

# ALERT

## SEC Requires More Mutual Fund Disclosure

### *Portfolio Managers Identified, Performance Comparison Added*

Beginning in July, mutual funds will need to improve their performance disclosure in prospectuses and annual reports to shareholders, following recently adopted Securities and Exchange Commission (SEC) amendments.

The SEC's March 18 ruling, following proposals released more than three years earlier, is expected to simplify the per share tables found in prospectuses and expand information about fund managers and performance in prospectuses or annual reports.

Under amendments to the Securities Act of 1933 and Investment Company Act of 1940, most mutual funds will be required as of July 1, 1993, to disclose information about portfolio managers, discuss those factors, strategies, and techniques that materially affected fund performance, graphically compare performance to that of an appropriate broad-based securities market index, and substantially revise the content and format of the condensed financial information contained in the prospectus.

*Continued, page 8*

## Ginnie Mae Scheme Inflicts Huge Losses

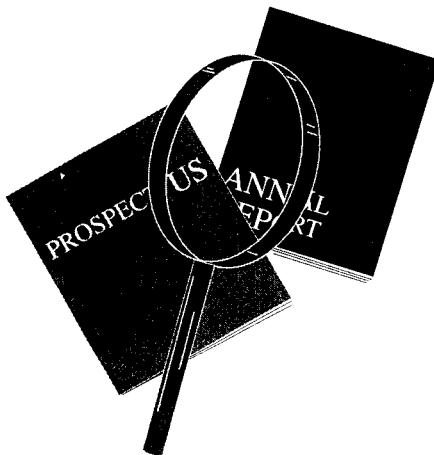
### *NASD Expels Firm, Bars Individual, Assesses \$765,000 in Fines*

The NASD expelled Englewood, Colorado-based Orion Securities, barred a registered representative of another firm, and assessed fines totaling \$765,000 following an investigation that uncovered misrepresentations of bonds purportedly issued by the Government National Mortgage Association (Ginnie Mae), leading to millions of dollars in investor losses.

Steven Kochensparger of Upper Arlington, Ohio, a registered representative at Parsons Securities, Inc., was barred from association with any member in any capacity, fined \$200,000, and

required to make restitution to a customer. Roger Parsons of Baltimore, Ohio, formerly president of Parsons Securities was barred from associating with any NASD member in any capacity and fined \$165,000. Douglas W. Nutt of Greenwood Village, Colorado, the President of Orion, was barred from associating with any member in any capacity. Nutt and Orion were also fined \$400,000 jointly and severally.

The NASD found that the Ginnie Mae bonds in question were clearly not on deposit as represented by Kochensparger, *Continued, page 9*



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(Special Tear-Out Copy of *NASD Sanction Guidelines* Included)

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## Regulation

# SEC Moves on Rule for Quicker Stock Settlement

Equity securities transactions would have to be settled within three business days under a proposed rule released for comment by the Securities and Exchange Commission (SEC) on February 23, 1993.

SEC Rule 15c6-1 would provide that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted securities) if payment of funds and delivery of securities does not occur within three business days of the date of the contract.

By reducing the total number of unsettled trades at any given time, Rule 15c6-1 is designed to reduce the inherent risk for clearing corporations, their members, and public investors when settling securities transactions.

The proposed rules originated from

industry efforts to identify and eliminate causes for market declines to shield all market participants from the impact of sudden, steep declines in securities markets.

Following market breaks in 1987 and 1989, numerous groups discussed ways to avoid many of the problems that resulted. Identifying clearance and settlement as a main area of concern, the Group of Thirty, a worldwide investment industry group that included the NASD, organized a symposium to discuss the state of clearance and settlement in the world's principal securities markets. Subsequently, SEC Chairman Richard Breeden formed the so-called "Bachmann Task Force," named after former Securities Industry Association Chairman and Edward D. Jones and Co. Managing Principal John Bachmann, to evaluate changing the current clearance and settlement system in the U.S., where transactions in futures, options, and government securities markets occur on the

business day after trade date (T+1) while stock trades occur within five business days (T+5).

The SEC largely agreed with the Bachmann Task Force Report findings that shorter settlement would reduce market risk, acknowledging that today's market environment can drastically change a security's value and end in the default of unsettled positions. Still, the SEC amended the task force's recommendations, which concluded that all standard stock settlements should be reduced to three days by mid-1994. In lengthening to January 1, 1996, the estimated timetable for the rule's approval, the SEC recognized that market participants need time "... to implement the necessary changes to allow three-business-day settlement in an efficient manner."

Regarding differences in the current clearance and settlement system in the U.S., the SEC's release added, "The rule

will also facilitate additional risk reduction procedures by achieving closer conformity between the government securities and derivatives markets and

the markets for other securities.”

Release No. 33-6976 in the March 1, 1993 issue of the *Federal Register* (Volume 58, No. 38). □

Anyone with questions regarding this rule proposal should see Securities Act

Goal Is Complete Redesign

# NASD Board Proposes Interim, Long-Term Changes for SOES<sup>SM</sup>

Concern about the impact of trading in the Small Order Execution System (SOES)<sup>SM</sup> on volatility and liquidity in Nasdaq® stocks led the NASD Board to approve interim and long-term changes

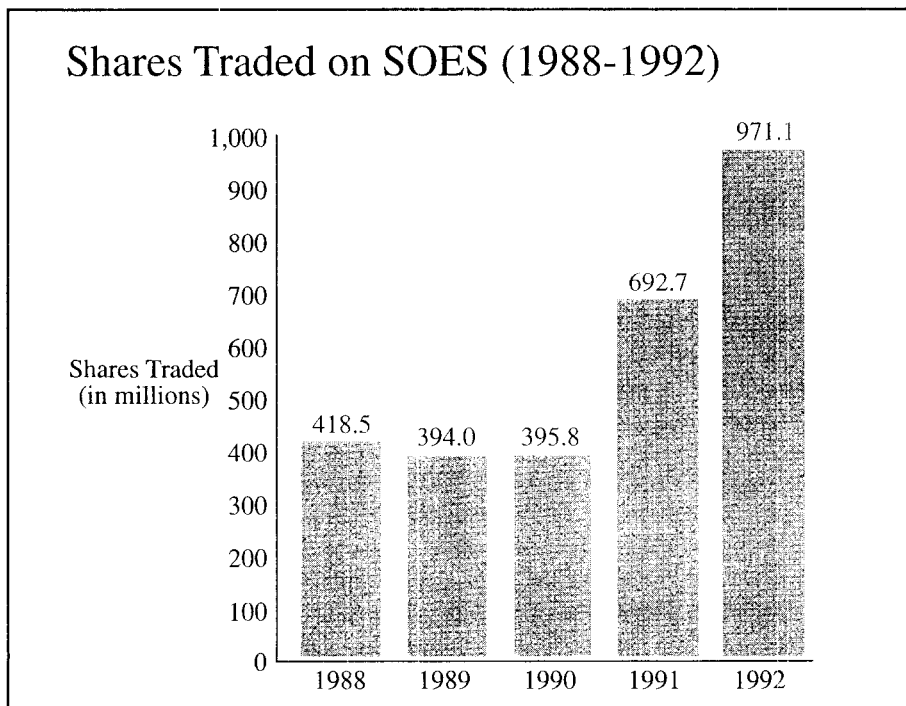
to the service. The Securities and Exchange Commission (SEC) must approve these modifications before their expected effective date in mid-June. SOES was designed as an efficient order-entry and execution system for agency orders of 1,000 shares or less. More than 970 million shares traded through SOES in 1992, and the average

- Accept the order or do nothing, in which case an execution would be processed after a specific time period.

The proposals are designed to increase the potential for improved prices and to assure public investors that their best interests are being served. The changes also address the activities of a growing number of active traders who have been using SOES to trade rather than to invest.

“SOES plays an important role for public investors, particularly during periods of heavy volume,” says Richard M. DeMartini, NASD Governor and President of Dean Witter Financial Services Group, Inc. “The Board’s action will ensure that the public will have continued access to fast, automated executions of their small orders by preventing professionals from crowding out the retail customer’s trades.”

size of a transaction was 414 shares.



- Reject the order provided that a prior execution took place and the market maker had updated its quote.

If the order is rejected by a market maker, then it would be broadcast to the remaining dealers at the inside price. These dealers may:

- Accept the order on a first-come, first-serve basis.

**How Long-Term Revisions Will Work**  
Long-term modifications to SOES order processing will include a complete redesign of the system, including mechanisms for market-order price improvement and limit-order protection. Under revised SOES, an order would be sent to a market maker with the best quotation, using the same rotation processing as today. The market maker may:

- Do nothing, and the next market maker in rotation gets the execution.
- Reject the order provided that each dealer has had an execution in the security and has updated its quotes.

If all market makers reject the order, it goes to the first market maker at the new inside price. That dealer may only accept or wait for the automatic execution but may not reject the order.

Unpreferred orders will be delivered anonymously. Preferred orders will be routed and executed as described above and may not be rejected.

Market makers that narrow the spread by raising a bid or lowering an offering may get all eligible SOES executions by manually accepting every delivered order. If market makers fail to accept an order, it nullifies their priority and subsequent SOES orders would go through the regular rotation.

#### Incoming SOES Orders

Incoming SOES market orders (or marketable limit orders) would pass over the limit-order file to see if there is a limit order priced better than the existing inside bid or offer in the limit-order file.

If there is a limit order priced in between the spread, the incoming market order is displayed to market makers at the improved limit-order price, and the dealers may either execute the market order at that price or do nothing. If the market makers take no action within a specified time, the market order will match with the limit order and execute at the improved price.

#### Planned Interim Changes

Because the planned modifications to SOES will involve considerable programming effort, the NASD has also approved and filed with the SEC an interim series of modifications to SOES that:

- Decrease the maximum size order from 1,000 to 500 shares.
- Prohibit short sales in SOES.
- Reduce the required exposure limits for market makers from five times the tier level to two.
- Allow the Nasdaq system to automatically update market-maker quotations after SOES exposure limits are exhausted.
- Decrease SOES exposure limits using unpreferred order flow only.
- Permit use of the 15-second execution interval for quote updates during locked and crossed markets. □

## New Amendments Expand PORTAL<sup>SM</sup> Market Availability

Amended following comments from participants in the Rule 144A securities market, the NASD's PORTAL system rules now offer expanded eligibility for market participants and enhanced capital-raising opportunities for foreign issuers within the United States—regardless of whether those securities are privately placed or offered publicly offshore.

To ease access to and facilitate use of The PORTAL Market, the NASD has proposed the following important changes to PORTAL rules:

#### Segregated Accounts Eliminated.

PORTAL participants would no longer be required to establish segregated accounts at depositories for PORTAL securities transactions. Furthermore, PORTAL brokers would no longer be prohibited from engaging in principal transactions in PORTAL securities.

#### PORTAL Investor Base Broadened.

PORTAL securities would be available to any investor as long as the sale complies with an applicable exemption under securities laws, either Rule 144A or pursuant to the "Section 4(1-1/2)" concept,

if the member maintains the basis for the exemption in its files.

#### PORTAL Securities Eligibility Eased.

Eligibility criteria for PORTAL securities would be amended to require that the securities be "restricted" or include terms requiring that the security can be sold in a Section 4 (1-1/2) transaction, or in compliance with Regulation S, Rule 144A, or Rule 144. Securities must be Rule 144A-eligible and have a CUSIP number different from that of an unrestricted security.

#### Reporting Requirements and

**Qualifications Simplified.** PORTAL brokers and dealers, as well as any other involved member, would be required to report all transactions in PORTAL securities to the NASD. PORTAL brokers and dealers would submit a transaction report within 15 minutes of trade execution and a monthly surveillance report by the fifth day of the month following. Other members that are not PORTAL participants would have to file a monthly non-participant report by the fifth day of the month following. The surveillance and non-participant reports would indi-

cate whether a buyer is a Qualified Institutional Buyer (QIB), a non-QIB institution, or an individual investor.

The NASD would also rely on a PORTAL dealer's representation of an investor's qualifications as a QIB (though the NASD would still qualify investors as well).

#### Clearing and Settlement Expanded.

Participants would be permitted to clear and settle PORTAL securities in depositories other than the Depository Trust Company or Cedel, or by physical delivery. They would also be allowed to use PORTAL automatic clearance and settlement facilities.

#### Access Eased, Data Expanded.

PORTAL quotations will be available to PORTAL participants and through securities information vendors. Participants can access quotations through dial-up with enhanced screen navigation or via the Nasdaq Workstation.\* PORTAL will calculate the inside quote, cumulative volume, and data on the last sale quantity, price, and date of transaction. □

# RECENT U.S. TREASURY DEPARTMENT REPORTING INTERPRETATIONS

The U.S. Treasury Department recently issued two interpretations concerning how broker/dealer firms and other financial institutions verify and record information on Currency Transaction Reports (CTRs). The interpretations, issued as administrative rulings, concern the proper completion of CTRs as covered by the Bank Secrecy Act. Administrative rulings are used as a means of interpreting the Act and, as such, simply clarify existing regulations without creating new requirements.

## IDs for the Elderly, Disabled

The Treasury Department had received a number of questions concerning how financial institutions can meet reporting requirements when an individual does not possess proper identification—a common occurrence among the elderly and disabled. In such cases, where the individual frequently does not possess a driver's license, passport, alien identification card, or other documents normally accepted as identification, members should employ the identification standards generally used within the banking community when cashing checks for non-depositors.

Typically, broker/dealer firms and other financial institutions are required to verify and record on CTRs the identities of individuals who conduct currency transactions in excess of \$10,000. Similar requirements require a chronological log of cash purchases between \$3,000 and \$10,000 of certain monetary instruments.

Noting the Bank Secrecy Act, the Treasury Department stated in its interpretation that a financial institution may accept as appropriate identification a social security, Medicare, Medicaid, or other insurance card along with another document containing both the name and address of the individual (e.g., an organization membership card, voter registration card, utility bill, or real estate tax bill). The firm must also establish that an indi-

vidual's means of identification is limited to such documents and use any available information to determine the individual's identity. These forms of identification must be specified, however, in the firm's written supervisory procedures, and, once established, the firm may not permit any exceptions. Only if the firm is confident of the individual's identity should the transaction be concluded.

In completing a CTR, the firm should enter on Item 15a the words *Elderly or Disabled* and the method used to verify the individual's identity such as *Social Security Card* and *(Name of Organization) Membership-Card-Only ID*.

Members are reminded that the notation *Know Customer* or *Signature Card on File* is not acceptable on a CTR. A signature card may be relied on only if it contains the specific information used to verify the identity of the individual.

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## Reporting Multiple Transactions

The Treasury Department ruling on multiple transactions states that a firm must make a reasonable effort to obtain and provide as much of the required information in multiple transactions as is available. Generally, multiple transactions that total in excess of \$10,000 when aggregated must be

reported on a CTR if the financial institution has knowledge that the transactions occurred.

If each of the individual transactions is under the \$10,000 threshold, as occurs in some cases, a firm may not know at the time that a CTR would be required. Hence, information identifying the person making the transaction may not have been obtained.

Going into great detail in its interpretation, the Department gives six examples of how to complete a CTR under varying circumstances. It addresses specifically those instances when multiple transactions are aggregated and reported on a single form—even if all or part of the information requested on the form is not known.

If all or part of the information is not available, the firm should check Item 3d on the CTR to indicate that the information is not being provided. All subsections of Item 48, however, must be completed concerning the number of transactions involved, the number of locations of the financial institution, and the zip codes of those locations where the transactions were conducted.

Members interested in reviewing either Treasury ruling should refer to the February 4, 1993 issue of the *Federal Register* (Volume 58, Number 22).

# COMPLIANCE SHORT TAKES

**The direction of continuing education for securities industry professionals may be finalized by year end.** The securities industry task force assigned to examine the issue is expected to provide an interim or final report to the participating self-regulatory organizations by September 1993. The NASD Membership Committee will report any results to the NASD Board of Governors at its November meeting.

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**The NASD can make special testing arrangements for those candidates for NASD licenses with physical or learning disabilities.** To request alternative arrangements for NASD testing or for more information, please contact the Qualifications & Membership Department at (301) 590-6724.

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**The Securities and Exchange Commission (SEC) recently approved a NASD proposal to alleviate inadvertent violations of SEC Rule 10b-6.** Under new provisions of paragraph 8(d) of Part VI of Schedule D to the NASD By-Laws, managers of a distribution subject to SEC Rule 10b-6 must now assume responsibility for

requesting excused withdrawal or passive market maker status on behalf of the underwriting syndicate and selling group known to the manager on the day prior to the beginning of the cooling off period under Rule 10b-6.

The proposal arose from instances where market makers inadvertently did not comply with the two- and nine-business day cooling-off period provisions of Rule 10b-6, although their non-compliance did not necessarily indicate a manipulative trading pattern.

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**The NASD Market Surveillance Committee has stepped up its review of firms that fail to properly display the maximum order size for each security eligible through the Small Order Execution System.** The required tier size is published from time to time by the NASD pursuant to the Rules of Practice and Procedure for the Small Order Execution System, and members will be held accountable for ensuring that the appropriate size is reflected for their Nasdaq markets.

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**The NASD Board of Governors approved a plan to speed up the dis-**

**ciplinary process for minor violations of NASD rules and regulations.** Submitted to the SEC for approval, the new *Minor Rule Violations Plan* (under Article II, Section 10 of the NASD Code of Procedure) would allow the NASD to process and report disciplinary actions involving fines that do not exceed \$2,500 and/or a censure. General authority for the *Plan* would fall to each NASD District Business Conduct Committee, the NASD Market Surveillance Committee, or the NASD National Business Conduct Committee.

An appendix to Section 10 provides a list of violations, including advertising errors, excess spread violations, and late short-sale filings, that will be appropriate for inclusion under the *Plan*.

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**The NASD will solicit member comment on a report concerning its Free-Riding and Withholding Interpretation.** Scheduled for release in an upcoming *Notice to Members*, the recommendations of the NASD Free-Riding and Withholding Subcommittee were approved by the NASD Board of Governors at its May meeting and will be submitted to the NASD membership for comment.

## Registered Representative Disciplined for Profane and Indecorous Language

Sheldon Maschler, a registered representative from Bayonne, New Jersey, was fined \$5,000 and suspended from association with any NASD member in any capacity for one business day based on findings that, on several occasions, Maschler used language that was indecorous and abusive while addressing persons associated with various

member firms. Maschler, who has been subject to previous disciplinary actions for violations of NASD rules, served his suspension on May 17.

This [language] transcended anything that could remotely be considered proper even where salty language might be commonplace," said John Pinto,

Executive Vice President, NASD Compliance. Brokers at six firms complained about conversations in which Maschler and other traders at Datek Securities used language that the NASD found to be "sexually denigrating," "highly abusive," and "gross, vile and disgusting." □

## Surveillance

# Firm Supervisory Responsibilities Crucial in Marking-the-Close Cases

The NASD's Market Surveillance Committee (MSC) encourages all members to review the adequacy of their supervisory procedures to guard against marking-the-close violations.

In reviewing marking-the-close cases, the MSC will continue to closely examine how effectively a firm's supervisory procedures monitor for potential marking-

the-close violations. A firm's written procedures should include a reasonable method to monitor such activity, including monitoring fictitious and substantive transactions. In accordance with Section 27 of the NASD's Rules of Fair Practice, the firm's procedures should also specifically identify the title, registration status, and the location of the required supervisory personnel who are responsible for

overseeing such activity.

In addition to closely examining a firm's procedures, the MSC will also carefully review the activities of the individuals responsible for carrying out the procedures to determine whether they are routinely performed in a responsible fashion. □

## Legislation

# Investment Adviser Legislation Approved by House

## *Government Securities Legislation Awaits Committee Action*

The U.S. Congress moved forward on legislation that would give the Securities and Exchange Commission (SEC) and the NASD increased oversight of the investment adviser community and the government securities auction.

On May 4, the House passed by voice vote the *Investment Adviser Regulatory Enhancement and Disclosure Act*, which would increase the supervision and responsibility of investment advisers.

The House and Senate initially tried to pass the investment adviser legislation last fall before Congress adjourned.

The two bills that were introduced earlier this year were substantially similar to legislation before both bodies of Congress late last year. But neither body could compromise differences between the Senate version of the bill and the House's much broader variation that would have required greater supervision of the financial planner community.

Specifically, the House bill would compel increased communication between advisers and their customers, set up a toll-free number on advisers, and establish a mechanism for identifying unregistered advisers.

In addition, the House bill would require investment advisers to disclose commissions to them or any third party; customers would receive periodic reports disclosing total commissions and fees paid by the client; and advisers would need to supply clients with information about their business background—including disciplinary history, registration information, compensation arrangements—and the educational history of anyone providing the client with significant advice. And the bill would hold planners to suitability requirements for their investment suggestions and expect them to inquire about a customer's financial condition, investment experience and objectives.

Currently, the inspection cycle for 17,500 investment advisers is once every 30 years. Both bills would quadruple the number of SEC examiners currently allotted to investigating investment advisers. The SEC would finance the added supervision by raising annual fees to financial planning firms, at a minimum, to \$300 with the possibility of charges as high as \$7,000 depending on a firm's assets under management. Financial planner firms currently pay only a one-time fee of \$150 to register with the SEC as advisers. Both

bills also set out bonding and suitability standards, and set up a central registration authority. The House bill would also permit the SEC to delegate to an SRO the authority to inspect the investment advisory activities of its members.

## Added Supervision for Treasury Market

The *Government Securities Reform Act* reauthorization bills were also reintroduced in both Houses earlier this year. The Senate bill would permanently reauthorize the Treasury Department's rulemaking authority for government securities dealers, and clearly prohibit the use of false and misleading statements in connection with government securities offerings. The bill would also authorize the NASD to apply its sales practice rules to government securities sales.

The House bill would, in addition, grant the SEC authority to adopt recordkeeping rules for government securities dealers, establish backstop authority for the SEC to foster transparency in the government market, and permit the SEC to require large position reporting by government securities brokers and dealers. □

# NASD Testifies Before Congress on Rollups Bill

Testifying before the U.S. Senate in April, the NASD supported legislation that would shore up protection to investors involved in partnership rollups.

Invited to comment on the need for federal rollup legislation and the adequacy of current regulation, NASD representative Phillip S. Cottone told Congress that the NASD supported federal legislation that would cover the few rollups not involving NASD members.

“Large nationwide rollups of partnerships are difficult to accomplish without the use of NASD members,” said Mr. Cottone, former chairman of the NASD Direct Participation Programs Committee. “However, smaller rollups with a limited number of partnerships can, and have, been solicited without NASD members and are not, therefore, covered by our rules. This legislation will provide uniformity for listing of rollup securities on the major markets. Passage by Congress of legis-

lation that mirrors our rules will assure a uniform standard for NASD members and non-members alike.”

The House of Representatives passed *The Limited Partnership Rollup Reform Act* in March by a vote count of 408-6. Through Mr. Cottone’s Senate testimony, the NASD had been asked to specifically address the current and potential problems with rollups, any potential gaps in federal and state law, and the NASD’s proposed rules.

The NASD Direct Participation Programs Committee, which Mr. Cottone chaired in 1992, has long been involved in regulation concerning rollups, including new rules currently before the SEC that give extensive protection to partnership rollup investors.

Even before any federal legislation was introduced, the NASD had begun to address problems with rollups. In December 1990, the NASD Direct Participation Programs Committee

sought to clarify rules on differential compensation, the practice where a general partner pays broker/dealers to solicit investors to vote “yes” to rollups.

The NASD proposals currently before the SEC would require that NASD member firms meet certain criteria before participating in rollups. Specifically, dissenting limited partners would have to be offered the right to receive compensation for their partnership units based on an independent appraisal of partnership assets, retain the rights to a security with substantially the same terms and conditions as the security originally held, or other comparable rights. To ensure the partnership has been valued properly, dissenting limited partners would receive compensation based on an independent appraiser’s report. The new NASD rules would also prohibit listing a limited partnership rollup on the Nasdaq National Market\* if investor rights were unfairly reduced or abridged. □

## *Fund Disclosure, continued from page 1*

Condensed financial information, namely the per share table, should be shortened and simplified to permit investors to trace more easily the operating performance of the fund on a per share basis from beginning to ending net asset value. The SEC will also require that a line of data be added showing the fund’s total return during each reporting period.

## **Portfolio Managers Must Be Disclosed**

According to new item 5(c) of Form N-1A, the form by which mutual funds must register under the Investment Company Act, most mutual funds will also have to disclose in their prospectuses the name and title of the person or persons who primarily manage the portfolio from day to day.

Certain funds may be excluded from the 5(c) requirements. If all fund investment decisions are made by a committee—and

no person(s) is primarily responsible for making recommendations to that committee—that fact must be stated, though no individuals need be identified by the fund.

Money market and index funds are also excluded from the new item. The SEC excluded money market funds because they meet risk-limiting conditions under rule 2a-7 of the 1940 Act, which limits the role of the portfolio manager. Index funds, which normally mirror the performance of a specified securities index, are excluded because the portfolio management of such funds is largely mechanical. However, an index fund that seeks to outperform a specific fund index would be required to respond to the item since its portfolio manager would need to make investment decisions that extend beyond merely duplicating an index.

Because concerns that the new portfolio

manager disclosure would impose burdensome updating requirements, funds may simply provide a prospectus supplement or “sticker” delivered to “new” investors. The SEC defines new investors as any current shareholder who acquires new fund shares through additional cash purchases, even via shares bought through an automatic cash investment plan. New investors would not include those shareholders using a dividend reinvestment plan. Current fund shareholders who are not “new” investors could receive the sticker in the fund’s next regular mailing.

## **Graph Comparisons and Other Analysis Required**

Under Item 5A(a), funds must explain in the prospectus or annual report what happened during the previous fiscal year and why it happened. The narrative should describe what techniques or strategies—within the fund’s investment objectives



and limitations and along with any market conditions and events—management used that resulted in the fund's performance.

Pursuant to Item 5A(b), the SEC will also require funds/index comparisons visually through the use of performance graphs. The graph format is expected to more easily compare fund performance over the last 10 years to an appropriate index, such as the S&P 500, the Nikkei Index, or the Lehman Corporate Bond Index, and also put the narrative discussion in perspective. Funds could change comparative indexes provided an explanation is given and if the previously used index comparison is mentioned in the Management Discussion where the new index first appears.

Item 5A(b) gives a fund considerable flexibility in selecting a broad-based index that it believes best reflects the

market in which it invests. Any graphs must assume a hypothetical \$10,000 investment and reflect all fund expenses, sales loads, and any account fees. In addition, within or contiguous to the graph, the fund must include the "standardized" total return figures used in advertisements and sales literature (the average annual returns for the one-, five-, and ten-year periods that ended on the last day of the most recently completed fiscal year.

Item 5A(c) requires each fund that has a policy or practice of maintaining a specified level of distributions to shareholders to report what impact that policy had on the fund's investment strategies and per share net asset value during its last fiscal year.

#### Amendments to Rule 34b-1

The SEC is also adopting technical amendments to Rule 34b-1 regarding

sales literature used with a prospectus. Among other things, the rule requires performance information to be current; the amendments exclude periodic reports to shareholders from these updating requirements. The rule has also been clarified to require that all money market fund sales literature disclose that an investment in the fund is neither insured nor guaranteed by the U.S. government and that there can be no assurance the fund will maintain a stable net asset value.

**For more information on the new amendments, please see Securities Act Release Number 33-6988 in the April 12, 1993 issue of the *Federal Register* (Vol 58, No. 68) or contact the Office of Disclosure and Investment Adviser Regulation, SEC Division of Investment Management, at (202) 272-2107.**

□

#### *Ginny Mae Scheme, continued from page 1*

who also had no basis for confirming the following: borrowers or third parties owned the bonds; the bonds were free and clear of all liens and encumbrances; or, if the value of the bonds declined, Kochensparger would liquidate the bonds or transfer them to the lender. As a result of Kochensparger's misconduct, lenders lost several million dollars, and one investor, a California savings and loan institution, went into receivership. Kochensparger fraudulently represented to lenders, insurers, and other institutions that the Ginnie Mae issues were purportedly held at Columbus Equities International, Inc. (then known as Parsons Securities, Inc., and a former member located in Columbus, Ohio) in seven separate transactions during 1989 and 1990. The bonds were supposedly available to insurance companies as collateral to secure loans or to enhance balance sheets, thus allowing those companies to continue conducting business. Parsons, charged with failing to supervise Kochensparger properly, settled that and other pending actions (net capital, markup, and SEC cold-call rule

violations) without admitting or denying the allegations. The NASD also found that Parsons allowed the fraudulent scheme to continue by taking no action regarding Kochensparger's activities despite receiving numerous telephone inquiries.

#### Related Stock Fraud Scheme

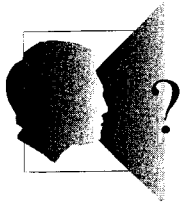
Nutt and Orion obtained from an investment banking client a \$500,000 loan—the principal collateral for which was a Ginnie Mae bond purportedly being held by Parsons Securities—that had been pledged by another of Orion's clients, Dublin Osaka Group, Inc. Several months before this loan was obtained, Nutt purchased under mysterious circumstances 372,000 shares of Dublin Osaka—approximately one-third of the company's purported free-trading stock—at a reduced average price of \$.0006 per share.

Orion then entered quotes in the National Quotations Bureau Pink Sheets at \$5 bid and \$5.25 ask prices, and then effected several trades at these prices while subsequently trading the stock at prices of

\$1.25 to \$1.75 per share. As a result, Orion realized a profit of almost \$400,000.

The NASD found that Nutt and Orion did not adequately demonstrate that Dublin Osaka stock was exempt from registration and freely tradable. The NASD also concluded that receiving the stock was illicit consideration for becoming a market maker and that fraudulent markdowns resulted with initial share purchases.

Although Nutt and Orion have appealed to the SEC, the bar and expulsion have not been stayed pending appeal. In denying their request for a stay, the SEC found that Nutt and Orion had not demonstrated a substantial possibility of prevailing on the merits of the case. According to the SEC, the distribution of unregistered securities was an extremely serious violation, noting: "It came in a context where investors needed a high level of protection. By any assessment, the promotion at issue here bore a high degree of risk to investors. Indeed, it proved to be a complete fraud." □



## “ASK THE ANALYST”

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

### Variable Life Insurance Products

**Q.** *When will the NASD or the SEC finalize and publish guidelines for advertising performance of variable products?*

**A.** In a letter dated March 5, 1993, the staff of the SEC provided the NASD with its guidelines for advertising the historical performance of variable life insurance policies. The full text of this letter appears in the article titled “SEC Mandates Guidelines for Variable Life Performance” on page 11 of this issue.

Variable annuity performance advertising and sales literature should comply with SEC Rule 482 or Rule 34b-1 under the Securities Act of 1933. Both rules are included in the Investment Company Securities section of the *NASD Manual*.

In addition, through the Insurance Affiliated Member Committee, the SEC staff is currently working on proposed guidelines for variable product advertising and sales literature. We expect these guidelines to be finalized by the end of 1993. Upon SEC approval, we will publish the guidelines in *NASD Notices to Members*.

**Q.** *May a variable life insurance policy or variable annuity contract advertise performance of an underlying fund that predates the existence of the policy or contract?*

**A.** Yes, provided no significant changes related to investment

objectives, fund policies, investment manager, etc., occurred after the fund became part of the product.

**Q.** *Suppose the underlying fund of a policy or contract is substantially similar to an existing mutual fund with a track record of its own,—for example, the two funds share the same adviser, objectives, investment policies, etc. May the policy or contract advertise the performance of the pre-existing mutual fund?*

**A.** No. The use of such performance in advertising or sales literature for the variable product could mislead an investor to conclude that the new, underlying fund would share in the same performance already demonstrated by the existing mutual fund.

### General Advertising

**Q.** *May advertisements and brochures feature fabricated quotes? For example, a piece might include the photograph of an actor meant to represent a “typical” investor along with a quoted statement regarding the success of a product or investment strategy. Would such material have to disclose that the quotation is fictitious?*

**A.** The Department does not object to fictitious or fabricated quotations provided they are not misleading within the context of the presentation. Generally, the advertising or sales literature would not have to identify the quotation as fictitious.

**Q.** *In the December 1992 Regulatory & Compliance Alert (RCA), you advised that ratings or rankings of mutual funds by independent services such as Morningstar and Standard & Poor’s may be used, provided the communication containing such rating is preceded or accompanied by a prospectus. Has this position changed?*

**A.** Previously, because the SEC staff had objected to these ratings or rankings in fund prospectuses, they could not be used in Rule 482 material disseminated prior to prospectus delivery. Rule 482 limits a communication to information substantiated in the full prospectus.

In a recent letter to the mutual fund industry, the SEC staff modified this position to permit the use of these ratings in prospectuses. The SEC staff’s letter states that such ratings should be accompanied by a statement that past performance is no guarantee of future results and by a brief explanation of the manner in which the ranking is calculated. The fund should also disclose whether the ranking takes into account sales loads and other fees and charges. Rankings should also be current.

Provided these disclosures appear in the prospectus and the sales literature or advertising, we no longer object to the use of these ratings prior to prospectus delivery. Of course, the approval and filing requirements of Article III, Section 35(b)(1) and (c)(1) of the Rules of Fair Practice must also be met as discussed in the March 1993 RCA. □

# SEC Issues Variable Life Insurance Interpretation

The NASD Advertising Regulation Department recently received an interpretation from the Securities and Exchange Commission (SEC) Division of Investment Management regarding the use of separate-account or underlying-fund performance in general sales material for variable life insurance investment products.

Since an investor is unable to invest directly in these funds and because of the significance of separate-account charges, the SEC Division staff believes that without the corresponding performance of the separate accounts it would be inappropriate to illustrate the performance of underlying funds that support separate-account variable life insurance.

Yet the SEC also believes that any presentation of separate-account performance should reflect insurance-benefit charges and policy sales loads incurred by variable life investors. Since these costs can be substantial and vary due to the investor's age, gender, health, amount of insurance, etc., the SEC is concerned that an investor may purchase a variable life contract based on separate-account performance data without realizing that additional policy charges (including the cost of insurance) are assessed and the degree to which they would lower the return on premiums for the policyholder.

The following letter outlines standards that the SEC believes will help investors

understand the effect of insurance charges on performance. The Advertising Regulation Department believes that these standards will help investors evaluate soundly the performance of separate accounts and the underlying portfolios of variable life insurance contracts. In accordance with Article III, Section 35(d)(1)(A) of our Rules of Fair Practice, this Department will be reviewing and recommending revisions to sales material for compliance with these standards.

If you have any questions about these guidelines, please contact the Advertising Regulation Department at (202) 728-8330.



DIVISION OF  
INVESTMENT MANAGEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

Ms. R. Clark Hooper  
Vice President of Advertising & Investment Companies/Insurance Affiliates  
National Association of Securities Dealers, Inc.  
1735 K Street, N.W.  
Washington, D.C. 20006

Dear Clark:

Recently, The Office of Insurance Products, Division of Investment Management, has received several inquiries from variable life insurance ("VLI") registrants concerning the use of fund performance data in advertisements or supplemental sales literature. The purpose of this letter is to advise you of the Division's position concerning this matter.

As you know, variable life insurance contracts are virtually always offered by way of a two-tiered structure: premium payments are allocated to separate accounts that in turn invest in underlying funds. Because an investor is unable to invest directly in the underlying fund and because of the significance of the separate account charges, we believe that it would be misleading for a VLI issuer to advertise fund performance without also disclosing separate account performance.<sup>1</sup>

<sup>1</sup> Variable annuities often are also offered by way of a two-tiered structure. The Commission has stated that advertising the performance of an underlying fund for a variable annuity would be misleading because prospective contractowners could not obtain the benefit of underlying fund performance without the charges incurred at the separate account level. The Commission stated, however, that it would not be misleading to disclose performance of the underlying fund if performance of the separate account were disclosed as well. Investment Company Act Release No. 16245 (Feb. 2, 1988), 53 FR 3868, 3874.

Disclosing separate account performance presents two major issues. First, how should the cost of insurance charge be reflected given the fact that there are materially different costs of insurance incurred by an investor depending on the investor's age, gender and health status. Second, how should sales load be reflected given the fact that VLI contracts often assess "excess" loads in the early years of a contract. We address these issues below in addition to various other issues we feel may arise.

### **1. Underlying Fund Charges**

All fees and charges at the underlying fund level should be reflected.

### **2. Separate Account Expenses**

#### **a. Inclusion of Separate Account Expenses**

All fees and charges at the separate account level other than cost of insurance and sales loads should be used in the computation of performance. These charges include, for example, any contract fee, deferred acquisition tax, administrative expenses, and mortality and expense risk charges.

#### **b. Sales Charges**

Preceding any chart or graph presenting performance, there should be prominent disclosure of the rate of all sales charges, if any, deducted from premiums. If there is a contingent deferred sales load, prominent disclosure also must make reference to the fact that surrenders are subject to additional contingent deferred sales charges, and advise readers to consult the example described below.

#### **c. Example**

An example should follow the chart or graph showing the amounts of contingent deferred sales charges as a percentage of cumulative premium payments that a policy owner would pay upon surrender after 1, 2, 3, 5 and 10 years. Any assumptions that may be used in the example, such as the face amount of the policy and the payment of one guideline annual premium per year, should be clearly stated.

#### **d. Cost of Insurance**

We recognize that including the cost of insurance in separate account performance calculations for any one type of purchaser could be potentially misleading to other purchasers because the charge varies significantly according to the purchaser's age, gender and health status and the net amount at risk. For this reason, it is the staff's opinion that this charge may be disclosed by an example. Disclosure that the costs of insurance are not included in the performance data should precede the chart or graph presenting performance, be in prominent typeface, and refer to the example following the chart or graph. The example should show the cost of insurance with the same assumptions used in the example of contingent deferred sales charges (face amount of policy, etc.).

The advertisement or supplemental sales literature used for VLI products should prominently disclose that costs of insurance may be higher for individuals who do not meet the profile of the hypothetical investor used in the sales materials. Disclosure also should be given that the cost of insurance goes up each year, as the insured becomes a year older.

### **3. Allocation assumptions**

In our view, presenting VLI performance with assumptions about allocation among various investment options is inherently confusing to investors. Performance for each investment option should be presented separately.

If you have any questions concerning this matter, please do not hesitate to contact Robert Dorsey, Assistant Chief, Wendy Finck Friedlander, Senior Attorney, or me at (202) 272-2060.

Sincerely,

Clifford E. Kirsch  
Assistant Director

## NASD Disciplines Colorado Firm for Penny Stock Manipulation

Denver-based Pacific Southern Securities, Inc., and two of the company's officers agreed to fines totaling \$800,000 and expulsion from the NASD for employing manipulative, deceptive, and other fraudulent practices in the purchase and sale of an over-the-counter penny stock.

In conjunction with the settlement, the firm, its president, Gerald M. Schechter, and corporate financing executive William P. Snow, Sr., neither admitted nor denied allegations contained in the NASD complaint.

The NASD, through an investigation conducted by its Anti-Fraud Department in Washington D.C., found that Pacific Southern underwrote Vintage Capital Corp. and placed 100 percent of the offering with its own customers.

Thereafter, Schechter and Snow continually recommended the purchase of Vintage despite knowing materially adverse information. Both knew that the rise in Vintage's share price from a penny to more than a dime per share was arbitrarily determined by the firm and Schechter, was unsupported by market demand or corporate developments, and that Pacific Southern dominated and controlled aftermarket trading in Vintage.

Schechter and Snow were barred from associating with any NASD member in any capacity. Edgel G. Groves, head of the firm's branch operations in Atlanta, Georgia, was fined \$150,000 and suspended from association with any NASD member in any capacity for two years. Paul D. Melvey, who assisted in the preparation of a firm newsletter, was

fined \$2,500 and suspended from association with any NASD member in any capacity for four years.

In accepting the respondents' settlement offer, the NASD stated that Schechter and Snow were the "masterminds and major participants in the Vintage manipulation." Snow also acted as an undisclosed promoter and control person of Vintage and the firm, resulting in the firm reaping profits of over \$600,000. Groves, as the franchise branch owner, was responsible for the sale of the majority of Vintage common stock and warrants. He continued to recommend and sell Vintage to customers in the absence of material information about the company. Melvey assisted in issuing materially misleading newsletters to the public. □

## SEC Affirms NASD Decision in Manipulation Case

The Securities and Exchange Commission (SEC) largely affirmed NASD findings and sanctions entered in a 1988 decision against two employees of former New York-based NASD member firm Rooney, Pace, Inc.

In reviewing the case, the SEC found "overwhelming evidence" to support the NASD manipulation charges against Randolph K. Pace of New York City, co-chief executive officer of previously expelled Rooney, Pace, and Thomas Henry of Oklahoma City, Oklahoma, a salesman in Rooney, Pace's Oklahoma City branch office.

Pace, who oversaw the firm's over-the-counter trading department, also failed to supervise adequately the firm's salesmen to prevent them from defrauding Rooney, Pace customers and engaging in unauthorized trading in American Educational

Computer, Inc. (AEC) stock. Pace was fined \$100,000, suspended from association with any NASD member in any capacity for two years, and prohibited from working in a supervisory capacity with any NASD member for five more years.

Henry, who knowingly assisted the manipulation, was fined \$10,000 and suspended for one year from association with any NASD member in any capacity.

Among other things, Rooney, Pace dominated and controlled the market in AEC; consistently led the market at the close; increased its high bid at a time when the firm already had a substantial inventory position in the stock; supported an inflated price for the stock at a time when the company's financial performance was steadily deteriorating; effected retail sales below its inside bid; made misrepresenta-

tions to customers; and effected high volume unauthorized trading in one customer account.

The SEC found that the "effect of the scheme was to suspend the normal interplay of market forces and to cause a misleading appearance that there was sufficient market interest in the security to sustain a price that was, in fact, not an accurate reflection of the security's worth." Without Rooney, Pace support, the price of AEC immediately tumbled from \$9 to \$4.50, further proof of the Rooney, Pace manipulation.

The SEC rejected Pace's claim that he was unaware of the manipulation. The SEC found "much circumstantial support" for the NASD conclusion that Pace knew about the manipulation early on, and the SEC concluded that Pace certainly knew of the manipulation at the

scheme's apex and set up an undisclosed inventory account to profit from the manipulation by selling at prices Pace knew to be artificially inflated.

The SEC found that Pace "put benefit to his firm above integrity of the market and the interest of his customers . . ." Almost all of the shares sold from this account ended up with one Oklahoma City customer who did not authorize the purchases. Even a rudimentary inquiry by Pace into the account would have revealed the illicit activity that was occurring. However, Pace examined the account only to determine whether there

was sufficient buying power to support the purchases. The SEC concluded that Pace "knowingly breached a fiduciary obligation" to this customer. NASD sanctions against Pace were fully warranted, according to the SEC, because of the "egregiousness of his conduct" in participating in a manipulative scheme and his "grossly deficient" supervision.

The SEC affirmed NASD findings that Henry assisted in the manipulation by misrepresenting AEC's future prospects to induce sales or persuade customers not to sell the security; giving a guarantee against loss to a customer to prevent him from selling the security; failing to

disclose to customers material adverse information regarding the character of the market in AEC; accepting customer sales orders without intending to execute them, and "lying outright" to at least one of those customers that sales had in fact occurred.

The NASD acknowledged the assistance of the Oklahoma Department of Securities in the case. "This investigation reflects the very positive results that can be achieved by working on a coordinated basis with state regulators throughout the country," said John E. Pinto, NASD Executive Vice President, Regulation. □

## Minnesota Broker, Others Sanctioned in Unauthorized Trading Scheme

Working with the Minnesota Department of Commerce, the NASD disciplined Minneapolis broker William C. Murphy; his employer John G. Kinnard & Co., Inc., and five other individuals for various violations of NASD rules, including unauthorized trading and refusal to cooperate with an investigation.

Between 1985 and 1989, Murphy established several brokerage accounts in the names of others at Kinnard and at other Minneapolis firms. Without authority, he then traded actively in the accounts for his own personal gain, falsifying new account information and forging customer signatures to conceal his interest in and control of the accounts. Murphy was also sanctioned for refusing to cooperate with the investigation conducted by the NASD's Anti-Fraud Department in Washington, D.C.

Murphy, who neither admitted nor denied the allegations in a settlement offer, was fined \$100,000 and permanently barred from associating with any NASD member firm in any capacity.

Kinnard and two of the firm's officers also settled with the NASD without admitting or denying the allegations that they failed to supervise Murphy adequately and failed to review his activities once his misconduct was brought to their attention. As a result, Executive Vice President Plato A. Mavroulis and Chief Compliance Officer Gerald M. Gifford were fined \$35,000, jointly and severally. Mavroulis and Gifford were also suspended for three business days in all capacities, and the firm agreed to hire an independent consultant to thoroughly review its supervisory policies, procedures, and practices.

Alex P. Karos and Daniel L. Rhode, who were associated with two other Minneapolis firms, agreed to settlements whereby they neither admitted nor denied allegations that they assisted Murphy. Karos and Rhode established two nominee accounts for Murphy and then knowingly executed numerous unauthorized trades on his behalf without first notifying their firms. Karos was fined \$40,000, suspended for three months in all capacities, and prohibited from maintaining any retail customer accounts. Rhode was fined \$7,500 and suspended for two months in all capacities. Coley D. Murphy, William Murphy's nephew and a registered representative at a fourth firm, was fined \$10,000 and suspended for two years in all capacities for refusing to cooperate with the investigation. □

### **NASD Fall Securities Conference Site Changed**

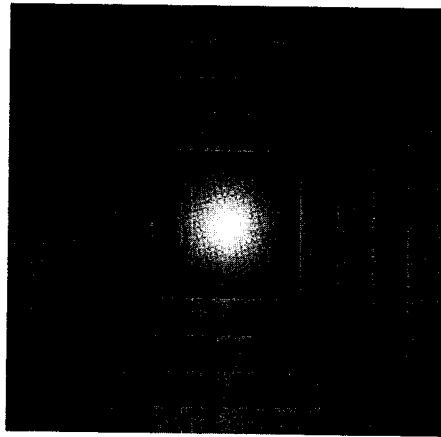
The NASD reminds all attendees of a change in location for the NASD 1993 Securities Conference to be held on Tuesday, October 5. Previously scheduled for the New York Vista Hotel, the new site is:

**Grand Hyatt New York  
Park Avenue at Grand Central  
New York City 10017  
(212) 883-1234**

**If you have any questions concerning the Conference, please contact Rosalie Tardi at (212) 858-4178.**

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# NASD Sanction Guidelines



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## Introduction

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

Originally disseminated by the NASD National Business Conduct Committee (NBCC) for use by the various NASD District Business Conduct Committees and the Market Surveillance Committee, the attached guidelines help the Committees decide on appropriate remedial sanctions in NASD disciplinary proceedings. However, the purpose of these guidelines is not to prescribe fixed sanctions for particular violations. Rather, they serve as a guide for Committees in the effort to achieve greater consistency, uniformity, and fairness when imposing sanctions. These guidelines are not required sanctions and should not be viewed as absolute. Developed for the most frequent violations, they include the basic considerations of an offense, its gravity, and a discussion of the range of appropriate sanctions.

Depending on mitigating or aggravating factors present in individual cases, sanctions may be increased or decreased beyond the limits set forth here. The range of monetary sanctions in each case is intended to be applied in the

aggregate rather than per individual violation. As such, a lesser or greater number of violations in each individual case should be reflected as a mitigating or aggravating factor in any sanction determination.

In general, the guidelines include a recommendation that a monetary sanction fine away ill-gotten gains from a respondent or, preferably, effect restitution in conjunction with the imposition of a remedial fine. When harm to public customers is part of the violative activity, restitution is generally ordered where the customers are clearly identifiable. Orders requiring restitution to such customers or other appropriate persons are encouraged to the extent practicable. The NASD may assess interest on amounts ordered as restitution, generally accruing from the date of last violation. Interest rates are set at the prime rate plus three percentage points.

A significant consideration in determining appropriate sanctions for each type of violation listed on the following pages is the respondent's history of similar misconduct. This reflects the NBCC's belief that a primary objective of the NASD disciplinary process is to deter future violations by imposing progressively escalating sanctions on repeat violators.

# Advertisements and Sales Literature<sup>1</sup>—Misleading<sup>2</sup> or Failure to Comply With Specific Standards

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

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rule G-12.

<sup>2</sup>Investigate also for fraudulent activity in the advertising of securities, i.e., inducing sales via fraudulent advertising.

<sup>3</sup>Suspension from ability to effect transactions in type of securities involved refers to all securities (e.g., equities, bonds), not only the particular security in question.

# Advertisements and Sales Literature<sup>1</sup>—Pattern of Failure to File or Late Filing

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

<sup>1</sup> These guidelines are also appropriate for violations of MSRB Rule G-12.

<sup>2</sup> NOTE: Previous late Advertising/Sales Literature filings within the latest 12-month period should have received the following treatment:

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

## Arbitration Award—Failure to Honor or Honor in a Timely Manner

Principal Considerations in Determining Sanctions	Monetary Sanction*	Suspension, Bar, or Other Sanctions*
1) Prior or other similar misconduct.	Failure to Honor \$10,000	In a typical case, suspend the respondent firm or individual for a specific duration of up to 90 days and thereafter until the arbitration award is satisfied (by payment or settlement).
2) Amount of the arbitration award.		
3) Demonstration of bona fide insolvent condition preventing payment of the award or any part thereof.	Failure to Honor in a Timely Manner \$2,500 to \$10,000	Five-business-day suspension.
4) Evidence of respondent's good-faith attempt to substantially satisfy the award in whole or part, including a partial payment.		
5) The promptness of any such good-faith effort after the issuance of the arbitration award.		
6) Other mitigating factors.		

\*Consider lower sanctions where Committee concludes that a good-faith effort to pay has been made by the respondent.

# Bulletin Board Updates in Foreign Securities/ADRs Outside of Permissible Hours

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	Based on number of violations within a 12-month period <sup>1</sup>	In egregious cases, or those with evidence of manipulative intent, consider a suspension as a market maker.
2) Number of days involved.		
3) Number of securities involved.	1st Violation - De Minimis Letter <sup>2</sup>	
4) Absence of reasonable explanation for occurrence.	2nd Violation - Letter of Caution <sup>2</sup>	
5) Whether violation was negligent, intentional, or willfully disregarded reporting requirements.	3rd Violation - Letter of Acceptance, Waiver and Consent (AWC), and \$250 fine <sup>3</sup>	
6) Demonstrated new corrective measures or controls to prevent recurrence.	4th Violation - AWC and \$500 fine	
7) Other mitigating factors.	5th Violation - AWC and \$1,000 fine	
	6th Violation - AWC or Formal Complaint <sup>4</sup>	

<sup>1</sup> Each day a firm has one or more updates outside the prerequisite hours, it is usually counted as one violation, depending on the circumstances.

<sup>2</sup> The staff is authorized to issue disciplinary letters following its daily review of the exception report.

<sup>3</sup> See Principal Considerations to determine sanction amount.

<sup>4</sup> Sanctions imposing fines will not be imposed until after the firm has received a Letter of Caution.

## Cheating on Exams or Possession of Unauthorized Materials

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
---------------------------------------------------	-------------------	-------------------------------------

- |                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------|
| 1) Prior or other similar misconduct.                                                                                                                                                                                                                                                                                                 |  | Bar is standard where cheating or possession of unauthorized materials is demonstrated and supported by the record. |
| 2) Schedule C to the NASD's By-Laws prohibits an applicant from receiving assistance while taking an examination.                                                                                                                                                                                                                     |  |                                                                                                                     |
| 3) Study outlines provided by NASD Qualifications Department advises applicants that examinations are "closed book."                                                                                                                                                                                                                  |  |                                                                                                                     |
| 4) Examination pamphlet given to applicants prior to examination advises applicants that no unauthorized materials may be brought by the applicant into the testing center.                                                                                                                                                           |  |                                                                                                                     |
| 5) Applicants taking an examination by computer must certify by prescribed keystrokes, to continue computer operation, that they will take the examination in the prescribed fashion and not receive assistance while taking the examination. For paper examinations, applicant must sign certification before beginning examination. |  |                                                                                                                     |
| 6) Proctor instructions before examinations advise applicants that unauthorized materials are not allowed during examination.                                                                                                                                                                                                         |  |                                                                                                                     |

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

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

<sup>1</sup>Where the violations found by the Committee involve only unsuitable recommendations based on frequency of transactions, without findings of all elements of proof required for churning see the Suitability Sanction Guideline.

<sup>2</sup>If the evidence suggests a failure of supervision, consider separate supervisory charge.



## Conversion or Improper Use of Funds or Securities<sup>1,2,3</sup>

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	Restitution of the amount converted or misappropriated; plus a fine of five times the amount converted, with a \$5,000 minimum, \$100,000 maximum.	In a typical case, regardless of amount converted, bar respondent in all capacities. If mitigation is clearly demonstrated, consider suspension of respondent in all capacities for 6 months to two years, requalification by examination, and proof of restitution.
2) Attempts to conceal conversion, misappropriation, or misuse.		
3) Forgery of documentation or customer's signature.		(Where appropriate mitigation is shown, consider suspending respondent for a specific duration and thereafter until restitution is made.)
4) Duration or period the securities or funds were converted or misused.	For improper use not rising to level of conversion, \$2,500 to \$20,000.	Suspension or bar should be considered in egregious cases or repeated offenses.
5) Essentially "stealing" versus a mistaken belief of authority to use.		
6) Value of converted, misappropriated, or misused funds or securities (loss to customer(s)).		
7) Prompt and voluntary restitution; clear evidence that the funds or securities were returned to the customer(s).		
8) Other mitigating factors.		

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rule G-25.

<sup>2</sup>See also possible supervisory and forgery violations.

<sup>3</sup>Consistent with local law enforcement policies, and, in all, cases of \$10,000 or more, every effort should be made to refer cases to appropriate criminal and regulatory authorities, including but not limited to state insurance commissioner and state securities regulator.

## Customer Reserve Account (Customer Protection Rule) Violations—SEC Rule 15c3-3

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$2,500 to \$20,000	In a typical case, do not suspend either the firm or the Financial Principal.
2) Extent of Rule 15c3-3 deficiencies or inaccuracies.	Repeated violations should carry individual fine on Financial Principal and/or responsible supervisor.	Where substantial or frequent deficiencies exist, consider suspending the firm in all aspects of business for 1 to 30 business days. Also consider suspending the Financial Principal for 1 to 30 business days.
3) Period of deficiencies or inaccuracies.		Violations suggesting willful disregard of rules should result in bar for Financial Principal and/or responsible supervisor.
4) Number of deficiencies or inaccuracies during period.		
5) Extent of any unlawful use of customer's funds or securities.		Consider requiring requalification by examination.
6) Extent of unwarranted risk/exposure to customer funds or securities.		
7) Attempts to conceal deficiencies or inaccuracies.		
8) Willful disregard of rule requirements.		
9) Genuine dispute with rule requirements.		
10) Demonstrated new corrective measures or controls to prevent recurrence.		
11) Other mitigating factors.		

## Discretion Without Client's Written Authority<sup>1</sup>

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

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

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

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Firm and Supervisory Principals</i>	<i>Firm and Supervisory Principals</i>
2) Length of time functioning as associated person; was MC-400 application pending or was no application filed?	\$5,000 to \$50,000, plus disgorgement of any commissions earned.	In a typical case, suspension or bar should be considered for principals responsible, particularly where they knowingly allowed a disqualified person to become associated. Aggravating factors would include whether disqualified person had been barred by SEC or NASD or was allowed to act in a principal capacity.
3) Nature and extent of person's activities and responsibilities.	<i>Individual</i>	Consider requiring requalification by examination.
4) Incidental or widespread use of unapproved persons.	\$5,000 to \$50,000, plus disgorgement of any commissions earned.	<i>Individual</i>
5) Remedial action taken upon discovery of persons.		Where individual negligently or knowingly violated approval requirement, consider bar or suspension, particularly if person had been barred by SEC or NASD or had previous experience with NASD Eligibility Proceeding. Inadvertent violation should not generally result in a suspension.
6) Extent of supervisory procedures in place at time of violation to prevent and detect problem, including nature and extent of background check.		Consider requiring requalification by examination.
7) Source of discovery—SRO or firm.		
8) Explanation of firm, person, and other mitigating factors.		

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rule G-4.

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

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$15,000 to \$50,000	In a typical case, do not suspend the firm. Consider suspension of principal responsible for supervision for up to one year for egregious cases.
2) Extent of inadequacy of written supervisory procedures and controls.		If disqualified person is involved in misconduct, consider bar in principal capacity for supervisors. If supervisory inadequacies are serious or
3) Extent of any failure to comply with supervisory representations made in the MC-400 application.		disqualified person is involved in misconduct, consider referring matter to Statutory Disqualification Committee for reconsideration of prior NASD approval.
4) Extent of any misconduct by the disqualified person and extent of disqualified person's knowledge of failure to comply with the requirements of supervisory program.		Consider requiring requalification by examination.
5) Absence of any reasonable explanation for supervisory failure.		
6) Demonstrated new corrective measures or controls to prevent recurrence.		
7) Other mitigating factors.		

<sup>1</sup> These guidelines are also appropriate for violations of MSRB Rule G-4.

## Equity Audit Trail

### Principal Considerations in Determining Sanctions      Suspension, Bar, or Other Sanctions

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	Based on a monthly compliance rate of less than 95 percent within a 12-month period.	
2) Number of previous occurrences.		
3) Total number of trades versus trades with data.	1st Violation—De Minimis Letter.	
4) Extent of decrease in Compliance Rate.		
5) Absence of reasonable explanation for occurrences.	2nd Violation—Letter of Caution.	
6) Demonstrated new corrective measures or controls to prevent recurrences.	3rd Violation—Letter of Acceptance, Waiver and Consent (AWC) and \$250 fine.	
7) Whether violation resulted from negligence or willful disregard.		
8) Date of NASD membership.	4th Violation—AWC and \$500 fine.	
	5th Violation—AWC and \$1,000 fine.	

## Escrow Violations (SEC Rule 10b-9)<sup>1,2</sup>

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Broker/Dealer and Issuer Not Affiliated</i>	No suspension should be imposed in a case involving no intentional scheme to circumvent the Rule's customer-fund requirements, no prior similar misconduct, and no broker/dealer affiliation with issuer.
2) Number of contingency offerings involved.	\$2,500 to \$15,000	
3) Number of purchasing customers involved.	<i>Broker/Dealer and Issuer Affiliated</i>	In egregious cases such as those involving non-bona fide sales or affiliation between broker/dealer and issuer, consider suspending responsible individual or firm in one aspect of the firm's business, such as underwritings, for 1 to 12 months.
4) Extent of the failure to satisfy the contingency described in the prospectus or offering circular.	\$5,000 to \$50,000	Also consider requiring rescision offer and requalification by examination.
5) Extent of any release of any subscription funds from escrow before the contingency occurred.		
6) Whether respondent is affiliated with the issuer or entity to which customer funds were improperly released.		
7) Amount of commissions and/or other underwriting compensation retained by respondent despite the failure to satisfy the contingency.		
8) Respondent's use of non-bona fide sales to give the appearance that the contingency was satisfied.		
9) Other evidence that the respondent knowingly disregarded or recklessly ignored the requirements of the Rule.		
10) Mistaken understanding of the Rule's requirements.		
11) Rescison or subsequent return of customer funds.		
12) Other mitigating factors.		

<sup>1</sup> See also Escrow Violations (SEC Rule 15c2-4) Sanction Guideline.

<sup>2</sup> Also investigate possible SEC Rule 10b-5 violations.

## Escrow Violations (SEC Rule 15c2-4)<sup>1</sup>

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Broker/Dealer and Issuer Not Affiliated</i>	No suspension is imposed in the typical case involving one offering with no overreaching or willful disregard of the rule requirements.
2) Whether a proper escrow or trust account was established.	\$1,000 to \$10,000	In egregious cases, consider suspending respondent member in one aspect of the firm's business, such as underwritings, for 5 to 10 business days. Also consider requiring requalification by examination.
3) Number of contingency offerings involved.	<i>Broker/Dealer and Issuer Affiliated</i>	
4) Number of purchasing customers involved.	\$2,500 to \$20,000	Consider suspension of up to one year.
5) Extent of any failure to promptly transmit customer funds.		
6) Extent of any release of customer funds before the contingency occurred.		
7) Respondent owns or has beneficial interest in the entity to which the funds were improperly released.		
8) Amount of commission or other benefits to respondent.		
9) Absence of meaningful supervisory control.		
10) Willful disregard of requirements.		
11) Recision or subsequent return of customer funds.		
12) Other mitigating factors.		

<sup>1</sup> See also possible Escrow Violations (SEC Rule 10b-9) Sanction Guideline.



## Excess Spread Violations (Schedule D, Part VI, SS2(d))

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

<sup>1</sup> Each day that a firm has one or more excess spread violations usually counts as one violation, depending on the circumstances.

<sup>2</sup> See Principal Considerations to determine sanction amount.

## Failure to Respond or Respond in a Timely Manner to the NASD

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Failure to Respond</i>	<i>Individual</i>
2) Actual or constructive notice of the staff's request for information. <sup>1</sup>	\$20,000	In a typical case where an individual or responsible principal actually received the request for information but did not respond in any manner, a bar should be standard. Where mitigation exists, consider suspension of six months to two years.
3) Evidence of willful attempts by respondent to delay investigation.	<i>Failure to Respond in Timely Manner</i>	<i>Individual</i>
4) Absence of a reasonable explanation why respondent failed to provide the requested information.	\$1,000 to \$20,000	Consider requiring requalification by examination.
5) Documentation of any effort by respondent to comply with request.		<i>Firm</i>
6) Regulatory importance of the information not produced. <sup>2</sup>		Where respondent firm actually received the request and refused to provide the information, suspension or expulsion of the firm should be standard.
7) Other mitigating factors.		Where there is a failure to respond in a timely manner, consider the number of requests, the amount of time taken to respond, the degree of regulatory pressure required, and the adequacy of the response. Consider suspending appropriate individual(s) and/or firm for period of 1 to 30 days.

<sup>1</sup>Staff should provide proof of receipt of request by respondent or reasons for allegation of constructive notice.

<sup>2</sup>Details of reasons for request of information and description of potential violations should be provided in decision.

## False or Inaccurate Reports (FOCUS or Other) to the NASD

Principal Considerations in Determining Sanctions	Monetary Sanction <sup>1</sup>	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Firm and/or Responsible Principal</i>	In a typical case of unintentional inaccuracy, do not suspend either the firm or the Financial Principal. However, consider requiring the Financial Principal to retake the FINOP exam.
2) Number of reports involved.	\$2,500 to \$20,000	
3) Nature and extent of inaccuracy or falsity.		Where materially inaccurate reports were intentionally prepared, consider a bar of the Financial Principal and/or expulsion of the firm. Also consider requiring the Financial Principal to retake the FINOP exam.
4) Absence of reasonable explanation for inaccuracy or falsity.		
5) Intentionally inaccurate or false report.		
6) Unintentionally inaccurate or false report (resulting from, for example, an erroneous capital computation).		
7) Prior report inaccuracies.		
8) Demonstrated new corrective measures or controls to prevent recurrence.		
9) Other mitigating factors.		

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

## FOCUS I Reports Late—SEC Rule 17a-5

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

NOTE: Previous late FOCUS filings within the latest 12-month period should have received the following treatment:

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

## Forgery and/or Falsification of Records

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

# Free-Riding and Withholding

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<p>The amount of any commissions and "transaction profit"<sup>2</sup> to the respondent, plus \$2,500 to \$15,000.</p> <p>In egregious cases or those with evidence of willful conduct, the greater of the standard guideline stated above or three times the "transaction profit."</p>	<p>In the typical case involving one "hot issue" and one restricted account, no suspension should result. In more egregious cases, consider suspending respondent representative for 5 to 10 days and the respondent member in one aspect of the firm's business, most likely a firm's participation in underwritings, for 5 to 10 days.</p> <p>Consider requiring requalification by examination.</p>
2) Number of "hot issue" offerings involved.		
3) Number of customer accounts involved.		
4) Type of restricted accounts involved.		
5) Knew or should have known accounts were restricted.		
6) Respondent owns or has beneficial interest in the restricted accounts.		
7) Amount of commissions or other benefits to respondent.		
8) Attempt to conceal activity.		
9) Absence of meaningful supervisory controls on free-riding.		
10) Prior disciplinary history of entire firm, adequacy of firm compliance policies.		
11) Mistaken belief that the account was not restricted. <sup>1</sup>		
12) Awareness of likelihood that issue would be "hot."		
13) Violation was inadvertent or amount involved was minimal.		
14) Other mitigating factors.		

<sup>1</sup> For example, see the requirements for investment partnerships in the Free-Riding and Withholding Interpretation.

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

## Guaranteeing a Customer Against Loss

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

# Inaccurate Schedule H Reports or Non-Reports

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Penny Stocks Under \$5</i>	
2) Number of non-reports.	A large majority of non-reports may justify skipping one or more sanction levels.	
3) Number of days involved.	1st Violation—Letter of Caution for first-time violations, if not egregious.	
4) Number of securities involved.	2nd Violation—Letter of Acceptance, Waiver and Consent (AWC) with fine of \$500.	
5) Size of the inaccuracies - volume/price.	3rd Violation—AWC with fine of \$1,000.	
6) Absence of reasonable explanation.	4th Violation—AWC with fine of \$2,000.	
7) Whether violation was negligence, intentional, or willful disregard of reporting requirements.	5th Violation—AWC or Formal Complaint.	
8) New corrective measures to prevent recurrence are demonstrated.	<i>Stocks \$5 or More</i>	
9) Evidence of manipulative intent.	1st Violation—De Minimis Letter.	
10) Other mitigating factors.	2nd Violation—Letter of Caution.	
11) Do written supervisory procedures exist? a) Are procedures adequate? b) Are procedures enforced?	3rd Violation—AWC with fine of \$250. 4th Violation—AWC with fine of \$500. 5th Violation—AWC with fine of \$1,000. 6th Violation—AWC or Formal Complaint.	



## “Marking the Close” Violations<sup>1</sup>

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$25,000 to \$100,000	In a typical case involving fictitious trade reports, suspend respondent in all capacities for one to three years, depending upon primary considerations.
2) Size of respondent's inventory protected or enhanced by misconduct.		Consider requirement of requalification by examination.
3) Amount of direct benefit to respondent, including increased valuation of inventory.		More serious misconduct, involving more transactions and/or attempts to conceal misconduct or untruthfulness about transactions, may warrant a longer suspension or a bar.
4) Duration of misconduct.		
5) Number of marking-the-close transactions during the targeted duration.		In an egregious case, consider suspending the firm as market maker in subject security(ies) for up to one year.
6) Whether the marking-the-close transactions are real or fictitious.		
7) Range of the fictitious price markups or markdowns at the close.		
8) Number of affected securities.		
9) Willful disregard of prohibitions against manipulative activities.		
10) Damage to market integrity.		
11) The absence of supervisory controls to detect and prevent such misconduct.		
12) Attempts to conceal misconduct or untruthful explanations.		
13) Other mitigating factors.		

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

## Markup/Markdown<sup>1</sup> Violations<sup>2</sup>

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

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rule G-30.

<sup>2</sup>See also Supervision Sanction Guideline for related causes of action and evidence of fraudulent activity.

## Misrepresentations or Material Omissions of Fact<sup>1</sup>

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

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

## Net Capital Violations

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct. <sup>1</sup>	\$2,500 to \$20,000 (jointly and severally to the firm and Financial Principal). <sup>3</sup>	In a typical case involving one or two deficiencies, neither the firm nor the Financial Principal are usually suspended. Where a substantial amount and/or frequency of deficiencies exist, consider suspending the firm in all aspects of business for 1 to 30 days or in one business aspect, such as underwriting, for 1 to 30 days.
2) Dollar amount of net capital deficiencies or inaccuracies.	Repeat violations should carry individual sanctions to firm and responsible individual(s).	Also consider suspending the Financial Principal for 1 to 30 days in that capacity. Consider requiring requalification by examination.
3) Period of deficiencies or inaccuracies.		Violations suggesting willful disregard of rules should result in lengthier suspension or a bar for Financial Principal and/or supervisor.
4) Number of deficiencies or inaccuracies during period.		
5) Whether continued in business while knowing of deficiencies/inaccuracies or ceased business.		For egregious cases and/or repeated net capital violations, consider a bar of individuals and expulsion of firm.
6) Extent of risk/exposure to customers.		
7) Attempts to conceal deficiencies or inaccuracies. <sup>2</sup>		
8) Demonstrated corrective measures or controls to prevent recurrence.		
9) Genuine accounting dispute on asset or liability treatment.		
10) Other mitigating factors.		

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

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

<sup>3</sup>The impact on a firm's net capital is not a factor in determining the dollar amount of the fine to be assessed.

## Outside Business Activities (Article III, Section 43)

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$2,500 to \$25,000	In a typical case, no suspension or bar should be imposed. Where willful intent to circumvent the rule is demonstrated, consider suspension of 1 to 30 days.
2) Length of time engaged in outside activity prior to reporting.		Consider requiring requalification by examination.
3) Similarity of outside activity to the employing broker/dealer's business.		
4) Willful disregard of requirements.		
5) Use of employer's premises for outside activities.		
6) Attempts to conceal the outside business activity.		
7) Mitigation, such as oral prior notice to employer who acquiesced.		
8) Whether outside activity presented real or perceived conflicts of interest for customers and/or employing firm.		

## Penny Stock Rules Violations (SEC Rule 15c2-6 Violations)

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct (e.g., unsuitability).	\$2,500 to \$20,000, plus amount of any commissions, markups, or profits to respondent.	<b>Firm/Individual</b> For recidivist or first-time offender with multiple violations, suspension of up to one year from recommending any transactions of designated securities.
2) Deliberate attempt to circumvent rule (i.e., capricious claims of exemption; misleading customers regarding Rule requirement).		
3) Dollar amount of improper transactions, amount of commissions, markups, or other benefits to firm or associated persons based on improper transactions.	<b>Willful Misconduct</b> Fine of \$2,000 per violative transaction plus the sum of all commissions, markups, trading profits, and all other remuneration to firm and/or associated persons based on violative transactions.	<b>Willful Misconduct</b> For willful violation or attempt to incur a substantial benefit for firm or associated person, consider suspension of firm from recommending, engaging in, or doing business in designated securities (other than unsolicited liquidating transactions). Consider suspension of individual's registration for more than one year from recommending any transactions in designated securities and/or a suspension in all capacities.
4) Nature of violations based on: a) Wrongly claimed "established customer" or "accredited investor." b) Wrongly claimed "non-recommended" transactions. c) Wrongly claimed \$2,000,000 net tangible asset exclusion. d) Wrongly claimed 5 percent commission/non-market maker. e) Deficient suitability statements. f) Deficient written agreements.		
5) Number of violative transactions.		
6) Knowledge, participation, and involvement of registered representative in handling of violative transaction.		
7) Lack of appropriate written supervisory procedures and other compliance efforts.		
8) Extent of harm or injury to customers.		
9) Mistaken understanding of requirements followed by prompt voluntary restitution or rescission by the respondent.		
10) Other mitigating or aggravating factors.		

## Recordkeeping Violations<sup>1</sup>

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$2,500 to \$20,000	In a typical case of non-current records posting, do not suspend either the firm or the Financial Principal.
2) Type violation (inaccurate or non-current records).		Where a substantial number of unintentionally inaccurate records exist, consider suspending the firm in all aspects of business for 1 to 30 business days. Also consider suspending the Financial Principal for 1 to 30 business days.
3) Period of violation.		
4) Number of violations during period.		
5) Intentionally inaccurate or non-current records.		Consider requiring requalification by examination.
6) Extent of unwarranted risk/exposure to customers.		Where materially inaccurate records were intentionally prepared, consider a substantially longer suspension or a bar for the responsible individual and/or a longer suspension or expulsion of the firm.
7) Attempts to conceal deficiencies.		
8) Demonstrated corrective measures or controls to prevent recurrence.		
9) Unintentionally inaccurate or non-current records resulting from misunderstanding or chronic sloppiness.		
10) Compliance with the telegraphic reporting requirements of SEC Rule 17a-11.		
11) Other mitigating or aggravating factors.		

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rules G-8 and G-9.

## Registration Violations (Schedule C)

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



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## Restrictive Agreement Violations

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

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## Selling Away (Private Securities Transactions)

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

<sup>1</sup>Where the "sales away" involved offerings of limited partnerships, the general partner should also be charged if within NASD jurisdiction.

<sup>2</sup>Sanction considerations should not include whether the investment or enterprise was successful.

## Short-Sale Filings (Delinquent) on Form NS-1

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Based on Number of Late Filings Within a 12-Month Period</i>	
2) Number of days involved.		
3) Number of securities involved.	First late filing—Letter of Caution	
4) Size of transactions involved.	Second late filing—\$1,000 fine	
5) Absence of reasonable explanation for occurrence.		
6) Whether violation was negligent, in willful disregard of reporting requirements, or intentional.	Third late filing—\$2,500 fine	
7) Demonstrated new corrective measures or controls to prevent recurrence.	Fourth late filing - Letter of Acceptance, Waiver and Consent, or formal complaint	
8) Other mitigating factors.		

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

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

## SOES—Non-Public Customer Orders<sup>1</sup> (SOES Rule c(3)(C), RFP Art. II, Sect. 1(f) and Notice To Members 88-61)

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

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

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

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

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

## SOES—Professional Trading Accounts (SOES Rule c(3)(E))

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

## SOES—Split Orders (SOES Rule c(3)(C) and NTM 88-61)

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



## Suitability<sup>1</sup>

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	The amount of any commissions, concessions, or profits to the respondent and firm, plus \$5,000 to \$25,000.	In a case involving numerous recommendations of clearly unsuitable securities and no prior similar misconduct, consider suspending the respondent in all capacities for 10 to 30 business days.  Also consider requiring requalification by examination.
2) Amount of commission or other benefits to respondent.		
3) Extent of harm or injury to customers.		
4) Number of unsuitable recommendations and number of customers involved.	(Where appropriate, consider requiring restitution of customer losses.)	As to the firm, see the Supervision Sanction Guideline.
5) Attempts to conceal misconduct by misstating customer information.		
6) Honest misunderstanding of the customer's financial resources, other security holdings, and investment objectives.		
7) Investment experience, sophistication, and resources of customer(s).		
8) Prompt and voluntary restitution by the respondent.		
9) Other mitigating or aggravating factors.		

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rule G-19. Note that there need not be a loss for unsuitability to be found.

# Supervision<sup>1</sup>

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

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

<sup>2</sup>Where there is a pattern of multiple violations, substantially higher penalties should be considered, i.e., \$25,000 to \$50,000.

## Trade-Reporting Violations

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$1,000 to \$100,000	In egregious cases, or those with evidence of manipulative intent, consider a bar or suspension as a market maker, or from conducting principal transactions and/or higher fines.
2) Number of days involved.		
3) Number of securities involved.		
4) Size of transactions involved.		
5) Absence of reasonable explanation for occurrence.		
6) Whether violation was negligent, in willful disregard of reporting requirements, or intentional.		
7) Demonstrated new corrective measures or controls to prevent recurrence.		
8) Evidence of manipulative intent.		
9) Potential for benefit or monetary gain.		
10) Other mitigating or aggravating factors.		

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

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	The amount of any commissions, concessions, or profits to the respondent, plus \$5,000 to \$50,000.	In a typical case involving customer losses and/or sizable commissions, suspend respondent representative in all capacities for 5 to 30 days. In egregious cases, consider a bar.  As to the firm, see the Supervision Sanction Guideline.  Consider requiring requalification by examination.
2) Number of unauthorized transactions.		
3) Amount of commissions or other benefits to respondent.		
4) Extent of customer injury.		
5) Extent of threat to investing public that respondent would repeat misconduct.		
6) Admissions by respondent.		
7) Attempt to conceal misconduct or lull customers.		
8) Misunderstanding of authority or terms of customer orders.		
9) Prompt and voluntary restitution by the respondent.		
10) Timeliness of customer notification or complaint.		
11) Other mitigating or aggravating factors.		

<sup>1</sup>These guidelines are also appropriate for violations of MSRB Rule G-19.

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

## Unregistered Securities—Sales of

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

## Volume—Failure to Report

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	<i>Based on the number of violations within a 12-month period<sup>1</sup></i>	In egregious cases or those with evidence of manipulative intent, consider suspending as a market maker.
2) Number of days involved.		
3) Number of securities involved.	1st Violation—De Minimis Letter	
4) Size of transactions involved.	2nd Violation—Letter of Caution	
5) Absence of reasonable explanation for occurrence.	3rd Violation—Letter of Acceptance, Waiver and Consent (AWC) and \$250 fine	
6) Whether violation was negligent, in willful disregard reporting requirements, or intentional.	4th Violation—AWC and \$500 fine	
7) Demonstrated new corrective measures or controls to prevent recurrence.	5th Violation—AWC and \$1,000 fine	
8) Whether violations resulted from failure(s) to report volume that actually existed, or failure(s) to report volume when no volume existed.	6th Violation—AWC or Formal Complaint <sup>2</sup>	
9) Evidence of manipulative intent.		
10) Other mitigating or aggravating factors.		

<sup>1</sup> Each day a firm has one or more failure(s) to report existence of no volume and/or failure(s) to report volume when volume existed is usually counted as one violation, depending on the circumstances.

<sup>2</sup> See Principal Considerations to determine sanction amount.

## Volume—Inaccurate Reporting and Inaccurate Form NS-1

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar, or Other Sanctions
1) Prior or other similar misconduct.	\$500 to \$50,000	In egregious cases, or those with evidence of manipulative intent, consider a suspension as a market maker and/or higher fines.
2) Number of days involved.		
3) Number of securities involved.		
4) Size of transactions involved.		
5) Impact on volume reported to media.		
6) Absence of reasonable explanation for occurrence.		
7) Whether violation was negligent, in willful disregard of reporting requirements, or intentional.		
8) New corrective measures or controls to prevent recurrence are demonstrated.		
9) Evidence of manipulative intent.		
10) Other mitigating or aggravating factors.		

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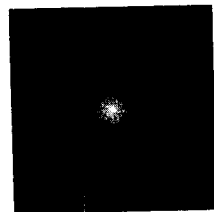
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# NASD Disciplines Firm, Individuals for Unfair Markups in DPPS

The NASD's National Business Conduct Committee (NBCC) censured and fined Oakland, California-based Partnership Exchange Securities Company (PESCO) and two company employees nearly \$90,540.29—and ordered \$89,176 in restitution to customers—for unfair markups in the purchase and sale of limited partnership interests in the secondary market. PESCO and both individuals have appealed to the Securities and Exchange Commission (SEC).

Following an appeal of a case initiated by the NASD's District Business Conduct Committee in San Francisco, the NASD NBCC found that Ronald Thomas Baker of Walnut Creek, California and James Frank Fotenos of San Francisco, California charged excessive markups—based on PESCO's cost of the securities—ranging from 15.94 percent to 359.46 percent in 36 transactions.

Baker and Fotenos specifically added a transfer fee, usually \$250, charged to each seller. Though separately disclosed to the sellers on confirmations, PESCO retained the fee rather than paying it to a third party. Finding no evidence to support the fee, the NASD considered it to be part of the firm's unfair markup and ordered it returned to the sellers as part of the \$89,176.30 restitution.

In issuing its decision, the NASD specifically rejected the respondents' contention that the ultimate buyers and sellers involved were not PESCO customers. Because the customers were represented by third parties, including brokers, PESCO argued it had no fiduciary obligations to them and could therefore buy and sell at whatever prices it could negotiate.

The NASD noted, however, that after third-party brokers found a buyer or seller for their clients at a negotiated price, the clients dealt directly with PESCO. PESCO did not buy or sell securities with these or other broker/dealers in an inter-dealer market. The NASD found that the third-party brokers took no part in purchases and sales, title transfers, or guaranteeing distributions.

PESCO bought and sold securities directly from the sellers and sold them directly to the buyers effecting the executed assignments, handled paperwork, and assumed responsibility for title transfers and distribution payouts. Individual buyers paid PESCO, which then paid third-party broker commissions, and paid the sellers. Any commissions owed by sellers were also remitted to PESCO which, in turn, wrote and sent commission checks to third-party brokers.

The NASD also rejected the respondents' contention that the NASD improperly calculated markups based on PESCO's transaction costs that were not contemporaneous with retail sales. The complaint against the respondents alleged that PESCO purchased securities from the sellers and were held by PESCO for periods up to 56 calendar days. The NASD found that under the specific facts and circumstances in this case, there was no evidence of an active, competitive inter-dealer market, and therefore it was not possible on the basis of inter-dealer sales.

As such, applying a contemporaneous cost standard to the secondary market for limited partnership interests was considered illogical since it assumes certain similarities between the equity and debt securities markets and the lim-

ited partnership secondary market that did not exist in this particular case.

The NASD considered that none of PESCO's purchases were effected on any organized market or exchange, that most trades were conducted on an agency basis, and that quotations are subject to negotiation. Based on this analysis, the NASD rejected PESCO's contention that the firm was entitled to the difference between the purchase and sale price because it was at risk. The NASD stated that even a firm putting its capital at risk to make a market may only be compensated by taking the spread in an active, competitive market, which did not exist here.

Finally, though the NBCC found markups of 8 percent “. . . fair under the particular facts and circumstances of this case, but that **this decision should not serve as a license to other member firms to charge 8 percent, since each case must be considered on its own merits.**” (Emphasis added)

As such, the NBCC reiterated the applicability of its long-standing 5 percent markup policy to secondary trading in direct participation programs (DPPs) and expressly stated that “the NASD's Mark-Up Policy should be applied to the sale of DPP units in the secondary market.” □

# NASD DISCIPLINARY ACTIONS

*In February, March, and April 1993, 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

## February Actions

**Billy Joe Altstatt, II (Registered Representative, San Mateo, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Altstatt failed to respond to NASD requests for information regarding customer complaints.

**Timothy Joseph Harrington (Registered Representative, Los Gatos, California)** was fined \$309,772.43 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Harrington received from three public customers funds totaling \$239,772.43 for the purchase of securities but misappropriated and converted the proceeds to other uses. Harrington also failed to respond to NASD requests for information.

**T.T. Securities, Inc. (Danville, California)** and **James Patrick Tolley (Registered Principal, Menlo Park, California)**. The firm was fined \$40,000 and expelled from NASD membership. Tolley was fined \$190,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, in financing and/or refinancing of properties owned by limited partnerships previously underwritten by the firm, Tolley diverted loan proceeds to other limited partnerships that the firm sold without disclosure to the limited partners. Furthermore, the firm and Tolley diverted funds belonging to investors of one limited partnership to another limited partnership that the firm had underwritten.

In addition, the firm, acting through Tolley, sold units of limited partnerships offered on a best efforts "part or none" basis and received investor funds without depositing the monies into an escrow account.

## March Actions

**Gregory Dean Boynton (Registered Representative, Walnut, California)** was fined \$14,283.62, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination. The NBCC imposed the sanctions following an appeal of a District 1 DBCC decision. The sanctions were based on findings that Boynton effected unauthorized transactions in two customer accounts.

## April Actions

**Angie Theresa Agarpao (Associated Person, Mountain View, California)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Agarpao submitted to a member firm an examination score report that falsely reflected a passing score when, in fact, she had failed the Series 6 examination. Agarpao also failed to respond to NASD requests for information.

**Robert Naylor Cherrington, Jr. (Registered Representative, San Francisco, California)** was fined \$51,126 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cherrington effected transactions in the accounts of public customers without their knowledge or consent and failed to respond to NASD requests for information.

**Patrick Lee Hamilton (Registered Representative, Burlingame, California)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended

from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hamilton consented to the described sanctions and to the entry of findings that he effected an unauthorized transaction in a customer's account and failed to respond to NASD requests for information.

**Steven Joseph Nori (Registered Representative, Colma, California)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nori, on two occasions, effected a computer entry which created fictitious deposits totaling \$10,000 to his personal account.

**Steven Farley Richards (Registered Representative, Aptos, California)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Richards consented to the described sanctions and to the entry of findings that he recommended and effected unsuitable transactions in the accounts of customers. In connection with such activity, the NASD found that Richards participated in private securities transactions without giving prior written notification to his member firm.

**Anthony John Salemme (Registered Representative, Stockton, California)** was fined \$37,650 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Salemme purchased and sold securities in the account of two public customers without their knowledge and consent. Salemme also failed to respond to NASD requests for information.

**Smith Bellingham International, Inc. (San Francisco, California)** and **Michael William Meagher (Registered Principal, Mill Valley, California)** were fined \$9,200, jointly and severally, and fined \$15,000, jointly and severally with another registered representative. The firm was fined an additional \$35,000, expelled from NASD membership, and fined \$20,000, jointly and severally with a registered representative. Furthermore, Meagher was fined \$35,000 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that the firm, acting through Meagher, failed to comply with the SEC Customer Protection Rule 15c3-3 by receiving and accepting customer funds in violation of its claimed exemption from the rule and did not otherwise comply with the full provisions of the rule. In addition, the firm, acting through Meagher, offered and sold units of convertible notes by means of false and misleading statements of material fact and omissions of material fact. Specifically, the respondents represented to investors that the proceeds of an offering would be used to purchase capital equipment, to develop a management team, to provide working capital for new product development, and to allow the company to build up its inventory. However, the respondents failed to disclose to prospective purchasers that the proceeds were used to retire pre-existing debt.

Furthermore, the firm, acting through Meagher, permitted an individual to act as a representative of the firm without proper registration and failed to evidence supervisory review and approval of securities transactions effected by the firm. Moreover, the firm failed to file its quarterly FOCUS Part IIA reports in a timely manner.

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)

## February Actions

**Charles Michael Banacos (Registered Representative, Breckenridge, Colorado)** was fined \$94,175 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Banacos recommended to a public customer the purchase of securities,

represented to the customer that he was associated with a firm that was not registered with the NASD, and received from the customer a \$24,175 check intended for the purchase of the securities. Banacos failed to purchase any securities for the customer, cashed the check, and converted the money to his own use and benefit. Banacos also failed to respond to NASD requests for information.

**Juanito A. Go (Associated Person, Long Beach, California)** was fined \$1,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that while taking a qualifications examination, Go had material used to prepare and assist individuals in taking the examination.

**Hassan Hashemian (Registered Principal, Torrance, California)** was fined \$104,538.23 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 2 DBCC decision.

The sanctions were based on findings that Hashemian engaged in excessive trading in a public customer's account by recommending to the customer the purchase and sale of options and securities without having reasonable grounds for believing that such recommendations were suitable for the customer. In addition, Hashemian executed unauthorized transactions in customer accounts.

**Richard Kaye (Registered Representative, Long Beach, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Kaye consented to the described sanction and to the entry of findings that he sold securities without being properly qualified and failed to notify his member firm of his association with another member firm.

**Ephram Touma Nehme (Registered Representative, Thousand Oaks, California)** submitted an Offer of Settlement pursuant to which he was fined \$30,676.26 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nehme consented to the described sanctions and to the entry of findings that, without the knowledge or consent of insurance customers, Nehme forged their signatures on disbursement request forms and cash surrender forms to facilitate the withdrawal of certain accumulated dividends. Furthermore, the NASD found that he also forged their signatures on new life insurance application forms and used the aforementioned funds to make premium payments on the new life insurance contracts without their consent. This activity generated commissions for Nehme totaling \$676.26.

**Martin Wewerka (Registered Representative, El Cajon, California)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wewerka failed to pay a \$5,000 NASD arbitration award.

**Stanley Zicklin (Registered Principal, Woodland Hills, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Zicklin consented to the described sanction and to the entry of findings that, without written authorization from his member firm, he shared in losses in the accounts of five public customers and made no financial contribution to the accounts.

**Agostino Joseph Zolezzi (Registered Principal, San Diego, California)** was fined \$7,500, jointly and severally with a member firm, fined an additional \$500, jointly and severally with other respondents, and suspended from association with any NASD member in any capacity for three days. The NBCC imposed the sanctions following appeal of a District 2 DBCC decision.

The sanctions were based on findings that a member firm, acting through Zolezzi, effected securities transactions and/or induced the purchase or sale of securities when the firm failed to maintain sufficient net capital. In addition, the

firm, acting through Zolezzi, failed to give telegraphic notice of its net capital deficiency in a timely manner and failed to file a report detailing steps taken to correct the situation. Furthermore, the firm, acting through Zolezzi, sold shares of an initial public offering to a public customer without a final registration statement in effect and without the benefit of an exemption from registration, in violation of Section 5 of the Securities Act of 1933.

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

### March Actions

**Stephen Russell Boadt (Registered Principal, Pacific Palisades, California)** was fined \$10,000 and ordered to requalify by examination as a financial and operations principal within 120 days or be barred in any principal capacity. The NBCC imposed the sanctions following an appeal of a District 2 DBCC decision. The sanctions were based on findings that after being ordered by the NASD in a previous disciplinary action to requalify as a financial and operations principal, Boadt continued to act in that capacity for his member firm without having so requalified.

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

**Jonathan Garrett Ornstein (Registered Representative, Los Angeles, California)** was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by examination before acting in any registered capacity. The SEC affirmed the sanctions following an appeal of a January 1991 NBCC decision. The sanctions were based on findings that Ornstein engaged in numerous options transactions for the account of a public customer without the customer's knowledge or consent and failed to respond to NASD requests for information.

**Carl Everett Young, Jr. (Registered Principal, Glendale, California)** was fined \$3,500, jointly and severally with a member firm, and suspended from association with any NASD member in any capacity for 30 days. The SEC affirmed the sanctions following an appeal of a November 1991 NBCC decision. The sanctions were based on findings that a member firm, acting through Young, allowed an individual to be associated with it but failed to obtain a required blanket fidelity bond to cover his activities. Further, Young engaged in a course of conduct designed to mislead the NASD staff about whether the firm had obtained a blanket fidelity bond.

### April Actions

**Aimco Securities Company, Inc. (San Diego, California), Marvin Irwin Friedman (Registered Principal, La Jolla, California), and William Raymond Braun (Registered Principal, La Mesa, California)** submitted an Offer of Settlement pursuant to which the firm was fined \$20,000. Friedman was fined \$20,000 and barred from association with any NASD member in any proprietary or principal capacity, and Braun was fined \$10,000 and suspended from association with any NASD member as a financial and operations principal for one year.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Friedman and Braun, conducted a securities business while failing to maintain its minimum required net capital and continued to conduct business when they knew, or should have known, that the firm did not have sufficient net capital.

**Richard Emanuel Campbell (Registered Representative, Oakland, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanctions and to the entry of findings that he took a \$78.48 check without the knowledge or consent of the maker of the check (his supervisor).

**Peter Joseph Conley (Registered Representative, Anaheim Hills, California)** was suspended from association with any NASD member in any capacity for seven

days. The sanction was based on findings that, on several occasions, Conley placed orders to purchase securities with his member firm and failed to prepare order tickets for such transactions as required by the firm's written procedures. Moreover, after one of the orders was executed, the shares were placed in the firm's error account because no written order ticket had been submitted by Conley and the firm was unable to determine into whose customer account the securities should have been placed. Subsequent sale of the shares resulted in a \$10,000 loss to the firm.

**Michael Demetrio Gabriele (Registered Representative, Chula Vista, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$260,000 and barred from association with any NASD member in any capacity. The fine may be reduced if Gabriele provides satisfactory evidence that he has paid \$210,000 to the appropriate parties.

Without admitting or denying the allegations, Gabriele consented to the described sanctions and to the entry of findings that he misused \$211,000 received from five public customers for investment purposes. According to the findings, Gabriele solicited these funds from investors by representing that he would provide them with an 11 percent return and gave each customer a document entitled "contract for a five-year money management account." The NASD determined that after a short while, Gabriele ceased making interest payments and, instead, used the funds collected to pay personal expenses.

The findings also stated that Gabriele liquidated an investment for a customer, took the check, forged the recipient's signature, and deposited the check to his bank account.

**Richard Albert Hernandez (Registered Representative, Torrance, California)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The suspension will continue thereafter until an arbitration award has been satisfied. The sanctions were based on findings that Hernandez failed to pay in full a \$12,000 NASD arbitration award.

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

### February Actions

**Keith A. Bergner (Registered Representative, Lakewood, Colorado)** was fined \$5,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a District 3 DBCC decision. The sanctions were based on findings that Bergner failed to pay a \$31,733.34 NYSE arbitration award.

**Richard L. Blackstock (Registered Representative, Aurora, Colorado)** was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blackstock failed to pay a \$7,250 NASD arbitration award.

**Richard J. Calt (Registered Representative, Phoenix, Arizona)** was fined \$19,275 and suspended from association with any NASD member in any capacity for 10 business days. In addition, he must requalify by examination in any capacity in which he desires to act.

**William F. Coble (Associated Person, Silver City, New Mexico)** was fined \$56,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Coble obtained \$6,000 from two insurance customers, caused their endorsements to be forged on checks representing these funds without authorization, and failed to use the monies for the customers' benefit. In addition, Coble falsified books and records by causing insurance policies of the aforementioned customers to be changed without their authorization to an address where Coble accepted mail. Coble also failed to respond to NASD requests for information.

**Halliday Capital, Inc. (Seattle, Washington) and Scott Buchanan Halliday (Registered Principal, Seattle, Washington)** were fined \$5,000, jointly and severally. In addition, the firm was suspended from NASD membership for 30 days and Halliday was suspended from association with any NASD member as a general securities principal

for 30 days. Also, Halliday must requalify by examination as a general securities principal or a direct participation programs principal. The sanctions were based on findings that the firm, acting through Halliday, effected securities transactions while failing to maintain its minimum required net capital.

**Randy Blaine Johnson (Registered Representative, Ogden, Utah)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Johnson received a check on a matured insurance policy for delivery to a public customer and caused the check to be deposited into his personal bank account. Thereafter, he used the funds for his personal use.

**Alexander Andrew Kusulos (Registered Representative, Mill Creek, Washington)** submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Kusulos consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$23,000 for investment purposes and failed to remit the funds as instructed. Instead, Kusulos endorsed the checks and deposited the funds into an account in which he had a beneficial interest.

Furthermore, the NASD found that Kusulos filed an inaccurate and misleading Uniform Application for Securities Dealer Industry Registration (Form U-4) by failing to disclose certain information.

**Joni Lynn Merwin (Registered Representative, Aurora, Colorado)** was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Merwin executed unauthorized transactions in customer accounts and guaranteed another customer against loss to induce him to purchase securities.

**Piper Jaffray, Inc. (Minneapolis, Minnesota) and Daniel Francis Brotherton (Registered Principal, Bellevue, Washington)** submitted an Offer of Settlement pursuant to which the firm was fined \$35,000 and Brotherton was fined \$25,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to create, maintain, or enforce adequate supervisory procedures. Specifically, the findings stated that the firm failed to ensure that Brotherton adequately supervised the sales activities of a registered representative.

**Manuel S. Sandoval (Registered Representative, Pueblo, Colorado)** was fined \$38,616 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sandoval obtained from public customers funds totaling \$13,381.47 intended for investment purposes and \$235 in cash for the purchase of automobile insurance. However, these funds were neither used as intended nor returned to the customers.

**John F. Yakimczyk (Registered Representative, Parker, Colorado)** was fined \$15,000 and suspended from association with any NASD member in any capacity for three business days. The SEC affirmed the sanctions following an appeal of a June 1991 NBCC decision. The sanctions were based on findings that Yakimczyk provided inaccurate quotations to public customers to conceal the fact that the securities were dropping in price, and failed to follow customer instructions to sell their stock. Yakimczyk also made unauthorized transactions in three customer accounts.

### March Actions

**Keith A. Bergner (Registered Representative, Lakewood, Colorado)** was fined \$5,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 3 District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Bergner failed to pay a \$31,733.34 NYSE arbitration award.

**Dillon Securities, Inc. (Spokane, Washington) and Lyle R. Haas (Registered Principal, Spokane, Washington).** Dillon Securities was fined \$20,000, and Haas was fined \$10,000 and required to requalify by examination as a

financial and operations principal. The SEC affirmed the sanctions following an appeal of an October 1988 NBCC decision. The sanctions were based on findings that the firm and Haas failed to prepare accurate net capital computations for certain periods. The respondents also failed to transmit promptly investor checks received in two best-efforts underwritings to a separate escrow account.

**Thomas S. Foti (Registered Representative, Tucson, Arizona)** was fined \$5,000 and suspended from association with any NASD member in any capacity for one business day. The SEC affirmed the sanctions following an appeal of a June 1991 NBCC decision. 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 written approval of a registered principal or designee of his member firm.

**Michael S. Hughes (Registered Representative, Salt Lake City, Utah)** was fined \$47,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hughes solicited or effected securities transactions for the accounts of others and for his own account without proper registration with the SEC or the NASD.

In addition, Hughes made improper use of \$48,800 belonging to persons associated with two companies involved in a merger/acquisition and also misused 1,680,000 shares of stock belonging to the original shareholders of one of those companies by representing to them that their securities were needed to complete the merger.

Furthermore, Hughes caused misleading and unapproved sales literature recommending the purchase of stock to be disseminated to the public and failed to respond to NASD requests for information.

**Donald F. Spalletta (Registered Representative, Simla, Colorado)** was fined \$10,000. In the event Spalletta failed to reach an agreement to pay the arbitration award at issue within 30 days, Spalletta will be barred from association with any NASD member firm in any capacity. The NBCC imposed the sanctions following an appeal of a District 3 DBCC decision. The sanction was based on findings that Spalletta failed to pay a \$28,257.92 NYSE arbitration award.

#### April Actions

**Andrew William Casebeer (Registered Representative, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Casebeer consented to the described sanctions and to the entry of findings that, without the clients' prior authorization or consent, he completed insurance policy surrender forms for 20 insurance customers requesting that their policies be surrendered and signed their names to those forms. The NASD determined that the surrender checks endorsed by Casebeer totaled \$34,803.22.

The NASD also determined that Casebeer received surrender checks for two other insurance customers who had completed policy surrender forms and endorsed the checks, totaling \$3,159.33, without the customers' prior knowledge or consent.

**Carlos Alberto Enriquez (Registered Principal, Coral Gables, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$14,400. Without admitting or denying the allegations, Enriquez consented to the described sanction and to the entry of findings that, in contravention of the Board Of Governors' Free-Riding and Withholding Interpretation, Enriquez purchased shares of a "hot issue."

**First Choice Securities Corp. (Englewood, Colorado), Gregory F. Walsh (Registered Principal, Los Angeles, California), Derek H. Yamada (Registered Principal, Denver, Colorado), and Sheldon O. Fertman (Registered Principal, Denver, Colorado).** The firm was fined \$200,000 and expelled from membership in the NASD. Walsh was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by examination in any capacity

that he desires to act after his suspension. Yamada was fined \$50,000 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and filed an inaccurate FOCUS Part I report. The firm also violated Securities and Exchange Commission (SEC) Rule 15c2-6, by effecting transactions in designated securities in the accounts of public customers without obtaining suitability statements and other information required by the rule before approving their accounts. Furthermore, the firm failed to respond to NASD requests for information, allowed an unregistered person to act as a principal of the firm, and failed to disclose on the firm's Form BD that this individual was a control person with the firm.

In addition, the firm, acting through Walsh and Yamada, failed to make a bona fide "minimum-maximum" contingent offering of limited partnership interests in that they effected the sale of 18 percent of the total amount of the securities being offered to accounts that were related to the issuer for non-investment purposes to meet the minimum number of units required to close the offering, and failed to disclose the purpose of these sales to investors. The firm, acting through Yamada, purchased securities while participating as an underwriter in the same stock's distribution during its initial public offering (IPO). They also induced customers to purchase these securities at excessive prices while failing to disclose to the customers that they were purchasing the securities at excessive prices compared to the prices in the IPO.

The firm, acting through Yamada, falsified order tickets relating to securities transactions in the same stock by causing notations of dealers whom they contacted as market makers in the securities, and quotations that they received from the dealers relating to the securities, to be reflected on the order tickets when, in fact, these dealers were not market makers in the security and were not providing quotations in the security.

In addition, the firm, acting through Walsh, failed to establish, maintain, and enforce written supervisory procedures to prevent the aforementioned violations, and filed an inaccurate Form BD that represented to the NASD that the firm was wholly owned by a company that did not exist.

In a separate action, First Choice and Fertman were fined \$114,088, jointly and severally and the firm was suspended from all principal transactions for 60 days. Fertman was barred from association with any NASD member in any capacity.

The sanctions were based on findings that the firm, acting through Fertman, effected principal sales of securities to public customers at unfair and unreasonable prices based on all relevant circumstances. These circumstances included the fact that the firm was not a market maker in the securities at the time the trades were effected and that the markups on these trades ranged from 76 to 100 percent over the firm's contemporaneous cost for the securities. Moreover, the firm, acting through Fertman, failed to disclose the unfair and unreasonable prices to the customers.

**Frederick C. Heller (Registered Representative, Englewood, Colorado)** was fined \$12,500. The SEC affirmed the sanction following an appeal of a August 1991 NBCC decision. The sanction 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 and exercised discretion in the same account without obtaining written discretionary trading authority from these customers or his member firm.

**John Hoppe (Registered Representative, Albuquerque, New Mexico)** was fined \$20,000 and barred from association with any NASD member in any capacity. In addition, Hoppe must pay \$3,575 in restitution to customers. The sanctions were based on findings that Hoppe obtained four checks totaling \$3,575 that were made payable to public customers, forged the customers' signatures on the checks, and used these funds for his own benefit.

**Deborah Lynn Jennings (Registered Representative, Fruitland, Idaho)** was fined \$15,000, barred from association with any NASD member in any capacity, and required to pay \$1,620.74 in restitution to her member firm. The

sanctions were based on findings that Jennings completed disbursement request forms for public customers requesting the surrender of their insurance policies. Acting without the customers' knowledge or consent, Jennings signed the customers' names on the forms, submitted the forms to her member firm, and received surrender checks totaling \$1,620.74.

**David A. Ledden (Registered Representative, Aurora, Colorado)** was fined \$10,000 and required to requalify by examination. The sanctions were based on findings that Ledden sent correspondence to a public customer that overstated the value of certain securities owned by the customer. In addition, Ledden failed to follow his member firm's written supervisory procedures in that he sent the aforementioned correspondence and other related material to the customer without obtaining the prior approval of his manager.

**Alan Frederick Lipman (Registered Representative, Tucson, Arizona)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 30 days, barred from association with any NASD member in any principal capacity, and must requalify by examination. Without admitting or denying the allegations, Lipman consented to the described sanctions and to the entry of findings that he falsified his member firm's books and records by opening an account and signing a new account card, a Form W-9, and a stock power under an assumed name. According to the findings, Lipman endorsed a check made payable to this assumed name, and deposited the proceeds in his own bank account. The findings also stated that he opened an account at a member firm without notifying it of his association with another member firm.

Lipman's suspension commenced with the opening of business on April 19, 1993, and concluded at the close of business May 18, 1993.

**Gerald Lee Reichenbacher (Registered Representative, Mesa, Arizona)** was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Reichenbacher must pay \$160,433 in restitution to his former member firm plus interest at 9 1/2 percent from September 25, 1989, until paid. The sanctions were based on findings that Reichenbacher misused customer funds in that he withdrew, or caused to be withdrawn, \$160,435 from the bank accounts of a public customer without her knowledge or authorization.

**George William Scherzer (Registered Representative, Portland, Oregon)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Scherzer consented to the described sanctions and to the entry of findings that he exercised discretion in a customer's account without obtaining prior written discretionary trading authority. The findings also stated that Scherzer recommended unsuitable transactions in the same customer's account.

**Robert W. Weed (Registered Representative, Wilson, Wyoming)** was fined \$10,000. The sanction was based on findings that Weed recommended to public customers the purchase of securities without having reasonable grounds for believing that these recommendations were suitable considering the customers' investment objectives, financial situations, and needs.

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

#### February Actions

**Michael Sebastian Toscano (Registered Representative, Fenton, Missouri)** was fined \$21,000, barred from association with any NASD member in any capacity, and required to pay \$423.99 in restitution to a public customer. The NBCC imposed the sanctions following appeal of a District 4 DBCC decision. The sanctions were based on findings that Toscano received from a public customer \$423.99 to be applied to life insurance premiums. Instead, Toscano deposited the funds into his personal bank account, thereby converting the monies to his own use and benefit. In addi-

tion, Toscano failed to respond to NASD requests for information.

## March Actions

**Richard John Hanson (Registered Representative, Edina, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hanson 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.

**Jay Raymond Lovitt (Registered Representative, Shenandoah, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$587.90 in restitution to insurance customers. Without admitting or denying the allegations, Lovitt consented to the described sanctions and to the entry of findings that, without the knowledge or consent of three customers, he received checks totaling \$587.90 intended for the purchase of insurance policies and converted the funds to his own use and benefit.

## April Actions

**First Gateway Securities, Inc. (St. Louis, Missouri)** and **Kenneth Keith Kays (Registered Principal, Fenton, Missouri)** were fined \$20,000, jointly and severally. In addition, the firm and Kays were each fined \$2,222 and required to undergo staff interviews. First Gateway was also fined \$2,500, jointly and severally with another respondent and Kays was required to requalify by examination as a principal. The National Business Conduct Committee (NBCC) imposed the sanctions following an appeal of a District 4 District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Kays, effected transactions with public customers at unfair prices with markups ranging from 6.42 to 20 percent above the firm's contemporaneous costs. They also charged excessive and unfair commissions ranging from 5.25 to 20.64 percent in agency transactions.

The firm, acting through Kays, failed to comply with its restriction agreement with the NASD in that it opened and operated a branch office without notifying or obtaining approval from the NASD. In addition, the firm, acting through Kays, executed principal transactions and violated its restriction agreement by maintaining a trading inventory in shares of a common stock. Furthermore, the firm inaccurately prepared its books and records.

**Steven Douglas Grau (Registered Representative, Omaha, Nebraska)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for five business days. The suspension will continue thereafter until an arbitration award has been paid or he has been discharged from payment. Without admitting or denying the allegations, Grau consented to the described sanction and to the entry of findings that he failed to pay a \$5,000 arbitration award plus \$1,092 in interest.

**William Franklin Herndon (Registered Representative, Wichita, Kansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, suspended from association with any NASD member in any capacity for one month, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Herndon consented to the described sanctions and to the entry of findings that, without prior knowledge or approval of his supervisors, he transmitted to various parties sales literature that was false and misleading, in that it was issued on the letterhead of the firm.

**Lowell H. Listrom & Company, Inc. (Kansas City, Missouri)**, **Lowell H. Listrom (Registered Principal, Kansas City, Missouri)** and **Stephen L. Mock (Registered Principal, Grandview, Missouri)** were fined \$15,000, jointly and severally. In addition, Listrom was suspended from association with any NASD member in any capacity for two weeks. The SEC affirmed the sanctions following an appeal of a March 1988 NBCC decision.

The sanctions were based on findings that the firm, acting through Listrom and Mock, made improper withdrawals from the Special Reserve Bank Account for the Exclusive Benefit of Customers when the required computations made before the withdrawals either did not permit any withdrawal or permitted a withdrawal that was significantly less than the amount actually withdrawn. Furthermore, the respondents made deposits to the reserve account from an overdrawn bank account.

In addition, the firm, acting through Listrom, failed to maintain the required minimum margin in two customer accounts.

**Charles Clifton Marshall (Registered Representative, Shawnee Mission, Kansas)** was fined \$68,705.05, barred from association with any NASD member in any capacity, and required to pay \$13,741.01 in restitution to public customers. The sanctions were based on findings that, without the knowledge or consent of nine insurance customers, Marshall requested a withdrawal of dividends or surrender of paid-up insurance on their insurance policies and converted the proceeds therefrom to his own use and benefit.

**Everett Gary Oliver (Registered Representative, North Mankato, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Oliver consented to the described sanctions and to the entry of findings that he received the equivalent of \$9,700 in cash and goods from public customers in connection with purchases of annuities. The findings stated that he received these benefits by misrepresenting to the customers that the amounts were due for commissions and consulting fees, when these fees were included in the premium amount.

**Robert Arnold Wald (Registered Representative, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The suspension will continue thereafter until restitution of \$12,030 plus interest is paid to public customers. Without admitting or denying the allegations, Wald consented to the described sanctions and to the entry of findings that he recommended and executed transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations were suitable in light of the nature, size, and frequency of the recommended transactions and the customers' investment objectives, financial situations, and needs.

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

## February Actions

**Robert L. Eaton (Registered Representative, Kingsport, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Eaton consented to the described sanctions and to the entry of findings that he executed five unauthorized transactions in the account of a public customer.

The findings also stated that Eaton engaged in unsuitable transactions and a practice known as switching. Specifically, the NASD found that he recommended and executed the liquidation of various mutual funds and the purchase of other mutual funds with similar investment objectives that cost the customers \$3,440.60 in additional sales charges. In addition, the NASD determined that Eaton failed to respond in a timely manner to NASD requests for information.

**FirstMoney Securities Corporation (Memphis, Tennessee)** and **James H. Beckemeyer (Registered Representative, Memphis, Tennessee)** were each fined \$20,000, and Beckemeyer was suspended from association with any NASD member in any capacity for one week. The sanctions were based on findings that the firm, acting through Beckemeyer, executed certain U.S. government agency securities transactions with public customers. However, the firm, acting through Beckemeyer, failed to disclose to the Board of Directors and senior officers that

the prices were not reasonably related to the then current market price for the securities, a practice commonly referred to as adjusted trading. In addition, the firm, acting through Beckemeyer, failed to reflect on its books and records that the transactions were not effected at the prevailing market price and caused false and misleading confirmations to be mailed to customers.

**James M. Graybosch (Registered Principal, Jackson, Tennessee)** was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 5 DBCC decision. The sanctions were based on findings that Graybosch failed to disclose to his member firm that he executed documents purporting to grant him power of attorney and discretionary power over the account of a public customer. Graybosch also forged the same customer's name on 32 documents and executed unsuitable transactions in her account and that of her minor son. In addition, Graybosch failed to disclose to his member firm his ownership and controlling interest in a corporate entity because of his failure to keep current his Form U-4.

**Gary B. Marshall (Associated Person, Fayetteville, Arkansas)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Marshall failed to submit accurate information when making application for registration with the NASD. In addition, Marshall failed to respond to NASD requests for information.

**Valerie W. Nalley (Registered Representative, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$1,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Nalley consented to the described sanctions and to the entry of findings that she made journal entries transferring funds between her account and accounts of her family members without obtaining valid letters of authorization.

The findings also stated that in an effort to conceal the aforementioned activities, Nalley altered at least eight separate daily journal reports to prevent the branch manager from reviewing a complete record of daily activity. In addition, the NASD determined that Nalley forged the signature of her mother on three separate letters of authorization and a change of address request. Furthermore, the NASD found that in an effort to expedite the disbursed funds to public customers, Nalley forged the signatures of co-workers to customer checks.

**Ann Marie Sonderman (Registered Representative, Lexington, Kentucky)** was fined \$85,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sonderman received from two public customers \$44,735 for investment purposes. Sonderman deposited the funds into her personal checking account and converted the monies to her own use and benefit without the customers' knowledge or consent. In addition, Sonderman failed to respond to NASD requests for information.

**Thomas E. Warren, III (Registered Representative, Tulsa, Oklahoma)** was fined \$5,000, suspended from association with any NASD member in any capacity for two weeks, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a District 5 DBCC decision. The sanctions were based on findings that Warren failed to record accurate information on new account forms for four children. Specifically, Warren failed to record accurately the ages of the children; accepted third-party discretionary instructions from their mother; and failed to record the mother's authority as custodian to execute such transactions. By failing to record this information accurately, Warren aided and abetted the children's mother in misappropriating funds in the accounts.

In addition, Warren recommended and executed margin transactions in the aforementioned accounts without having reasonable grounds for believing that the creation of debit balances through the use of margin was suitable for the customers. This margin activity enabled the children's mother to withdraw funds in excess of \$300,000 from their

account that would not otherwise have been available to her.

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

### March Actions

**Douglas F. Dodd (Registered Representative, Lookout Mountain, Georgia)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dodd consented to the described sanctions and to the entry of findings that he recommended and executed transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers based on their financial situations, investment objectives, and needs. In addition, the NASD found that Dodd sent correspondence to a public customer without the prior approval of his member firm.

**Mark E. White (Registered Representative, North Little Rock, Arkansas)** was fined \$5,000 and suspended from association with any NASD member in any capacity for one week. The sanctions were based on findings that White engaged in a private securities transaction with a public customer without providing prior written notification to his member firm and without obtaining prior written approval from his member firm.

### April Actions

**Betty Lou Deislinger (Registered Representative, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which she was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Deislinger consented to the described sanction and to the entry of findings that she recommended to public customers the purchase of various limited partnerships that were unsuitable and contrary to the customers' stated investment objectives of liquidity and safety of principal.

**Steven L. Fritz (Registered Representative, Tulsa, Oklahoma)** submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for four months, and required to requalify by examination as a general securities representative.

Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he provided a public customer with false and misleading written price quotes for an investment held in the customer's account. The NASD found that in an attempt to conceal these actions, Fritz provided the same customer with written valuations of his portfolio that were signed by a fictitious person. In addition, the NASD determined that Fritz gave the same customer a letter on which he forged the signature of an executive vice president of his member firm to further substantiate the false and misleading valuations.

**Alex L. Herman (Registered Principal, Denver, Colorado)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The suspension will continue thereafter until Herman demonstrates that an arbitration award has been paid or, alternatively, that a payment schedule or other form of settlement has been agreed on. The sanctions were based on findings that Herman failed to keep his Uniform Application for Securities Industry Registration or Transfer (Form U-4) current by failing to report his involvement in an arbitration proceeding. In addition, Herman failed to pay a \$47,013.87 NASD arbitration award.

**Patrick G. Keel (Registered Representative, Bay St. Louis, Mississippi)** was fined \$25,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following an appeal of a December 1990 NBCC decision. The sanctions were based on findings that Keel recommended and executed unauthorized and unsuitable transactions in the accounts of public customers.

In addition, Keel exercised discretion in the accounts of public customers without obtaining their prior written authorization and without acceptance of the accounts as discretionary by his member firm. Furthermore, Keel recorded false information on a purchaser questionnaire and investor application to effect the purchase of a limited partnership by a public customer.

**Paul Z. Makris (Registered Representative, Fayetteville, Arkansas)** was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 5 DBCC decision. The sanctions were based on findings that Makris made unauthorized withdrawals totaling \$8,690 from the account of a private club in which he maintained an ownership interest and converted the funds to his own use and benefit without the knowledge or consent of the club members. Makris changed the mailing address listed on the club's account to his home address so that other club members would not receive confirmations or account statements reflecting the unauthorized withdrawals.

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

**J. Robert Wilgus (Registered Representative, Duluth, Georgia)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Wilgus exercised discretionary power in non-discretionary accounts of public customers. Wilgus also recommended and executed securities transactions in the custodial account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer.

In addition, Wilgus obtained \$20,000 from the securities account of a public customer for investment purposes and, by transmitting the funds to his personal bank account, and thereafter converted the monies to his own use and benefit without the customer's knowledge or consent.

District 6—Texas

### February Actions

None

### March Actions

None

### April Actions

**Douglas Drake Alcalá (Registered Representative, Seattle, Washington)** submitted Offers of Settlement pursuant to which he was fined \$2,500, suspended from association with any NASD member in any capacity for 60 days, and must disgorge \$7,500 to the NASD. In a separate Offer of Settlement, Alcalá was suspended from association with any NASD member in any capacity for an additional period of 90 days and must disgorge \$1,500 to the NASD.

Without admitting or denying the allegations in both proceedings, Alcalá consented to the described sanctions and to the entry of findings that he recommended and executed transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations were suitable for the customers.

**GBM International, Inc. (Houston, Texas) and Julio Carlos Marron (Registered Principal, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$51,187.75, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in violation of the Interpretation of the Board of Governors concerning Free-Riding and Withholding, the firm, acting through Marron, purchased and sold shares of a "hot issue."

**Sunpoint Securities, Inc. (Longview, Texas) and Van Roberson Lewis, III (Registered Principal, Longview, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Lewis, failed to comply with Schedule C of the NASD's By-Laws in that they allowed two individuals at the firm to effect securities transactions

with public customers and to receive commissions for the transactions when their registrations with the NASD had not been approved.

The findings also stated that the firm, acting through Lewis, effected purchases of designated securities for public customers without obtaining from each customer a written suitability statement and a written agreement to the transaction, in violation of SEC Rule 15c2-6. In addition, the NASD found that the firm, acting through Lewis, failed to establish adequate written supervisory procedures or to properly supervise the firm's compliance with SEC Rule 15c2-6.

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

### February Actions

**David A. Bohnenkamper (Registered Representative, Palm Harbor, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Bohnenkamper consented to the described sanctions and to the entry of findings that he engaged in fraudulent activity by preparing false and misleading books and records for public customers' accounts. In addition, the NASD found that Bohnenkamper effected unauthorized transactions in the same accounts.

The sanctions were based on findings that, in violation of the Board of Governors' Free-Riding and Withholding Interpretation, Calta purchased shares of a "hot issue" for a restricted account. Moreover, Calta failed to disclose to his member firm that he had opened the aforementioned account with another member firm and continued to effect securities transactions in the account without notifying his firm.

**Eric Michael Diehm (Registered Representative, Tampa, Florida)** was fined \$5,000 and barred from association with any NASD member in any capacity with the proviso that the bar may be removed upon payment of an arbitration award. The NBCC imposed the sanctions following an appeal of a District 7 DBCC decision. The sanctions were based on findings that Diehm failed to pay a \$750 arbitration award.

Diehm has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal. Furthermore, the SEC issued an order granting a stay of Diehm's bar. He thereafter paid the arbitration award; the bar was thus effective only from December 21, 1992 through February 8, 1993.

**Paul Charles Hedrick (Registered Representative, Palm Beach Gardens, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$10,250. Without admitting or denying the allegations, Hedrick consented to the described sanctions and to the entry of findings that he effected sales of a common stock in a private placement offering to public customers without providing written notification to or obtaining written authorization from his member firm.

**Gregory Small (Registered Principal, Tierra Verde, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Small consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the securities accounts of public customers.

**Frank O. Spampinato (Registered Principal, Lauderdale, Florida) and Albert F. DeMange (Registered Principal, Coral Springs, Florida).** Spampinato was fined \$50,000 and barred from association with any NASD member in any capacity. DeMange was fined \$25,000, suspended from association with any NASD member in any capacity for six months, and barred from association with any NASD member in any principal capacity. The NBCC imposed the sanctions following appeal of a District 7 DBCC decision. The sanctions were based on findings that a former member firm, acting through Spampinato and



DeMange, participated in a parking scheme wherein they engaged in non-bona fide month-end sales and re-purchases of the firm's municipal bond inventory to conceal its ownership and to avoid, for financial reporting and net capital purposes, the haircut required by the SEC.

In addition, the firm, acting through Spampinato, failed to maintain accurate books and records, filed materially inaccurate FOCUS Parts I and II reports, and failed to maintain its required minimum net capital. Furthermore, the firm, acting through Spampinato, failed to deposit customer subscription funds in a separate bank trust account or bank escrow account in a contingent offering of units.

### March Actions

**Stanley T. Conyer (Registered Representative, Lebanon, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Conyer was also required to pay \$98,239.96 in restitution to his member firm. Without admitting or denying the allegations, Conyer consented to the described sanctions and to the entry of findings that, without the knowledge or authorization of two public customers, he instructed his member firm to issue 12 checks totaling \$98,239.96 on the customers' accounts, cashed the checks, and converted the proceeds to his own use and benefit.

**James C. Heffernan (Registered Representative, Alpharetta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Heffernan consented to the described sanction and to the entry of findings that he accepted orders for the account of a public customer from a third party who had no ownership interest in the customer's account and who had no authority to act on the customer's behalf. The findings also stated that Heffernan purchased shares of a common stock for the same customer's account without authorization.

In addition, the NASD found that Heffernan provided another public customer with a letter guaranteeing a profit on her account, and solicited the same customer to make investments in options outside the scope of his association with a member firm.

**Peter K. Lloyd (Registered Representative, Odessa, Florida)** was fined \$10,000, suspended from association with any NASD member in any capacity for 20 days, and barred from association with any NASD member in any principal or supervisory capacity. The SEC affirmed the sanctions following an appeal of a March 1991 NBCC decision. The sanctions were based on findings that Lloyd sold securities to a public customer in a private securities transaction without providing his member firm with prior written notice. In addition, Lloyd made recommendations to the same customer regarding the aforementioned purchase without having reasonable grounds for believing that such recommendations were suitable based on the customer's other securities holdings and her financial situation and needs.

**Marc Lloyd Minkoff (Registered Representative, Deerfield Beach, Florida)** was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative. The sanctions were based on findings that Minkoff prepared or assisted in the preparation of materially false books and records. In addition, Minkoff ordered the purchase of a low-priced security, defined by SEC Rule 15c2-6 as a designated security, for the account of a public customer without first providing the customer with a written suitability statement and without obtaining a written agreement to purchase such securities for the customer, as required by the rule.

**Karl F. Tarbox (Registered Representative, Wiscasset, Maine)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tarbox consented to the described sanctions and to the entry of findings that he failed to pay a \$947.50 NASD arbitration award.

### April Actions

**Pal Boquist (Registered Principal, Treasure Island, Florida)** was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$6,000 in restitution to a public customer. The sanctions were based on findings that Boquist engaged in a private securities transaction without providing prior written notice to and receiving written authorization from his member firm. In addition, Boquist failed to respond to an NASD request for information.

**Larry L. Lanier (Registered Representative, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Lanier consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction with a public customer outside the scope of his association with his member firm and without providing written notification to and receiving written approval from his member firm.

**David A. Wallace (Registered Representative, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500, suspended from association with any NASD member in any capacity for two business days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Wallace consented to the described sanctions and to the entry of findings that he recommended that a public customer engage in short-term trading of equity securities on margin. The NASD found that this recommendation was unsuitable.

**Michael C. Williams (Registered Representative, Augusta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that, without the knowledge or authorization of a public customer, he withdrew \$22,500 from the customer's checking account and used the funds to pay administrative costs and personal expenses.

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

### February Actions

**James D. Clemmons, II (Registered Representative, Peoria, Illinois)** was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Clemmons participated in private securities transactions while failing to give written notice of his intention to engage in such activities to his member firm. Clemmons also failed to respond to NASD requests for information.

**Richard C. Harpole (Registered Representative, Rochester, New York)** was fined \$65,000, barred from association with any NASD member in any capacity, and required to pay \$15,000 in restitution to a public customer. The sanctions were based on findings that Harpole misappropriated and converted customer funds totaling \$15,000 to his own use. In addition, he failed to respond to NASD requests for information.

**Michael A. Iwe, Jr. (Registered Representative, Chicago, Illinois)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Iwe prepared and delivered to the public sales literature and an advertisement without obtaining prior approval by a registered principal of his member firm. Iwe also failed to respond to NASD requests for information.

**Jay B. Kitchens (Registered Representative, New Philadelphia, Ohio)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from asso-

ciation with any NASD member in any capacity. Without admitting or denying the allegations, Kitchens consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use \$6,081.49 in customer funds intended for the purchase of a fixed annuity.

**Moses Wilson, Jr. (Registered Principal, Detroit, Michigan)** submitted an Offer of Settlement pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. In addition, he must pay \$32,991.57 in restitution to insurance customers.

Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he received from insurance customers checks totaling \$53,991.57 intended for the purchase of an annuity policy and a life insurance policy. The NASD determined that Wilson failed to follow the customers' instructions, used only \$21,000 as instructed, and used the remaining \$32,991.57 for purposes other than to benefit the customers. The findings also stated that Wilson failed to respond to NASD requests for information.

### March Actions

**John A. Bochetto (Registered Representative, Rochester, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$1,000 in restitution to his member firm. Without admitting or denying the allegations, Bochetto consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$1,000 intended for the purchase of shares of a mutual fund. In addition, the findings stated that Bochetto failed to respond to NASD requests for information.

**Patrick John Crombie (Registered Representative, Columbus, Wisconsin)** submitted an Offer of Settlement pursuant to which he was fined \$42,459 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Crombie consented to the described sanctions and to the entry of findings that he obtained a total of \$5,889.67 from insurance customers for the purchase of variable life insurance policies issued by his member firm. Instead of depositing the entire amount for the benefit of the customers, and without their knowledge or consent, the NASD found that Crombie deposited only \$3,430.51 with the member firm and retained the remaining \$2,459.16 for his own use and benefit.

**Allen M. Denny (Registered Representative, Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Denny consented to the described sanctions and to the entry of findings that he received from an insurance customer a \$101.75 check with instructions to use the funds to make a payment on the customer's insurance policy. The NASD determined that Denny failed to follow the customer's instructions and used the funds for purposes other than to benefit the customer.

**Charles Mark Derricotte (Registered Principal, Lorain, Ohio) and Cleveland Clifford Brooks (Registered Principal, Shaker Heights, Ohio)** submitted an Offer of Settlement pursuant to which Derricotte was fined \$7,500 and barred from association with any NASD member in any capacity. Brooks was fined \$2,500 and suspended from association with any NASD member as a general securities principal for one day. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that on separate occasions a member firm, acting through Derricotte and Brooks, failed to maintain its required minimum net capital.

The findings also stated that the same firm, acting through Brooks, made improper payment to two non-registered individuals for their efforts to secure underwritings for the firm. In addition, the NASD found that the same firm, acting through Brooks, permitted the aforementioned individuals to execute underwriting agreements on behalf of the firm.

**Lynne Alstrom Hollerbach (Registered Principal, Mill Valley, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$43,000, barred from association with any NASD member in any capacity, and required to pay \$23,388 in restitution to a member firm.

Without admitting or denying the allegations, Hollerbach consented to the described sanctions and to the entry of findings that she obtained checks totaling \$23,388 payable to her member firm for commissions it earned on funds deposited by the firm's customers in a money market account. Instead of depositing the checks in her member firm's account, the NASD determined that without the firm's knowledge or consent, Hollerbach deposited the checks in an account that she controlled or had a beneficial interest and retained the funds for her own use and benefit. The findings also stated that Hollerbach failed to respond to NASD requests for information.

**Kent Edward Karras (Associated Person, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Karras consented to the described sanctions and to the entry of findings that during the course of a Series 7 examination, he had in his possession notes and other materials relating to the examination despite being advised that such materials were not allowed in the examination room.

**Albert M. Mikes (Registered Representative, Cleveland, Ohio)** submitted an Offer of Settlement pursuant to which he was fined \$31,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mikes consented to the described sanctions and to the entry of findings that he purchased shares of a common stock in the account of a public customer without the customer's knowledge or consent.

**John M. Przybylinski (Registered Representative, Lombard, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$42,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Przybylinski consented to the described sanctions and to the entry of findings that he received from two public customers a \$2,500 check with instructions to purchase common stock. However, the findings stated that Przybylinski used the funds for purposes other than for the benefit of the customers. The findings also stated that Przybylinski failed to respond to NASD requests for information.

**William G. Werling (Registered Representative, Findlay, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$14,298.78 in restitution to his member firm. Without admitting or denying the allegations, Werling consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use insurance customer funds totaling \$14,298.78. In addition, the findings stated that Werling failed adequately to respond to NASD requests for information.

#### April Actions

**Thomas George Cecchi (Registered Representative, Grand Rapids, Michigan)** was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$129,611.89 in restitution to an insurance company. The sanctions were based on findings that Cecchi obtained funds totaling \$129,611.89 from 28 insurance customers by taking out loans from the customers' existing insurance policies. Cecchi informed the customers that he would use the loan proceeds in their entirety to finance the purchase of new life insurance policies. Contrary to what he told the customers, and without their knowledge or consent, Cecchi deposited the loan proceeds into an account that he controlled or had a beneficial interest in and retained the funds for his own use and benefit. Cecchi also failed to respond to NASD requests for information.

**Michael Joseph Clark (Registered Representative, Orchard Park, New York)** submitted an Offer of Settlement pursuant to which he was fined \$1,500 and suspended from association with any NASD member in any capacity for one business day. Without admitting or denying the allegations, Clark consented to the described sanctions and to the entry of findings that he failed to pay a \$7,000 NASD arbitration award.

**Peter W. Schellenbach (Registered Principal, Glencoe, Illinois)** was fined \$50,000, jointly and severally with a former member firm. In addition, he was suspended from association with any NASD member in any capacity for 60 days, barred in any principal, supervisory, or managerial capacity, and prohibited from maintaining any proprietary interest in any nonpublicly traded member of the NASD.

The United States Court of Appeals for the Seventh Circuit affirmed the action following an appeal of an SEC decision. The sanctions were based on findings that a former member firm, acting through Schellenbach, failed to prepare and maintain accurate books and records, effected securities transactions when it failed to maintain its minimum required net capital, prepared and filed inaccurate FOCUS Part I and IIA reports, filed its annual audited report late for one year, and failed to file its financial statements the following year.

Furthermore, Schellenbach engaged in a pattern of activity designed to give the illusion that the firm was in compliance with net capital requirements by engaging in the month-end purchase and subsequent resale of accounts receivable of the firm on four separate occasions. In addition, the firm, acting through Schellenbach, failed to establish, maintain, and enforce adequate written supervisory procedures and failed to review and provide evidence of approval in writing on all correspondence of its registered representatives pertaining to the solicitation or execution of securities transactions.

**Billy Lawrence Simpson (Registered Representative, Wheaton, Illinois)** was fined \$54,000, barred from association with any NASD member in any capacity, and ordered to pay \$14,000 in restitution to a customer. The fine may be reduced by any amount of restitution paid to the customer (reduction not to exceed \$4,651.59). The NBCC imposed the sanctions following an appeal of a District 8 DBCC decision. The sanctions were based on findings that Simpson obtained from a public customer a \$14,000 check with instructions to invest \$9,000 in a municipal bond fund and \$5,000 in a high yield investment. Contrary to the customer's instruction, and without her knowledge or consent, Simpson failed to invest the \$14,000 and, instead, retained the funds for his own use and benefit.

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

#### February Actions

**Emery E. Boudreau (Registered Principal, Oakton, Virginia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000. Without admitting or denying the allegations, Boudreau consented to the described sanction and to the entry of findings that he engaged in private securities transactions while failing to notify his member firm of such activity.

**Thomas J. Falzani (Registered Principal, Somerdale, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended association with any NASD member in any principal capacity for three months. Without admitting or denying the allegations, Falzani consented to the described sanctions and to the entry of findings that a member firm, acting through Falzani, failed to comply with the SEC's Customer Protection Rule by failing to act, or to act timely, to reduce its possession or control of customer full-paid and excess margin securities, or made deliveries that created or increased a deficiency.

The findings also stated that the firm, acting through Falzani, failed to comply with the SEC's Customer

Protection Rule by failing to complete sale transactions effected for the accounts of public customers by "buying in" securities not delivered by the customers within 10 business days following the trade date or the expiration of any applicable extension of time.

In addition, the NASD found that the firm, acting through Falzani, failed to obtain amounts required for maintenance margin on a timely basis and failed to comply with the requirements of the Uniform Practice Code to validate transfer of account instructions within five business days. Furthermore, the NASD determined that the firm, acting through Falzani, effected short sales for customers in cash accounts and failed to cancel promptly or otherwise liquidate purchase transactions effected in cash accounts that had not been paid in full within seven business days following the trade, in violation of Regulation T of the Federal Reserve Board.

The findings also stated that the firm, acting through Falzani, violated Regulation T when it effected purchase transactions for cash accounts subject to "90 day freezes" when such accounts did not already have sufficient funds to pay for the transactions in full on the trade date. Moreover, the findings stated that they further violated Regulation T when they made improper liquidations in margin accounts. Specifically, the margin calls were met by liquidation rather than by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

**David J. Leyshon (Registered Representative, Hopewell, Virginia)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Leyshon consented to the described sanctions and to the entry of findings that he affixed signatures purporting to be those of public customers to documents that he submitted to his member firm as genuine.

**J. Kenneth Powell (Associated Person, West Mifflin, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powell consented to the described sanctions and to the entry of findings that he forged the signatures of insurance customers on requests to withdraw accumulated policy dividends and on a request to surrender the cash value of an insurance policy.

In connection with this activity, the NASD found that Powell also forged their endorsements and the endorsements of other insurance customers on checks totaling \$3,490.74 issued to them by Powell's member firm and deposited the funds with his firm to pay premiums.

**Auldís E. Wright (Registered Representative, Richmond, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$90,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wright consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to respond to NASD requests for information.

#### March Actions

**Tomas Bernardino (Registered Representative, Philadelphia, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$4,965 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bernardino consented to the described sanctions and to the entry of findings that he received from a public customer \$993 in insurance premiums but failed to remit the monies to his member firm.

**Joseph R. Callaghan (Registered Representative, Beaver, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$31,000 in restitution to customers. Without admitting or denying the allegations, Callaghan consented to the described sanctions and to the entry of findings that he received \$31,000 from public customers for investment purposes, or for repaying an insurance policy loan, failed to

use the funds for their intended purposes, and converted the monies to his own use and benefit.

**Jeffery W. Caudill (Registered Representative, Midlothian, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$60,000 and barred from association with any NASD member in any capacity. In addition, Caudill is required to pay \$24,900 in restitution to investors. Without admitting or denying the allegations, Caudill consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without notifying his member firm, and submitted to customers a private placement offering memorandum and an addendum containing inaccurate disclosures, misstatements, and omissions of material facts. The NASD also determined that Caudill failed to provide investors with a prospectus or any additional information regarding the offering.

The findings also stated that Caudill, through the use of sales literature, advertisements, and other forms of communications, held a firm out to the public and permitted persons associated with the firm to hold it out to the public as an independent broker/dealer, when it could not lawfully act as one. According to the findings, this firm, acting through Caudill, raised \$115,000 from eight investors intended for investment in the aforementioned private offering and that Caudill converted \$24,900 of the investors' funds to his own use and benefit.

**Charles R. Cavallaro (Registered Representative, Sewell, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cavallaro consented to the described sanctions and to the entry of findings that he forged or caused to be forged a public customer's signature on a letter to his member firm requesting the issuance of a \$25,000 check. According to the findings, Cavallaro then requested that a stop payment order be placed on the check as a result of the aforesaid letter, and that a new check be issued payable to the customer. The findings also stated that Cavallaro forged or caused to be forged the customer's endorsement on the reissued check and deposited the funds in his personal bank account.

**Douglas W. Kendrick (Registered Representative, Richmond, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kendrick consented to the described sanctions and to the entry of findings that he engaged in private securities transactions while failing to provide prior written notice to his member firm.

#### April Actions

**Thomas E. Cavanagh (Registered Representative, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cavanagh failed to provide testimony or to respond to NASD requests for information concerning transactions and activities he was involved in while employed at a member firm.

**Francis A. Fisher, Jr. (Registered Representative, Cherry Hill, New Jersey)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fisher failed to respond to NASD requests for information regarding customer complaints.

**Jamie M. Lyles (Registered Representative, Birdsboro, Pennsylvania)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lyles forged signatures of customers on applications for variable life insurance policies and related forms and submitted such documents to his member firm. In addition, Lyles failed to respond to NASD requests for information.

**George W. Moffitt, Jr. (Registered Principal, Philadelphia, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$2,500, jointly and severally with a member firm and barred from association with any NASD member in any principal, supervisory,

or managerial capacity. In addition, Moffitt is precluded from having a proprietary interest in any broker/dealer. However, he may maintain a noncontrolling interest in a member whose stock is publicly traded and subject to the reporting requirements of Section 12(g) of the Securities Exchange Act of 1934.

Without admitting or denying the allegations, Moffitt consented to the described sanctions and to the entry of findings that a member firm, acting through Moffitt, tendered notes in the principal amount of \$80,000 held in a public customer's account without the customer's consent, failed to inform the customer of the true status of his securities account, and caused the customer to believe that he still owned certain securities until a later date.

In addition, the firm, acting through Moffitt, failed to notify the NASD of its change of exemption status or to obtain prior written approval from the NASD to engage in operations or activities that disqualified it from continued exemption under the SEC Customer Protection Rule 15c3-3. Specifically, the findings stated that the firm, acting through Moffitt, failed to establish and maintain a Special Reserve Bank Account for the Exclusive Benefit of Customers, to make monthly computations of the amount required to be on deposit in the reserve account, and to make deposits to and maintain in the reserve account cash and qualified securities in the required amounts. The NASD also determined that the firm, acting through Moffitt, prepared an inaccurate net capital computation, filed inaccurate FOCUS Part I reports and failed to prepare and keep current books and records, including records of securities holdings.

In a separate action, Moffitt submitted a Letter of Acceptance, Waiver and Consent pursuant to which he consented to the sanctions set forth in the aforementioned Offer of Settlement. Without admitting or denying the allegations, Moffitt consented to these sanctions and to the entry of findings that the same member firm, acting through Moffitt, held customer securities, failed to prepare and maintain an accurate stock record, to prepare a blotter, or to maintain other sufficient records reflecting receipts and deliveries of securities. Moreover, the findings stated that the firm, acting through Moffitt, failed to prepare a record reflecting dividends and interest received, to prepare a complete and accurate record reflecting securities in transfer, and to conduct a required quarterly securities count.

**Frank A. Nicolais (Registered Representative, Staten Island, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nicolais failed to provide testimony or to respond to NASD requests for information concerning transactions and activities in which he was involved while employed at a member firm.

**Eric C. Pietranton (Registered Representative, New Cumberland, West Virginia)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pietranton failed to respond to NASD requests for information regarding his alleged failure to process customer funds and checks received by his member firm on a timely basis.

**William H. Rookstool, III (Registered Representative, Doylestown, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Rookstool consented to the described sanctions and to the entry of findings that he forged an insurance customer's signature on an application for reinstatement of a life insurance policy. The findings also stated that he forged another individual's signature on a form requesting the withdrawal of \$200 in accumulated policy dividends and submitted these documents to his member firm. The NASD determined that Rookstool used the funds to pay overdue premiums and to reinstate the first customer's life insurance policy.

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

**Bradley L. Uhlfelder (Registered Representative, Owings Mills, Maryland)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Uhlfelder failed to respond to NASD requests for information concerning several customer complaints.

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

#### February Actions

**Theodore Allocca (Registered Representative, Huntington, New York)** was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanction following an appeal of a District 10 District Business Conduct Committee (DBCC) decision. The sanction was based on findings that Allocca failed to pay a \$67,556.02 NASD arbitration award.

Allocca has appealed this action to the Securities and Exchange Commission (SEC), and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Joseph Simon Arsenaull (Registered Representative, Manhasset, New York)** submitted an Offer of Settlement pursuant to which he was fined \$12,000. Without admitting or denying the allegations, Arsenaull consented to the described sanction and to the entry of findings that he effected unauthorized transactions in the accounts of public customers. In addition, the findings stated that Arsenaull failed to disclose on his Form U-4 that he was the subject of customer complaints.

**Praveen Diwan (Registered Representative, Enclave, New Delhi, India)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Diwan consented to the described sanctions and to the entry of findings that without the knowledge or consent of public customers, Diwan submitted forms requesting withdrawals of accumulated dividends totaling \$7,573.16 from the customers' policies. Furthermore, the findings stated that he had the checks delivered to his locked mail slot at his branch office and thereafter deposited the funds into his personal checking account.

**Thomas Lee Dussault (Registered Principal, Iselin, New Jersey)** was suspended from association with any NASD member in any capacity for three days. The sanction was based on findings that Dussault failed to pay a \$1,361.75 NASD arbitration award.

**Murray H. Frankel (Registered Representative, New City, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Frankel consented to the described sanctions and to the entry of findings that during the course of a Series 7 Examination, he had notes with material relevant to the examination.

**James Richard Hackett, Jr. (Registered Representative, Wadsworth, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$10,000 in restitution to his member firm. Without admitting or denying the allegations, Hackett consented to the described sanctions and to the entry of findings that he converted two customer checks totaling \$19,817.83.

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

to the entry of findings that he converted five checks from a public customer's money market account to his own use without the customer's knowledge.

**Oxford Capital Securities, Inc. (New York, New York), James Anthony Sehn (Registered Principal, Eaton's Neck, New York), and Samuel Osei Asihy Forson (Registered Principal, Brooklyn, New York).** The firm was suspended from NASD membership for one year, and Sehn and Forson were each suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that the firm, acting through Sehn and Forson, denied the NASD's staff access to any of the firm's books and records. In addition, Sehn and Forson failed to respond to NASD requests for information.

**Angelo Pastore (Registered Representative, Sayville, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$22,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pastore consented to the described sanctions and to the entry of findings that without the knowledge or consent of an insurance customer, he requested two unauthorized loans totaling \$1,300 against the customer's policy and used the funds to pay for an additional policy for the customer.

In addition, the NASD found that Pastore submitted a cash surrender request for \$549.43 on the policy of another insurance customer, cashed the check with the customer's forged endorsement, and used the proceeds to buy a money order that was placed in the customer's file.

**Frank Lyon Polk, III (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$27,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Polk consented to the described sanctions and to the entry of findings that he effected 15 unauthorized transactions in the accounts of 10 public customers.

**Michael Schatten, III (Registered Representative, Forest Hills, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$62,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schatten consented to the described sanctions and to the entry of findings that he misappropriated to his own use and purpose \$41,612 from the accounts of public customers without their knowledge or consent.

**Andrew Scudiero (Registered Representative, Whitestone, New York) and Robert Hollis Griffith (Registered Representative, Bay Shore, New York)** submitted an Offer of Settlement pursuant to which Scudiero was fined \$10,000, suspended from association with any NASD member in any capacity for seven months and 15 days, and suspended from association with any NASD member in any supervisory capacity for three years. Scudiero was also prohibited for three years from maintaining any proprietary interest in any NASD member other than a non-controlling interest in a member whose shares are publicly traded and are subject to the reporting requirements of Section 12 of the Securities and Exchange Act of 1934. In addition, Scudiero is required to qualify by examination before acting in any capacity and must pay \$38,300 in restitution to public customers.

Griffith was fined \$7,500 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they conducted a securities business without proper registration with the NASD. The NASD also found that Scudiero and Griffith caused trades to be effected in the accounts of public customers without their knowledge, authorization, or consent. In addition, the NASD determined that Scudiero made a written guarantee to a public customer and failed to respond to NASD requests for information. Furthermore, the findings stated that Griffith refused to accept a public customer's sell order unless the customer agreed to purchase additional stock. Also, according to the findings, Griffith made misrepresentations to public customers that the price of a common stock would increase.

**Maynard Matt Smith (Registered Representative, Bayside, New York)** was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$56,100 in restitution to a public customer, jointly and severally with other respondents. The sanctions were based on findings that Smith recommended the purchase of unregistered shares of a common stock to a public customer without having reasonable grounds for believing that the transaction was suitable for the customer given the customer's financial condition and investment objectives. Moreover, Smith failed to ensure that the customer's account was managed properly. In addition, Smith shared in the customer's account by sending her a personal money order for \$822.50 as a dividend on her investment.

**Florence Terrie Sommer (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which she was fined \$50,000 and suspended from association with any NASD member in any capacity for 24 months. Without admitting or denying the allegations, Sommer consented to the described sanctions and to the entry of findings that, the purchase and sale of certain securities, she exercised discretion in a customer's account without approval and engaged in excessive trading in a customer's account. Furthermore, the findings stated that Sommer forged customer signatures to various documents, executed unauthorized transactions, deposited personal funds into customer accounts, made misrepresentations to customers, and falsified member firm documents.

**Erick Peter Spronck (Registered Representative, Clinton, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Spronck consented to the described sanction and to the entry of findings that without the approval of his member firm, he solicited loans from public customers and promised to pay 10 percent interest in one year.

#### March Actions

**David Kippins (Registered Representative, Brooklyn, New York)** was fined \$10,000. The NBCC imposed the sanction following an appeal of a District 10 DBCC decision. The sanction was based on findings that Kippins effected transactions in the accounts of public customers without their knowledge or consent.

#### April Actions

**William Munroe Boland, Jr. (Registered Principal, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Boland failed to respond to NASD requests for information.

**Adam Jason Cohen (Registered Representative, New York, New York)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cohen opened two fictitious accounts at his member firm and caused shares of a common stock to be purchased in the accounts to receive an advance on the commissions for the trades.

**Alan Kalupa (Registered Representative, Nutley, New Jersey)** was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$3,001.54 in restitution to his member firm. The sanctions were based on findings that Kalupa forged the signatures of four insurance customers on disbursement request forms which he presented to his member firm. As a result, checks were issued from the customers' insurance policies totaling \$3,901.54. He converted these to his own use and benefit. In addition, Kalupa failed to respond to NASD requests for information.

**Jeffrey L. Karlitz (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Karlitz consented to the described sanctions and to the entry of findings that he solicited a public customer to purchase a common stock. However, after the purchase, the stock price dropped sharply. The NASD found that Karlitz falsely represented to the customer the

stock had not been purchased, and thereafter corrected the deficit in her account by transferring funds from the account of another public customer without the customer's consent.

**Raymond J. Kelleher (Registered Representative, Tarrytown, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kelleher consented to the described sanctions and to the entry of findings that he requested checks totaling \$13,782.72 against the policies of public customers, deposited the checks into his personal bank account, and used the funds for his own purposes without the customers' knowledge or authorization.

**Michael A. Largue (Registered Representative, Rockville Centre, New York)** submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and must pay \$48,337.39 in restitution to his member firm. Without admitting or denying the allegations, Largue consented to the described sanctions and to the entry of findings that he falsified his previous commission records to secure employment with another member firm and obtain a 20 percent transitional signing bonus of \$48,337.39.

**Frank J. Neal (Registered Representative, Howell, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$33,300 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neal consented to the described sanctions and to the entry of findings that he misappropriated for his own use \$14,040.13 from the accounts of public customers without their knowledge or consent.

**Avinash M. Suchak (Registered Representative, Middlesex, United Kingdom)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Suchak consented to the described sanctions and to the entry of findings that he executed numerous purchases and sales of futures contracts in the account of a public customer without the customer's authorization.

**Michael Charles Woloshin (Registered Representative, New York, New York) and Stewart Emanuel Holzkenner (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which Woloshin was fined \$20,000 and suspended from association with any NASD member in any capacity for 14 days. Holzkenner was fined \$2,500, suspended from association with any NASD member in any capacity for 10 business days, and required to qualify by examination as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, on several occasions, they purchased from an individual at another member firm microfiche reflecting customer account information of the firm.

**Yankee Financial Group, Inc. (Bright Waters, New York) and Richard F. Kresge (Registered Principal, Bayshore, New York)** 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 Kresge, executed 29 municipal securities transactions on a riskless principal basis and 22 option transactions with public customers without an effectively registered municipal securities principal or options principal.

District 11—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the counties of

Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)

## February Actions

**Kenneth N. Morton (Registered Representative, Charlotte, Vermont)** submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Morton consented to the described sanctions and to the entry of findings that he misappropriated to his own use and benefit insurance customer funds totaling \$12,073.27 without the customer's knowledge or consent. In addition, Morton failed to respond to NASD requests for information.

## March Actions

None

## April Actions

**Bruce B. Angus (Registered Representative, Hohenwald, Tennessee)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Angus misappropriated to his own use and benefit insurance customer funds totaling \$14,472.08. In addition, Angus failed to respond to NASD requests for information.

**Michael J. Becal (Registered Representative, Margate, Florida)** was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Becal failed to respond to NASD requests for information.

**Rocco A. Calise (Registered Representative, Johnston, Rhode Island)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Calise misappropriated to his own use and benefit customer funds totaling \$4,290 without the knowledge or consent of his member firm or the customers. In addition, Calise failed to respond to NASD requests for information.

**Kathleen C. Diedrich (Registered Representative, Waverly, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Diedrich consented to the described sanctions and to the entry of findings that she misappropriated insurance customer funds totaling \$2,696.34 intended as insurance premium payments without the knowledge or consent of the customers.

**Patrick T. Flanagan (Registered Representative, Enfield, Connecticut)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Flanagan failed to respond to NASD requests for information regarding customer complaints.

**Zachary S. Hanoyan (Registered Representative, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$12,000 and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Hanoyan consented to the described sanctions and to the entry of findings that he recommended and executed purchase and sale transactions in the account of a public customer with undue frequency and without reasonable justification.

**Kelly M. Madigan (Registered Representative, Troy, New York)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without the knowledge or consent of an insurance customer, Madigan submitted a false insurance surrender form and a fictitious new-policy application by forging the customer's signature. In addition, Madigan failed to respond to NASD requests for information.

**Deborah B. McLaughlin (Registered Representative, Bridgeport, Connecticut)** was fined \$50,000 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that McLaughlin participated in private securities transactions without providing prior written notification to her member firm. In addition, McLaughlin failed to respond to NASD requests for information.

**James T. Ogle, II (Registered Representative, East Hartford, Connecticut)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ogle misappropriated to his own use and benefit customer funds totaling \$12,500 without the knowledge or consent of the customer. In addition, Ogle failed to respond to NASD requests for information.

**Anthony R. Raucci, Jr. (Registered Representative, Southington, Connecticut)** was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without the knowledge or consent of his member firm or a public customer, Raucci misappropriated to his own use and benefit customer funds totaling \$38,257.50, intended for deposit into various tax-sheltered annuities. In addition, Raucci failed to respond to NASD requests for information.

**William K. Tingley (Registered Representative, Ansonia, Connecticut)** was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Tingley misappropriated to his own use and benefit customer funds totaling \$451 intended for insurance premium payments. In addition, Tingley failed to respond to NASD requests for information.

**Stephen Wolfson (Registered Representative, Revere, Massachusetts)** was fined \$60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wolfson misappropriated to his own use and benefit \$28,623 in customer funds intended for the purchase of a life insurance policy without the customer's knowledge or consent. In addition, Wolfson failed to respond to NASD requests for information.

Market Surveillance Committee

## February Actions

**Edward Dallin Bagley (Registered Principal, Salt Lake City, Utah)** was fined \$50,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following the appeal of a District 3 DBCC decision. The sanctions were based on findings that Bagley parked securities to circumvent District Surveillance Committee inventory limitations and its directives to be fully disclosed. Specifically, Bagley caused fictitious stock transaction entries to be made on his member firm's books and records to allow the firm to maintain a minimum level of net capital. As a result of the above activity, Bagley caused the firm to conduct a securities business while failing to maintain its minimum required net capital. In addition, Bagley filed inaccurate FOCUS Parts I and II reports.

**Jules B. Lipow (Registered Principal, Riverside, Connecticut), Irving Levine (Registered Representative, Woodmere, New York), and Howard R. Perles (Registered Representative, Staten Island, New York)** submitted an Offer of Settlement pursuant to which Lipow was fined \$100,000 and barred from association with any NASD member in any capacity. Levine was fined \$15,000 and suspended from association with any NASD member in any capacity for 15 business days. Perles was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Lipow entered into an illegal arrangement with the principal shareholder of a blind pool for an over-the-counter stock not listed on Nasdaq to transfer control of the management of the blind pool and its outstanding unregistered shares. To effect the transactions required to transfer control of the stock, the NASD found that Lipow created false books and records, including the establish-

ment of nominee accounts at his member firm to receive these securities.

Once Lipow obtained control of the blind pool, the NASD determined that he planned to use this control to manipulate the price of the securities, to sell those securities to the public as freely traded stock at artificially high prices through his member firm's retail sales force, and to otherwise use this undisclosed control of the stock to his own advantage.

In relation to this scheme, the NASD also found that Lipow engaged in insider trading, failed to disclose the common control of a member firm with the issuer, improperly distributed equity securities issued by an affiliate of a member firm, and purchased securities of an issuer as the underwriter before completion of the distribution.

Moreover, the findings stated that Levine and Perles provided knowing and substantial assistance by facilitating this distribution of unregistered shares. Specifically, the NASD determined that Levine and Perles purchased shares of the common stock on a principal basis from another member firm and within minutes of such purchase, sold the same shares from the firm's proprietary account to a different member firm.

## March Actions

None

## April Actions

None

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## Regarding Any Items In This Publication

If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Michael Budzinski, Editor, *NASD Regulatory and Compliance Alert*, 1735 K Street, N.W., Washington, D.C. 20006-1500, (202) 728-8945.

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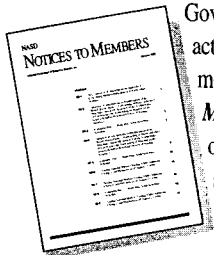
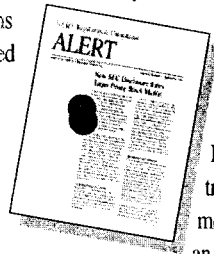
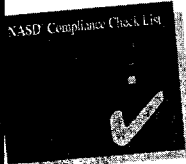
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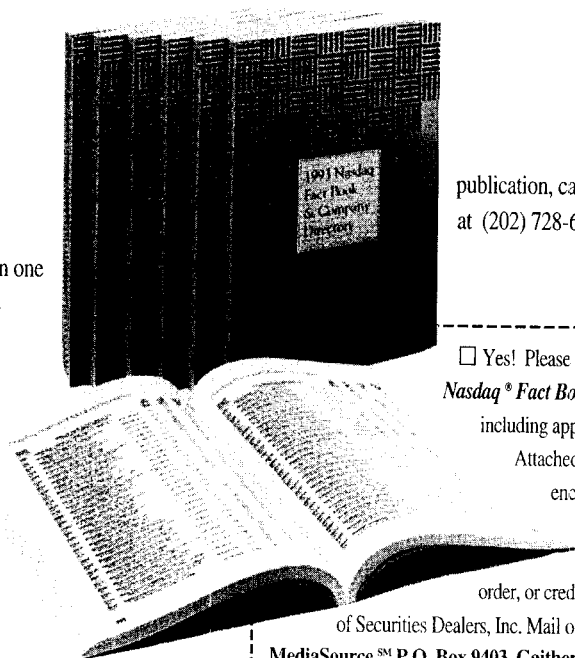
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