

# ALERT

## NASD Cautions Members on Non-Nasdaq Trading Rules

Members that make markets in non-Nasdaq over-the-counter securities must comply fully with the requirements of Schedule H, Section 4 of the NASD's By-Laws and Securities and Exchange Commission (SEC) Rule 15c2-11. In its review of compliance with these rules and regulations, the NASD staff has found a number of deficiencies, many of which have resulted in disciplinary actions.

With certain exceptions, Rule 15c2-11 requires any member to gather, maintain, and review certain basic information about an issuer and to have a reasonable basis for believing that the information is accurate and obtained from reliable sources before such a member initiates or resumes a quotation for the issuer's security in an interdealer quotation medium.

Schedule H, Section 4 requires members to submit copies of the issuer information required by Rule 15c2-11 to the NASD (on Form 211) at least three business days prior to publishing a quotation in an interdealer quotation medium, such as the OTC Bulletin Board or the National Quotations Bureau Inc.'s (NQB) "Pink Sheets."

### Requirements of Rule 15c2-11

Members can comply with the issuer informational requirements of Rule 15c2-11 by maintaining and reviewing such information and having a reasonable basis for believing that the information is accurate and was obtained from reliable sources. Any one of the following five categories of issuer information may be reviewed and maintained:

1. The issuer's prospectus, filed with the SEC, that has been in effect less than 90 days; or
2. The issuer's Regulation A offering circular with an effective date less than 40 days old; or
3. The issuer's latest Form 10-K report (or registration statement) and all subsequent current 10-Q and 8-K reports; or
4. All the information filed by a foreign private issuer with the SEC during the issuer's last fiscal year pursuant to Section 12g3-2(b) of the Securities Exchange Act; or
5. Sixteen items of information about the issuer specified in the rule, including reasonably current financial information as defined in the rule.

Members must submit copies of this information to the NASD along with a completed Form 211 application at least three business days before entering a quotation in any interdealer quotations medium.

The NASD staff conducts a substantive review of the application and will notify the broker/dealer that the submission is cleared or, alternatively, that deficiencies have been

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## Member Expelled, Employees Fined For "Adjusted Trading" in Bonds

The NASD has taken disciplinary action against Fitzgerald, DeArman & Roberts, Inc., of Tulsa, Oklahoma; Larry Dale Harrison, the firm's compliance officer and principal in Tulsa; and Eric Linton Witherow, a registered representative in its Irvine, California branch office.

Pursuant to this action, the NASD Board of Governors expelled Fitzgerald, DeArman & Roberts, Inc., from membership in the NASD, fined Harrison \$50,000 and suspended him from association with any member of the NASD in any capacity for 90 days, and fined Witherow \$30,000.

The Board imposed these sanctions following an appeal of a District Business Conduct Committee decision for the San Francisco district.

The allegations of misconduct were based on findings that, on two separate occasions, the firm, acting through Harrison and Witherow, engaged in a fraudulent pricing scheme known as "adjusted trading" involv-

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ing government securities.

Specifically, the respondents purchased U.S. Treasury bonds, utility bonds, and corporate bonds at prices not reasonably related to the then-current market from a public customer and thereafter sold Federal National Mortgage Association and Student Loan Marketing Association zero coupon bonds to the same customer at inflated prices substantially above the then-prevailing market.

As a result, the respondents were found to have violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and SEC Rule 10b-5 promulgated thereunder. They are federal regulations that, in general, prohibit the use of any manipulative or deceptive device or scheme in the purchase or sale of any security.

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identified that must be resolved before quotations activity may begin.

Exceptions from the issuer informational requirements of Rule 15c2-11 are available for: (a) exchange-listed securities; (b) unsolicited customer interest; (c) securities that have been continually quoted during the past 30 calendar days in the quotation medium (the "piggyback" exception); and (d) securities traded in Nasdaq.

If the member can rely on one of these exceptions, no filing of Form 211 is generally necessary for quoting in the OTC Bulletin Board. To qualify for the exception for exchange-listed securities, a security must trade on a United States national stock exchange on the business day of or the business day before the Form 211 application is filed.

A security qualifies for the unsolicited customer interest exception if the broker/dealer enters the quotation solely for the customer and the broker/dealer did not solicit the quotation.

To qualify for the "Nasdaq securities exception," the Nasdaq listing for the security must not be suspended, terminated, or prohibited.

To rely on the most frequently used exception, namely the piggy-

back exception, a security must be quoted in the specific interdealer quotation medium during the past 30 calendar days. In addition, during those 30 days, the security had to be quoted on at least 12 days with no more than four consecutive business days without a quotation.

In closely monitoring member activity in this area, the NASD has discovered significant non-compliance with Rule 15c2-11 and Schedule H, Section 4 as well as violations of other SEC and NASD rules, such as:

- When reviewing issuer information required by Rule 15c2-11, members must be alert for "red flags" that indicate inaccurate information. Evidence that the member knew or should have known the issuer's information was inaccurate could result in NASD or SEC disciplinary action.

For example, a recent NASD complaint involved a member that submitted issuer 10-K reports that had not been filed with the SEC. In addition, those reports contained information that the member knew or should have known was false and inaccurate. The member and three individuals each were fined \$2,500 and suspended for two weeks.

- In other cases, broker/dealers have accepted cash payments or other remuneration from issuers and promoters to make a market in securities. This practice has been found to be contrary to federal securities laws and the NASD's rules. The NASD in *Notice to Members 75-16* placed the membership on notice that accepting such payments could be viewed as improper conduct. As stated in that notice:

"Members generally have considerable latitude and freedom to make or terminate market-making activities in over-the-counter securities. The decision to make a market in a given security and the question of 'price' are generally dependent on a number of factors including, among other things, supply and demand, the firm's attitude toward the market, its current inventory position and exposure to risk and competition. *The additional factor of payments by an issuer to a market maker would proba-*

*bly be viewed as a conflict of interest since it would undoubtedly influence, to some degree, a firm's decision to make a market and thereafter, perhaps, the prices it would quote.*

*Hence, what might appear to be independent trading activity may well be illusory."* (Emphasis added.)

The NASD has disciplined members for accepting payments to become market makers.

- Some members have also failed to comply with the fundamental requirements of Rule 15c2-11 before publishing quotations. Frequently, this involved entering quotes in the NQB Pink Sheets without either having an exception from Rule 15c2-11 or reviewing and maintaining the information required by the rule. This type of conduct has also resulted in NASD disciplinary sanctions. Also, some members satisfy the information maintenance requirements of Rule 15c2-11 but fail to file the Form 211, thus denying the NASD an opportunity to conduct a substantive review of the issuer information obtained by the member.

- All members that submit issuer information with the Form 211 for a priced quotation must disclose on the Form 211 the basis for the price level of their initial priced quotation and the factors considered in making that determination.

This requirement was designed to deter the entry of potentially fraudulent or manipulative quotations. The member's basis (i.e., underlying rationale) for the price level should be specific and concise and take into account the issuer information and/or specific current market conditions. The factors considered by the member in reaching the price determination must also be specified. A broad, generalized statement, such as "supply and demand," is not an acceptable explanation of the specific pricing rationale of the member for the particular security. The NASD is not conducting merit review but must be able to clearly understand the basis and factors and their relationship to the initial priced entry.

- Some members have subsequently entered priced quotes in the

OTC Bulletin Board after their Form 211 filings were submitted without the basis and factors explanation required for priced quotations. Further, the NASD staff cleared the filing only for unpriced quotations. A member may request NASD clearance for an unpriced entry (a name-only quote) but, once it appears in the interdealer quotation medium, the member may not enter a priced quotation until it first supplements the original filing with its basis and factors for such a price quote.

## Compliance Short Takes

■ SEC-approved amendments to Sections 3 and 4 of Article VI of the By-Laws allow the NASD to suspend or cancel after 15 days notice, in writing, the registration of any associated person who fails to pay fees (including arbitration forum fees), dues, assessments, or other charges owed for the use of NASD facilities or systems. The By-Laws already provide for this authority regarding member firms. The NASD Board believes this rule change protects the integrity of the arbitration process and the marketplace and provides uniformity in the treatment of members and associated persons failing to pay fees.

■ The SEC has approved the amendments to Article III of the NASD's Rules of Fair Practice, establishing a new Section 35A relating exclusively to options communications. The changes, which became effective November 1, amend Section 35 of the Rules of Fair Practice, the NASD's general communications rule, by deleting all provisions related to options. The new Section 35A addresses the SEC's concerns related to the approval of options communications before use, suitability disclosure, educational communications, and communications containing comparisons and recommendations. The new rule also serves to make the NASD's options communications regulations consistent with those of other SROs. More details on this change are available in *Notice to Members 91-62* (October 1991).

■ Recently, many corporate and municipal issuers have been calling their bonds to take advantage of declining interest rates. While the savings benefit the issuers, investors, counting on a bond's yield to maturity, may feel shortchanged if the call reduces the rate of return on their investment. Customers so affected may complain that their brokers failed to describe the impact call features would have on their investment return. The NASD suggests that, when discussing bonds with investors, members quote the yield to first call rather than the yield to maturity.

■ Private investors can now call the NASD on a toll-free number, (800) 289-9999, to get information from the NASD's Central Registration Depository (CRD) on disciplinary actions taken against member firms and their registered representatives. This new service is an outgrowth of the NASD's public disclosure program, begun in 1988 to help investors learn about the background of prospective brokers and their employers. Although all users have free, unlimited access to the service, private individuals requesting information for their own use can receive written summaries from CRD free. However, commercial customers (those who use the information for nonprivate purposes) must pay a \$30 disclosure program fee, which they may pay by credit card, per request.

■ Recent Form U-4 and U-5 changes allow for disclosure of SEC-issued cease-and-desist orders and SEC-imposed monetary sanctions. The modified forms also provide for disclosure of any action taken by a "foreign financial regulatory authority" that is deemed a statutory disqualification. To avoid multiple, repetitive disclosures of information under Item 22 of Form U-4 and Items 13-15 of Form U-5, an individual can certify that all information in the CRD data base related to Item 22 is complete, accurate, and has been previously submitted on a Disclosure Reporting Page format. Because these changes contain new language required by law, members should begin using the revised forms immediately

and disregard prior versions. Effective February 1, 1992, only the current form will be acceptable. Firms may request additional copies of these forms by contacting NASD Member and Market Data Services at (301) 590-6500.

■ The NASD recently sent out for a membership vote proposed amendments to the Rules of Fair Practice that would require members to maintain records of all cash and noncash compensation received from offerors and the distribution of the compensation to its associated persons, prohibit associated persons from receiving any such compensation from anyone other than the member with which the person is associated, prohibit a member from receiving securities from an offeror, and prohibit receipt by a member of any type of compensation from the offeror unless such is described in the current prospectus of the investment company or variable contract. Notwithstanding the foregoing, the proposal would permit associated persons to receive gifts with a value not exceeding \$100 per annum and permit offerors to pay or reimburse members for training and educational meetings at a business location where the offeror or member has its office or in the vicinity of such an office. There also are exceptions provided for, among others, compensation arrangements between a member and its associated persons.

■ NASD and SEC regulations require members and registered persons to keep Form U-4s current at all times by filing supplementary amendments to the original application whenever required to do so under the rules. While recently checking for compliance in this area, the NASD found instances of failure to file the necessary amendments when it was required. Members and associated persons are reminded that a "yes" response to any question in Item 22 on Form U-4 mandates that the member submit an amended filing, including a detailed explanation on the form's disclosure reporting page. To ensure compliance, the NASD advises members to review their internal proce-

dures for filing amended Form U-4s as required.

■ With the upturn in the securities markets during recent months, many members have changed their internal policies to require their registered personnel to increase their production levels. By increasing the minimum amount of revenue a broker must produce to earn above the minimum commission, sales personnel are expected to reach the new sales levels as a condition of continued employment. Members are cautioned that these higher production minimums may influence some brokers to exert improper pressure on investors so that the brokers can meet their quotas. Those members that change their production pay-out schedules should work to ensure that their representatives do not resort to improper sales practices and should determine the adequacy of their supervisory procedures to monitor these sales activities.

## Delays in Bond Interest Payment To Customers Concern NASD

The NASD has received a number of inquiries from customers who are dissatisfied with broker/dealers that hold interest payments on book-entry bonds for a period of time before forwarding the monies to customers.

Customers question delays in forwarding interest on their bonds in light of the increased efficiencies that book-entry settlement and record-keeping provide.

Members must forward customers' money promptly. Although the rules do not define "promptly," members should forward customer payments as soon as possible after receipt. A firm that receives an interest payment on the first day of the month and fails to forward it until mid-month may not have acted promptly.

Today's increased movement toward book entry for municipal bond ownership represents efficiency in cost and paperwork for broker/deal-

ers as well as the issuers and should be encouraged, the NASD believes.

However, customers who experience delays in receiving the interest payments on their bonds may not believe that book entry is in their best interest. Members should review their procedures for forwarding interest payments, keeping in mind the need to act promptly and taking into consideration whether customers believe these procedures treat them fairly.

## Packaged Phone Scripts Could Mean Trouble

The NASD is concerned that certain national telemarketing firms are soliciting NASD members to purchase prepared telephone scripts for use by unregistered persons. The telemarketing firms do not say whether the scripts comply with applicable rules or have been filed with the NASD for review.

The following is a script the NASD recently obtained.

### TAX-FREE BOND FUND Nonregistered Caller Version Introduction

*May I speak with Mr./Ms. \_\_\_\_\_, please? Very good. This is \_\_\_\_\_'s office with [company], calling. I have some important information on what is called a tax-free municipal bond fund. Have you ever heard of one of these before?*

*Basically [as you know], it's a portfolio of top quality tax-free municipal bonds that have been selected for both income and safety. Could I send you some information on it?*

**IF NO:** *Thank you very much, and have a nice day/evening.*

**VERIFY ADDRESS:** *Great, I have your address down as \_\_\_\_\_, is that correct? [response] Just one other question, and I'll let you go. In case I can't get in touch with you during the day/evening, how can I reach you during the evening/day?*

**Possible Objections To Be Handled**  
**WIFE ANSWERS:** *Is this Mrs.*

*\_\_\_\_\_? [response] Mrs. \_\_\_\_\_, tell me, do you take care of the investment decisions in your family?*

*If yes, continue with script.*

**OTHER BROKER:** *Let me ask you this. We have a lot of information available that you might want to consider, just as a second opinion. Should I send you information on [broker specialty]? If [broker] comes up with another idea, would you be offended if we called you back and mentioned it to you?*

This script **DOES NOT** comply with NASD or SEC rules because:

1. Only registered personnel should use such a script. The text discusses a particular security and is designed to solicit purchases of that security. Even if the potential customer's response is negative, the caller pursues other areas of the firm's business. Section (1)(b), Part II of Schedule C to the Association's By-Laws prohibits unregistered persons from discussing general or specific investment products or services offered by the firm, prequalifying prospective customers as to financial status and investment history and objectives, or soliciting new accounts or orders.

2. The script involves a tax-free municipal bond fund. As such, the script must comply with SEC Rule 134 to avoid being deemed a prospectus. The script does not comply with this rule in that, for example, it does not offer a prospectus with the required legend.

3. Because the script is for a registered investment company, it must be filed with the NASD's Advertising Department for review under Article III, Section 35(c) of the Rules of Fair Practice. The text must also follow the standards set forth in subsection (d) of the rule. Depending on the type of bond fund offered, additional disclosure may be needed to comply with those standards.

The NASD is alerting members so they may avoid purchasing similar materials for use with the public. If you have any questions about this script or others, please call the

NASD's Advertising Department at (202) 728-8330.

## Members Vote on NASD Retention-Of-Jurisdiction Amendment

**A** proposal to extend NASD jurisdiction for two years after a termination or resignation recently went out for member vote. If approved, the measure will go to the SEC for final approval.

The membership had previously approved a measure (now on file with the SEC) to codify the NASD's procedure of "holding" terminations and resignations to accommodate investigations of actionable misconduct.

Currently, the NASD has one year from the effective date of the filing of a member resignation or an associated person's termination to file a complaint for previous actionable misconduct. If the NASD is unaware of misconduct by an associated person when a termination takes effect, the time period for filing a complaint could expire before action is taken.

To avoid this, the NASD uses a procedure that involves "holding" the effectiveness of the member's resignation or the associated person's termination if the NASD knows of or is investigating actionable misconduct.

The NASD also retroactively holds resignations or terminations if it becomes aware, after the effectiveness of the termination, of matters that would have resulted in a hold.

The SEC expressed concern that the proposal as filed permits the NASD to hold indefinitely a member resignation or registration termination pending the outcome of an investigation.

In response to these concerns, the NASD amended the proposal to extend its current one-year time period for retaining jurisdiction to a fixed two years from the date a resignation or termination is filed or from the date the NASD revokes or cancels a member or associated person.

In the NASD's view, this fixed

two-year time limit will be less intrusive than the current indefinite and potentially unlimited "hold" process and will allow sufficient time to bring virtually all necessary disciplinary actions.

For associated persons, the two-year period would recommence on the filing date of the last amendment to a Form U-5 filed within the original two-year period.

This covers situations in which routine Form U-5 filings are followed by subsequent amendments disclosing potential violations requiring investigation. With the two-year period running from the date of the last Form U-5 amendment, persons cannot avoid disciplinary action through their own coverups or the delays caused by others.

Moreover, because members have to send any amended Form U-5s to the terminated person, he or she would know when the two-year period recommences. The two-year limit also would be consistent with current rules that permit a person to become associated with another member without requalifying by examination for up to two years from the date of termination.

## NASD Finds Problems With Members' Form U-5 Reporting

**A** recent review of NASD examinations and disciplinary actions make it evident that members are not disclosing full and accurate reasons for termination when filing Form U-5s for their insurance-affiliated registered personnel.

There seem to be vast disparities among members reporting insurance-side improprieties on Form U-5 filings. This suggests that not all such insurance-affiliated members are complying with the rule.

Some members are particularly diligent in making the appropriate Form U-5 filings and disclosures, while others are far more lax. Clearly, the latter group of members is not in

compliance with reporting requirements and must take immediate steps to rectify its disclosure deficiencies.

NASD rules require a member to file a Form U-5 promptly, but not later than 30 calendar days after terminating a registered person.

The member must answer questions concerning apparent misconduct by a person while associated with the firm submitting the Form U-5. A "yes" answer to any of these questions requires a detailed explanation of the apparent misconduct.

A member's failure to provide accurate disclosures on Form U-5 could permit the terminated person to avoid regulatory oversight for potential violations and sanctions for actual violations of NASD rules and other applicable federal statutes and regulations. Failure to provide this information also may subject the investing public to repeated misconduct as well as deprive other member firms of the ability to make informed hiring decisions, the NASD points out.

Moreover, members may be subject to administrative, civil, and even criminal penalties for failing to provide complete and accurate information on Form U-5s regarding the termination of any registered personnel, including those engaged in insurance transactions.

For more details on these issues, see NASD *Notice to Members* 88-67, which addresses member obligations to provide accurate information on Form U-5.

## Board Adopts Short-Sale Rule For Nasdaq/NMS® Securities

**T**he NASD Board has approved the adoption of a short-sale rule for Nasdaq National Market System (Nasdaq/NMS)® securities.

The rule, which will contain an exemption for qualified market makers, will be submitted to the NASD membership for vote and, if approved, thereafter filed with the SEC

for its consideration and approval.

The proposed rule was recommended to the NASD Board for adoption by a broad base of its constituents, including its Issuer Affairs, Institutional Investors, Corporate Financing, and Trading Committees as well as by the Nasdaq Corporate Advisory Board, which is composed of chief executive officers of companies whose securities are traded in Nasdaq/NMS.

"The NASD Board took this action," said NASD President and Chief Executive Officer Joseph R. Hardiman, "to prevent improper or demoralizing short-selling activity that adversely affects the pricing efficiency of The Nasdaq Stock Market. In large measure, the proposed rule will have the same impact on trading in Nasdaq/NMS securities as SEC Rule 10a-1 currently has on exchange-listed securities. As a result, the Board's action will equalize the short-sale regulation of Nasdaq/NMS securities with that imposed by the SEC on exchange-listed issues."

This NASD Board's approval of a short-sale rule for Nasdaq/NMS securities follows other steps it has taken over the past five years to govern the conduct of short selling in The Nasdaq Stock Market. These steps include monthly reporting of short interest in Nasdaq securities; requiring, before a short sale is executed for customer accounts, that an affirmative determination be made that the security can be borrowed and delivered; and requiring that buy-in transactions for customer accounts be for cash or guaranteed delivery.

As approved by the NASD Board, the proposed short-sale rule will incorporate the following elements:

- The rule would be based on the inside bid as displayed in the Nasdaq system.
- Short sales would be prohibited at or below the bid when the current bid is lower than the preceding bid. (Short sales could be made at all times by offering stock at prices higher than the bid.)
- Qualified market makers would be exempted from the provis-

ions of the rule.

- Market makers could not use their exemption to bypass the rule for customer orders.

- Exemptions, where applicable, would track SEC Rule 10a-1 for short sales in exchange-listed securities.

- The rule would be effective during normal, domestic market hours (i.e., 9:30 a.m. to 4 p.m., Eastern Time).

Simultaneous with the submission to the SEC of a short-sale rule applicable to NASD members, the NASD will petition the SEC to amend Rule 10a-1 to include Nasdaq/NMS securities so that short-sale restrictions would apply directly to all market participants.

## NASD Backs Exclusion for Regular Nasdaq Issues

The NASD recently filed detailed comments with the SEC on a series of rule proposals to regulate trading in "penny stocks." The comments call for regular Nasdaq stocks, on which listing standards were raised recently, to be exempted from the definition of penny stock.

The planned SEC rules would establish criteria for defining a penny stock and subject broker/dealers trading them to additional disclosure and recordkeeping requirements.

The rules being considered are designed to curb illicit sales and trading practices in low-priced equities traded primarily in the over-the-counter market. In its comment letter, the NASD supported the intent of the SEC's proposed rules, highlighting the Association's enforcement efforts directed at individuals and firms engaged in fraudulent practices involving penny stocks.

The NASD disputes the need to classify certain regular Nasdaq securities as penny stocks to fulfill the SEC's regulatory objectives under the proposed rules. Instead, the

NASD recommends that all regular Nasdaq securities be exempt from the proposed rules for the following reasons:

- The NASD this year filed with the SEC, based on Board approval, a last-sale price and volume reporting requirement for regular Nasdaq securities. With this enhancement, the NASD's surveillance of trading in regular Nasdaq securities would be the same as that for Nasdaq/NMS issues.

- The Board also voted to increase the minimum size requirement to 500 shares for market-maker quotations in regular Nasdaq securities. This proposed requirement, filed with the SEC, should provide greater market depth and liquidity for these securities.

- The SEC recently approved significantly higher listing and maintenance standards for regular Nasdaq issues, thus providing additional investor protections for those securities.

The NASD also urged the SEC to reduce the proposed minimum price for defining an equity security as a penny stock from \$5 to \$3 per share. A \$3 standard avoids imposing an undue burden on small companies raising capital through initial public offerings while still addressing the potential for abusive sales practices in low-priced securities, according to the NASD. In addition, the NASD suggested that the proposed rules use as a reference a security's market price based on the inside quotations now available for securities quoted in the OTC Bulletin Board<sup>SM</sup> service.

## New SOES<sup>SM</sup> Rules Take Effect

A series of rule changes, unanimously approved by the SEC, for the Small Order Execution System (SOES)<sup>SM</sup> is now effective. These rules include new definitions of the term professional trading account (including day trading) and system modifications to (1) allow market makers time to update their quotations following a SOES execution and (2) accept preferencing on a firm-by-firm basis.

In response to a petition from four broker/dealers and several of their customers, the SEC agreed, when it approved these measures, to an interim stay of the effectiveness of the definition of professional trading rules. That stay subsequently expired, and a federal court denied a grant of interim relief.

With the lifting of the stay, the expanded definition of a professional trading account now includes excessive frequency of short-term trading and short-sale transactions, a broker's discretionary authority over the account, and the account owner's physical access to a terminal with SOES execution capability. In the past, these were not included in the rules as characteristics of a professional trading account and couldn't be used to prevent participation in SOES.

The existence of any of these conditions does not mean that the NASD automatically would classify the account as a professional trading account but that it could be a factor in making a determination. The new rules also make clear that executing either one or both sides of a day trade through SOES now may be considered professional use, which is barred from SOES. Day trading is defined as the purchase and sale of a security in the same day. SOES rules state that five or more day trades using SOES indicate professional trading. To circumvent the five-trade test, some professionals have executed one side of a trade through SOES and the other outside SOES.

In addition, under the new rules, the interval between SOES executions for a market maker will not be less than 15 seconds. This brief window of time is designed to give market makers a chance to update their quotes before additional SOES automatic executions occur.

From time to time, however, particularly during high volume periods such as at the opening when system traffic is heavy, market makers may not receive a full 15-second notification of an execution. There may, in fact, be a delay of several seconds between the actual execution and the time the execution report appears on

the market maker's terminal.

Members can act to minimize this problem by directing some portion of their SOES execution reports away from "heavy use" terminals to other terminals within the firm. In addition, members may wish to take steps to disconnect hard-copy printers used to record SOES execution messages from Nasdaq Workstation<sup>SM</sup> terminals. This type of linkage adds traffic and serves to reduce the notification interval and, as a result, the time available to market makers to adjust their quotes. There are two exceptions to the update interval of which members should be aware. Specifically, the 15-second period will not apply to preferenced orders or orders for which the market is locked or crossed.

The NASD is taking steps to monitor closely the adequacy of the 15-second update interval to determine its effectiveness and whether additional adjustments need to be made.

In connection with preferencing, market makers may select up to 50 firms from which they will accept preferenced SOES orders. All such orders will automatically be executed at the inside market, regardless of the individual quotes of the preferenced market makers at the time these orders are received.

The rule allows market makers to negotiate preferencing arrangements on a firm-by-firm basis. When market makers accept preferenced trades from a firm, the new 15-second time period for quote updates will not apply to those trades. Previously, SOES market-making firms could accept or decline preferencing only by selected security or for all securities without regard to order-entry firms. If a market maker accepted preferenced orders from one firm, it had to accept them from all firms. Preferencing was originally introduced to facilitate order routing and execution between SOES market makers and the order-entry firms with which they did business.

The options now available to SOES market makers are:

- Decline preferenced orders.
- Accept preferenced orders in

all securities.

- Accept preferenced orders in specific securities only.

- Accept preferenced orders from up to 50 firms of the market-making firm's choosing. At the market maker's option, these preferenced orders can be accepted in all securities or in specific securities only.

## Rollup Fees Get A New Look

Changes to the NASD's direct participation programs rules prohibit members from receiving compensation for soliciting votes or tenders on a proposed limited partnership rollup unless the compensation:

- Is payable and equal in amount regardless of whether limited partners vote affirmatively or negatively on the proposed rollup.

- Does not exceed, in the aggregate, 2 percent of the exchange value of the newly created securities.

- Is paid regardless of whether the limited partners accept or reject the proposed rollup.

The amendments also prohibit members or their associated persons from soliciting votes or tenders in a rollup unless the general partner or sponsor proposing the rollup agrees to pay all solicitation expenses associated with the transaction, including all related preparatory work, in the event the rollup is not approved.

Under the amendments, a "rollup" or "rollup of a direct participation program" is defined as a transaction involving an acquisition, merger, or consolidation of at least one direct participation program, not currently listed on a national securities exchange or The Nasdaq Stock Market,<sup>SM</sup> into another direct participation program, public corporation, or public trust.

The definition of rollup in the amendments differs from the definition employed in proposed rollup legislation being considered by Congress. The NASD will consider conforming the definition of rollup to the legislative definition in the event the bill becomes law.

## NASD DISCIPLINARY ACTIONS

In August, September, and October 1991, 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 to 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**

**Advent Securities, Inc. (Denver, Colorado)** was fined \$10,000. The sanction was based on findings that Advent failed to establish and implement written supervisory procedures concerning the publication of advertisements. The firm also failed to obtain supervisory approval in writing prior to the use of an advertisement.

**Allied Equity Group (Bodega Bay, California) and Richard Francis McCudden (Registered Principal, Bodega Bay, California)**. The firm was fined \$90,773, jointly and severally with McCudden, and suspended from membership in the NASD for 360 business days. McCudden was also suspended from association with any member of the NASD in any capacity for 360 business days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 1.

The sanctions were based on findings that the firm, acting through McCudden, failed to file certain FOCUS Part IIA reports in a timely manner and engaged in a securities business while the firm was suspended from membership in the NASD. In addition, the firm, acting through McCudden, failed to file its annual audited financial reports in a timely manner for two years and failed to respond to an NASD request for information.

**Americorp Securities, Inc. (Bellevue, Washington), Linda Lee Wilson (Registered Principal, Bellevue, Washington), and Gary Louis Canady (Registered Representative, Seal Beach, California)**. The firm was fined \$90,000, jointly and severally with Wilson, and Wilson was barred from association with any member of the NASD in any capacity. In addition, Canady was fined \$25,000 and barred from association with any member of the NASD in any capacity.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that the firm, acting through Wilson, participated as an underwriter for the offering of convertible debentures on a best-efforts "minimum or none" basis and failed to transmit investors' funds promptly to a separate escrow account. In addition, the firm, acting through Wilson, recommended to a customer the purchase of a private placement investment without having reasonable grounds for believing that the recommendation was suitable considering the customer's financial situation and investment needs. The firm and Wilson also failed to disclose certain material information regarding the investment to the customer.

Furthermore, Wilson made an unsuitable recommendation to another customer in that she fraudulently induced this customer to liquidate her two mutual funds and to invest in Americorp Financial Group. She also failed to respond to three

NASD requests for information. In addition, the firm, acting through Canady, made unsuitable recommendations to three public customers and failed to disclose certain material information regarding the investment. In connection with the unsuitable recommendations, Americorp, acting through Wilson, failed to supervise Canady properly.

This action has been appealed to the SEC by Canady, and his sanctions, other than the bar, are not in effect pending consideration of his appeal. The other two respondents, Americorp and Wilson, did not appeal to the SEC, and their sanctions are in effect.

**John Thomas Higley (Registered Representative, Sacramento, California)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Higley exercised effective control over the account of a public customer. He also recommended the purchase and sale of securities to the customer without having reasonable grounds for believing that such recommendations were suitable considering the customer's financial situation and investment objectives.

**Charles Arthur Hoffmann (Registered Representative, Novato, California)** was fined \$130,700 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hoffmann participated in private securities transactions with investors without giving prior written notification to his member firm. In connection with such transactions, Hoffmann received funds totaling \$72,500 from the investors and misappropriated \$12,500 of those funds to pay his own expenses. Hoffmann also failed to respond to an NASD request for information.

**Intercontinental Brokerage Corporation (Los Angeles, California), Ronald Leon Brock (Registered Principal, Larkspur, California), Lutz Karl Willi Pilling (Associated Person, Dusseldorf, Germany), and Walter Uwe Zipfel (Foreign Associate, Woodland Hills, California)**. The firm was fined \$20,000 and expelled from membership in the NASD, and Brock was barred from association with any member of the NASD in a principal capacity. In addition, Pilling and Zipfel were each fined \$20,000 and barred from association with any member of the NASD in any capacity.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 1. The sanctions were based on findings that the firm, acting through Brock, Zipfel, and Pilling, failed to maintain accurate books and records and filed FOCUS Parts I and II reports for certain periods that contained false representations of facts. Moreover, the firm, acting through Brock, Zipfel, and Pilling, violated the firm's restriction agreement with the NASD in that it conducted business in contravention of the provisions of its net capital requirement.

**Marc Steven Mandel (Registered Representative, Carmichael, California)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any member of the NASD in any capacity for one year. Without admitting or denying the allegations, Mandel consented to the described sanctions and to the entry of findings that he participated in private secu-

rities transactions without giving prior written notification to his member firm and effected unauthorized securities transactions in customer accounts.

The findings also stated that Mandel recommended to customers, and effected in their account, the purchase of shares of common stock on margin without having reasonable grounds for believing that such recommendations were suitable for the customers considering their financial situations and investment objectives. Furthermore, in contravention of a loan agreement, Mandel failed to maintain an equity balance of at least \$100,000 in his security account at his member firm, according to the findings.

**Perry Investments, Inc. (Saratoga, California) and Joan Anne Perry (Registered Principal, Saratoga, California)** were fined \$18,500, jointly and severally, and Perry was required to requalify by examination as a financial and operations principal.

The sanctions were based on findings that the firm, acting through Perry, conducted a securities business while failing to maintain its minimum required net capital. Also, the firm, acting through Perry, permitted an individual to act as a representative of the firm when he was not registered properly with the NASD. Furthermore, the firm, acting through Perry, failed to file its FOCUS Part I report in a timely manner.

**Prudential Securities, Inc. (Danville, California)** was fined \$25,000. The sanction was based on findings that the firm failed to establish and implement adequate written supervisory procedures to detect and prevent certain violations and to otherwise supervise the activities of a registered representative.

**Ronald Lee Rogers (Registered Principal, Salinas, California)** was fined \$45,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 1. They were based on findings that Rogers received 36 payroll checks from his member firm and forged employee signatures on 31 of the checks. Moreover, he arranged for another individual to forge endorsements on the remaining five checks and misappropriated the proceeds of all 36 checks.

**John Thyle Romanik (Registered Representative, Redwood City, California)** was fined \$542,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Romanik received funds totaling \$471,985.95 from public customers for the purchase of securities and misappropriated and converted the funds to his own use and benefit. Romanik also failed to respond to NASD requests for information.

**Sacks Investment Company, Inc. (Novato, California) and Richard Lawrence Sacks (Registered Principal, Novato, California)** were fined \$169,812.43, jointly and severally, and Richard Sacks was barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 1.

They were based on findings that the firm, acting through Sacks, engaged in securities transactions with public customers at prices that were un-



fair, with markups ranging from 17 to 220 percent over the firm's contemporaneous cost. In addition, the firm, acting through Sacks, failed to report securities transactions to Nasdaq and failed to employ a financial and operations principal and a municipal securities principal.

Furthermore, the firm, acting through Sacks, engaged in the sales of municipal securities without having first registered with the Municipal Securities Rulemaking Board and paying the required fees. They also engaged in securities transactions on a principal basis without having obtained written approval from the NASD in contravention of its voluntary restriction agreement.

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

**Robert Susumu Uyematsu (Registered Principal, Watsonville, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$69,288.11 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Uyematsu consented to the described sanctions and to the entry of findings that he received a \$49,288.11 check issued to a public customer and misappropriated and converted the proceeds to his own use and benefit.

**James Lee Williams (Registered Principal, Las Vegas, Nevada)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Williams failed to respond orally to NASD requests for information concerning his activities at a member firm.

**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)**

**Boardwalk Capital Corporation (Agoura Hills, California), Mason Alan Dinehart, III (Registered Principal, Los Angeles, California), and Dana Joseph Welch (Associated Person, Moorpark, California).** The firm was expelled from membership in the NASD, and Welch was barred from association with any member of the NASD in any capacity. In addition, Dinehart was fined \$7,500, suspended from association with any member of the NASD as a general securities principal (and as a financial and operations principal for 60 days), and thereafter must requalify by examination as a financial and operations principal.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 2. The sanctions were based on findings that the firm, acting through Dinehart and Welch, engaged in a general securities business while failing to maintain minimum required net capital. Furthermore, Welch, with the knowledge and consent of the firm, actively engaged in the management of a securities business without proper registration with the NASD.

**Ira Tobin Distenfield (Registered Principal, Solvang, California)** submitted an Offer of Settlement pursuant to which he was fined \$15,000. Without admitting or denying the allegations, Distenfield consented to the described sanction and to

the entry of findings that he engaged in the sale of units of limited partnership interests to public customers while failing to provide prior written notification of such sales to his member firm.

**Fortress Securities, Inc. (Beverly Hills, California) and Alex Lazar Kahan (Registered Principal, Beverly Hills, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$12,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in connection with 12 offerings of limited partnership interests, the firm, acting through Kahan, failed to transmit investors' funds to a separate escrow account promptly. Instead, the funds were transmitted to 11 separate bank checking accounts controlled by the firm.

**Harris Dodge Emery (Registered Representative, Lake Oswego, Oregon)** was suspended from association with any member of the NASD in any capacity for one year. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 2. The sanction was based on findings that Emery executed purchases of securities and units of a limited partnership for public customers without their knowledge or consent.

**Stephen Charles Everett (Registered Principal, Thousand Oaks, California)** was fined \$10,250. The sanction was based on findings that Everett participated in private securities transactions without giving prior written notification to his member firm.

**Thomas Jackson Hannum (Registered Representative, San Diego, California)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hannum failed to respond to NASD requests for information concerning his termination of employment from a member firm.

**Jeffrey Matthew Hildebrandt (Registered Representative, Beverly Hills, California)** was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hildebrandt received two bearer bonds from a public customer under the pretense that he would process their redemption. Hildebrandt instructed a bank to send the proceeds following the redemption to him and received from the bank two checks totaling \$10,150. Hildebrandt failed to remit the proceeds from the redemption to the customer and, instead, converted the funds to his own use and benefit.

**Lik Law (Registered Representative, El Monte, California)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Law failed to respond to NASD requests for information concerning his termination of employment with a member firm.

**Kristi Kay Peterson (Registered Representative, Playa Del Rey, California)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Peterson failed to respond to NASD requests for information regarding her termination of employment from a member firm.

**Trevor Carol Roberts (Registered Principal, Burlingame, California)** was fined \$25,000 and barred from association with any member of the NASD in any capacity until the NASD determines that he has satisfied all of the DBCC's exist-

ing investigatory requests. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 1. The sanctions were based on findings that Roberts failed to respond to NASD requests for books and records.

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

**Allied Capital Group, Inc. (Denver, Colorado)** was expelled from membership in the NASD. The sanction was based on findings that the firm failed to pay arbitration awards totaling \$36,368.

**American Capital Equities, Inc. (St. Louis, Missouri)** was fined \$111,138. The sanction was based on findings that the firm effected 258 principal transactions with public customers at prices that were unfair based on all relevant circumstances, including the fact that the firm was not a market maker in any of the securities. The markups charged in these transactions ranged from 4.76 to 62.5 percent over the firm's contemporaneous costs for these securities. Moreover, the firm failed to disclose the amount of markup or markdown charged to customers on at least 400 confirmations involving riskless principal transactions in a common stock for which the firm was not a market maker. American Capital also failed to enforce its written supervisory procedures in that it allowed excessive markups to be charged on retail securities transactions effected by a branch office.

**Bagley Securities, Inc. (Salt Lake City, Utah), Edward D. Bagley (Registered Principal, Salt Lake City, Utah), and Thomas Gregg Holloway (Registered Principal, Mandarin, Florida).** The firm was suspended from membership in the NASD for six months, and Edward Bagley was fined \$25,000 and barred from association with any member of the NASD in any principal capacity. In addition, Holloway was fined \$98,000 and barred from association with any member of the NASD in any capacity.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that the firm, acting through Bagley and Holloway, sold municipal securities to its retail customers at unfair and unreasonable prices with markups ranging from 5.8 to 46.6 percent over the prevailing market price. The firm and Bagley also failed to inform the purchasers of the securities that it charged excessive markups.

Moreover, the firm, acting through Bagley, engaged in a municipal securities business without having a qualified municipal securities principal and sent to customers confirmations of transactions in municipal securities that failed to disclose required information.

**Michael D. Barber (Registered Representative, Aurora, Colorado)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Barber effected 48 unauthorized transactions in customer accounts.

In addition, Barber falsified his firm's books and records to reflect deposits into five customer accounts when, in fact, no funds were actually deposited. Barber also failed to amend his Uniform Application for Securities Industry Registration (Form U-4) to disclose the circumstances of his termination from a member firm or the NASD's investigation of these circumstances. Furthermore, Barber failed to

respond to NASD requests for information.

**Ivan D. Barnes (Registered Representative, Gunnison, Utah)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Barnes made improper use of customer funds in that he accepted from a public customer two checks totaling \$15,000 intended for investment purposes and to pay interest on a loan. Instead, Barnes deposited the checks into his personal bank account. Moreover, he provided false and misleading information to the same customer in that Barnes sent a letter to the customer stating that he had invested \$10,000 in a mutual fund when, in fact, this investment had not been made.

**James David Barry (Registered Representative, Medford, Oregon)** was fined \$14,000 and suspended from association with any member of the NASD in any capacity for five business days. In addition, Barry must requalify by examination in any capacity requiring registration prior to associating with any NASD member firm. The sanctions were based on findings that Barry exercised discretion in a customer's account without obtaining prior written discretionary trading authority from the customer and without written acceptance of the account as discretionary by his member firm.

**Larry P. Blinder (Registered Principal, Englewood, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Blinder consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**George Milton Bollinger (Registered Representative, Albuquerque, New Mexico)** was fined \$100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bollinger used fraudulent documentation to solicit investments totaling \$142,507 from five public customers purportedly for the purchase of shares of a mutual fund that did not exist. Furthermore, Bollinger misused these funds for his own use and benefit. In addition, he failed to respond to NASD requests for information.

**Boucher, Oehmke and Co., Inc. (Tucson, Arizona), Bryce E. Boucher (Registered Principal, Tucson, Arizona), and Donald E. Oehmke (Registered Principal, Tucson, Arizona)** submitted an Offer of Settlement pursuant to which the firm was expelled from membership in the NASD. In addition, Boucher and Oehmke were each fined \$150,000 and barred from association with any member of the NASD 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 Boucher and Oehmke, caused advertisements and sales literature that contained misleading statements to be disseminated to the public. According to the findings, the firm, acting through Boucher and Oehmke, failed to maintain adequate written supervisory procedures, to evidence supervision of all transactions effected by the firm, and to abide by the provisions of the firm's restriction agreement with the NASD. The findings also stated that the firm, acting through Boucher and Oehmke, effected principal transactions with customers at unfair and unreasonable prices.

Moreover, the NASD found that Boucher and Oehmke sold unregistered securities to public customers through an unregistered broker/dealer

and, in connection with the sale of securities, made material misrepresentations and failed to disclose material information to customers.

The NASD also determined that Boucher and Oehmke failed to comply with the provisions of Schedule E of the NASD By-Laws in that they effected the merger of a member firm with a non-member firm. In addition, the findings stated that Boucher and Oehmke participated in a scheme to defraud a customer and misused the customer's funds, failed to maintain accurate books and records, and failed to supervise the activities of a registered representative properly. Boucher and Oehmke also failed to respond to NASD requests for information.

**Craig Alan Coder (Registered Representative, Redmond, Washington)** was fined \$13,600, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination prior to acting again in any capacity requiring registration. The sanctions were based on findings that Coder effected 10 unauthorized purchases and 6 unauthorized sales of securities for the account of a public customer.

**Covey & Co., Inc. (Salt Lake City, Utah) and David E. Nelson (Financial and Operations Principal, Salt Lake City, Utah)** submitted an Offer of Settlement pursuant to which they were fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in contravention of the SEC's Customer Protection Rule, the firm, acting through Nelson, failed to compute its reserve computation accurately and to maintain the amount required to be on deposit in its reserve bank account. According to the findings, the firm, acting through Nelson, also made withdrawals from its reserve account in excess of the amount allowed by the aforementioned rule.

Moreover, the findings stated that the firm, acting through Nelson, failed to compute its net capital accurately and to comply with limitations imposed on it by the District Surveillance Committee. In addition, the NASD found that the firm, acting through Nelson, conducted a securities business while failing to maintain its minimum required net capital.

**Daniel Neal DeSpain (Registered Representative, Clackamas, Oregon)** submitted an Offer of Settlement pursuant to which he was fined \$1,500 and suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, DeSpain consented to the described sanctions and to the entry of findings that he recommended that a customer purchase shares of common stock on margin without having reasonable grounds for believing such recommendation was suitable for the customer considering his financial situation and investment needs. Moreover, DeSpain effected this purchase transaction without the customer's prior authorization, according to the findings.

**Herbert Mark Ehrman (Registered Representative, Scottsdale, Arizona)** was fined \$100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ehrman solicited at least 12 public customers to invest funds totaling \$483,061.39 into a private trading account at his member firm. Ehrman failed to invest these funds as represented and, instead, converted the funds to his own use and benefit. In addition, he solicited loans from six other customers while failing to provide prompt written notification to his member firm of his outside business activities.

**Samuel W. Evans (Registered Representative, Ft. Collins, Colorado)** was fined \$70,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Evans effected 23 unauthorized transactions in customer accounts and failed to respond to NASD requests for information.

**First Choice Securities Corporation (Englewood, Colorado) and Gregory F. Walsh (Registered Principal, Englewood, Colorado)** were fined \$10,000, jointly and severally, and the firm was suspended from membership in the NASD for 30 days. In addition, the firm must close all of its branch offices for which it has not received specific written approval from the NASD. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that, in contravention of the provision of the firm's restriction agreement with the NASD, the firm, acting through Walsh, opened two branch offices.

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

**Gerald M. Fitzgerald (Registered Principal, Denver, Colorado)** was barred from association with any member of the NASD in any capacity. The sanction was imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 3. The sanction was based on findings that, in connection with the purchase of shares of securities in an initial public offering, Fitzgerald failed to escrow customer funds properly. He also made improper use of the customers' funds in that he caused the monies to be deposited into a former member firm's operating account and used for firm purposes.

Fitzgerald caused the same firm to conduct a securities business while failing to maintain its minimum required net capital. Furthermore, he caused nine customer account records to reflect inaccurate addresses in order to circumvent state securities laws.

**Thomas S. Foti (Registered Representative, Tucson, Arizona)** was fined \$5,000 and suspended from association with any member of the NASD in any capacity for one business day. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Foti caused an advertisement to be published and distributed to the public that was misleading and contained promises of specific results and exaggerated and unwarranted claims. Furthermore, Foti disseminated the advertisement without obtaining the prior approval of a registered principal or designee of his member firm.

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

**Thomas Wolverton Gaul (Registered Representative, Ft. Collins, Colorado)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gaul effected unauthorized transactions in three customer accounts. In addition, he failed to follow a customer's instructions to sell stock and provided the customer with false quotes on a security in order to conceal the true price and the amount of unrealized loss sustained by the customer. Moreover, Gaul made misrepresentations of material facts to the same customer and failed to respond to NASD requests for information in a timely manner.

**Richard D. Gilson (Registered Principal, Golden, Colorado)** was fined \$25,000 and barred from association with any member of the NASD in any principal capacity. The sanctions were based on findings that a former member firm, acting through Gilson, accepted 12 customer orders to sell shares of a common stock but failed to execute the orders. Furthermore, the firm, acting through Gilson, caused non-bona fide quotations in the same stock to be published in the National Quotation Bureau's "Pink Sheets." In addition, Gilson and the firm failed to disclose on 25 customer confirmations that the firm was under common control with the issuer of the securities purchased or sold.

**GMI Securities, Inc. (Orem, Utah)** and **Gary L. Leavitt (Registered Principal, Orem, Utah)** were fined \$11,000, jointly and severally. The sanction was based on findings that the firm, acting through Leavitt, failed to file its annual audit report on the required date and failed to obtain an extension of the filing requirement. Furthermore, the firm, acting through Leavitt, continued to conduct a securities business when the firm was suspended from membership in the NASD.

**Russell R. Haden (Registered Principal, Sandy, Utah)** was fined \$2,500 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Haden failed to maintain accurate books and records in that 12 customer accounts failed to properly credit deposits that were made for securities purchases.

**Daniel Edward Halligan (Registered Principal, Missoula, Montana)** and **Ronald Gene Heppner (Registered Principal, Missoula, Montana)**. Halligan was fined \$2,500, jointly and severally, with a former member firm. In a separate sanction, Halligan was fined an additional \$17,500 and barred from association with any member of the NASD in any principal capacity. Heppner was fined \$2,500 and barred from association with any member of the NASD in any principal capacity.

The sanctions were based on findings that a former member firm, acting through Heppner, filed a Uniform Application for Broker-Dealer Registration (Form BD) with the NASD Seattle office that failed to disclose the firm's affiliation with another corporation that was under common control of Heppner and Halligan. Moreover, Halligan failed to disclose this information during a district staff interview and failed to disclose that he was an employee and officer of the corporation on a Uniform Application for Securities Industry Registration (Form U-4). Furthermore, the firm, acting through Halligan, effected securities transactions when it failed to maintain minimum required net capital. Halligan also failed to respond to NASD requests for information.

**Frederick C. Heller (Registered Representative, Englewood, Colorado)** was fined \$12,500. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The fine was based on findings that Heller effected excessive transactions in the account of public customers in view of the resources and nature of the customers' account and of their investment objectives. Furthermore, Heller exercised discretion in the same account without obtaining written discretionary trading authority from these customers or his member firm.

This case has been appealed to the SEC, and the sanction is not in effect pending consideration of the appeal.

**Keith H. Horrocks (Registered Representative, West Jordan, Utah)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Horrocks created 1,911 life insurance applications that contained false information and submitted these applications to his member firm. As a result, Horrocks received \$1,139,608 in commissions to which he was not entitled.

**Johnson-Bowles Company, Inc. (Salt Lake City, Utah)** and **Marlen V. Johnson (Registered Principal, Salt Lake City, Utah)**. The firm was fined \$20,000, jointly and severally with Marlen Johnson, and expelled from membership in the NASD. In addition, Johnson was barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Johnson, individually and on behalf of Johnson-Bowles, failed to respond to an NASD request for information in connection with an NASD staff investigation.

**Paul W. Jones (Registered Representative, Salt Lake City, Utah)** submitted an Offer of Settlement pursuant to which he was fined \$7,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he shared in the profits and losses in customer accounts without obtaining prior written authorization from his member firm. He also exercised discretion in customer accounts without obtaining prior written discretionary trading authority or acceptance in writing by his member firm, according to the findings.

The NASD determined that Jones used the accounts of four public customers for executing his personal transactions without notifying his member firm. Furthermore, the findings stated that he issued three checks totaling \$6,620 to his member firm to pay for the securities purchased, but the checks were returned because of insufficient funds or because the account was closed. The NASD also found that Jones sold securities from his personal account prior to making payment in full for the securities, in contravention of Regulation T of the Federal Reserve Board.

**Mark Albert Kristic (Registered Representative, Salt Lake City, Utah)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kristic executed unauthorized transactions in a public customer's account.

**Livingston Securities, Inc. (Portland, Oregon)**, **Les Thomas Livingston (Registered Principal, Portland, Oregon)**, **Cletus Herman Niebur (Financial and Operations Principal, Beaverton, Oregon)**, and **Curtis Reginald Coleman (Registered Representative, Portland, Oregon)** submitted an Offer of Settlement pursuant to which the firm was fined \$20,000, jointly and severally with Les Livingston, and fined \$10,000, jointly and severally with Niebur. Also, Livingston and Niebur must requalify by examination as general securities principals. In addition, Coleman was fined \$2,500 and suspended from association with any member of the NASD in any capacity for five business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Les Livingston and Coleman effected unauthorized purchases of securities for the accounts of public customers. The findings also stated that Coleman recommended the purchase of securities in the account

of a public customer without having reasonable grounds for believing that such recommendations were suitable considering the customer's financial situation and needs.

In connection with the unsuitable recommendations made by Coleman, the NASD determined that the firm, acting through Les Livingston and Niebur, failed to supervise Coleman's activities properly and adequately and to establish adequate written supervisory procedures to assure his compliance with applicable rules. Furthermore, the NASD found that the firm, acting through Les Livingston, made misrepresentations to customers and failed to disclose certain information concerning the solicitation and sales of common stock to public customers.

**Joseph P. Madden III (Registered Representative, Phoenix, Arizona)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Madden completed new-account forms containing the names of fictitious customers. He then effected 11 transactions in these fictitious accounts.

**Mark J. Mathis (Registered Representative, Boulder, Colorado)** was fined \$62,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Mathis effected excessive and unsuitable transactions in the accounts of seven public customers in view of their financial resources and investment objectives. In addition, he exercised discretion in four customer accounts without obtaining prior written discretionary trading authority from the customers and without obtaining the acceptance of these accounts as discretionary by his member firm. Mathis also effected three unauthorized transactions in another customer account.

**Garland W.H. McDonald (Registered Representative, Mesa, Arizona)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for five business days. In addition, he must requalify by examination as a general securities representative. Without admitting or denying the allegations, McDonald consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

**Joni Lynn Merwin (Registered Representative, Parker, Colorado)** submitted an Offer of Settlement pursuant to which she was fined \$5,000 and suspended from association with any member of the NASD in any capacity for three days. Without admitting or denying the allegations, Merwin consented to the described sanctions and to the entry of findings that she solicited a customer to purchase shares of common stock by guaranteeing the customer against losses in the transactions.

The findings also stated that Merwin induced two customers to purchase securities by misrepresenting the price of the securities and by providing optimistic and unrealistic forecasts about future prices while failing to discuss the risks associated with the purchase. In addition, Merwin failed to follow a customer's instructions to sell securities, according to the findings.

**Joseph Miyamoto, Jr. (Registered Representative, Arvada, Colorado)** was fined \$100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Miyamoto made certain fraudulent misrepresentations to a public customer in order to induce him to purchase securities. As president of a former member firm, Miyamoto ac-

cepted \$10,000 from the same customer for the purchase of shares of the firm's stock but failed to reflect the customer as a shareholder on the firm's books and records. Moreover, he failed to deliver a certificate for these shares but, instead, delivered a certificate for another unrelated company. In addition, at the time of this transaction, the shares of both securities were unregistered and not exempt from registration. Miyamoto sold these securities to the customer in contravention of the requirements of Section 5 of the Securities Act of 1933.

Furthermore, Miyamoto executed unauthorized transactions in the account of this same customer. Miyamoto also failed to respond to an NASD request for information.

**National Securities Corp. (Seattle, Washington), Jeffrey Joel Pritchard (Registered Principal, Bainbridge Island, Washington), and Douglas Frank Gass (Registered Representative, Masapequa, New York).** The firm was fined \$15,000 and required to file all advertisements with the NASD's advertising department for one year. Pritchard was fined \$10,000, and Gass was fined \$5,000 and suspended from association with any member of the NASD as a registered representative for two weeks.

The sanctions were based on findings that Gass made misleading, exaggerated, and unwarranted statements and omitted material facts in regard to six public radio broadcasts. In connection with such conduct, the firm, acting through Pritchard, failed to establish adequate written supervisory procedures or otherwise failed to supervise the activities of Gass. Moreover, Gass failed to state adequately, on advertisements and his office sign, the name of his member firm. Instead, he used the name "Douglas Gass and Associates."

Furthermore, the firm, acting through Pritchard, failed to approve the aforementioned advertisements prior to their use and failed to obtain and retain tape recordings of radio broadcasts made by Gass.

**John W. Pike (Registered Representative, Denver, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any member of the NASD in any capacity for three months. Without admitting or denying the allegations, Pike consented to the described sanctions and to the entry of findings that he sent a letter to a public customer confirming that he would guarantee the customer against loss on an investment.

**William M. Putz (Registered Representative, Albuquerque, New Mexico)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Putz consented to the described sanctions and to the entry of findings that he failed to amend a Uniform Application for Securities Industry Registration or Transfer (Form U-4) to disclose disciplinary action.

**James A. Ryan (Registered Representative, Phoenix, Arizona)** was fined \$20,000 and suspended from association with any member of the NASD in any principal or supervisory capacity for two years. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that, in order to increase his earnings, Ryan directed representatives under his supervision to circumvent his member firm's "free exchange" privilege (permitting the free exchange of shares in one of its affiliated mutual funds for one of its affiliated variable annuity products).

In addition, Ryan falsified his member firm's books and records in that he directed registered representatives under his supervision to execute transactions in at least 34 separate accounts through first-year representatives of the firm in order to generate commission overrides for himself to which he was not entitled.

**James C. Scheidell (Registered Representative, Midvale, Utah)** was fined \$12,000. The sanction was imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 3. The sanction was based on findings that Scheidell effected 10 unauthorized transactions in the account of two public customers. Moreover, Scheidell wired \$1,445 into the same customers' bank account for losses incurred as a result of the aforementioned transactions without obtaining prior written authorization from his member firm.

**Paul Richard Tosch, Jr. (Registered Representative, Kent, Washington)** was fined \$51,550 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Tosch misappropriated, endorsed, and negotiated two company checks totaling \$1,552.08 purportedly signed by his member firm's operations manager, when, in fact, the signature was a forgery. Tosch also failed to respond to NASD requests for information.

**Timothy S. Vasko (Registered Principal, Littleton, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any principal capacity for 10 business days. Without admitting or denying the allegations, Vasko consented to the described sanctions and to the entry of findings that he failed to supervise the activities of a registered representative appropriately. Specifically, the findings stated that Vasko failed to ascertain by investigation the good character, business repute, qualifications, and experience of the registered representative prior to making a certification of such matters on an application for registration filed with the NASD.

**VIP Financial Companies, Inc. (Denver, Colorado) and Timothy S. Vasko (Registered Principal, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$2,500, jointly and severally with Vasko, and suspended from entering into any options transactions for five business days. Vasko also was suspended from acting in a principal capacity with any member of the NASD for five 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 Vasko, conducted an options business prior to qualifying a registered options principal. According to the findings, the firm, acting through Vasko, failed to have a registered options principal approve each discretionary options transaction and to establish adequate written supervisory procedures.

The findings also stated that the firm, acting through Vasko, failed to obtain the required customer account information prior to commencing an options business with customers and, in contravention of the SEC's Customer Protection Rule, failed to transmit customer funds promptly.

**Robert W. Wetzel (Registered Representative, Tucson, Arizona)** was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Wetzel received \$1,500 from a public customer for the purchase of common stock. He

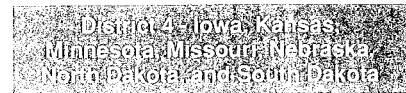
failed to both deliver a stock certificate to the customer and to repay the funds.

**Molly Carol Wilson (Registered Representative, Bellevue, Washington)** was fined \$90,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without a customer's knowledge or consent, Wilson caused funds totaling \$38,654.70 to be transferred by wire from the customer's account to a bank account the customer did not control. Wilson also failed to respond to NASD requests for information.

**John F. Yakimczyk (Registered Representative, Parker, Colorado)** was fined \$15,000 and suspended from association with any member of the NASD in any capacity for three business days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Yakimczyk provided inaccurate quotations to four public customers and, in four other instances, failed to follow customers' instructions to sell their stock. In addition, Yakimczyk effected four unauthorized transactions in customer accounts.

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

**Ali Reza Zenhari (Registered Representative, Englewood, Colorado)** was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, he must requalify by examination before becoming associated with any member of the NASD. The sanctions were based on findings that Zenhari executed two unauthorized transactions in the account of a public customer.



**James Arthur Bikson (Registered Principal, Kansas City, Missouri) and Albert Edward Hyer, Jr. (Registered Principal, Mission Hills, Kansas)** submitted Offers of Settlement pursuant to which Hyer was fined \$50,000 and Bikson was barred from association with any member of the NASD as a principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through Hyer and Bikson, conducted a securities business while failing to maintain its required minimum net capital and failed to prepare its books and records in an accurate manner.

According to the findings, Bikson failed to comply with the NASD's qualification requirements in that he performed duties for his member firm without proper registration as a financial and operations principal. In addition, the NASD found that Hyer, on behalf of his member firm, failed to supervise adequately the activities of certain individuals.

**Dennis A. Brower (Registered Representative, Sioux City, Iowa)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for 10 business days. Without admitting or denying the allegations, Brower consented to the described sanctions and to the entry of findings that he executed a written guarantee against loss to a public customer.

**Thomas John Freudenstein (Registered Representative, New Hope, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and barred from

association with any member of the NASD in any capacity. Without admitting or denying the allegations, Freudenstein consented to the described sanctions and to the entry of findings that he received a \$500 check from his member firm, made payable to another representative. The findings stated that Freudenstein deposited the check into his personal bank account and converted the proceeds to his own use and benefit without the knowledge or consent of his member firm or the representative.

**Albert Edward Hyer, Jr. (Registered Principal, Mission Hills, Kansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hyer consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he authorized the issuance of checks totaling \$144,700 from the customer's margin account, endorsed the checks by forging the customer's name, and converted the funds to his own use and benefit.

The findings stated that Hyer also reduced the margin debit balance in the same customer's account by executing unauthorized sales of common stock. Hyer facilitated these transactions by changing the customer's mailing address to one that he controlled, according to the findings.

**Jerold Draper Liberstein (Registered Representative, Webster Groves, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Liberstein consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he changed the customer's address and forged the customer's signature on a Letter of Authorization requesting a \$4,300 withdrawal check from the customer's account. The findings stated that he then endorsed the check, deposited the proceeds into his personal bank account, and converted the monies to his own use and benefit.

**Joel William Mills (Registered Representative, Des Moines, Iowa)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any member of the NASD in any capacity for two years. Without admitting or denying the allegations, Mills consented to the described sanctions and to the entry of findings that he received assistance while taking the Series 7 examination. The NASD found that he brought into the examination room and utilized notes regarding the subject matter of the exam.

**Peterson Financial Corporation (Excelsior, Minnesota)** and **Robert S.C. Peterson (Registered Principal, Excelsior, Minnesota)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Robert Peterson, effected principal transactions with customers at prices that were unfair and unreasonable.

**R.G. Dickinson & Co. (Des Moines, Iowa)** and **Raymond Duve, Jr. (Registered Principal, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they each were fined \$10,000, and Duve was required to qualify by examination as a financial and operations principal.

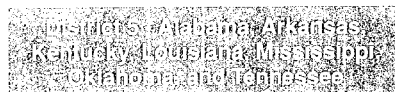
Without admitting or denying the allegations, the respondents consented to the described

sanctions and to the entry of findings that the firm, acting through Duve, failed to maintain required minimum net capital. The NASD found that the firm, acting through Duve, failed to deposit required amounts in its special reserve account, which resulted in deficiencies. The findings also stated that the firm, acting through Duve, prepared an inaccurate reserve computation and withdrew funds from its special reserve account without making a computation showing the basis for the withdrawal.

According to the findings, the firm, acting through Duve, also failed to prepare an accurate net capital computation, filed an inaccurate FOCUS Part I report, and maintained an inaccurate position record.

**Paul B. Shute (Registered Representative, St. Louis Park, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Shute consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he changed the customer's address and arranged for the issuance of checks totaling \$34,312.67 from the customer's account. The findings stated that Shute then endorsed the checks, deposited the proceeds therefrom into his personal bank account, and converted the proceeds to his own use and benefit.

**Daniel Glenn Thurston (Registered Representative, Rapid City, South Dakota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Thurston consented to the described sanctions and to the entry of findings that he obtained funds from public customers through both fraudulent redemption of investment company shares and also sales of fictitious certificates of deposit. The NASD found that Thurston converted \$529,000 of those funds to his own use and benefit without the knowledge or consent of the customers.



**Blount, Parrish & Roton, Inc. (Montgomery, Alabama)** and **Prudential-Bache Securities, Inc. (New York, New York)** submitted Offers of Settlement pursuant to which Blount, Parrish was fined \$150,000 and Prudential-Bache was fined \$90,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to exercise sufficient due diligence in connection with the offering and reoffering of an insured municipal bond issue.

**Das A. Borden (Registered Principal, Muscle Shoals, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for one week. Without admitting or denying the allegations, Borden consented to the described sanctions and to the entry of findings that, on behalf of a member firm, he engaged in a securities business while failing to maintain the firm's required minimum net capital.

**Horace L. Burford (Registered Principal, Herando, Mississippi)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any member of the

NASD in any capacity for three weeks. Without admitting or denying the allegations, Burford consented to the described sanctions and to the entry of findings that, on behalf of a member firm, Burford executed certain municipal securities purchase and sale transactions with a financial institution and two member firms while failing to make certain disclosures. Specifically, the NASD found that these transactions were not executed at prices reasonably related to the current market price for the securities. This activity constitutes a practice commonly known as "adjusted trading."

In connection with this activity, the NASD determined that Burford caused the falsification of the financial institution's and member firms' books and records in that realized losses on the sales were concealed and the new securities purchased were recorded at inflated prices. Furthermore, the findings stated that Burford failed to reflect on his member firm's books and records that the adjusted purchase price on the first leg of each adjusted trade was conditioned on the subsequent sale at a further inflated or adjusted price.

Burford also caused false and misleading confirmations to be mailed to these customers and misled third parties with an interest in one of these accounts concerning the performance of the investment, according to the findings.

**Dennis P. Crowley (Registered Principal, New Orleans, Louisiana)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Crowley exercised discretionary power in the account of a public customer without receiving prior written authorization to exercise discretion from the customer and acceptance of the account as discretionary by his member firm. Crowley also failed to follow instructions given by the same customer concerning the customer's account and failed to respond to NASD requests for information.

**Robert F. Durr, Jr. (Registered Representative, Zachary, Louisiana)** and **Charles L. King, Jr. (Registered Representative, Zachary, Louisiana)** each were fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Durr and King received checks totaling \$14,925 from public customers for investment purposes that they converted to their own use without the knowledge or consent of the customers. In another case, Durr and King were each fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Durr and King received checks totaling \$23,900 from public customers for investment purposes. However, the respondents either cashed the checks or deposited the monies into a bank account of a company that they controlled, or did both, thereby converting the funds to their own use without the knowledge or consent of the customers. In addition, Durr and King acted in the capacity of a broker/dealer when they were not registered with a member firm.

**Charles W. Eye (Registered Representative, Huntsville, Alabama)** was fined \$18,500 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were imposed following a review by the SEC of an action taken by the NASD's Board of Governors. The sanctions were based on findings that Eye recommended that a public customer purchase and sell certain securities, and make use of margin in certain of the transactions, when he knew or should have known that the recommendations were not suitable in light of the customer's previous trading experience, investment objectives, and financial re-

sources. In addition, Eye executed, or caused to be executed, securities purchase and sale transactions in the same account without the customer's prior authorization, knowledge, or consent.

**First Investment Securities, Inc. (Little Rock, Arkansas), First State Investments, Inc. (Little Rock, Arkansas), William F. Smith (Registered Principal, Little Rock, Arkansas), Arthur Boutiette (Associated Person, Little Rock, Arkansas), Robert C. Goodwin (Registered Principal, Sherwood, Arkansas), Richard M. Brucki (Registered Principal, Tallahassee, Florida), and Gerald E. Smith (Registered Principal, Little Rock, Arkansas).** First Investment was fined \$75,000, and First State was fined \$25,000. In addition, both firms were expelled from membership in the NASD.

The other respondents submitted an Offer of Settlement pursuant to which William Smith was fined \$15,000, suspended from association with any member of the NASD in any principal capacity for five years, suspended in any capacity for two months, and required to requalify as a general securities principal. Boutiette was suspended from association with any member of the NASD in any capacity for six months, and Brucki was suspended from association with any member of the NASD as a financial and operations principal for six months. Goodwin was suspended from association with any member of the NASD as a financial and operations principal for six months and required to requalify by examination as a financial and operations principal. In addition, Gerald Smith was fined \$5,000, suspended from association with any member of the NASD in any principal capacity for one year, suspended in any capacity for one week, and required to requalify by examination as a general securities principal.

Without admitting or denying the allegations, William Smith, Boutiette, Goodwin, Brucki, and Gerald Smith consented to the described sanctions and to the entry of findings that, in connection with a consulting agreement and management agreement, the two firms, acting through William Smith, Goodwin, Brucki, and Gerald Smith, improperly made payments to nonregistered broker/dealers and to a nonregistered person who was barred by the Securities and Exchange Commission (SEC) from association with any broker/dealer. The NASD also found that the firms, acting through William Smith, Brucki, and Gerald Smith, failed to register an individual as a general securities representative and a general securities principal with the NASD and failed to disclose to the NASD that he was a barred individual who continued to be associated with the firms.

According to the findings, both firms, acting through William Smith, Gerald Smith, and Brucki, failed to register Boutiette as a principal with the NASD. In addition, First Investment, acting through William Smith and Goodwin, failed to disclose to the NASD that monies deposited in its special reserve bank account did not belong to the firm and that the firm was borrowing/using money from employees to fund its reserve account, the findings stated. Furthermore, First Investment, acting through Goodwin and Brucki, failed to compute accurately the amount required to be deposited in the Special Reserve Bank Account for the Exclusive Benefit of Customers, make the required deposit in the account, immediately notify the SEC and the NASD by telegram of its failure to make the deposit, and confirm promptly thereafter such notification in writing, the NASD found. Also, the NASD determined that William Smith, Goodwin and Brucki improperly removed principal and interest payables from its balance sheet, reported these monies as income, and failed to record the journal entry

for this reclassification in a timely manner.

**John Edward Good (Registered Principal, Memphis, Tennessee)** was fined \$20,000, suspended from association with any member of the NASD in any capacity for one year, and barred from association with any member of the NASD in any principal capacity. The sanctions were based on findings that Good took advantage of his position as branch office manager and misused \$874,000 of his member firm's funds. In addition, he failed to disclose to his member firm both this fraudulent scheme and that he did not have sufficient funds in his personal account for transactions that he effected.

**John M. Griffith (Registered Representative, Baton Rouge, Louisiana)** submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Griffith consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers.

The NASD also found that without the knowledge or consent of a public customer, Griffith effected loans totaling \$84,600 against single life policies owned by the customer and used the proceeds to pay for unauthorized transactions in the customer's account. The NASD determined that Griffith executed government securities transactions for the account of public customers and inaccurately represented to the customers the yields and maturities of the securities. The findings stated that Griffith prepared and sent statements to public customers that contained inaccurate information regarding the values of their accounts. According to the findings, Griffith recommended that public customers make certain investments and/or switch from one mutual fund to another while inaccurately representing the nature of the investments, maturities, and sales charges.

In addition, the NASD found that Griffith transferred securities from public customers' manager's accounts to regular accounts and liquidated the securities, generating commissions totaling \$3,720.09. Griffith also failed to respond to NASD requests for information.

**Jimmy Dean Hinds (Registered Representative, Tuscaloosa, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hinds consented to the described sanctions and to the entry of findings that he received \$3,800 from a public customer as payment on an insurance premium and converted the monies to his own use without the knowledge or consent of the customer.

**Audrey Weathers Landrum (Registered Representative, Memphis, Tennessee)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Landrum executed unauthorized mutual fund transactions and an unauthorized liquidation of a certificate of deposit in the accounts of public customers. Landrum also recommended and executed the sale of various mutual funds and the purchase of other mutual funds with similar investment goals in the accounts of public customers without having reasonable grounds for believing that these mutual fund switches were suitable for the customers, resulting in excessive trading in the customers' accounts.

Landrum sent written correspondence to public customers without obtaining prior approval from her member firm. She also purchased mutual

funds on margin in the account of public customers without having reasonable grounds for believing such recommendations were suitable in view of the customers' financial situation, investment experience, and investment objectives. Furthermore, Landrum recommended and executed the purchase of shares in two similar mutual funds in a public customer's account and failed to disclose to the customer prior to the investment her rights of accumulation and the availability of a breakpoint (a purchase amount that would permit the customer to buy at a reduced load commission rate) offered by one of the funds.

Also, in an attempt to conceal unauthorized transactions, Landrum deposited \$602.29 in the account of a public customer without the knowledge or consent of the customer or her member firm. In addition, Landrum failed to respond to NASD requests for information.

**Gregory B. O'Quin (Registered Representative, Alexandria, Louisiana), Charles A. Prince (Registered Representative, Alexandria, Louisiana), and Thomas G. Easterling, Jr. (Registered Representative, Alexandria, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$1,000, jointly and severally. In addition, O'Quin, Easterling, and Prince must qualify by examination as general securities representatives.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they acted in the capacity of unregistered broker/dealers. The NASD also found that O'Quin, Prince, and Easterling engaged in private securities transactions without prior written notice to their member firm.

**Ernest L. Palmer (Registered Representative, Tuscaloosa, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Palmer consented to the described sanctions and to the entry of findings that he received a surrender check for \$2,075 from the liquidation of a life insurance policy of a public customer. The proceeds of the check were to be rolled into another policy offered by Palmer's member firm. According to the findings, Palmer instead deposited the funds in a checking account and converted the monies to his own use without the knowledge or consent of the customer.

**Robert S. Parenteau, Sr. (Registered Representative, Mobile, Alabama)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Parenteau consented to the described sanctions and to the entry of findings that, in order to achieve a minimum production level, Parenteau submitted three applications for life insurance and one application for the purchase of a variable annuity contract to his member firm when he knew that the applicants listed did not exist.

**Pamela K. Robbins (Registered Representative, Louisville, Kentucky)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Robbins received \$10,783.67 from a public customer intended for deposit into the customer's 401(k) plan. Robbins failed to follow the customer's instruction and, instead, retained possession and control of the funds. In addition, Robbins failed to respond to NASD requests for information.

**Paul D. Roussel (Registered Principal, Metairie, Louisiana)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Roussel failed to supervise properly the activities of a registered representative at his member firm. In addition, Roussel recommended and purchased shares of common stocks in the account of a public customer without having reasonable grounds for believing such recommendations were suitable for the customer in view of her security holdings, tax concerns, and financial situation and needs.

**Bryce W. Smith (Registered Representative, Covington, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any member of the NASD in any capacity for one day, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he failed to prepare order tickets for the sale of shares of common stock to public customers. In addition, the findings stated that Smith failed to follow a customer's instructions in that he executed a purchase transaction when he knew it would generate a margin requirement in the customer's account.

**Robert L. Sullivan (Registered Representative, Kenner, Louisiana)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sullivan failed to follow a customer's instructions and executed an unauthorized transaction in the customer's account. In addition, Sullivan failed to respond to an NASD request for information.

#### District 6 - Texas

**Charles Clifford Emmons (Registered Representative, Garland, Texas)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Emmons received from public customers checks totaling \$30,936.80 for the purchase of securities and, instead, deposited the checks in his own account and converted the funds to his personal use and benefit without the knowledge or consent of the customers. Also, Emmons caused sales literature to be mailed to clients without the knowledge or approval of his member firm.

**Frederick Earl Jury (Registered Principal, Fort Worth, Texas)** and **Lynn Dale Vautrain (Registered Principal, Fort Worth, Texas)** were fined \$50,000 and barred from association with any member of the NASD in any capacity. Vautrain was fined \$5,000, suspended from association with any member of the NASD in a supervisory capacity for one year, and required to requalify by examination as a general securities principal. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 6.

The sanctions were based on findings that, in connection with the offer and sale of securities in a limited partnership to four investors, Jury utilized fraudulent and deceptive devices, along with misstatements and omissions of material facts. In addition, Vautrain failed to supervise properly the activities of Jury to assure compliance with the representations made in the limited partnership's private placement memorandum.

**Roy Anthony Lightner (Registered Representative, Houston, Texas)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for five days. The sanctions

were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 6. The sanctions were based on findings that Lightner effected four transactions in the account of a public customer without the knowledge or consent of the customer.

**James Scott Short (Registered Representative, Lampasas, Texas)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Short participated in private securities transactions without providing prior written notice to his member firm. In addition, Short utilized fraudulent and deceptive devices, and misstatements and omissions of material facts in connection with the offer and sale of securities.

**Benito Armando Silva (Registered Representative, Houston, Texas)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 6. The sanctions were based on findings that Silva purchased and sold shares of common stock in the account of public customers without the knowledge or consent of the customers.

**Sunpoint Securities, Inc. (Longview, Texas)** and **Van Roberson Lewis, III (Registered Principal, Longview, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Lewis, modified its business activities without receiving written approval from the NASD.

The findings also stated that the firm, acting through Lewis, effected transactions in securities while failing to maintain its required minimum net capital. The NASD determined that Sunpoint, acting through Lewis, failed to reflect on its books and records all assets and liabilities. Furthermore, the findings stated that the firm, acting through Lewis, filed inaccurate FOCUS Parts I and IIA reports and failed to record on its blotter checks received in and disbursed from the Special Account for the Exclusive Benefit of Customers.

In addition, the NASD found that the firm's agreement to purchase designated securities contained deficiencies. The NASD also determined that the firm, acting through Lewis, allowed four accounts to trade options prior to approval of the accounts by the firm's registered options principal. Furthermore, forms for option accounts and municipal new-account cards contained deficiencies, according to the findings.

**Larry Glenn Upp (Registered Representative, Houston, Texas)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without the knowledge or consent of a public customer, Upp submitted a distribution request form to his member firm requesting the issuance of a check for \$10,500 from the customer's Individual Retirement Account. Upp received the check, endorsed it, and used \$5,500 of it to open an account for another individual, from which a \$2,000 check was drawn payable to Upp. The remaining \$5,000 was received in cash by Upp.

District 7 - Florida (Coral Springs, Florida)  
 Carolina, South Carolina, Florida,  
 Rico and the Canal Zone, Virginia,  
 Virginia Islands

**A.F. Best Securities, Inc. (Coral Springs, Florida)** and **Alan Z. Appelbaum (Registered Principal, Coral Springs, Florida)** submitted an Offer of Settlement pursuant to which the firm was fined \$50,000 and Appelbaum was fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Appelbaum, conducted a securities business while failing to maintain its required minimum net capital.

The NASD found that the firm, acting through Appelbaum, failed to determine the quantity of fully paid and excess margin securities in its possession and control and not in its possession and control. The NASD also found that the firm, acting through Appelbaum, failed to obtain physical possession or control of all fully paid and excess margin securities. The findings stated that the firm, acting through Appelbaum, hypothecated customer securities so as to permit them to be commingled with the firm's securities under a lien for a loan.

Furthermore, the NASD determined that the firm, acting through Appelbaum, failed to maintain an adequate deposit in its reserve account and made a withdrawal from the account in excess of the amount permitted by applicable rules. In addition, Best, acting through Appelbaum, failed to make weekly computations to determine its reserve account deposit requirement and failed to maintain accurate books and records, according to the findings.

The NASD determined that the firm, acting through Appelbaum, filed materially inaccurate FOCUS reports and failed to give telegraphic notice of the books and records deficiencies. The findings stated that Best, acting through Appelbaum, failed to conduct the required examination count, verification, and comparison of securities. The findings also added that Appelbaum failed to supervise adequately the financial and operational activities of the firm.

Moreover, the NASD determined that the firm, acting through Appelbaum, failed to establish, maintain, and enforce written supervisory procedures.

**Michael A. Bagnulo (Registered Representative, Roswell, Georgia)** submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 10 business days. Without admitting or denying the allegations, Bagnulo consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of municipal bonds and municipal bond funds to a public customer without having a reasonable basis for believing that such recommendations were suitable for the customer in light of the customer's financial background, situation, needs, and objectives.

**Michael Harris Beer (Registered Principal, Miami, Florida)** and **Kenneth Cutler (Registered Principal, Miami, Florida)**. Beer was fined \$25,000 and barred from association with any member of the NASD in any capacity. Cutler was fined \$10,000, suspended from association with any member of the NASD in any capacity for one year, and barred from association with any member of the NASD as a principal or supervisor. In addition, Cutler must requalify by examination as a general securities representative.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that Beer and Cutler effected sales transactions in over-the-counter stocks at prices that were unfair.

**Robert Edward Heinlein (Registered Rep-**

representative, Tampa, Florida) was fined \$25,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that, in connection with the offer of a common stock to public customers, Heinlein engaged in manipulative, deceptive, and other fraudulent devices through misrepresentations in an investment newsletter. Heinlein also failed to disclose that he was one of the authors of the newsletter.

**Huberman Securities Corporation (North Miami Beach, Florida) and Michael Huberman (Registered Principal, Newport Beach, California)** were fined \$42,751, jointly and severally, and Michael Huberman was barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that the firm, acting through Huberman, effected transactions in over-the-counter securities at prices that were unfair, with excessive markdowns ranging from 15 to 36 percent.

**Lefonza Jackson (Registered Representative, Orlando, Florida)** was fined \$5,000, suspended from association with any member of the NASD in any capacity for five business days, and required to requalify by examination as a general securities representative. The sanctions were based on findings that Jackson recommended the purchase of shares of a common stock to public customers without having reasonable grounds for believing such recommendations were suitable for the customers considering their financial situations and needs.

**Patricia Byrne Mulcahy (Registered Representative, Tampa, Florida)** was fined \$12,560, suspended from association with any member of the NASD in any capacity for 30 days, and required to make restitution of \$2,012.50 to customers. The sanctions were based on findings that Mulcahy made recommendations to two public customers without having reasonable grounds for believing that the recommendations were suitable for the customers based on their other securities holdings, financial situations, and needs. Mulcahy also recommended the purchase of a promissory note to one of the two customers without providing prior written notice to her member firm.

**Curtis Andrews Olive (Registered Principal, Tallahassee, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Olive consented to the described sanction and to the entry of findings that, without providing written notification to or obtaining authorization from his member firm, Olive established a company through which he conducted business and sold debentures issued by that company to public customers.

**Robert Joseph Salla (Registered Representative, Boca Raton, Florida)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without the knowledge or consent of public customers, Salla caused checks totaling more than \$15,000 to be issued from the customers' accounts, forged the customers' endorsements on the checks, and converted the funds to his own use and benefit. In addition, Salla failed to respond to an NASD request for information.

**Gary Clifford Smith (Registered Principal, Southern Pines, North Carolina)** was suspended from association with any member of the NASD in any capacity for three days. The sanction

was based on findings that Smith failed to pay a \$71,274.22 arbitration award and \$3,750 in forum fees.

**James Robert Smith (Registered Representative, Jacksonville Beach, Florida)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Smith effected securities transactions in the accounts of public customers without the knowledge or consent of the customers. In addition, Smith failed to respond to an NASD request for information.

**Paul Edward Surmay (Registered Principal, Louisville, Kentucky)** was fined \$5,000, suspended from association with any member of the NASD in any capacity for three days, required to make restitution of \$44,515 to public customers, and required to requalify by examination in any capacity. The sanctions were based on findings that, in connection with the solicitation and sale of various common stocks with public customers, Surmay made misrepresentations and guarantees to the customers without having a factual basis for such representations.

**Martin I. Tucker (Registered Principal, Lauderdale Lakes, Florida)** submitted Offers of Settlement pursuant to which he was fined \$6,000, suspended for 30 business days in all capacities, barred from association with any member of the NASD in any principal capacity, and barred from association with any member of the NASD in any capacity with the right to reapply after two years. Without admitting or denying the allegations, Tucker consented to the described sanctions and to the entry of findings that a member firm, acting through Tucker, effected principal transactions in over-the-counter corporate securities with public customers at prices that were unfair.

**Calvin Lee Word (Registered Representative, Roswell, Georgia)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that Word fraudulently induced a public customer to purchase shares of common stocks by representing, without factual basis, that the market value of the stocks would triple or quadruple.

Furthermore, Word recommended to the same customer the purchase of certain speculative, low-priced stocks without having reasonable grounds for believing that the recommendations were suitable for the customer. In addition, Word failed to respond to an NASD request for information.

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.

**Bradley W. Becker (Registered Representative, Rockford, Illinois)** was fined \$110,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Becker obtained from a public customer funds totaling \$67,909.61 with instructions to invest the funds. Becker failed to invest all of the funds as instructed and, instead, without the customer's knowledge or consent, deposited \$57,829.61 into a bank account in which he had an interest, and converted the funds to his own use.

Becker also failed to respond to NASD requests for information.

**Norman A. Beeghley (Registered Representative, Troy, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Beeghley consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use funds of his firm totaling \$874.69. Specifically, the findings stated that he failed to notify his member firm promptly of the termination of an employee, endorsed five checks payable to the employee, and deposited the funds into his own account.

**Bishop Securities, Inc. (Chicago, Illinois), Tibor Zoltan Katona (Registered Principal, Shorewood, Wisconsin), and Gene Walter Rutkowski (Registered Principal, Chicago, Illinois)** The firm was fined \$20,000, and Katona and Rutkowski each were fined \$18,000 and required to requalify by examination as registered principals. The sanctions were based on findings that the firm, acting through Rutkowski and Katona, effected principal transactions in the accounts of public customers at prices that were unfair and unreasonable. The firm, acting through Rutkowski and Katona, also failed to report price and volume information through the Non-Nasdaq Reporting System.

**Michael R. Coso (Registered Representative, Lorain, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$53,206.03 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Coso consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer checks totaling \$13,206.03. In addition, Coso failed to respond to NASD requests for information.

**Saroop Deol (Registered Principal, Oakbrook Terrace, Illinois)** was suspended from association with any member of the NASD in any principal capacity for one year. In addition, he must requalify by examination before again acting in any principal capacity. The sanctions were based on findings that, in connection with a previous NASD complaint concerning a net capital violation, Deol provided false and misleading information in his answer to the NASD and during testimony at a disciplinary hearing.

**Samuel J. Dittmer (Registered Representative, Crawfordsville, Indiana)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Dittmer consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning his termination from a member firm.

**Thomas M. Ellis (Registered Representative, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of findings that he misappropriated \$160,570.76 from several public customers.

**Ronald A. Furman (Registered Representative, Parma, Ohio)** submitted an Offer of Settlement pursuant to which he was fined \$42,825 and



barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Furman consented to the described sanctions and to the entry of findings that, on seven occasions, he misappropriated and converted to his own use customer funds totaling \$12,825.

**Great Lakes Equities Co. (Farmington Hills, Michigan), G. Reynolds Sims (Registered Principal, Birmingham, Michigan), and Eric R. Bryen (Registered Principal, Birmingham, Michigan)** were fined \$200,000, jointly and severally. In addition, Sims and Bryen were each suspended from association with any member of the NASD in any capacity for 60 days, and Sims was required to requalify by examination as a financial and operations principal.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that the firm, acting through Sims and Bryen, effected securities transactions when it failed to maintain its required minimum net capital. In addition, the firm, acting through Sims and Bryen, prepared inaccurate net capital computations, filed inaccurate FOCUS Parts I and II reports, and failed to file its audited report on a timely basis. Furthermore, the firm, acting through Sims and Bryen, effected, as principal, sales of common stock to customers at unfair and unreasonable prices taking into consideration all relevant circumstances, including the fact that the firm was not a market maker in such stocks.

Great Lakes, acting through Bryen, failed to demonstrate that it had complied with representations made to the NASD in a membership continuance application concerning how a statutorily disqualified person would be supervised.

**Gary G. Hart (Registered Representative, Barberton, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on insurance dividend withdrawal documents and used the proceeds to make unauthorized payments of premiums on insurance policies of other customers.

**Donald L. Johnson (Registered Representative, Edina, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 10 business days. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he guaranteed a customer against loss in connection with the purchase and sale of stock. The NASD also found that Johnson represented to a customer that he could sell in the future certain securities from his account at stated minimum prices without regard to the market price of the securities.

**Kettler and Company (Chicago, Illinois) and Paul C. Kettler (Registered Principal, Chicago, Illinois)** were fined \$10,000, jointly and severally. In addition, Paul Kettler was suspended from association with any member of the NASD in any capacity for 30 days and required to requalify by examination as a registered principal. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that the firm, acting through Kettler, employed an individual and/or permitted him to be associated

with the firm when Kettler knew that the individual was barred from such employment or association by the NASD. This case has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Raymond Lenga (Registered Representative, Glen Este, Ohio)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that Lenga failed to enter an order for a customer and attempted to hide the error by falsifying his member firm's books and records. In addition, Lenga failed to respond to NASD requests for information.

**Thomas F. Maher (Registered Representative, Linden, Michigan)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Maher received from a public customer five checks totaling \$71,023.39 with instructions to deposit the funds into a mutual fund account. Without the customer's knowledge or consent, Maher opened a mutual fund account under his own name and deposited the customer's funds in the account. Moreover, he withdrew \$2,700 from the account and retained the funds for his personal benefit.

Maher also submitted to the NASD three Applications for Securities Industry Registration or Transfer (Form U-4) that failed to disclose a criminal conviction.

**Michael John Matta (Registered Representative, Powell, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Matta consented to the described sanctions and to the entry of findings that he misappropriated checks totaling \$1,124.60 made payable to employees or former employees of his member firm.

**Marty A. McCandless (Registered Representative, Oakford, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$35,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, McCandless consented to the described sanctions and to the entry of findings that he received from public customers funds totaling \$19,806.40 with instructions to use such funds to purchase securities and life insurance policies. According to the findings, McCandless used \$12,149.52 as directed by his clients but failed to follow their instructions fully by crediting \$7,656.88 to other customers' accounts. McCandless also failed to respond to NASD requests for information.

**James D. Oberweis (Registered Principal, Aurora, Illinois)** was fined \$7,500 and suspended from association with any member of the NASD in any capacity for four days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8. The sanctions were based on findings that a former member firm, acting through Oberweis, effected securities transactions and attempted to induce the purchase or sale of securities when it failed to maintain the required minimum net capital.

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

**Rex J. Payne, Jr. (Registered Representative, Columbus, Ohio)** was fined \$45,000 and

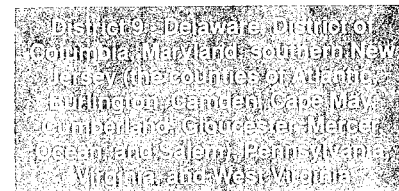
barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Payne misappropriated and converted to his own use customer funds totaling \$705 without the knowledge or consent of the customer. In addition, Payne failed to respond to NASD requests for information.

**Michael Anthony Pleasant (Registered Representative, Chicago, Illinois)** was fined \$7,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Pleasant sold, for the account of a public customer, shares of common stock without the customer's knowledge or consent. In addition, he exercised discretion in the same customer's account without obtaining prior written discretionary trading authority. Pleasant also failed to respond to NASD requests for information.

**Ronald Earl Smits (Registered Representative, Grandville, Michigan)** was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8.

The sanctions were based on findings that Smits received a \$100,000 check from a public customer with instructions to use the funds to purchase a certificate of deposit. Smits failed to follow the customer's instructions and, instead, without the customer's knowledge or consent, used the funds to purchase interests in a limited partnership. Moreover, Smits recommended and effected this purchase without having reasonable grounds for believing such transaction was suitable for the customer considering her financial situation and investment objectives.

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



**Jerome U. Burke (Registered Principal, Little Silver, New Jersey) and Kevin J. Burke (Registered Principal, Westfield, New Jersey)** were suspended in any principal, managerial, supervisory, or proprietary capacity for six months. In addition, they must requalify as principals before acting in such capacity.

The sanctions were imposed by the NASD's Board of Governors following a remand of an NASD decision by the SEC. The sanctions were based on findings that a former member firm, acting through Jerome and Kevin Burke, effected 11 principal transactions in municipal securities with public customers at prices that were unfair and unreasonable. In addition, the firm, acting through Jerome and Kevin Burke, failed to designate a qualified municipal securities principal to be responsible for the overall supervision of the firm's municipal securities activities.

**Andrew J. Dougherty, Jr. (Registered Representative, Upper Darby, Pennsylvania)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Dougherty failed to respond to NASD requests for information concerning a customer complaint.

**Dennis W. Fausey (Registered Representative, Selinsgrove, Pennsylvania)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Fausey received \$269 in cash from a public customer along with an application for insurance. Fausey failed to remit such application and monies and, instead, submitted to his member firm an unauthorized application for another policy on which he had forged the customer's signature, and enclosed \$90.80 for premium payments. Furthermore, he retained the remaining \$178.20 for his own use and benefit. Fausey also failed to respond to NASD requests for information.

**Finalco Capital Corp. (McLean, Virginia)** submitted an Offer of Settlement pursuant to which it 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 effected securities transactions while failing to maintain its required minimum net capital. In addition, the firm failed to maintain accurate net capital computations and filed inaccurate FOCUS Part IIA reports, according to the findings.

The findings also stated that Finalco employed an individual who was subject to a statutory disqualification and continued the firm's association in the NASD without notifying the NASD of this individual's disqualification. Moreover, in allowing the same individual to be associated with the firm while subject to disqualification, the NASD determined that the firm failed to supervise adequately. And the NASD found that Finalco failed to maintain a fidelity bond meeting the firm's minimum required coverage.

**Milton C. Greim (Registered Principal, Morton, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$75,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Greim consented to the described sanctions and to the entry of findings that he converted to his own use and benefit funds totaling \$514,335.10 received by his member firm by causing such funds to be credited to his personal securities account. In addition, he failed to respond to NASD requests for information.

**John E. Ingold (Registered Principal, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Ingold consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, he purchased shares of a new issue that traded at a premium in the immediate aftermarket.

**Darius G. Lowber (Associated Person, North Wales, Pennsylvania)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Lowber failed to respond to NASD requests for information concerning a customer complaint.

**James W. McCartney, Jr. (Registered Representative, Mountain Lake Park, Maryland)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McCartney misappropriated funds totaling \$957.20 given to him by insurance customers that were intended as insurance premium payments. In addition, McCartney failed to respond to NASD requests for information.

**John M. Mickner (Registered Representa-**

**ive, Allentown, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$250,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, he consented to the described sanctions and to the entry of findings that Mickner, without the knowledge or authorization of three public customers, prepared and submitted letters of instruction to an investment company requesting the redemption of shares in amounts totaling \$53,000.

According to the findings, he forged the customers' signatures on the letters of instruction and forged the signature of his member firm's president purportedly guaranteeing the customers' signature, causing the investment company to send a check payable to each customer to his member firm. The NASD found that Mickner intercepted and negotiated the checks and converted the funds to his own use and benefit.

The NASD also determined that Mickner obtained from public customers five checks totaling \$146,391.20 intended for investment purposes and deposited the checks in a bank account that he controlled. Moreover, he failed to invest the funds as instructed and converted the monies to his own use and benefit, the findings stated. Mickner also failed to respond to NASD requests for information.

**Princeton Financial Group, Inc. (Princeton, New Jersey)** and **Jerry F. Shorthouse (Registered Principal, Monmouth Junction, New Jersey)** were fined \$20,000, jointly and severally. The sanction was based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Shorthouse, effected securities transactions in the accounts of public customers at prices that were unfair in relation to the market value of such securities.

**Benjamin M. Ragland (Registered Representative, Wingham, Virginia)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ragland received from a public customer a \$2,323.75 check intended as a rollover investment. Ragland converted and used the funds for his own benefit. In addition, he failed to respond to NASD requests for information.

**Alan M. Ralsky (Registered Representative, West Bloomfield, Michigan), Archie Hudson, Jr. (Registered Principal, DeWitt, Michigan), and Larry L. Conn (Registered Representative, East Lansing, Michigan).** Ralsky was fined \$85,000, Hudson was fined \$30,000, and Conn was fined \$40,000. In addition, they were barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 8.

The sanctions were based on findings that Ralsky, Hudson, and Conn participated in the offer and sale of securities to public customers and failed to give written notice to their member firms of their intention to engage in such activities. In addition, they failed to respond to NASD requests for information.

**Joseph V. Rantuccio (Registered Representative, Philadelphia, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Rantuccio consented to the described sanctions and to the entry of findings that he induced a policyholder to apply for the issuance of an additional life insurance policy by misrepresenting that the customer was applying for reinstatement of a lapsed policy.

According to the findings, Rantuccio submitted to his member firm a request to surrender the policyholder's existing lapsed policy for its cash nonforfeiture value without her knowledge or consent. The findings stated that Rantuccio forged the policyholder's signature on a Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) and on the \$1,943.30 cash surrender check, and deposited the check with his member firm. The NASD also determined that he caused \$1,782 to be applied as advance premium payments on the customer's new policy and \$157.70 to be refunded to her.

**Andrew A. Renert (Registered Principal, Scottsdale, Arizona)** submitted an Offer of Settlement pursuant to which he was fined \$500,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Renert consented to the described sanctions and to the entry of findings that a former member firm, acting through Renert, effected principal sales of equity securities to customers at prices that were unfair in relation to its own acquisition costs and the actual market value of such securities.

**Charles V. Roberts, III (Registered Representative, Glendon, Pennsylvania)** was fined \$200,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Roberts converted to his own use and benefit company funds totaling \$121,105.81 by causing such funds to be credited to his personal securities account. In addition, Roberts failed to respond to NASD requests for information.

**Stephen B. Schofield (Registered Representative, Absecon, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$35,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Schofield consented to the described sanctions and to the entry of findings that, on two separate occasions, he forged signatures purporting to be those of policyholders on requests to withdraw accumulated policy dividends and then submitted such requests to his member firm.

As a result, the NASD found, Schofield came into possession of two checks totaling \$10,886.50 issued by the firm to the customers. Furthermore, the findings stated that he forged their endorsements and negotiated the checks. Schofield also failed to respond to NASD requests for information.

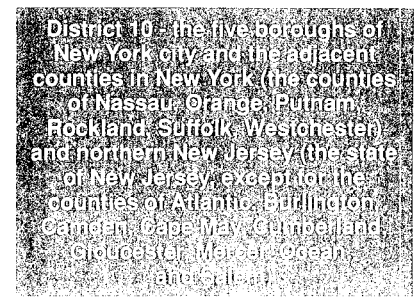
**Frank L. Silvagni, Jr. (Registered Representative, Williamsport, Pennsylvania)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Silvagni received \$253.60 in cash from a public customer for payment on an insurance policy. Silvagni failed to remit such monies to his member firm and, instead, retained the funds for his own use and benefit. Moreover, he concealed such misappropriation by causing policy dividend accumulations to be withdrawn and applied to the payment of such premiums. Silvagni also failed to respond to NASD requests for information.

**Stephens Financial Group, Inc. (Chicago, Illinois)** and **Stephen C. Browere (Registered Principal, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally. Browere also was suspended from association with any member of the NASD in any capacity for 30 days and barred from association with any member of the NASD in any

principal 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 Browere, effected securities transactions while failing to maintain required minimum net capital and filed inaccurate FOCUS Parts I and IIA reports. The findings also stated that, in contravention of the SEC's Customer Protection Rule, the firm, acting through Browere, held customer funds, failed to transmit the funds to the clearing broker/dealer, and used the monies to cover the firm's operating expenses. In addition, the firm, acting through Browere, failed to disclose on customer confirmations the amount of remuneration received in connection with transactions in direct participation programs and failed to prepare and maintain accurate books and records.

**Frank Wayne Williams (Registered Representative, Trotwood, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Williams consented to the described sanction and to the entry of findings that he received an \$8,000 check from a public customer to pay the premium on a life insurance policy. The NASD found that Williams altered the date and added his name as a payee to the check, endorsed and deposited the check in his bank account, and converted the proceeds to his use without the authorization of the customer or his member firm.



**Thomas Vincent Ackerly (Registered Principal, Glen Ridge, New Jersey)** was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ackerly failed to comply with NASD requirements in that a qualified independent underwriter failed to either assess the adequacy of the price offered to all shareholders or conduct due diligence pursuant to a merger that resulted in public ownership of a member firm. Ackerly also failed to respond to NASD requests for information.

**Allied Capital Group, Inc. (Denver, Colorado)** and **Shahin Rezazadeh (Registered Representative, Brooklyn, New York)**. The firm was fined \$15,000. Rezazadeh was fined \$10,000, suspended from association with any member of the NASD in any capacity for 10 business days, and required to requalify by examination as a general securities representative. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 10. The sanctions were based on findings that Rezazadeh executed unauthorized transactions in the accounts of public customers. Also, the firm failed to establish and implement supervisory procedures and to designate a manager in its office where Rezazadeh was employed.

**Vincent William Aquino (Registered Representative, Whitestone, New York)** was fined

\$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Aquino failed to pay a \$6,875 arbitration award.

**Joel E. Babas (Registered Representative, East Meadow, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Babas consented to the described sanctions and to the entry of findings that he received from a public customer a \$5,000 check to be deposited in the customer's account. According to the findings, Babas instead deposited the check in his account for his own use without the knowledge or consent of the customer.

**Best Investors Group, Inc. (Hauppauge, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$20,000 and required to make an offer of rescission to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with transactions in designated securities, the firm failed to approve customers' accounts prior to the execution of transactions, deliver to the customers a written statement setting forth a reasonable determination for suitability, and obtain the written agreement setting forth the identity and quantity of the designated securities to be purchased. In addition, the NASD found that the firm failed to maintain, establish, and enforce its supervisory procedures.

**Timothy Martin Carroll (Registered Representative, Palm Harbor, Florida)** submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Carroll consented to the described sanction and to the entry of findings that he failed to pay the remaining \$6,500 of a \$6,964.67 arbitration award.

**George Eugene Cooper (Registered Representative, East Northport, New York)** was fined \$45,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cooper failed to pay a \$12,035.18 arbitration award. In addition, Cooper failed to respond to NASD requests for information.

**Darryl Sylvester Cox (Registered Representative, Guttenberg, New Jersey)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cox failed to respond to NASD requests for information concerning his termination from a member firm.

**Thomas Patrick Cronin (Registered Representative, Purchase, New York)** was fined \$226,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cronin solicited and received \$106,000 from a public customer by indicating that the funds would be placed in a sound and profitable investment. Instead, Cronin converted the monies to his own use and benefit.

Furthermore, Cronin presented the same customer's son with a check for \$115,000, in purported repayment of the \$106,000, that was returned unpaid due to insufficient funds. Cronin also signed an undated release captioned "Loan Repayment" on his firm's letterhead with a subheading naming his firm as a division of an NASD member without the authorization of the member firm. In addition, Cronin failed to respond to NASD requests

for information.

**Burton Engel (Registered Principal, Muttontown, New York)** submitted an Offer of Settlement pursuant to which he was fined \$17,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Engel consented to the described sanctions and to the entry of findings that a member firm, acting through Engel, sold limited partnership units in a direct participation program when no registration statement was in effect.

The NASD also found that, in connection with a best-efforts all-or-none offering, the same firm, acting through Engel, failed to return investors' funds and instead wired funds to the operating account of the limited partnership despite the fact that the contingent number of units had not been sold. In addition, the firm, acting through Engel, conducted a securities business while failing to maintain its required minimum net capital and failed to maintain accurate books and records, according to the findings.

**Andrew R. Foster (Registered Representative, North Carolina)** was fined \$5,000 and suspended from association with any member of the NASD in any capacity for six months retroactive to January 2, 1991. The sanctions were imposed by NASD's Board of Governors following an appeal of a decision by the misrepresentations of material facts to the same customer and DBCC for District 9. The sanctions were based on committee findings that Foster falsified certain customer documents to reflect that customers made higher contributions to their retirement plans than were actually made by the customers.

**Michael Scott Friedman (Registered Representative, Wayne, New Jersey)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that, without the knowledge or consent of his member firms, Friedman drew eight checks totaling \$27,200 from his member firms' accounts, forged the signature of an authorized drawer, and converted the proceeds to his own use and benefit.

**Laurence Mark Geller (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$1,500 and suspended from association with any member of the NASD in any capacity for one business day. Without admitting or denying the allegations, Geller consented to the described sanctions and to the entry of findings that he failed to pay four arbitration awards totaling \$5,007.

**Abraham Charles Halpern (Registered Representative, Larchmont, New York)** was fined \$20,000, suspended from association with any member of the NASD in any capacity for 20 business days, and required to requalify by examination as a general securities representative. The sanctions were based on findings that, in connection with a series of purchase and sale transactions, Halpern provided substantial assistance to another representative in executing these transactions at prices that were fraudulent, unfair, and detrimental to his member firm and public customers. In addition, the same representative exercised discretionary power in a customer's account through Halpern without submitting the customer's prior written authorization to his member firm and obtaining the firm's approval.

**Herbert M. Jacobi (Associated Person, New York, New York)** and **Robert James Mannes (Registered Principal, Manalapan, New York)**. Jacobi was fined \$15,000 and barred from association with any member of the NASD in any capacity. Mannes was fined \$10,000 and barred from associa-

tion with any member of the NASD in any capacity. The sanctions were based on findings that Jacobi and Mannes caused an inaccurate Uniform Application for Broker-Dealer Registration (Form BD) to be filed for their member firm and thereafter failed to file Form BD amendments to correct it.

Also, Jacobi engaged in the management of his member firm's securities business without proper registration as a principal. In addition, Jacobi and Mannes, acting on behalf of their member firm, conducted a securities business while failing to maintain its required minimum net capital.

**Kidder, Peabody & Co., Inc. (New York, New York) and Ira Elliot Saferstein (Registered Representative, New Rochelle, New York)** submitted Offers of Settlement pursuant to which the firm was fined \$30,000 and required to undertake an internal review of its compliance procedures governing the trading and sale of collateralized mortgage obligations (CMOs). Saferstein was fined \$10,000 and suspended from association with any member of the NASD in any capacity for six months, and two of the firm's supervisory personnel were sanctioned.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Saferstein took advantage of a pricing error made by another member firm by selling to that firm CMOs totaling \$1,105,566.63. Saferstein covered the short position resulting from that sale by purchasing the same securities from another dealer for \$100,000. The findings stated that Saferstein concealed this activity by directing his subordinate to change the description of the securities on the confirmation to reflect a 9.95 percent coupon rate, rather than a zero coupon instrument.

The NASD also found that Saferstein opened a securities account for himself at Kidder, Peabody under another name without disclosing to the firm that he had a beneficial interest in the account. In addition, he opened a different account at another firm without notifying Kidder, Peabody in writing that he opened the account. According to the findings, Saferstein then purchased and resold the same bonds in these accounts, again taking advantage of the other dealer's pricing error. He received proceeds and interest totaling \$3,029,550 on the sale of bonds he had purchased for \$125,000. The NASD determined that Kidder, Peabody, acting through the two supervisory personnel, failed to supervise the activities of Saferstein. The suspension of Saferstein began with the opening of business on October 7, 1991.

**Michael Davis Meyers (Registered Principal, Houston, Texas)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that he executed transactions in the account of a public customer without the authorization, knowledge, or consent of the customer. The NASD also found that Meyers shared in the losses in the same customer's

account. Furthermore, the findings stated that Meyers made purchases in his personal account and paid for the transactions with checks that were returned due to insufficient funds. In addition, Meyers failed to respond to NASD requests for information.

**John Raymond Mitkowski (Registered Representative, Hicksville, New York)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Mitkowski failed to execute a customer's order to sell shares of a common stock. In addition, Mitkowski failed to respond to NASD requests for information.

**Raymond A. Nasta (Registered Representative, Florham Park, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,000. Without admitting or denying the allegations, Nasta consented to the described sanction and to the entry of findings that he participated in sales of limited partnerships without having received written approval of such activity from his member firm.

**Richardson, Lyle & Adler, Inc. (New York, New York) and Richard Schwartz (Registered Principal, Riverdale, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was expelled from membership in the NASD. Schwartz was fined \$2,000 and barred from association with any member of the NASD 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 Schwartz, liquidated the securities positions in the account of a public customer and invested the \$2,673 proceeds in shares of common stock without the authorization of the customer. The NASD also found that the firm, acting through Schwartz, failed to obtain the most favorable price for its customers who purchased or sold the aforementioned common stock.

**Thomas P. Reynolds Securities, Ltd. (New York, New York) and Milton A. Netcher (Registered Principal, New York, New York)** were fined \$15,000, jointly and severally. The sanctions were affirmed by the Securities and Exchange Commission (SEC) following an appeal of a decision rendered by the NASD's Board of Governors. The sanctions were based on findings that the firm failed to carry a blanket fidelity bond; filed an annual audited report that was not reviewed by an independent accountant; and prepared an inaccurate general ledger and trial balance, and an inadequate net capital computation.

**Arthur W. Weisberg (Registered Representative, Mount Kisco, New York)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for five days. The sanctions were imposed following a review by the SEC of an action taken by the NASD's Board of Governors. The sanctions were based on findings that Weisberg sold municipal bonds from the inventory of his member firm to individuals associated with another firm at prices that were unfair and detrimental to his firm in relation to prevailing market

conditions.

**Melinda Schmidt Zeller (Registered Representative, South Bound Brook, New Jersey)** was fined \$105,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Zeller forged the signatures of nine customers on disbursement request forms, requested the issuance of unauthorized loan checks to be sent to her, and forged the customers' endorsements on the checks, which totaled \$36,078.93. In addition, Zeller 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, and Westchester; the counties of Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)**

**Michael A. Barbalato (Registered Principal, Williamsville, New York)** was fined \$1,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination as a general securities representative. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that Barbalato recommended, purchased, and sold securities for the account of a public customer that were excessive and unsuitable in relation to the customer's investment objectives, financial situation, and needs.

**Rick L. Diffenderfer (Registered Representative, Addison, New York)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that Diffenderfer withheld and misappropriated to his own use and benefit \$274.41 received from a public customer as payment on an insurance policy without the knowledge or consent of his member firm or the customer.

**Michael K. Smith (Registered Representative, Shrewsbury, Massachusetts)** submitted an Offer of Settlement pursuant to which he was fined \$7,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that, through the use of fictitious transactions and unauthorized loans against the insurance policies of public customers, he withheld and misappropriated to his own use and benefit customer funds totaling \$43,130.

In addition, Smith failed to respond to NASD requests for information.

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