.

Roger Philip Holland (Registered Representative, Tyler, Texas) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Holland consented to the described sanctions and to the entry of findings that, without the prior approval of a principal of his member firm, he published advertisements and sent or made available to the public, sales literature that made false and misleading statements of fact, exaggerated, unwarranted, and misleading statements or claims and that omitted to state material facts or qualifications that would have caused such advertisements and sales literature not to be misleading in the offering of investments in tax-advantaged limited partnerships.

Jay B. Jones (Registered Principal, McKinney, Texas) was fined \$7,500, jointly and severally, with another respondent and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Jones failed to maintain an accurate blotter and failed to file FOCUS reports in a timely manner. Jones also failed to timely deposit customer checks in an escrow account.

Petroleum, Commodities & Realty, Inc. (Plano, Texas) and John Raymond Hodge (Registered Principal, Fairview, Texas) were fined \$20,000, jointly and severally, and Hodge was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Hodge, filed with the NASD a false annual audit report.

George Erwin Sledge, Jr. (Registered Principal, Houston, Texas) was fined \$120,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that a former member firm, acting through Sledge, effected transactions in nonexempt securities while failing to maintain its required minimum net capital. The firm, acting through Sledge, also made improper use of customer securities by borrowing approximately 1,000 shares of common stock from a public customer, selling such shares, and converting the proceeds for its own use and benefit.

Jeffery Steven Stone (Registered Representative, Dallas, Texas) was fined \$8,820 and suspended from association with any NASD member in any capacity for 15 business days. The sanctions were based on findings that Stone effected private securities transactions without giving prior written notification to, and receiving prior written approval from, his member firm of these transactions.

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

February Actions

Burnett Grey & Co., Inc. (Atlanta, Georgia) and Linda M. King (Registered Representative, Marietta, Georgia) were fined \$20,000 and expelled from NASD membership. A separate Offer of Settlement was submitted by King pursuant to which she was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and barred from association with any NASD member in any proprietary, supervisory, or managerial capacity, with the right to reapply to become associated with a member after three years. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that the firm, acting through King, conducted a securities business while failing to maintain sufficient net capital. The findings also stated that the firm, acting through King, failed to accurately make certain books and

records and filed materially inaccurate FOCUS Part I and IIA reports.

John R. Dankovich (Registered Representative, Sunrise, Florida) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dankovich opened a securities account with his member firm under the name of his infant daughter and listed false information on the new account card. Dankovich also failed to respond to an NASD request for information about his termination from a member firm.

Howe Solomon & Hall, Inc. (Miami, Florida) and Christopher John Hall (Registered Principal, Miami, Florida) were fined \$30,000, jointly and severally. The firm was ordered to disgorge excess profits totaling \$67,936.40 to public customers. The sanctions were based on findings that the firm, acting through Hall, effected principal sales of municipal bonds to public customers at prices that were not fair, given all relevant circumstances. The firm and Hall also failed to establish or maintain an adequate written supervisory procedure pertaining to the pricing of municipal securities.

Barry B. Levine (Registered Representative, Atlanta, 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, Levine consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request for information.

Barbara J. Owens (Registered Representative, Dundee, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Owens failed to respond to NASD requests for information.

George R. Peak (Registered Representative, Lauderhill, Florida) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Peak effected six unauthorized purchases in the accounts of public customers and failed to respond to NASD requests for information.

Charles O. Phillips, Jr. (Registered Representative, Decatur, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Phillips obtained a \$1,000 loan against the insurance policy of a public customer without the knowledge or authorization of the customer.

Mohammed N. Wasif (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 Wasif failed to respond to an NASD request for information regarding his termination from a member firm.

David H. Weinreb (Registered Representative, Aventura, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Weinreb failed to respond to NASD requests for information.

Allen G. Whitmire (Associated Person, Elgin, South Carolina) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Whitmire failed to respond to an NASD request for information regarding his termination from a member firm.

March Actions

Andrew P. Cinman (Registered Principal, Atlanta, Georgia) was fined \$50,000 and barred from association with any NASD member in any capacity with the right to reapply in non-supervisory or nonproprietary capacities after three months. The SEC affirmed the sanctions following appeal of a May 1995 NBCC decision. The sanctions were based on findings that Cinman effected transactions in his personal securities account at his member firm that were beyond his financial means, resulting in violations of the margin requirements set for in Regulation T of the Federal Reserve Board and the NASD Rules of Fair Practice.

Kirk Moore Rogers (Registered Representative, Elon College, North Carolina) submitted an Offer of

Settlement pursuant to which he was fined \$14,551.80 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he solicited for compensation investors who purchased \$191,036 in promissory notes outside the scope of his employment with his member firm without giving prior written notice to or receiving written approval from his member firm.

Sovereign Equity Management Corp. (Boca Raton, Florida) and Glen T. Vittor (Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,926, which includes disgorgement of commissions totaling \$5,926. In addition, Vittor was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Vittor, sold shares of stock that traded at a premium in the immediate aftermarket to restricted persons.

David L. Weintraub (Registered Principal, Tampa, Florida) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Weintraub consented to the described sanctions and to the entry of findings that he recommended the purchase of a common stock to a public customer without having a reasonable basis for believing that said transaction was suitable for the customer. The NASD also found that Weintraub sold shares of common stock to public customers at unfair prices with markups of 20.6 percent over his firm's contemporaneous costs. The findings also stated that Weintraub filed false and inaccurate Form U-4s with the NASD.

April Actions

Jerome H. Daniels (Registered Principal, Clearwater, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by exam as a financial and operations principal. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that he filed inaccurate FOCUS Parts I and IIA reports and prepared inaccurate net capital computations. The findings also stated that Daniels failed to supervise an associated person adequately.

Richard J. Kaighn (Registered Representative, Elizabeth City, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,353.50 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kaighn consented to the described sanctions and to the entry of findings that he received from a public customer \$6,028.20 that were intended as payment of an insurance premium. The NASD found that Kaighn applied only \$957.50 to the payment of the premium and converted the remaining \$5,070.70 to his own use and benefit without the customer's knowledge or authorization.

Kashner Davidson Securities Corp. (Sarasota, Florida) and Victor L. Kashner (Registered Principal, Sarasota, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally, and required to pay \$11,863 in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kashner, effected 20 principal sales of common stock with public customers at unfair prices. According to the findings, these markups ranged from 5.6 to 18.2 percent above the prevailing market price.

Litwin Securities, Inc. (Miami Beach, Florida) and Harold A. Litwin (Registered Principal, Miami Beach, Florida) were fined \$10,000, jointly and severally. The firm also was prohibited from effecting principal transactions of any nature for one year, and Litwin was suspended from association with any NASD member in any principal capacity for six months and ordered to requalify

by exam in any principal capacity. The SEC affirmed that sanctions following appeal of a January 1995 NBCC decision. The sanctions were based on findings that the firm, acting through Litwin, violated its restriction agreement with the NASD by executing certain securities transactions as principal without authorization.

Donald D. Metchick (Registered Principal, Altamonte Springs, Florida) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Metchick consented to the described sanctions and to the entry of findings that he received on behalf of public customers 26 checks totaling \$62,771.78 representing the proceeds from the sale of various insurance and annuity products and deposited the checks into a general operating account of his insurance agency, thereby commingling customer funds with other funds. The findings also stated that Metchick deposited one of the checks into his personal bank account and held the funds for various periods before submitting the funds to the appropriate entity on behalf of the customer or returning the funds to the customer.

Mark Robert Ritcey (Registered Representative, Plantation, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Ritcey consented to the described sanctions and to the entry of findings that he sent a \$750 money order to a public customer to induce him to withdraw a complaint letter the customer had filed against Ritcey's brother, without the knowledge of his brother or anyone else associated with the firm.

Steven A. Schween (Registered Principal, Longwood, Florida) 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, Schween consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, unauthorized purchases and sales of securities in the accounts of public customers without their knowledge or authorization and without having a reasonable basis for believing that the transactions were suitable. The findings also stated that Schween failed to respond to an NASD request for information.

Stephen J. Wagner (Registered Representative, Aspen, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wagner consented to the described sanctions and to the entry of findings that he obtained from life insurance policies owned by a public customer \$705,000 in cash that he misused and/or mishandled.

May Actions

William W. Bolles (Associated Person, Charlotte, North Carolina) was fined \$10,000 and suspended from association with any NASD member in any capacity for six months or until the fine is paid. The sanctions were based on findings that Bolles participated in outside business activities without providing prior written notice of and without obtaining approval from his member firm to engage in such activities.

James C. Buchanan (Registered Representative, Tampa, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Buchanan effected the purchase of shares of stock for the account of public customers without their knowledge or consent. Buchanan also failed to respond to NASD requests for information.

George E. Frizzell (Registered Representative, Macon, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Frizzell converted to his own use and benefit \$225,000 that he had solicited from public customers for investment purposes and had solicited public customers to lend him \$153,000 under false pretenses. Frizzell also reimbursed a public customer \$12,000 for losses incurred in the customer's securities account without obtaining authorization from his member firm and without

contributing financially to the customer's account in proportion to the amount of said reimbursements.

Frederick Gaston (Registered Representative, Atlanta, Georgia) was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities sales representative. The sanctions were based on findings that Gaston effected unauthorized transactions in the accounts of public customers.

Harvey Hertz (Registered Principal, St. Petersburg Beach, Florida) was fined \$10,000, required to requalify by exam as a general securities principal, and was made subject to special supervision. The sanctions were based on findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Hertz sold shares of securities that traded at a premium in the immediate aftermarket to a restricted account.

Shawn A. Howard (Registered Representative, Boynton Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Howard failed to respond to NASD requests for information about an ongoing investigation.

James W. Lyons (Registered Representative, Atlanta, Georgia) was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Lyons caused \$200 to be removed from the clearing account of a bank which employed him and converted the funds for his own use and benefit.

Roger A. Mullins (Registered Representative, Atlanta, Georgia) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mullins caused the address on the joint securities account of public customers to be changed without the customers' knowledge or authorization and executed three sales of securities for the account without their knowledge or consent. In addition, Mullins caused three checks to be issued from the account, forged a customer's signature on the checks, deposited the checks in his personal bank account, and converted the proceeds for his own use and benefit. Mullins also failed to respond to an NASD request for information.

David D. Otis (Registered Representative, Boynton Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Otis failed to respond to NASD requests for information about customer complaints.

John D. Perez (Registered Representative, Mayaguez, Puerto Rico) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Perez failed to respond to NASD requests for information about his termination from a member firm.

Tony L. Plymel (Registered Representative, Thomasville, Georgia) was fined \$95,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,000 in restitution to a public customer. The sanctions were based on findings Plymel received a check from a public customer made payable to an entity he controlled for the purpose of applying the proceeds of the check to the purchase of a certificate of deposit. Without the knowledge or consent of the customer, Plymel converted \$15,000 of the proceeds to his own use and benefit. Plymel also failed to respond to NASD requests for information.

Billy Max Robinson, Jr. (Registered Representative, Marietta, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Robinson failed to respond to an NASD request for information about his termination from a member firm.

Oliver J. Williams, Jr. (Registered Principal, Miami, Florida) was fined \$40,000, barred from association with any NASD member in any principal capacity, and ordered to requalify by exam as a general securities representative. The sanctions were based on findings that a member firm, acting through Williams, effected transactions in non-exempt securities and conducted a securities business

while failing to maintain sufficient net capital and failed to compute its net capital accurately. The firm, acting through Williams, also filed materially inaccurate FOCUS Part I reports with the NASD and failed to timely send telegraphic notice as required by SEC Rule 17a-11 with regards to its net capital deficiencies. In addition, Williams permitted the firm to conduct a securities business without a registered financial and operations principal and failed to file a FOCUS Part I report in a timely manner.

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

February Actions

Erika Hilda Bauer (Registered Representative, Rochester, Michigan) was suspended from association with any NASD member in any capacity for 90 days and required to requalify by exam. The NBCC imposed the sanctions following review of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bauer sold a variable life insurance product to a customer without the customer's knowledge or consent by signing the customer's name to a form that allowed for automated withdrawal of monthly premium payments from the customer's bank account.

Rodger E. Ericson (Registered Representative, Zionville, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$64,673.85 to a member firm. Without admitting or denying the allegations, Ericson consented to the described sanctions and to the entry of findings that he obtained \$61,250 in checks from his member firm by requesting advances against future insurance commissions of insurance agents of his member firm. After obtaining the checks, Ericson endorsed them, deposited them in an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the agents, without their knowledge or consent. Furthermore, the NASD found that Ericson received from a public customer a \$3,223.85 check with instructions that he use the funds to purchase an annuity. Ericson failed to follow said instructions in that he 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 for the benefit of the customer. The findings also stated that Ericson failed to respond to NASD requests for information.

Ray Arvil Forrester (Registered Representative, Chicago, Illinois) was fined \$1,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Forrester telephoned his member firm, identified himself as a customer, directed the liquidation of stock held in the customer's account, and caused the proceeds to be directed to the customer in care of Forrester at his address. Without the customer's or the member firm's knowledge or consent, Forrester received a check totaling \$1,998.48, deposited the check in an account, and the proceeds were used by someone other than the customer. Forrester also failed to respond timely to NASD requests for information.

Joseph Roberts & Co., Inc. (Chicago, Illinois), Robert B. DiMarco, Jr. (Registered Principal, Chicago, Illinois), and Joseph F. DeSanto (Registered Principal, Chicago, Illinois) submitted an Offer of Settlement pursuant to which the firm and DeSanto were fined \$50,000, jointly and severally. The firm was prohibited for one year from participation in the purchase or sale of any restricted or control security in transactions requiring compliance with Rule 144 of the Securities Act of 1933, as amended. DeSanto was suspended from association with any NASD member in any capacity for 15 business days and immediately thereafter suspended from association with any NASD member in any principal capacity for 120 days. DiMarco was fined \$25,000 and suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through DiMarco and DeSanto, failed to comply with the terms of its restric-

tive agreement with the NASD and failed to establish, maintain, or enforce written supervisory procedures.

The findings also stated that the firm, acting through DiMarco and DeSanto, participated in the sales of securities when there was no registration statement filed with the SEC or in effect for such securities and effected securities transactions by means of manipulative, deceptive, and/or other fraudulent devices or contrivances, in that they made untrue statements of material facts or omitted to state material facts concerning the fact that the respondents were selling, or had arranged to sell, a significant number of shares of stock for affiliates of the issuer and that they had received loans or other funds from affiliates of the issuer.

Fred W. Kwok (Registered Representative, West Lafayette, Indiana) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$120,000 in restitution to a member firm. The sanctions were based on findings that Kwok obtained from public customers \$120,293.54 in checks and cash to purchase shares in mutual funds, an annuity and universal life insurance policy, or investments through his member firm. Kwok failed to follow instructions and used the customers' funds for some purpose other than for the benefit of the customers. Kwok also failed to respond to NASD requests for information.

Curtis David Mase (Registered Principal, Glen Carbon, Illinois) submitted an Offer of Settlement 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, Mase 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 failed to give prior written notice to, or obtain prior written approval from, his member firm to engage in such activities.

Gerald J. Mundy, Sr. (Registered Representative, Livonia, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mundy 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 failed to give prior written notice to, or obtain prior written approval from, his member firm to engage in such activities.

William D. Roberts (Registered Representative, Indianapolis, Indiana) 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, Roberts consented to the described sanctions and to the entry of findings that he received from a public customer \$7,975 with instructions that the funds be used to purchase various investments. The NASD determined that Roberts failed to follow the customer's instructions and used the funds for some purpose other than for the benefit of the customer. The NASD also found that Roberts failed to respond fully to NASD requests for information.

Arthur K. Taylor (Registered Representative, Royal Oak, Michigan) submitted an Offer of Settlement 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, Taylor consented to the described sanctions and to the entry of findings that he participated in the offer and sale of securities to a public customer on a private basis and failed to give prior written notice to, or obtain prior written approval from, his member firm to engage in such activities.

March Actions

David A. Andriacco (Registered Representative, Loveland, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Andriacco consented to the described sanctions and to the entry of findings that he performed financial planning services, sold insurance, and serviced pension plans for a nonmember of the NASD and failed and neglected to give prompt written notice of this outside employment to

his member firm. The findings also stated that Andriacco engaged in securities transactions on a private basis without prior written notice to and approval from his member firm.

Jon R. Butzen (Registered Representative, Lakemoor, Illinois) was fined \$12,500 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a March 1995 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Butzen failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U-4) that he was the subject of a pending NASD complaint. Butzen also executed unauthorized transactions in the account of a public customer without the customer's knowledge, consent, or authorization to exercise discretion in the account. Butzen also failed to respond timely to NASD requests for information.

David R. Clark (Registered Representative, St. Clairsville, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$35,000, barred from association with any NASD member in any capacity, and ordered to pay \$2,902.51 in restitution. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$2,902.51 for a life insurance premium. According to the findings, Clark did not use these funds for their intended purpose, but for some purpose other than for the benefit of the customers. The NASD also determined that Clark failed to respond to NASD requests for information.

Domestic Capital, Inc. (Buffalo, New York), Michael A. Wier (Registered Principal, East Aurora, New York), Michael J. Clark (Registered Principal, Orchard Park, New York), William G. Suchocki (Registered Principal, Springville, New York) and Timothy T. Kraska (Registered Representative, N. Tonawana, New York) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. Wier was fined \$75,000 and barred from association with any NASD member in any capacity with a right to reapply after three years. Clark and Suchocki were each fined \$100,000 and barred from association with any NASD member in any capacity. Kraska was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, Wier, Clark, Suchocki, and Kraska made fraudulent misrepresentations and price predictions, failed to disclose material facts, and made unsuitable recommendations of securities to public customers. The NASD also found that Clark and Suchocki fabricated and inflated financial information in questionnaires of customers who purchased stock in private offerings to make it appear that the investments were appropriate when, in fact, they were unsuitable. By doing so, Clark and Suchocki caused the firm's books and records to be false and inaccurate. The findings also stated that the firm, acting through Wier and Clark, failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the sales practice and record keeping violations.

Anatoly V. Finkel (Registered Representative, Cincinnati, Ohio) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Finkel failed to respond to NASD requests for information regarding a customer complaint.

Peter M. Harrington (Registered Representative, Clarence, New York) was fined \$150,000, barred from association with any NASD member in any capacity, and ordered to pay \$125,412.01 in restitution to customers. The sanctions were based on findings that Harrington failed to deliver liquidation proceed checks totaling \$75,412.01 to public customers, but, instead, endorsed the customers' names on the checks and used the funds for some purpose other than for the benefit of the customers. Harrington also obtained \$50,000 from a public customer to purchase a certificate of deposit, and, without the knowledge or consent of the customer, he retained the funds for his own use and benefit. Harrington engaged in the aforementioned transactions in the absence of written or oral discretionary authority in the customers' accounts and without their knowledge or consent.

Robert L. Miller (Registered Representative, Chicago, Illinois) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miller received from a public customer \$164.99 in cash with instructions to use \$64.99 towards an insurance premium payment and \$100.00 toward a loan repayment. Miller failed to follow the customer's instruction and used the funds for some purpose other than for the benefit of the customer. Miller also failed to respond to NASD requests for information.

James Geoffrey Osborne (Registered Principal, Oshkosh, Wisconsin) was fined \$20,000 and suspended from association with any NASD member in any capacity for two months. The NBCC imposed the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Osborne obtained from a public customer a \$20,000 check to purchase a limited partnership interest. Instead of using the funds as instructed by the customer and without the customer's knowledge or consent, Osborne deposited the check in the account of a business entity in which he had an interest or controlled and retained the funds for the use and benefit of the entity until a later date. Osborne also recommended the purchase of securities to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer based on the facts disclosed to him by the customer relating to her investment objectives, financial situation, and needs.

April Actions

Jack F. Armbruster (Registered Representative, Wheaton, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Armbruster consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to give written notice to and receive written approval from the firm before engaging in such activities.

Janell R. Cardinal (Registered Representative, Columbus, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$5,000, suspended from association with any NASD member in any capacity for 20 days, and required to requalify by exam before acting in any registered capacity. Without admitting or denying the allegations, Cardinal consented to the described sanctions and to the entry of findings that she placed purchase orders for the accounts of public customers without authorization.

Gerard Colon (Registered Representative, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay restitution to a member firm. Without admitting or denying the allegations, Colon consented to the described sanctions and to the entry of findings that he obtained from his member firm a \$650 check payable to a customer from a loan on the customer's life insurance policy. The findings stated that Colon failed to remit this check to the customer and used the funds for some purpose other than for the benefit of the customer.

Donald Robert Dann (Registered Representative, Highland Park, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Dann consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Interpretation on Free-Riding and Withholding, Dann purchased for his account shares of new-issue stocks that traded at a premium in the immediate aftermarket. The findings also stated that Dann opened a securities account at a member firm and began purchasing and selling securities in the account without giving prior written notice to his member firm and without giving written notice to the other member firm of his status as an associated person of a member firm.

Jeffrey Lynn Dunn (Registered Representative, Crestwood, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$130,000, barred from association with any NASD mem-

ber in any capacity, and required to pay \$77,935 in restitution to a customer. Without admitting or denying the allegations, Dunn consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed and neglected to give prior written notice of or obtain prior written authorization from his member firm to engage in such activities. The findings also stated that Dunn obtained from a public customer \$116,000 to purchase additional units of stock and retained the funds for purposes not authorized or known to the customer without the knowledge or consent of the customer. The NASD also determined that Dunn failed to respond to NASD requests for information.

Martin Patrick Flanagan, III (Registered Representative, Winfield, Illinois) was suspended from association with any NASD member in any capacity for six months and required to requalify by exam. The NBCC imposed the sanctions following review of a Chicago DBCC decision. The sanctions were based on findings that Flanagan failed to respond timely to NASD requests for information.

Flanagan's suspension began November 3, 1992, and concluded May 3, 1993.

John H. Frazer, Jr. (Registered Representative, Cincinnati, Ohio) 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 15 business days. Without admitting or denying the allegations, Frazer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice of and obtain prior written authorization from his member firm to engage in such activities.

James Ralph Fredal (Registered Representative, Shelby Township, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fredal consented to the described sanctions and to the entry of findings that he signed public customers' names to a variable life insurance product application form and bank authorization forms that purported to authorize the customers' bank to pay to his member firm the required monthly premium payments for the variable life insurance product. The NASD also found that Fredal signed the customers' names to the above-referenced documents without their knowledge or consent.

Michael S. Keller (Registered Representative, Getzville, 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 required to pay restitution to member firms. Without admitting or denying the allegations, Keller consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$31,162.98 that were to be applied to certain variable life insurance policies or mutual fund investments of these customers. Keller failed to apply \$27,442.94 of the funds in question as directed, and used the funds for some purpose other than for the benefit of the customers.

Thomas J. Lewis, III (Registered Representative, Newark, New York) 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 pay restitution to a member firm. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he falsely represented to his member firm that he had effected a customer purchase of a variable annuity, and signed an application to purchase the annuity without obtaining the customer's prior permission.

Keith E. Lorick (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$350 in restitution to a member firm. Without admitting or denying the allegations, Lorick consented to the described sanctions and to the entry of findings that he received from a public customer \$350 with instructions to use the funds as the initial annual premium on an insurance policy. The NASD found that Lorick failed to follow said instructions

and used the funds for some purpose other than for the benefit of the customer. Lorick also failed to respond to NASD requests for information.

William M. Mehalco, Jr. (Registered Representative, Hubbard, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$13,640 in restitution to a member firm. Without admitting or denying the allegations, Mehalco consented to the described sanctions and to the entry of findings that he prepared certain insurance policy applications and related paperwork for 10 customers. None of these customers authorized the purchase of the insurance policies for which the applications were prepared. The NASD determined that Mehalco, without obtaining consent or approval from these customers, signed their names to these insurance applications and related paperwork and submitted these documents to his member firm to obtain the commission for the sale of these policies. The findings also stated that Mehalco failed to respond to NASD requests for information.

Martin M. Navales (Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$18,900 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Navales consented to the described sanctions and to the entry of findings that he obtained from his member firm checks totaling \$3,779.30 made payable to public customers representing withdrawals and loan proceeds from the respective customers' variable appreciable life policies. The NASD found that Navales failed to remit these checks to the customers and used the funds for some purpose other than for the benefit of the customers.

Jerry Lee Neal (Registered Principal, Indianapolis, Indiana) submitted an Offer of Settlement 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, Neal consented to the described sanctions and to the entry of findings that he failed to abide by the terms of a firm commitment underwriting agreement for partnership units offered by a limited partnership in that his member firm did not purchase the remaining unsold units of the partnership at the initial termination date of the offering. Instead, the NASD found that Neal advanced to the issuer sufficient funds to purchase the unsold units, less commissions, syndication and underwriting fees, and continued to offer and sell the units to the public.

The findings also stated that Neal distributed offering materials for the partnership units to customers that contained misstatements of fact and/or omissions of fact and made unsuitable recommendations to customers without having a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, financial situation, and needs. The NASD determined that Neal distributed sales literature to customers that contained exaggerated, unwarranted, or misleading statements and exercised discretionary trading authority in five customer accounts prior to obtaining written authorization from the customers and without obtaining prior written approval from his firm accepting the accounts as discretionary accounts. The NASD also found that Neal participated in private securities transactions without providing advance written notice to and receiving advance written approval from his member firm to engage in such activities and executed personal securities transactions in the form of purchasing and selling bonds through a bank, without providing prior written notice to his member firm. Furthermore, the findings stated that Neal engaged in improper IRA distributions and engaged in the options business despite the fact that he was not effectively qualified or registered with the NASD in the appropriate capacity.

Kenneth B. Priebe (Registered Principal, Marilla, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, Priebe consented to the described sanctions and to the entry of findings that he delivered to customers private placement memoranda, subscription agreements, and suitability questionnaires relating to purchases of stock in private offerings and withheld the offering memoranda from the customers until the

customers gave him payment for their purchases. The NASD also found that Priebe had the customers sign blank suitability questionnaires that were later completed by registered representatives at his firm using inaccurate and fictitious information. The findings also stated that Priebe refused to participate in an NASD investigative interview.

Michael J. Tomasino (Registered Principal, Lake Zurich, Illinois) 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 \$400,000 in restitution to a customer. Without admitting or denying the allegations, Tomasino consented to the described sanctions and to the entry of findings that he obtained from a public customer a \$400,000 check with instructions that the funds be used to purchase interests in a municipal bond fund. The findings stated that Tomasino failed to follow the customer's instructions and used the funds for some purpose other than for the benefit of the customer.

Robert Dean Tomlinson (Registered Representative, Hoffman Estates, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$95,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam. Without admitting or denying the allegations, Tomlinson consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing and neglecting to give prior written notice of or obtain prior written authorization from his member firm to engage in such activities.

Sonal Pravin Trivedi (Registered Representative, Naperville, Illinois) submitted an Offer of Settlement pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trivedi consented to the described sanctions and to the entry of findings that she submitted applications to purchase securities products in the form of variable life insurance policies in the names of individuals who did not exist.

May Actions

Donald Eugene Bline (Registered Representative, Brazil, Indiana) was fined \$35,750, barred from association with any NASD member in any capacity, and required to pay \$2,350 in restitution to a member firm. The sanctions were based on findings that Bline received from a public customer \$3,150 with instructions to deposit the funds in three policies with his member firm. Bline failed to follow the instructions and used the funds for some purpose other than for the benefit of the customer. Bline also failed to respond to NASD requests for information.

Robert Lester Bodack (Registered Principal, Farmington Hills, Michigan) was fined \$910,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bodack participated in private securities transactions while failing and neglecting to give prior written notice of, or obtain prior written authorization from, his member firm to engage in such activities.

David Craig Henry (Registered Representative, Romulus, Michigan) was fined \$6,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Henry participated in private securities transactions and failed to give prior written notice of, and obtain prior written approval from, his member firm before engaging in such activities.

Andre D. Johnson (Registered Representative, Chicago, Illinois) and **Charlie R. Allen, Jr. (Registered Representative, Chicago, Illinois)** were fined \$45,295 and barred from association with any NASD member in any capacity and Allen was fined \$40,490 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson and Allen purchased securities for the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the customers' accounts. Johnson and Allen also failed to respond to NASD requests for information.

Ajay R. Joshi (Registered Principal, Winnetka, 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 five business days. Without admitting or denying the allegations, Joshi con-

sented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice of, and receive prior written approval from, his member firm to engage in such activities.

Thomas G. Kirkconnell (Registered Principal, Lansing, Michigan) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$158,000 in restitution to customers. The sanctions were based on findings that Kirkconnell obtained from public customers checks totaling \$158,000 for investment purposes, failed to follow the customer's instructions, and used the funds for some purpose other than for the benefit of the customers. Kirkconnell also failed to respond to NASD requests for information.

Edward David Marande, Jr. (Registered Representative, Grosse Pointe, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$70,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marande consented to the described sanctions and to the entry of findings that he participated in private securities transactions and without giving written notice of his intention to engage in such activities to, and receiving written permission from, his member firm. The findings also stated that Marande failed to respond to NASD requests for information.

Breck A. Willbond (Registered Representative, Elyria, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Willbond consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice to and obtain prior written authorization from his member firm to engage in such activities.

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

February Actions

Alex V. Folgen (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 Folgen arranged to have an imposter take the Series 24 exam for him. Folgen also failed to respond to NASD requests for information.

Michael K. Hart (Registered Principal, Point Pleasant Beach, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hart failed to appear for an on-the-record interview.

Alton Ray Jewell, Jr. (Registered Representative, Battery Park, Virginia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jewell failed to respond to NASD requests for information.

Harry R. Lankenau (Registered Principal, Richmond, Virginia) and **Nicholas G. Costas (Registered Principal, Richmond, Virginia)** were suspended from association with any NASD member in any capacity for 15 days. Costas also was fined \$5,000. The NBCC imposed the sanctions following review of a Washington DBCC decision. The sanctions were based on findings that Costas and Lankenau engaged in a scheme to deceive their member firm. Costas and Lankenau effected sales of municipal securities from their firm's inventory account to an institutional customer pursuant to an understanding that after a bona fide buyer for the bonds could be located, Costas would repurchase the bonds from the customer at a price that would assure the customer a profit. Lankenau also effected discretionary securities transactions for the customer's account without written authority.

The suspensions began April 12, 1993, and concluded April 26, 1993.

Paul A. Muro (Registered Representative, Old Bethpage, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The

sanctions were based on findings that Muro failed to respond to NASD requests for information regarding allegations that he took the Series 7 qualification exam under the name of another individual who was seeking to become registered with the NASD.

U.S. Securities Corporation of Washington, DC (Chevy Chase, Maryland), Anthony D. Roberts (Registered Principal, Burtonsville, Maryland), and L. Guy Hagerty (Registered Representative, Fairfax, Virginia) The firm was expelled from NASD membership and Roberts was barred from association with any NASD member in any capacity, and the firm and Roberts were fined \$80,000, jointly and severally. The firm and Hagerty were fined \$22,500, jointly and severally and required to pay \$18,993.60 in restitution. The sanctions were based on findings that the firm, acting through Roberts, conducted a securities business while failing to maintain sufficient net capital, failed to maintain accurate books and records, and filed inaccurate FOCUS Part I and IIA reports. The firm, acting through Roberts, also failed to give timely telegraphic notice of its net capital deficiencies and notice when it failed to prepare and maintain its trial balance and general ledgers.

Furthermore, the firm, acting through Roberts, failed to notify the NASD and receive prior approval to effect changes to its restriction agreement and effected retail principal securities transactions, and failed to comply with Securities and Exchange Commission (SEC) Rule 10b-10 in that it did not disclose to the customers in the confirmation statements of each transaction, the amounts of the markups or markdowns the firm realized. The firm, acting through Roberts, also sent letters to prospective clients that contained false and misleading information, failed to supervise Hagerty relating to markups and markdowns of principal securities transactions, and failed to establish and maintain written supervisory procedures.

The firm, acting through Roberts, participated as the placement agent in a minimum/maximum offering of units and received from subscribers \$15,000 prior to the sale of the minimum number of units and failed to transmit the funds to a separate bank escrow account. Instead, the funds were transmitted directly to the issuer's attorney and deposited in the attorney's account. The firm, acting through Roberts, also failed to return subscriber funds or notify the subscriber and reconfirm the purchase when the offering had been extended past the termination date and the terms of the offering had not been met, and failed to conduct any annual compliance meetings with its registered representatives. Roberts also failed to respond to NASD requests for information.

The firm, acting through Hagerty, also effected transactions as principal with retail customers at unfair prices and sold shares of a new issue that traded at a premium in the secondary market to a restricted account in contravention of the NASD Board of Governors Free-Riding and Withholding Interpretation.

March Actions

John J. Balkovec (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$150,000, barred from association with any NASD member in any capacity, and required to pay \$54,000 plus interest in restitution to a member firm. Without admitting or denying the allegations, Balkovec consented to the described sanctions and to the entry of findings that he received from a public customer \$50,000 for investment purposes. The NASD found that, without the customer's authorization, Balkovec established an account in the customer's name and withdrew and used funds for his personal purposes. The findings also stated that Balkovec falsified a document purporting to be a confirmation by his member firm of the purchase of the stock, falsified documents purporting to be statements of account issued by his member firm to the customer, and submitted such documents to the customer.

Francis W. Giampa (Registered Representative, Ambler, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Giampa failed to respond to NASD requests for information.

Robert T. Stout (Associated Person, Easton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association

with any NASD member in any capacity. Without admitting or denying the allegations, Stout consented to the described sanctions and to the entry of findings that he received from insurance customers premium payments totaling \$120.72 that he failed to remit to his member firm. The NASD found that Stout retained the funds for his own use and benefit.

April Actions

Gary L. Artis (Registered Representative, Landover Hills, 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, Artis consented to the described sanctions and to the entry of findings that he forged the endorsement signatures of individuals on insurance refund checks totaling \$2,163.93, negotiated the checks, and converted the proceeds for his own use and benefit. The findings also stated that Artis failed to respond to NASD requests for information.

Scott T. Balog (Registered Representative, Johnstown, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Balog consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. The NASD also found that Balog made unauthorized trades and unsuitable recommendations of securities transactions to public customers.

Gregory V. Everett (Registered Representative, Arlington, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Everett consented to the described sanctions and to the entry of findings that he secured a blank cash management account check belonging to a public customer, forged the customer's name as the payor, and negotiated the check to the payee in settlement of a personal debt, thereby converting the funds for his own use. The findings also stated that Everett effected unauthorized transactions for a public customer that were also unsuitable in light of the frequency of the transactions and the customer's investment needs and objectives.

Michael J. Ozga (Registered Representative, Norristown, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ozga recommended and sold to public customers shares of stock and engaged in a course of conduct in which he knowingly and recklessly sold speculative securities to his customers without disclosing material facts. Ozga also made price predictions to customers and engaged in unauthorized trades.

Charles B. Riddick, Jr. (Registered Representative, Leesburg, Virginia) 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, Riddick consented to the described sanctions and to the entry of findings that he forged a customer's signature on a money order.

S. Richard Schalcosky (Registered Representative, Pittsburgh, Pennsylvania) 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, Schalcosky consented to the described sanction and to the entry of findings that he received from a policyholder checks totaling \$590,050.09 drawn to the order of a life insurance company and caused such checks to be deposited into a bank account under his control. The NASD found that Schalcosky retained \$202,000 of this sum for his own use and benefit.

Kevin Stile (Associated Person, Brooklyn, 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. The sanction was based on findings that Stile arranged to have an imposter take the Series 7 exam for him.

James J. Woods, Jr. (Registered Representative, Richmond, Virginia) 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, Woods consented to the described sanctions and to the entry of findings that he provided false information on a request for verification of deposit form and indicated that an individual had an account at his member firm at a time when the individual did not have such account. The findings also stated that Woods forged a branch manager's signature on this form, and during the NASD's investigation, Woods provided false information to the NASD.

May Actions

John C. Byars, Sr. (Registered Representative, Pittsburgh, Pennsylvania) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Byars affixed or caused to be affixed to disbursement request forms the purported signature of a policyholder without the policyholder's authorization and thereafter submitted such forms to his member firm. Byars also failed to respond to NASD requests for information.

Raymond E. Cleary (Registered Representative, Abbottstown, Pennsylvania) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$79,000 plus interest in restitution to customers. The sanctions were based on findings that Cleary received from a public customer a \$50,000 check intended for the purchase of an annuity. At the time he received the checks, the "pay to" section of it was blank. Cleary wrote in as payee the name of an entity under his ownership and control, deposited the check into this entity's bank account, and failed to apply the funds to the purchase of an annuity for the customer. In addition, Cleary received from two public customers four mutual fund redemption checks totaling \$79,068.34 intended for the purchase of securities for the customers. Cleary deposited the checks to the account of the aforementioned entity and used the funds to purchase securities in his own name or that of the entity rather than that of the customers. Cleary also failed to respond to an NASD request for information.

Franklin R. Clement (Registered Representative, Williamsburg, New Jersey) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Clement, acting without the authorization or consent of policyholders, obtained checks totaling \$962.48, forged the endorsements on the checks, negotiated the checks, and retained the proceeds thereof for his own use and benefit. Clement also failed to respond to NASD requests for information.

Rayfield J. James, Jr. (Registered Representative, Asbury Park, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that James failed to respond to NASD requests for information about his financial dealings with a public customer.

Steven J. Motosicke (Registered Representative, Apollo, Pennsylvania) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Motosicke forged or caused to be forged the purported signatures of public customers on policy disbursement requests and thereafter submitted such documents to his member firm. Motosicke also forged the purported endorsements of the payees on checks issued by his member firm, negotiated such checks, and converted the proceeds totaling \$6,571 to his own use and benefit.

Gordon D. Smith (Registered Principal, Johnstown, Pennsylvania) was fined \$7,500, jointly and severally, with a member firm, suspended from association with any NASD member as a financial and operations principal for 45 days, and required to qualify by exam as a financial and operations principal. The sanctions were based on findings that a firm, acting through Smith, conducted a securities business while failing to maintain its minimum required net capital and failed to maintain accurate books and records. The firm, acting through Smith, also prepared an inaccurate month-end net capital computation and filed an inaccurate FOCUS Part II report. In addition, the firm, acting through Smith, failed to file prompt telegraphic notice with the SEC and NASD reporting its net capital deficiencies.

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

February Actions

None

March Actions

John DePalo (Registered Representative, Pleasantville, New York) was fined \$28,750, barred from association with any NASD member in any capacity, and ordered to pay \$3,750 in restitution to customers. The sanctions were based on findings that DePalo received from public customers \$3,750 in checks from public customers to purchase a common stock, failed to deliver the stock to the customers, and retained the payments received for the purchases. DePalo also engaged in private securities transactions, and failed to provide written notice to his member firm of the described transactions, his proposed role in the transactions, and whether he was receiving compensation in connection with the transactions.

Alexander Godelman (Registered Representative, Paramus, New Jersey) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Godelman received from public customers for mutual fund purchases a \$10,000 check payable to a company he owned and controlled. Instead, Godelman deposited these funds into the company's bank account and commingled them with other funds. Godelman also failed to respond to an NASD request for information.

Investors Associates, Inc. (Hackensack, New Jersey), Donna M. Silverman (Registered Principal, New York, New York), and Alexander N. Cherepakhov (Registered Principal, New York, New York) submitted Letters of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Silverman and Cherepakhov were fined \$40,000, jointly and severally, and required to disgorge \$35,000 in commissions to the NASD. Silverman was suspended from association with any NASD member in any capacity for 30 days and ordered to qualify by exam as a general securities principal. Cherepakhov was suspended from association with any NASD member in any principal capacity for 90 days and ordered to qualify by exam as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Silverman and Cherepakhov, permitted and facilitated two individuals to function as registered representatives at a branch office of the firm without being registered with the NASD.

Spencer Trask Securities, Inc. (New York, New York), Robert P. DiVenere (Registered Principal, Old Greenwich, Connecticut), and Robert J. Hume, III (Registered Principal, Ossining, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally, and ordered to pay \$3,948 in restitution. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through DiVenere and Hume, failed to comply with the Penny-Stock Rules (SEC Rule 15g) in that the firm failed to furnish customers who were deemed to be nonexempt under the rule the requisite risk disclosure statements, suitability documents, and written agreements before they purchased the penny stock. The NASD also found that the firm did not furnish the customers the requisite disclosures on these transactions as well as the requisite account statements.

The Wellington Group, Inc. (New York, New York) and Kevin Henry Kading (Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$40,000, jointly and severally. Kading was required to qualify by exam as a general securities principal, suspended from association with any NASD member in any principal capacity for two years, suspended from recommending transactions in designated securities for two

years, and suspended from serving as an officer or director of or maintaining ownership (including partial ownership) or control of a brokerage firm whose business includes servicing retail customers for two years (excluding institutional investors as defined by SEC Rule 15a-6(b)(7)). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kading, failed to comply with its restriction agreement, in that the firm solicited the receipt of customer funds, did not comply with its inventory limitations, and failed to maintain at all times a qualified financial and operations principal.

The findings also stated that the firm, acting through Kading, conducted a securities business while failing to maintain the required minimum net capital, computed inaccurate capital computations due to the firm's understatement of its minimum net capital requirement, and calculated inaccurate blockage and haircut charges. The NASD found that the firm, acting through Kading, failed to comply with the Penny-Stock Rules (SEC Rule 15g) in that 90 transactions were effected without obtaining the appropriate documentation and providing the required disclosures. The NASD also determined that the firm, acting through Kading, failed to evidence its supervision of transactions and the firm's written supervisory procedures did not adequately or accurately set forth the supervisory system to supervise the activities of registered representatives and associated persons, nor did it accurately include the titles, registration status, and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and the NASD Rules.

April Actions

Sergey Y. Christov (Registered Representative, Parlin, New Jersey) 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 10 business days. Without admitting or denying the allegations, Christov consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information about a customer complaint.

Herbert Gurwitt (Registered Representative, Wayne, New Jersey) and Norbert Downie (Registered Representative, Teaneck, New Jersey) submitted an Offer of Settlement pursuant to which Gurwitt was fined \$20,000 and suspended from association with any NASD member in any capacity for 45 days. Downie was fined \$20,000 and suspended from association with any NASD member for 90 days. Gurwitt and Downie must satisfy NASD Continuing Education requirements before the end of the suspension period. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in a series of transactions in which they failed to pay for orders they entered to purchase a stock. The findings also stated that Downie failed to inform his member firm in writing that he had opened accounts at eight different member firms and failed to inform the other firms of his status as a registered representative of his member firm.

Jailall I. Ramoutar, Jr. (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam before acting in any capacity requiring qualification. Ramoutar must also pay \$1,800 in restitution to a customer. Without admitting or denying the allegations, Ramoutar consented to the described sanctions and to the entry of findings that he purchased shares of stock for the accounts of public customers without authorization.

M. Rimson & Co. Inc. (New York, New York), Moshe Rimson (Registered Principal, New York, New York), and Barry Charles Wilson (Registered Principal, Bloomfield, New Jersey). The firm was fined \$20,000 and expelled from NASD membership, and Rimson was fined \$20,000 and barred from association with any NASD member in any capacity. Wilson was fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify as a financial and operations principal. The National Business Conduct Committee (NBCC) affirmed the sanctions fol-

lowing appeal of a New York District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, Rimson, and Wilson failed to respond to NASD requests for information. The NASD also found that the firm and Rimson failed to comply with obligations imposed upon them in a previous NASD action.

Wilson has appealed this action to the Securities and Exchange Commission (SEC) and the sanctions as to him are not in effect pending consideration of the appeal.

May Actions

Robert Catoggio (Registered Representative, Staten Island, New York) was fined \$42,000 and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Catoggio, a person prohibited from purchasing "hot issues," effected the sale of units in an initial public offering and beneficially shared in the proceeds of the sale, thereby indirectly participating in the purchase of shares in an initial public offering that traded at a premium in the immediate after-market.

Robert W. Dempsey (Registered Representative, Lake Hopatcong, New Jersey) was fined \$60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dempsey sold shares of stock in the account of a public customer without the customer's prior knowledge or consent. Dempsey also caused a \$5,000 check to be issued from the same customer's account made payable to the customer without the customer's prior knowledge or consent and represented to the customer that the monies were repayment on a loan. Furthermore, to conceal the aforementioned activities, Dempsey caused his member firm's records to falsely indicate that a public customer had requested a change of address for the mailing of statements and confirmations pertaining to his account. Dempsey also failed to respond to NASD requests for information.

Emdadul Haque Khan (Registered Representative, Staten Island, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Khan failed to respond to NASD requests for information about customer complaints.

George Michael Vanvelhuisen, Jr. (Registered Representative, Bradley Beach, New Jersey) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Vanvelhuisen caused shares of stock to be sold and purchased in the account of a public customer without the customer's knowledge or consent. Vanvelhuisen also caused a customer's address to be changed without the customer's prior knowledge, authorization, or consent and failed to respond to NASD requests for information.

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

February Actions

Robert J. Darling (Registered Representative, Bradenton, Florida) 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, Darling consented to the described sanctions and to the entry of findings that, without the knowledge or consent of at least two public customers, he received \$16,309 in insurance proceeds from his submission of at least four fraudulent loan requests on insurance policies.

Richard C. Hinckley (Registered Representative, Windsor, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hinckley misrepresented the non-existence of a mutual fund sales charge to a public customer, and misrepresented the existence of a

guarantor on a personal promissory note that he tendered to his customer upon the customer's discovery of the sales charge. Hinckley also failed to respond to NASD requests for information.

Key Brokerage Company, Inc. (Cleveland, Ohio) 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 register all associated persons who were functioning in a principal capacity. The findings also stated that the firm failed to comply with Regulation T of the Federal Reserve Board in that in at least 35 transactions involving mutual funds wire order purchases, payment was neither received from the customer within the required seven business days nor was there a request for Regulation T extensions made by the firm on behalf of these customers. The NASD also found that the firm's written supervisory procedures and overall supervisory systems were inadequate.

Wilber S. Stakes (Registered Representative, Stamford, Connecticut) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stakes made use of fraudulent devices in setting up fictitious accounts, falsifying their existence, and executing fictitious transactions therein. Stakes also failed to respond to NASD requests for information.

March Actions

Garnet M. Marcotte (Registered Representative, Oxford, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marcotte consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information about a customer complaint.

April Actions

Armand Arce (Registered Representative, Longmeadow, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Arce consented to the described sanctions and to the entry of findings that he caused \$19,337.93 in insurance refund checks from public customers to be deposited into his bank account for his own use and benefit.

James E. Carroll, III (Registered Representative, West Hartford, Connecticut) 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, Carroll consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit funds totaling at least \$100,000 through the use of a fictitious account in a public customer's name wherein he redeemed shares of a money market fund and converted the proceeds to his own use and benefit. The findings also stated that in addition, Carroll converted \$20,000 in funds belonging to another customer to his own use and benefit.

Jackie R. Collins (Registered Representative, Shelburne, Vermont) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Collins failed to respond to NASD requests for information about his termination from a member firm.

Michael V. Duncan (Registered Representative, San Marcos, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Duncan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his employment with his member firm without giving prior written notice to his member firm.

Michael P. Freeman (Registered Representative, San Diego, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Freeman, without the knowledge or consent of two public customers, withheld

and misappropriated to his own use and benefit funds totaling \$550 that were intended for the purchase of financial investments. Freeman also failed to respond to NASD requests for information.

May Actions

Commonwealth Equity Services, Inc. (Waltham, Massachusetts) and **David L. Kelly (Registered Principal, Waltham, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. The firm also agreed to implement certain improvements in its supervisory, compliance, and management structure and was ordered to pay \$55,235 in restitution to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to entry of findings that the firm, acting through Kelly, failed to enforce its written supervisory procedures to achieve compliance with applicable securities laws and regulations and with the NASD rules.

Peter M. Wokoun (Registered Representative, Sutton, Massachusetts) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that Wokoun failed to respond to NASD requests for information about his termination from a member firm.

Wokoun has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Market Surveillance Committee

February Actions

Richard P. Brown (Registered Principal, Holmdel, New Jersey) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity, barred directly or indirectly from owning more than a five percent interest in any Nasdaq® company, or serving as an officer, director, or control person of a Nasdaq company. Brown also agreed to pay \$300,000 into an interest-bearing escrow account for the benefit of securities claimants. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in a manipulative, fraudulent, and deceptive scheme in connection with transactions in a common stock. The NASD also found that Brown sold common stock to customers at prices that were not fair and reasonable and not reasonably related to the prevailing market price for the securities with markups in excess of 10 percent above the prevailing market price. The findings also stated that Brown failed to supervise.

Kevin G. Malone (Registered Principal, East Rockaway, New York) and **Michael P. Galterio (Registered Principal, Wantagh, New York)** submitted Offers of Settlement pursuant to which Malone was fined \$40,000, suspended from association with any NASD member in any capacity for three months, and required to pay \$9,686 in restitution to public customers. Galterio was fined \$7,500, suspended from association with any NASD member in any capacity for 10 business days, and barred from association with any NASD member in any principal or supervisory capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Malone caused his member firm to sell common stock to retail customers at an arbitrary and inflated price, knowing there was little or no demand for the stock and no favorable news or developments concerning the stock.

The NASD also found that Malone used manipulative, deceptive, and other fraudulent devices to create actual or apparent active trading in the stock, and to arbitrarily and artificially establish, maintain, and raise the price of the stock to induce its purchase and sale by others. The findings also stated that Galterio failed to establish, implement, and enforce reasonable supervisory procedures designed to prevent the firm's retail customers from being charged manipulated prices and unfair and fraudulently excessive markups in a common stock.

Malone's suspension began on March 18, 1996, and concluded June 18, 1996.

March Actions

None

April Actions

Adams, Harkness & Hill, Inc. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$20,000 and ordered to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with applicable securities laws and regulations and with the applicable NASD trade-reporting rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported, or caused to be reported, Nasdaq transactions through the Automated Confirmation Transaction Service (ACT), contrary to provisions of Schedule D to the NASD By-Laws. The NASD also determined that the firm failed to establish, maintain, and enforce written procedures for late trade reporting.

Brooklyn Capital & Securities Trading, Inc. (Brooklyn, New York) and **David Rybstein (Registered Principal, Brooklyn, New York)** were fined \$58,000, jointly and severally. The firm was suspended from NASD membership for one year and required to reapply for membership. Rybstein was suspended from association with any NASD member in any capacity for one year and thereafter until he requalifies in all capacities in which he seeks to function. The NBCC imposed the sanctions following appeal of the NASD Market Surveillance Committee decision. The sanctions were based on findings that the firm and Rybstein employed manipulative and deceptive devices in the trading of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

The firm and Rybstein have appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

Paul Eisenberg (Registered Principal, Roslyn Estates, New York) 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 45 days. Without admitting or denying the allegations, Eisenberg consented to the described sanctions and to the entry of findings that he fraudulently used a prospectus known to contain materially false and misleading information in connection with an initial public offering. The NASD also found that Eisenberg made misrepresentations and omissions of material facts to customers during the underwriting and aftermarket trading period of this offering.

Thomas C. Kocherhans (Registered Representative, Orem, Utah) was fined \$50,500, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative. The SEC affirmed the sanctions following appeal of a January 1995 NBCC decision. The sanctions were based on findings that Kocherhans knowingly and willfully engaged in a manipulative, deceptive, and fraudulent scheme to increase the reported closing price of a common stock. Specifically, Kocherhans effected a series of purchases in a manner that caused the purchases to be executed at or near the close of the market with the intent to cause the market for the stock to close at a price higher than the previously reported trade, thereby reducing or avoiding margin calls on an account held in his wife's name, and to avoid higher maintenance margin requirements for the account. Kocherhans also failed to inform his member firm in writing that he maintained brokerage accounts at two other member firms.

Jeffrey Weissman (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Weissman consented to the described sanctions and to the entry of findings that he sold 20 percent of a hot issue to individuals associated with the holding company for his member firm and began aftermarket trading of units and components before completion of the initial public offering distribution of the securities. The NASD determined that Weissman dominated and

controlled the stock to the extent that there was no independent, active market for such securities, and charged excessive markups which ranged from 10.2 to 47.3 percent above the firm's contemporaneous costs and resulted in customer overcharges of \$718,384.

May Actions

James W. Bullard, Jr. (Registered Representative, Miami Beach, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Bullard was also suspended from association with any NASD member in any principal capacity for two years and ordered to appear and give on-the-record testimony to the NASD. However, if Bullard fails to appear, the suspensions will automatically convert to a bar from association with any NASD member in any capacity. The sanctions were based on findings that Bullard failed to respond completely to NASD requests for information.

Mayer & Schweitzer, Inc. (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$75,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to grant a "stop" in connection with the execution of certain orders. The firm's policy was not documented and the staff was not able to fully verify that its procedures for granting a stop were followed in all instances. The firm also executed orders that were inconsistent with its internal procedures and its obligation to provide best execution.

Trimark Securities Inc. (White Plains, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000 and must undertake to implement its supervisory procedures to prevent a pattern or practice of late trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported, or caused to be reported, transactions through the Automated Confirmation Transaction (ACTSM) Service, contrary to provisions of Section 2(a)1 and 2(a)5 of Schedule G to the NASD By-Laws and the Interpretation of the Board of Governors concerning the obligation of members to report transactions within 90 seconds of execution.

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