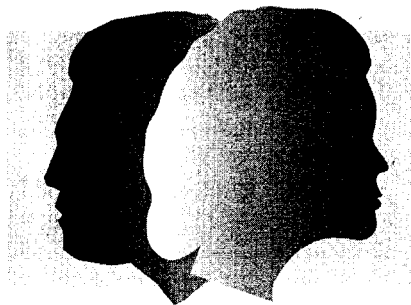


ALERT

Sales Practices Cannot Discriminate Between Male, Female Customers



The NASD® recently responded to a letter from the SEC addressing concerns raised by Representative Edward Markey, Chairman of the House Subcommittee on Telecommunications and Finance, about member sales practices in dealing with male and female customers.

Reacting to a *Money Magazine* article, Markey and the SEC raised concern about the possibility of inappropriate practices by members that result in violations of NASD suitability or other customer protection rules because they treat male and female customers differently.

Members are apprised of their obligations under NASD rules and federal laws to treat all customers fairly, and to ensure that their policies and practices do not raise questions about suitability or other sales practice issues relative to their male and female customers. The NASD, which is already placing increased regulatory and enforcement emphasis on sales practices in general, has alerted its District examiners to be watchful during future field examinations for indications that members may be engaging in inappropriate practices when dealing with male and female customers, thereby raising suitability or other issues. □

NASD Cautions Against Adjusted Trading

Securities industry compliance professionals need to be conscious of certain trading practices that could subject them along with their firms to NASD disciplinary action. One area of concern is so-called "adjusted trading."

Adjusted trading or overtrading is an inappropriate practice involving the sale by a customer, usually a bank or fiduciary for an institutional or trust account, of a security to a broker/dealer at a price above the prevailing market value and the simultaneous purchase and booking of a different security at a price greater than its market value. The newly acquired security is frequently of a lower

grade or longer maturity. Beneficial owners of accounts managed by fiduciaries or other parties relying on a fiduciary's performance can be misled regarding the actual performance of investments under the fiduciary's control.

In January 1992, federal banking regulators stated in a *Supervisory Policy Statement on Securities Activities* (Policy) that adjusted trading by federal financial institutions is an unsuitable investment practice "wholly unacceptable under all circumstances." The Policy recognizes that under current *Continued, page 8*

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NASD Response to Market 2000 Study: Let Competition Drive the Market

By Richard Ketchum, NASD Executive Vice President and COO

Background

In 1992, the Securities and Exchange Commission (SEC) published a release entitled U.S. Equity Market Structure Study (referred to as the Market 2000 study) soliciting comments on the structure of U.S. equity markets and regulatory issues affecting the marketplace. The SEC solicited comment on five broad areas—competition, fragmentation, best execution, transparency, and regulatory oversight. Because this was the first such broad-based study since the Securities Acts Amendments of 1975 and the ensuing national market system initiatives, the NASD and the other market centers took the opportunity to respond in detail.

In the NASD's response to the Market 2000 release, we stressed that where competition has been allowed to flourish in the securities markets, overall efficiency and services for customers have improved. In

order to facilitate continued growth and innovation in the markets, the NASD recommended that the Commission: (1) eliminate off-board trading restrictions, such as those found in the New York Stock Exchange's (NYSE's) Rule 390; (2) permit third market makers access to all exchange-listed securities through the ITS/CAES linkage; (3) adopt disclosure requirements regarding inducements for order flow; (4) engage in rulemaking to adopt procedures for review of operations and allocation of regulatory costs for proprietary trading systems; and (5) eliminate anti-competitive exchange delisting restrictions such as the super majority shareholder approval requirement contained in the NYSE's Rule 500.

Not surprisingly, the exchanges' recommendations to the Commission on Market 2000 took a different tack, and they defended off-board trading restrictions,

arguing that the restrictions reduce fragmented markets for exchange-listed stocks. They unanimously called for rescission of Rule 19c-3, the rule that prohibits off-board trading restrictions for stocks listed after April 1979. The exchanges also took the opportunity of Market 2000 to comment negatively on dealer processes overall, specifically criticizing a limited disclosure exception that permits market makers to trade ahead of customer limit orders and calling for an order-exposure requirement for The Nasdaq Stock MarketSM. In addition, the exchanges recommended that cash payments for order flow be banned as they view cash payments as anti-competitive and unethical.

Earlier this spring, Congressional hearings were also conducted on Market 2000 issues. Congressman Markey, Chairman of the Subcommittee on Telecommuni-

cations and Finance that oversees the activities of the securities markets, held hearings with speakers from the exchanges, the NASD, and the industry. The hearings focused on dealer and auction market principles and protections for public customers. The NASD stressed that dealer processes offer substantially equivalent investor protections as auction markets, including the ability to trade between the spread to obtain price improvement. We reiterated the view that The Nasdaq Stock Market and the third market for exchange-listed securities provide much needed liquidity and competition for the marketplace that has prompted numerous technological enhancements and cost savings for investors over the years.

Discussions at the hearings also centered around payment for order-flow and order-routing practices in the industry. The exchange markets condemned cash payments, differentiating them from rebates and free services that the exchanges might offer their members to attract order flow. The NASD argued that cash payments were no different from other inducements for order flow, and that investor interests would be served best by more complete disclosure of the practices. Congressional comments at the hearings appeared to support the NASD position on disclosure as members of the subcommittee failed to distinguish cash payments by dealers from rebates on service charges paid by exchanges.

Recent NASD Initiatives

The NASD and The Nasdaq Stock Market are constantly striving to improve the quality of the market for issuers, investors, and members. For example, in the past two years we have taken actions to enhance short-sale regulation by requiring delivery of stocks with large outstanding short positions and by proposing a "bid test" short-sale rule to prohibit short sales in down markets. Further, we have extended trade-reporting requirements to include Nasdaq SmallCap securities, and in the next few months we will begin collecting and dis-

seminating trade data on high-yield fixed income securities, convertible debt, and non-Nasdaq issues.

Most recently, the NASD Board of Governors has approved a series of initiatives to improve the quality of the market and promote investors' interests. These initiatives include: (1) enhancements to the NASD Small Order Execution System (SOESSM) to provide for price improvement and limit order protection; (2) improvements to members' handling of limit orders by prohibiting trading ahead of those orders; and (3) enhancements to improve disclosure of inducements for order flow.

SOES has been the subject of much controversy in the past few years. Following the 1987 market break, members agreed to make participation in SOES mandatory for market makers in Nasdaq National Market® securities. While this was intended to be a positive move to ensure liquidity and speedy executions for investors' small orders, a cottage industry of SOES active trading firms sprang up to take advantage of the instantaneous nature of SOES executions. Since 1988 the NASD has implemented a series of rules and interpretations to define which orders were not appropriate for automatic execution in SOES, the so-called "professional trading account" rules. And most recently, the Board has approved substantive modifications to the operations of SOES to curb misuse of the system and to enhance the opportunity for price improvement. These "long term" SOES changes will, among other things, provide for limit order protection as customer limit orders sent into SOES and priced in between the spread will be able to interact with incoming market orders. The system is being redesigned to allow market makers in the security to execute one or both orders or to permit the orders to match and execute against each other. Accordingly, the new SOES will, for the first time, protect customer limit order prices and permit interaction with and price improvement of investors' market orders.

In addition, the Board has approved elimination of the "Manning" disclosure safe harbor for firms that trade ahead of their customer limit orders. The issue of limit order protection in the Nasdaq market was brought to the forefront in 1985 when a customer alleged that a member firm had accepted his limit order, failed to execute it, and failed to discharge its fiduciary duties by trading ahead of the customer's order. (See *In the Matter of E.F. Hutton & Co.*, Release No. 34-25887, July 6, 1988).

In the Manning decision, the NASD found and the SEC affirmed that upon acceptance of a customer's limit order, a member undertakes a fiduciary duty and cannot trade for its own account at prices more favorable than the customer's limit order unless clear disclosure is provided and there is an understanding by the customer as to the priorities that will govern the order. While the general industry practice has been for market makers to avoid trading ahead of customer limit orders, some member firms have used disclosure notices in reliance on the exception identified in the Manning decision. In July 1993, however, the Board voted to eliminate the disclosure exception to Manning and to establish a new Interpretation of Article III, Section 1 of the Rules of Fair Practice that would prohibit member firms from trading ahead of a customer's limit order.

Finally, the Board in July also approved requirements for members to disclose to their customers the various inducements for order-flow arrangements in which they participate. The NASD believes that inducements for order flow, including but not limited to cash payments, are competitive means to attract order flow that enhance execution services and do not impair fair, efficient executions of customer orders. Accordingly, the rhetoric from exchanges encouraging the SEC and Congress to ban cash payments alone should be rejected in favor of more complete and understandable disclosure to customers.

Continued on next page

The NASD believes that the SEC's Market 2000 study will focus on the advantages to the investor in today's highly competitive, technologically sophisticated market environment. We are

hopeful that the study will call for removal of the remaining anti-competitive barriers maintained by the exchange markets. In any event, we believe that the initiatives already undertaken by the NASD

will demonstrate to both the Commission and to Congress that the NASD remains committed to providing levels of investor protection in The Nasdaq Stock Market that are second to none. □

Agency Commissions Must Be Fair

Members are reminded that commission charges on agency transactions are fully subject to Article III, Section 4 of the NASD Rules of Fair Practice. Section 4 states, in part, that if a member acts as agent for a customer in any transaction, the customer shall not be charged more than a fair commission or service charge, taking into consideration all relevant circumstances.

Further, the NASD Mark-Up Policy, which is incorporated in this Section in an Interpretation of the Board of Governors, indicates that it may be conducted inconsistent with just and equitable principles of trade for a member to charge a commission that is not reasonable. The policy further states that it applies to all transactions in which the member acts as agent and charges its customer a commission. Therefore, the NASD Mark-Up Policy and Article III, Section 4 of the Rules clearly apply to commissions charged in agency transactions and are not limited to markups in principal transactions.

Regardless of product or type of transaction, members should ensure that customers are receiving fair prices and not

being charged unfair or unreasonable commissions. The issue of fairness, relative to agency commission charges, as well as markups, is determined by considering all relevant factors to the transaction, of which the 5% Guideline is one. The Interpretation sets forth certain other relevant factors, such as availability of the security in the market, cost of providing services needed and wanted by customers, the amount of money involved in a transaction, and disclosure. Concerning disclosure, the referenced Interpretation provides the following:

"Any disclosure to the customer, before the transaction is effected, of information which would indicate (a) the amount of commission charged in any agency transaction or (b) mark-up made in a principal transaction is a factor to be considered. Disclosure itself, however, does not justify a commission or mark-up which is unfair or excessive in the light of all other relevant circumstances."

In an NASD disciplinary proceeding, the National Business Conduct Committee (NBCC) of the NASD recently affirmed findings of excessive commission charges

and reiterated the applicability of the NASD Mark-Up Policy to agency transactions. In that case, agency commissions ranging from 7 to 9 percent, with the majority in the area of 9 percent, were found to be excessive. The NBCC found respondents' reliance on another firm's commission schedule as mitigating but concluded that the president of the subject member, as a registered principal, should have been familiar with the NASD Mark-Up Policy and Article III, Section 1 of the Rules and their applicability to commissions charged in agency transactions. In its Decision, the NBCC stated their belief "... that in charging customers excessive commissions, respondents abused the trust placed in them by their clients and failed in their obligation to deal fairly with their clients."

NASD district office examiners will continue to focus attention during field examinations on member agency commission charges, and instances where patterns of excessive charges are found will be presented to the District Business Conduct Committee for possible disciplinary action. □

Regulation

NASD Participates in Penny Stock Examinations With SEC and Others

Working together with the Securities and Exchange Commission (SEC), the New York Stock Exchange (NYSE) and 40 state securities commissions, the NASD embarked on a nationwide Joint Penny Stock Examination Sweep in July. The Penny Stock Sweep is the largest coordinated interorganizational regulatory project ever undertaken, and

is being conducted to determine whether broker/dealers are complying with SEC penny stock rules (Securities Exchange Act Rules 15g-1 through 15g-6 and 15c2-6).

The rules, most of which became effective on January 1, 1993, require enhanced disclosure and record keeping

from broker/dealers who purchase from or sell to the public certain low-priced, non-Nasdaq, and non-exchange-listed securities—otherwise typically categorized as penny stocks.

The new rules represent an important investor-protection mechanism to ensure that broker/dealers inform investors

about the risks and costs associated with buying and selling penny stocks. In particular, the rules require broker/dealers to provide investors with a special risk disclosure document explaining the characteristics of penny stocks and the penny stock market prior to effecting any recommended transaction in a penny stock. Before executing a transaction in any security defined as a penny stock pursuant to Securities Exchange Act Rule 3a51-1, broker/dealers also

must disclose information concerning the current market and market price for the penny stock and the compensation that the firm and individual sales agent will receive from the transaction.

"This is an excellent example of effective cooperation among federal and state regulators and SROs for the benefit and protection of investors," said Joseph Hardiman, NASD President and CEO.

In 1990, when Securities Exchange Act Rule 15c2-6 (Cold-Call Rule) became effective, the SEC, the NASD and the State of Florida conducted a similar coordinated examination effort to verify compliance by broker/dealers with the Cold Call Rule.

For more information on the program, contact Robert Ferri, (202) 728-8955, James Spellman, (202) 728-8197, or Daniel Sibears, (202) 728-6911. □

Comment Requested on Optical Storage Technology

Members were asked to comment on a proposed rule change that would allow broker/dealers to use optical storage technology (OST) to comply with the records retention requirements of Securities and Exchange Commission (SEC) Rules 17a-3 and 17a-4.

The rule proposal formalizes an SEC no-action letter released May 18, 1993, and adds a long-recognized SEC interpretation from 1979 that permitted broker/dealer firms to use microfiche for record retention purposes. The comment period for rule change ended September 13, 1993.

Until 1970, paper was the sole medium for the preservation of records required under the Rules. Thereafter, microfilm and microfiche were permitted provided certain conditions were met. In 1970, Rule 17a-4 was amended to permit records to be immediately produced on microfilm as an original form of record keeping. In 1979, the SEC further interpreted Rule 17a-4 to include microfiche as well.

The no-action letter gives broker/dealer firms immediate relief in lieu of the rule's taking effect. The letter lists 10 conditions that must be met before a broker/dealer can currently use OST.

For a more information, including a complete transcript of an SEC no-action letter and the 10 conditions for using OST, see *NASD Notice to Members 93-47* (July 1993). □

Conditions for Using OST Technology

- 1) Notifying its designated examining authority before using OST for record-retention.
- 2) Maintaining facilities that provide immediate, easily readable projection of optical disks and capable of producing easily readable facsimile enlargements for use by the SEC or the appropriate self-regulatory organization.
- 3) Providing an organized arrangement of the optical disks available for immediate location.
- 4) Developing the capability to provide facsimile enlargements that the SEC may request.
- 5) Storing a duplicate copy, separate from the original, of each optical disk used for required records. The duplicate optical disk must be stored for the period required for the information preserved on the optical disk.
- 6) Providing storage that preserves records exclusively in a non-rewritable, non-erasable format and verifies automatically the quality and accuracy of the optical storage recording process. Duplicates must be in a separate optical disk and must include all information originally preserved and maintained by means of OST. Both original and duplicate disks must serialize records and permanently time-date information. The storage system must have the capacity to download indexes and records preserved on optical disks into paper, microfilm, or microfiche.
- 7) Providing an accurate organization and index of all originals and duplicates for easy retrieval.
- 8) Developing an audit system that accounts for all access to records maintained and preserved on OST and listing all changes made to originals and duplicates.
- 9) Maintaining, keeping current, and surrendering promptly on request to the SEC and other SROs all information needed to retrieve records and indexes on optical disk.
- 10) Providing a third-party designee who agrees in writing to furnish the SEC or its designee with assistance necessary to retrieve information from the optical storage system.

NASD Proposes Free-Riding and Withholding Amendments

The NASD is now reviewing member comments on proposed amendments to its Free-Riding and Withholding Interpretation under Article III, Section 1 of the Rules of Fair Practice.

Covering a wide variety of topics under the Interpretation, the amendments were recommended by the Free-Riding and Withholding Interpretation Committee, a special committee appointed by the NASD Board of Governors to determine the relevance of Free-Riding and Withholding Interpretation restrictions, definitions, and obligations in today's securities markets. The committee, comprised of members of various NASD committees as well as the members of the Board of Governors, met numerous times from May 1992 to April 1993 to examine various interpretative issues that had been raised inside and outside the NASD.

The committee offered recommendations on six broad topics covered under the Interpretation (see *Recommendations* below).

The purpose of the Interpretation is to protect the integrity of the public offering process by requiring that members make bona fide public distributions of "hot issue" securities, neither withholding such securities for their own benefit or using them as rewards to attract future business. As defined by the Interpretation, hot issue is a security of a public offering that trades at a premium to the public offering price in the

secondary market when such trading commences.

Under the current Interpretation, NASD members are prohibited from retaining hot issues in their own accounts and may not sell them to directors, officers, employees, and associated persons of members and other broker/dealers. A member also may not sell hot-issue securities to other specified persons, including senior officers of banks, insurance companies, registered investment companies, registered investment advisory firms, and any other persons within such organizations whose activities influence or include the buying or selling of securities. Further, members may not sell hot-issue securities to any accounts in which persons such as these may have a beneficial interest and, with limited exceptions, to members of the immediate family of those persons restricted by the Interpretation.

While there is no formula or absolute rule that determines precisely at what point in time secondary market trading in securities that have the characteristics described above would result in an issue being deemed hot, the primary factors that are considered are fairly basic. Was there unsatisfied public demand for the issue at the time of the offering? Was there immediate demand to buy the stock when it first opened for trading in the secondary market? Could the shares purchased in the public offering be sold at a profit in the immediate secondary market?

As an example, a security with a \$10 per share public offering price that opens for trading on Nasdaq or on a national securities exchange at \$10, trades at that price for several hours, and then moves up to \$11 by the close of trading, would not be considered a hot issue. Nor would a similarly priced Nasdaq or exchange-listed new issue that trades down initially at 9 3/4 from its \$10 public offering price of \$10, only to move up after several hours to close at 10 1/2. Thus, the NASD focus is on immediate secondary market bids and transaction activity.

The NASD through its Compliance Department authorizes the issuance of a Free-Riding and Withholding Questionnaire (Free-Riding Questionnaire) for those hot issues that exceed certain preset and predetermined regulatory parameters determined by the NASD. While not all offerings that open at a premium are subject to a Free-Riding Questionnaire, any public offering that opens at a premium is considered a hot issue under the Free-Riding and Withholding Interpretation. District examiners routinely review for compliance with the Free-Riding Interpretation during field examinations for those hot issues that are not the subject of a Free-Riding Questionnaire.

For more complete information, please see *Notice to Members 93-40* (June 15, 1993). □

Free-Riding and Withholding Committee Recommendations

Securities to be Covered

The Free-Riding Committee recommended that the Interpretation continue to apply to both equity and debt securities, but is seeking comment on whether the Interpretation should continue to apply to "straight" rated

debt securities. The Committee believes that closed-end mutual funds should remain covered by the Interpretation.

Stand-By Arrangements

The Free-Riding Committee concluded that securities

purchased under a stand-by arrangement by a restricted account should not be subject to the Interpretation if:

- The stand-by arrangement is disclosed in the prospectus, it is the subject of a formal agreement.
- The underwriter represents that it was unable to find any other purchaser for the securities.
- An appropriate holding period for the securities be included. The Free-Riding Committee determined that for purposes of soliciting comment on the proposal it would apply the holding period of five months currently included in the Interpretation's provisions relating to conversion offerings. Comments are specifically solicited on the appropriate holding period for securities purchased under a standby agreement.

Cancellation of Trades as "Safe Harbor"

The Free-Riding Committee believes that the Interpretation should make it clear that it is not a violation for a member that allocates a hot issue to a restricted person or account to cancel the trade and reallocate the security, at the public offering price, to a non-restricted account prior to the settlement date. The Committee understands that there may be implications of such cancellations and reallocations under Securities Exchange Act Rule 10b-6 and is seeking comment on this issue.

Definition of Immediate Family

The rule currently defines immediate family members very broadly and includes such persons as father-, mother-, brother-, and sister-in-law. Members have expressed concern over the compliance difficulties of monitoring whether such persons are restricted or become restricted. The Committee recommended:

1. The investment history exemption should be retained and expanded to include the use of investment history at firms other than the member making the allocation. The burden of obtaining such information would remain with the firm making the sale.
2. The immediate family restrictions on persons other than those associated with broker/dealers (i.e., having a relationship with the offering and individuals related to banks, insurance companies, and other institutional type accounts covered under the Interpretation) would be eliminated and the restriction would only apply to the enumerated individuals in those categories and to persons who are supported directly or indirectly to a material extent by the restricted person.
3. For persons associated with broker/dealers, the immediate family restrictions would continue to apply to persons supported by the restricted individual and to allocations by the restricted individual's firm; however, the restrictions would no longer prohibit sales to non-supported family members by a firm other than the restricted person's employer where the restricted

person has no ability to control the allocation of the hot issue. A violation would occur if it is determined that the restricted person had a beneficial interest in the account to which an allocation was made.

Applicability to Persons With Limited Registration or Limited Purpose Broker/Dealers

The Free-Riding Committee believes that individuals with various limited-purpose registrations should not be considered to be restricted persons. The categories would be persons registered as representatives or principals in registration categories limited to investment company securities, variable contracts, and Direct Participation Program securities. Comment is solicited on the propriety of exempting any securities industry professionals and, if appropriate, the proper scope of such an exclusion.

Investment Partnerships

The Free-Riding Committee believes a carve-out methodology, whereby sales to partnerships or corporations are disallowed if restricted persons have a beneficial interest in the entity, should apply both to investment partnerships having restricted persons as investors (as allowed by the August 1992 Notice to Members) and to partnerships that the restricted person or entity manages. The Free-Riding Committee recommends substituting an independent certified public accountant's opinion for the opinion of counsel currently called for in the Interpretation as well as adding several mechanisms to prevent restricted persons from participating in hot-issue allocations (see *Notice to Members 93-40*).

Foreign Mutual Funds

The Interpretation doesn't apply to investment companies registered under the Investment Company Act of 1940. The Free-Riding Committee believes foreign mutual funds which are subject to a similar scheme of regulation as that governing domestic funds should be similarly exempted.

Venture Capital Investors

The Committee recommends allowing a venture capital investor (either a fund or an individual) to purchase hot issues if:

1. One year of preexisting ownership of the company's securities has transpired.
2. The purchase of the new issue did not increase the investor's percentage ownership above that of the securities held for the prior year.
3. No special terms are connected to the purchase.
4. A six-month lock-up period for the newly purchased securities exists.

Adjusted Trading, continued from page 1
 accounting standards, some institutions carry long-term investments at cost; thus, unrealized losses are not recognized until the security is sold.

The banking regulators indicated that adjusted trades “inappropriately defer the recognition of losses on the security sold and establish an excessive reported value for the newly acquired security.” They indicated that such transactions are prohibited and may constitute violations of the applicable federal criminal statutes regarding reporting requirements of banks.

As previously noted, the purpose of an adjusted trade is to assist one party to the scheme in avoiding, disguising, or postponing losses. In the simplest case, an institution, such as a bank, will have unrealized losses on an existing position in fixed income securities. The institution wants to eliminate the security from its portfolio, but does not want the loss to be realized and recognized on its books. To circumvent this situation, the institution will conspire with a broker/dealer who agrees to purchase the security at a price above the current price, perhaps at the institution’s cost, or even above cost. The institution, in turn, agrees to purchase a replacement security from the broker/dealer at an artificially inflated price unrelated to the market price, involving comparable total dollar amounts so that the broker/dealer does not take a loss. (See Illustration 1.)

From the institution’s perspective, the adjusted trade conceals poor

performance figures. From the broker’s perspective, the adjusted trading is facilitated for the purpose of generating commissions through unnecessary transactions and aids and abets the customer in falsifying its records.

There are variations on the basic scenario. Using, for example, an institution that holds securities with unrealized losses, the broker/dealer purchases the security at an inflated price unrelated to the market, then sells the security to a third party at a price in excess of the current market price to recoup its loss on its overpriced purchase. The unsuspecting third party is left holding an overprice security. (See Illustration 2.)

In another scenario, the broker/dealer is positioned between two institutions, and the broker/dealer acts as a conduit

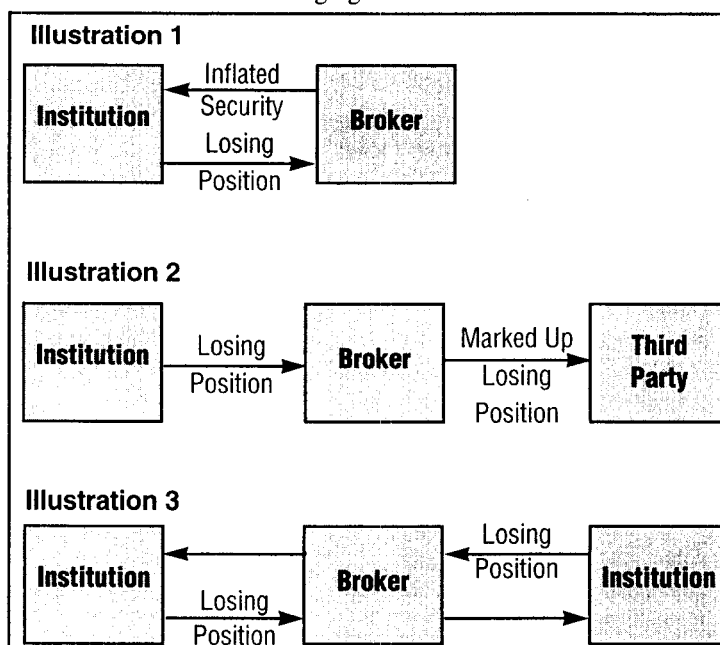
between each institution, allowing each institution to “swap” losing positions by paying an inflated price for the other’s security. (See Illustration 3.)

Of course, the scheme can be more complicated by involving multiple parties and securities. However, it

typically begins with a party with unrealized losses and another party willing to assist in the delay or avoidance of losses.

NASD examiners review members’ records for a broad array of sales- and trading-practice abuses, including adjusted trading. Members are reminded that all transactions must occur at prices reasonably related to current market prices. Verification of actual market prices with booked purchases and sales prices can uncover the possibility of adjusted trading.

Members and individuals involved in adjusted trading can expect to be named as respondents in NASD disciplinary actions and anticipate sanctions of a serious nature commensurate with the egregious misconduct. □



Advertising

Increasingly Popular Infomercials Considered Advertising

The NASD Advertising Regulation Department alerts member firms that “infomercials”—lengthy television and radio advertisements—and other paid or

gratuitous media appearances by a firm’s registered persons are considered advertising by the NASD and SEC staff if the member intends to solicit interest in its

securities products or services.

Many “infomercials” appear on the Cable TV’s Business Channel or similar local

media and last as long as 30 minutes. A typical program involves a registered person extolling the virtues of a particular issue of stock or a direct participation program.

The NASD believes that a presentation in the public media of a securities product or service—including an interview with the sponsor of a security—generally constitutes advertising. Such a presentation must comply with the general and specific advertising standards of Article III, Section

35 of our Rules of Fair Practice, as well as any SEC advertising rules that apply. It is also subject to review by a principal of the member, as well as the record-keeping procedures and filing requirements found in paragraphs (b)(1) and (c) of Section 35. No differentiation is made between an “educational” presentation and a sales presentation if the presentation is made to generate securities business.

The NASD is pursuing formal action

against a number of member firms whose “infomercials” have been found to seriously violate NASD and SEC advertising rules. The NASD will continue to do so aggressively in the future.

Any member with questions about whether an associated person’s appearance in the media constitutes advertising should contact the Advertising Regulation Department at (202) 728-8330 for clarification. □

“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.

Q. *Are recruiting advertisements subject to the ten day prior-to-use filing requirement of Article III, Section 35(c)(3)(A) of the Rules of Fair Practice?*

A. Yes.

Q. *For purposes of approval and record keeping, what constitutes correspondence as opposed to sales literature?*

A. Correspondence represents material that has been personalized to contain information relevant to an individual client. However, merely adding an individual’s name and address to a form letter would not transform such a communication into correspondence. As defined in Article III, Section 35(a)(2) of the Rules of Fair Practice, form letters are sales literature.

This informal definition should not inhibit member firms from providing administrative information to more than one client using a substantially similar letter. In determining whether this material is correspondence rather than sales

literature, one must evaluate the communication’s purpose. If the material serves solely to inform each recipient about specific information relating to his or her account, such material may constitute correspondence. However, if the intent is to offer or sell a security, or to promote any other aspect of a member’s securities business, such communication would be regarded as sales literature.

Q. *Must generic mutual fund, UIT, or variable product advertisements and sales literature be submitted to the Advertising Regulation Department for review?*

A. Yes. Article III, Section 35(c)(1) requires member firms to file all advertising and sales literature relating to investment company products. The rule does not distinguish product-specific material from that which describes investment company securities as a general medium for investment. However, the rule specifically exempts from filing any material that merely states that a firm offers investment company securities as part of a greater list of products and services. □

Just A Reminder

Don't forget the NASD Variable Insurance Products Compliance Seminar.

The program will include helpful information on both advertising and distribution of variable annuity and variable life insurance products.

Location: ANA Hotel, 2401 M Street, NW, Washington, DC 20037

Time: October 13th & 14th

Hotel Registration and Reception, Wednesday, October 13, 1993

Seminar Begins Thursday, October 14, 1993

For more information, call Jackie Niedermayer, NASD Corporate Communications, at (202) 728-8383.

ICI Agrees With NASD Prohibition of Adviser Performance

The Investment Company Institute (ICI), a national trade association representing the investment company industry, agrees with the NASD position that adviser performance should not be used in investment company advertising or sales literature. The NASD last published this position in the June 1992 issue of *NASD Regulatory & Compliance Alert*.

Despite several SEC initiatives permitting adviser performance in new fund prospectuses, it has been the long-standing NASD view that such information should not be included in advertising or sales literature. The NASD believes that the use of an investment adviser's track record in advertising or sales literature for a new mutual fund may lead an investor to conclude that the new fund will perform as

well as the adviser's previous accounts.

The NASD has been asked to reconsider this view on a number of occasions. Most recently, the NASD approached the ICI requesting guidance as to appropriate disclosures if adviser performance were to be permitted in fund advertising and/or sales literature. The ICI response was as follows:



CRAIG S. TYLE
Vice President—Securities

May 21, 1993

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

Dear Clark:

The Investment Company Institute understands that the NASD is considering whether to change its current position on the propriety of including information about the performance of an investment adviser's private accounts in sales literature for a new mutual fund managed by that adviser. Currently, the NASD does not permit such information to be included. (See *NASD Regulatory and Compliance Alert* at 7 (June 1992).)

The Institute's Subcommittee on Advertising, after reviewing the issue, has concluded that the NASD's current position is the correct one. Therefore, we do not believe it would be consistent with the NASD's Rules of Fair Practice to allow such information to be included in mutual fund sales literature.

The Institute understands that adviser performance may be included in mutual fund prospectuses during the first year of a fund's operations.¹ This is not necessarily inconsistent with the NASD's current position, as mutual fund prospectuses are not subject to the NASD's Rules of Fair Practice. Moreover, the fact that prospectuses, unlike supplemental sales literature, are subject to liability under Section 12(2) of the Securities Act provides an additional degree of protection in the former case.

The Institute does wish to note that it understands that the NASD's prohibition on the use of adviser performance in this manner would not prohibit disclosure of the performance of one mutual fund in the same piece of sales literature as the performance of another fund, as this was expressly permitted under the SEC's interpretive letter on fund newsletters.² Moreover, we understand that the SEC may require disclosure of the performance of all classes when the performance of one class in a multiple class structure is used.

We appreciate the opportunity to share our views on this subject with you. Please call me if we can be of further assistance.

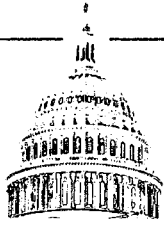
Very truly yours,

A handwritten signature in dark ink, appearing to read "C. S. Tyle". The signature is written in a cursive, flowing style.

¹ However, the SEC's Division of Management has stated that discussion in a fund's advertisement about the performance of any fund-related entity is not consistent with Rule 482. See Letter from Carolyn B. Lewis, Assistant Director, to Registrants at 7 (February 22, 1993).

² See Letter from Kathryn B. McGrath, Director, Division of Investment Management, to Matthew P. Fink, Senior Vice President and General Counsel, Investment Company Institute (January 29, 1990).

1600 M Street, N.W. Washington, DC 20036 202-293-7700



LEGISLATIVE NOTEBOOK

Bank Sales of Securities Raises Concern in Congress

In response to concerns raised about bank sales of stocks and mutual funds to customers with maturing certificates of deposit (CDs), Congressman John D. Dingell (D-MI), the Chairman of the House Energy and Commerce Committee and its Subcommittee on Oversight and Investigations, asked the NASD, the Securities and Exchange Commission (SEC), and the Comptroller of the Currency (OCC) for reports on their efforts to ensure that individuals who seek to reinvest the proceeds of CDs in bonds or bond funds, mutual funds, collateralized mortgage obligations (CMOs), and other noninsured investments receive adequate disclosure.

In response to reports provided by the NASD, SEC, and OCC, Dingell supported the direction of efforts by regulators, but called for more work in the area. In a press release Dingell added, "Responses clearly show that regulators are actively taking steps to ensure that investors are fully informed of the noninsured status of securities investments, and the risks to principal, more needs to be done to assure consistent and coordinated regulation for the protection of investors. The Committee will beef up its oversight of this and related areas and, if necessary, pursue legislation to ensure that sales personnel are fully aware of and in compliance with applicable disclosure requirements.

In addition, the General Accounting Office (GAO) is conducting a review of bank involvement in the sale of mutual funds, and the NASD has been requested to provide a broad spectrum of information to the GAO in conjunction with its study.

□

NASD Assists in Municipal Securities Probe

The NASD is expected to respond in early September to a congressional request for information about regulation of the municipal securities market. "The facts and circumstances surrounding the recent New Jersey Turnpike refunding scandal and the adequacy of the current laws and regulations applicable to the issuance and sale of municipal securities," according to a letter from Reps. Edward Markey (D-Mass.) and John Dingell (D-Mich.) to the NASD, SEC, and Municipal Securities Rulemaking Board (MSRB).

Dingell, chairman of the House Energy and Commerce Committee, and Markey, chairman of a subcommittee that supervises securities markets, are heading a sweeping investigation of the municipal securities markets.

Though NASD President Joseph Hardiman said that the NASD is not involved in any formal investigation of municipal securities underwriters, the NASD will likely respond to the congressional request with a general overview of how state and local government municipal bond offers are awarded.

□

Rollups Bill Passes Senate

The Limited Partnership Rollup Reform Act was passed by voice vote in the Senate on August 6, 1993. The different version of the bill, designed to counteract abuse of shareholders subject to the reorganization of partnerships, must now worked out by both houses of Congress before final approval.

Among other limited partner protections, the legislation would attempt to ensure that limited partners are permitted to communicate with each other about whether to oppose a rollup transaction; prohibit compensating persons soliciting proxies only for "yes votes; and prohibit exchanges and NASD members from participating in rollups unless they provide a number of specific protections for limited partners.

□

Congress Completes Second Round of Mutual Fund Hearings

The House Telecommunications and Finance Subcommittee held a second hearing to examine the rapidly growing mutual fund industry and revisit the Investment Company Act of 1940, the basis for its regulation.

Speaking before the Committee on August 5, SEC Commissioner Arthur Levitt suggested the need for an increase in SEC staffing to match the growing numbers of funds, fund companies, investors, and assets in the industry. Levitt also discussed many of the legislative and regulatory issues currently under SEC consideration, covered in a SEC study completed last year, *Protecting Investors: A Half Century of Investment Company Regulation*.

A third hearing under consideration for September was expected to focus on mutual fund advertising and marketing, including the he NASD advertising regulation efforts. However, there is now some debate as to whether the hearing will be held, and if so, what it will cover.

NASD Actions Affect Margins, Buy-Ins

On September 10, 1993, the NASD took action under its maintenance margin rules and buy-in notification procedures. Relying on its maintenance rules, the NASD set the maintenance margin requirements for Future Communications Inc. (FCMI) at 100 percent, effective immediately.

In a second action, the NASD said any notice of "buy in" issued for a security subject to a regulatory trading halt may not be executed for two business days after the trading halt ends. This action provides the same two-day trading period that would have been available before a buy-in had trading in the security not been halted.

Questions concerning these matters may be addressed to Walter Robertson, Director, Compliance at (202) 728-8236. □

Arbitration

NASD Adds Clarifications on Employment Dispute Rules

The NASD clarifies that employment-related disputes may be arbitrated pursuant to *NASD Code of Arbitration Procedure*, according to a proposal before the SEC that amends Section 1 of Part I and Sections 8 and 9 of Part II of the Code. Other amendments propose that in cases involving employment discrimination or public policy issues, arbitration panels should consist of a majority of public arbitrators.

The rule changes were prompted by a decision of the California Court of Appeals, *Higgins v. The Superior Court of Los Angeles County*, which found the NASD's Section 8 language did not cover employment disputes, but only those arising from business transactions.

In amending its arbitration rules, the NASD takes the position that employment disputes are matters of business. New Section 1 of Part I clarifies that disputes between or among members and associated persons are eligible for submission under the Code. A parallel change is proposed in Section 8, which

addresses industry and clearing controversies that are required to be submitted to arbitration.

Under amended Section 9(a) in Part II of the Code, arbitration panels comprised of industry arbitrators only would arbitrate disputes that arise from employment—or termination of employment—of an associated person of an NASD member. The NASD specifically mentioned in its rule filing that certain disputes—including those involving employment contracts, promissory notes, receipt of commissions and wrongful discharge—are related to industry practice and require industry experience.

The NASD believes that disputes involving public policy issues, however, may require different treatment. In instances involving claims of employment discrimination on the basis of age, sex, or race, or relating to sexual harassment, the panel would consist of a majority of public arbitrators. □

Early Settlement of Arbitration Encouraged in NASD Proposal

In response to member concern about unnecessary expenses involved in resolving arbitration disputes, the NASD submitted to the Securities and Exchange Commission (SEC) for approval an amendment to its arbitration code that encourages parties to a dispute to evaluate the case, extend an appropriate offer, and resolve cases before incurring unnecessary litigation costs.

Subsection (i) to Section 41 of the Code of Arbitration Procedure would permit either party to an arbitration proceeding to extend an "offer of award" to settle the case. In its filing the NASD recog-

nized that "the concept of an offer-of-award provision is new to arbitration and . . . may not be appropriate in small cases." Therefore, the NASD added a provision to its rule that would limit application of the rule to cases involving amounts of \$250,000 or more. NASD review of its arbitrator case docket revealed that approximately 30 percent of ready cases met the \$250,000 threshold.

Subsection (1) would permit an offer of award to be made any time after 60 days the settlement offer is answered but also more than 15 days before an arbitration hearing is set to begin.

The NASD believes the 60-day time period allows the respondent sufficient time to assess the value of the case while still providing an opportunity to settle early and avoid excessive costs. The rule filing mentioned that "the costs of trial preparation incurred in the 15 days prior to the hearing form a significant amount of the attorney fees associated with an arbitration proceeding."

Furthermore, the NASD added a sunset provision that would allow the rule to expire after two years as a means to reconsider the rule's effectiveness. □

NASD Enhances Public Disclosure Program

The NASD has enhanced its Public Disclosure Program to make additional regulatory information on its members and associated persons available to the public. As a result of this action, the program now includes civil judgments and NASD arbitration decisions involving securities matters, pending regulatory actions, and criminal indictments and information.

The NASD initially established the Public Disclosure Program in May 1988. The original program included final disciplinary actions taken by self-regulatory orga-

nizations (SROs); federal or state securities agency actions that involved securities or commodities transactions; or any criminal convictions. Initially released only upon written request, the information became available via a toll-free number (800-289-9999) in October 1991.

In May 1989—under a separate program—final NASD arbitration decisions and awards were made public upon written request.

As a result of action taken by the NASD earlier this year, data bases containing

both the disciplinary actions and NASD arbitration awards are now linked to ensure proper disclosure to the public through one toll-free number as well as on industry applications forms, such as Forms U-4 and U-5.

Free to investors, the program charges \$30 per inquiry for law firms, banks, and any other commercial callers. Member firms can receive Public Disclosure Program information through the Firm Access Query System (FAQS) by using the "PREHIRE" command. □

COMPLIANCE SHORT TAKES

NASD proposes greater customer limit order protection. The NASD solicited member comment on a proposal approved by its Board to adopt rules prohibiting a member firm trading ahead of a customer's limit order in The Nasdaq Stock Market. The Board's proposal eliminates a "safe harbor" disclosure approach for those members who wished to avail themselves of it. The comment period expired August 31, 1993 (See *Special NASD Notice to Members 93-49*.) □

The Securities and Exchange Commission (SEC) adopted significant amendments to Rule 15c3-1, otherwise known as the Net Capital Rule. A special question-and-answer format in *NASD Notice to Members 93-30* (May 1993) describes guidelines for complying with the new requirements, which went into effect in staggered installments beginning July 1, 1993. The June 1993 issue, specifically *Notice to Members 93-46*, provides additional and later clarifications and interpretations of these new requirements. □

The SEC approved the NASD's Minor Rule Violations Plan (Article II, Section 10 of the NASD Code of Procedure) on May 28. The Plan permits the NASD to process certain types of minor violations quickly while reporting periodically to the SEC summary lists of violations disposed under the Plan. □

The NASD may exempt certain foreign brokers from qualifications requirements. Seeking a reciprocal agreement from regulators in Japan, Canada, the United Kingdom, and France, the NASD is expected to submit an amendment to the SEC in 1993 that would exempt foreign brokers who do business with U.S. institutional investors from qualifications requirements. □

The NASD is proposing to eliminate SEC review of disputes where the NASD makes null and void clearly erroneous transactions on its quotation, execution, and communication systems. The proposal relates to an SEC ruling that permits the NASD to declare clearly erroneous transactions

null and void if they arise from the use of any automated quotation, execution, or communication system owned and operated by the NASD. Currently, Section 70(b)(3) allows persons aggrieved by a decision of the Market Operations Review Committee to appeal that decision to the SEC. The NASD proposes deleting that reference, although it notes in its filing that "disputes, claims, and controversies arising out of determinations made pursuant to Section 70 . . . remain eligible for arbitration." □

The U.S. General Accounting Office (GAO) has initiated a study of the disciplinary process and standards used by the SEC and self-regulatory organizations to fine, sanction, and/or remove unscrupulous sales representatives from the securities industry. The NASD has already met with the GAO staff and will be working with the GAO throughout the study.

Violations

Prudential Securities Disciplined For Inadequate Supervision

Finding evidence of failure to properly supervise the activities of employees, the NASD disciplined Prudential Securities Incorporated (Prudential) for certain activities in the firm's Little Rock, Arkansas, and Memphis, Tennessee, branch offices.

Prudential neither admitted nor denied the allegations but was censured and agreed to a \$250,000 fine. The firm will also institute training programs in its Little Rock and Memphis branch offices.

The NASD, through its District 5 office in New Orleans, found that Prudential's failure to supervise properly the activities of certain employees in the Little Rock office resulted in an unsuitable level of trading in the account of an institutional public customer, and an eventual settlement by the firm in the amount of

\$700,000. In addition, the firm failed to supervise properly the maintenance and preparation of its books and records in the Little Rock office, which resulted in certain employees improperly receiving commissions through the production numbers of other registered representatives, and compensation being paid to employees by check or other means not reflected on the firm's books and records.

The NASD also determined that Prudential failed to supervise properly the activities of a firm employee in its Memphis office who was found to have conducted an unsuitable level of trading in an institutional customer's account.

The NASD found that the overall conduct by Prudential violated the NASD's Rules of Fair Practice. Other individuals

that were involved in this matter are currently the subject of separate disciplinary actions.

Correction

It was incorrectly stated in the June 1993 issue of *NASD Regulatory & Compliance Alert* that Douglas Nutt and Colorado-based Orion Securities "obtained from an investment banking client a \$500,000 loan." In actuality, the NASD found that Nutt and Orion facilitated the receipt of a \$500,000 loan for an investment banking client.

NASD DISCIPLINARY ACTIONS

In May, June, and July 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 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

May Actions

Nancy Lee Brandstatter (Registered Representative, Los Altos Hills, California) was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brandstatter misappropriated \$137,096.15 belonging to 10 public customers and converted the funds to her own use and benefit. Brandstatter also failed to respond to NASD requests for information.

June Actions

Helen Holt Cordry (Registered Representative, San Francisco, California) and **Thomas Wallace Cordry (Registered Representative, San Francisco, California)** submitted an Offer of Settlement pursuant to which they were fined \$20,000, jointly and severally, and barred from

association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to respond to NASD requests for information regarding allegations that funds totaling \$149,702.73 were missing from a public customer's account.

July Actions

Raymond Edward Moore (Registered Representative, Santa Rosa, California) was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination upon completion of the suspension. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Moore effected 10 unauthorized securities transactions in a public customer's account and exercised discretion in another customer's account without obtaining the customer's prior written discretionary authority.

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)

May Actions

Marc Barry Resnick (Registered Representative, Bell Canyon, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Resnick failed to respond to NASD requests for information concerning his termination from a member firm.

Timoteo Torres (Registered Representative, Long Beach, California) was fined \$10,000 and barred from association with any NASD member in any capacity. The fine may be reduced by a payment to his member firm not to exceed \$700.

The sanctions were based on findings that, without an insurance customer's knowledge or consent, and through the use of forged documents, Torres caused a loan to be issued by his member firm on a life insurance policy issued to a public customer. Torres used the proceeds of such loan to purchase a new policy for the customer; however, since the premium was not paid on the policy, it lapsed. Torres then transmitted a request for the withdrawal of accumulated dividends from the customer's original life insurance policy and submitted an application for reinstatement of the new policy, without the customer's knowledge or consent. As a result of this activity, Torres received \$698.75 in commissions.

June Actions

Adams Securities, Inc. (Las Vegas, Nevada), James William Adams (Registered Principal, Henderson, Nevada), and Daniel Bruce Perry (Registered Principal, Henderson, Nevada). The firm was fined \$79,541, jointly and severally with Adams and Perry, and suspended for 60 days from market making. Adams and Perry were each fined an additional \$15,000 and suspended from association with any NASD member in any capacity for 30 days.

The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a November 1991 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that, in contravention of the Board of Governors' Interpretation with respect to the NASD's Mark-Up Policy, the firm, acting through Adams and Perry, sold securities to public customers in the secondary market at unfair prices. The markups on these transactions ranged from 17.65 to 100 percent above the firm's contemporaneous cost.

Anthony Gary Galante (Registered Representative, Las Vegas, Nevada) was fined \$13,875 and required to requalify by examination as a general securities representative. The fine may be reduced by any amount paid in restitution to his former member firm (not to exceed \$8,875). The sanctions were based on findings that Galante extended a guarantee against loss to a customer.

Kenneth Ray Hudson (Registered Representative, San Diego, California) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Hudson consented to the described sanction and to the entry of findings that he failed to pay a \$5,000 NASD arbitration award and \$575 in filing fees.

July Actions

Henry William Abts, III (Registered Principal, Los Angeles, California), Theron Hugh Murphy (Registered Principal, Simi Valley, California), and Jay Lynn Murphy (Registered Representative, Simi Valley, California). Abts was fined \$15,000, suspended from association with any NASD member in the capacity of general securities principal for 90 days, and required to requalify as a general securities principal before again acting in the aforementioned capacity. Theron Murphy was fined \$5,000 and suspended from association with any NASD member as a general securities principal for 30 days, and Jay Murphy was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days.

The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Jay Murphy, with the knowledge and consent of Abts and Theron Murphy, engaged in a securities business of a member firm without proper qualification or registration in any capacity whatsoever.

Adams Securities, Inc. (Las Vegas, Nevada), James William Adams (Registered Principal, Henderson, Nevada), Michael Richard Waldman (Registered Representative, Henderson, Nevada), John Bassell Hayden (Registered Representative, Chico, California), and Mark David Long (Registered Principal, Denver, Colorado). The firm was expelled from NASD membership and James Adams was barred from association with any NASD member in any capacity. Waldman was fined \$19,000, which may be reduced by any restitution paid to customers up to \$9,000. Hayden was fined \$12,935, which may be reduced by any restitution paid to public customers up to \$7,935. Long was fined \$13,408, which may be reduced by any restitution paid to customers up to \$3,408. Furthermore, Waldman and Hayden must requalify by examination as general securities representatives before acting in such capacities and Long must requalify as a general securities principal.

The sanctions were based on findings that the firm, acting through Adams, Waldman, Hayden, and Long, engaged in sales to customers of shares of stock in the secondary market at prices that were unfair, in contravention of the NASD Mark-Up Policy, in that such sales

resulted in markups ranging from approximately 5.14 to 88 percent.

Timothy L. Burkes (Registered Representative, Pleasanton, California) was fined \$16,200 and suspended from association with any NASD member in any capacity for 180 days. The SEC affirmed the sanctions following appeal of a May 1992 NBCC decision. The sanctions were based on findings that, to reach his target production for 1989, Burkes falsified customer names and account numbers so that funds totaling \$16,500.54 could be transferred from his member firm's account to his commission account. As a result, Burkes received credit for funds to which he was not entitled.

Burkes has appealed this action to the U.S. Court of Appeals for the Ninth Circuit, and a stay of his sanctions was granted.

Antoine Doumad (Registered Representative, Rancho, California) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Doumad caused the issuance of 16 checks totaling \$5,409.57 from 13 customers' accounts and submitted forged documents to his member firm requesting the payment of cash surrender values associated with such customers' life insurance policies (and one customer's payment of accumulated dividends) without the customers' knowledge or consent. Doumad took delivery of nine checks totaling \$2,602.62, used the checks to purchase new life insurance policies, and received \$2,286.69 in commissions based on the purchase of these policies.

In addition, Doumad took delivery of seven other checks totaling \$2,806.95, forged the customers' signatures, deposited the funds in his personal checking account, and converted the proceeds. Doumad also failed to respond to NASD requests for information.

Casey Karen Green (Registered Representative, Huntington Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Green consented to the described sanctions and to the entry of findings that she submitted applications for the purchase of life insurance by four fictitious customers and submitted "Requests for Redemption" forms bearing forged signatures in connection with various insurance policies owned by seven customers. According to the findings, Green used the funds so redeemed to purchase other insurance and securities products without the customers' knowledge or consent in order to generate commissions totaling \$17,155.

Gilbert M. Hair (Registered Representative, Newbury Park, California) and Vladimir Chorny (Registered Representative, Camarillo, California). Hair was fined \$13,250 and Chorny was fined \$18,500. The SEC affirmed the sanctions following appeal of a November 1991 NBCC decision. The sanctions were based on findings that Hair and Chorny participated in private securities transactions without giving prior written notification to their member firm.

La Jolla Securities Corporation (La Jolla, California) and Bruce Alan Biddick (Registered Principal, La Jolla, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$11,475, 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 Biddick, sold shares of a designated security in 18 transactions, in violation of SEC Rule 15c2-6. Specifically, the findings stated that the respondents failed to approve nine persons' accounts before each of the 18 transactions and failed to receive from each person a written agreement setting forth the identity and quantity of the designated security to be purchased.

William Frederick Rembert (Registered Representative, Torrance, California) was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Rembert sub-

mitted to his member firm falsified records relating to the purchase by 55 customers of tax-sheltered annuities. Specifically, the documents reported inflated total annual payments to be made by the customers, resulting in commission overpayments to Rembert totaling \$24,502.01.

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

May Actions

Allison A. Magee (Registered Representative, Scottsdale, Arizona) was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$13,350 in restitution to a public customer or to any other person or entity which has since recompensated the customer.

The sanctions were based on findings that Magee obtained 12 checks totaling \$13,350 payable to a public customer, caused the payee's endorsement to be forged on the checks, and converted the funds to her own use and benefit. In addition, Magee changed the same customer's address on account records to an address where she received mail without the customer's knowledge or authorization. Magee also failed to respond to NASD requests for information.

June Actions

Alliance Securities Corporation (Los Angeles, California) was fined \$5,000, jointly and severally with a registered representative and required jointly and severally to pay restitution to customers totaling \$56,335, plus interest. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital. In addition, the firm effected securities transactions with retail customers in a common stock that included excessive markups above the prevailing market price, in violation of the NASD's Mark-Up Policy and Article III, Sections 1, 4, and 18 of the Association's Rules of Fair Practice.

Scot Barringer (Registered Principal, Aspen, Colorado) 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 60 days. In addition, he was suspended as a general securities principal for an additional 30 days and required to requalify by examination as a general securities principal before acting in such a capacity.

Without admitting or denying the allegations, Barringer consented to the described sanctions, and to the entry of findings that he failed to deposit customer funds into a properly established escrow account in two best efforts, contingent offerings. According to the findings, Barringer caused \$122,289.21 in customer funds received in one of the aforementioned offerings to be disbursed before the stated contingency was met.

The findings also stated that Barringer effected a material change in the same offering wherein he caused \$658,765 received from investors to be used for purposes other than those disclosed in the offering memorandum. Of the funds improperly disbursed, only \$87,966.68 was paid to his member firm.

Rhonda Lee Breard (Registered Representative, Issaquah, Washington) submitted an Offer of Settlement pursuant to which she was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 business days. In addition, she must requalify by examination in any registered capacity that she proposes to function or is currently functioning.

Without admitting or denying the allegations, Breard consented to the described sanctions and to the entry of findings that she exercised discretion in the account of a public customer without obtaining prior written authority from the customer and without written acceptance of such discretionary account from her member firm. The findings also stated that Breard recommended securities transactions to public customers without having reasonable grounds for believing such recommendations were suitable for the customers.

Thomas C. Fead (Registered Representative, Englewood, Colorado) submitted an Offer of Settlement

pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fead consented to the described sanctions and to the entry of findings that he participated in 57 private securities transactions without providing his member firm with prior written notice and without receiving his firm's prior approval to participate in these transactions.

Timothy Mark Haas (Registered Representative, Bozeman, Montana) was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Haas must provide evidence to the NASD that restitution satisfactory to his former member firm has been paid. The sanctions were based on findings that Haas received from public customers checks totaling \$45,169.33 for investment purposes. Haas deposited the checks into his personal bank accounts and failed to remit the funds for their intended purposes or to otherwise return the monies to the customers.

Dan Lawrence Mauss (Registered Principal, Salt Lake City, Utah) was fined \$10,000, barred from association with any NASD member as a general securities principal and in any proprietary or ownership position. The sanctions were based on findings that a member firm, acting through Mauss, engaged in a fraudulent and deceptive course of conduct which involved "parking" securities in customers' accounts to give the appearance that the firm was in compliance with the net capital requirement of SEC Rule 15c3-1.

In addition, the firm, acting through Mauss, conducted a securities business while failing to maintain minimum required net capital, failed to make required deposits into its Special Reserve Account for the Exclusive Benefit of Customers in accordance with the SEC Customer Protection Rule 15c3-3, and filed inaccurate FOCUS Parts I and II reports.

The firm, acting through Mauss, also failed to establish adequate written supervisory procedures required to supervise the types of business in which the firm engaged, and failed to enforce its written supervisory procedures.

Cynthia Renae Mulflur f/k/a Cynthia Renae Meyer (Registered Representative, Portland, Oregon) submitted an Offer of Settlement pursuant to which she 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, Mulflur consented to the described sanctions and to the entry of findings that she prepared and submitted account agreements to her member firm for 18 customers and signed their names to the agreements without their knowledge, authorization, or consent.

Brian John Quinn (Associated Person, Sandy, Utah) was fined \$2,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Quinn submitted to a member firm a Form U-4 containing inaccurate and misleading information.

Gary Lee Robinson (Registered Representative, Denver, Colorado) 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, Robinson consented to the described sanctions and to the entry of findings that he caused customer records for the previously dormant account of a public customer to be changed to reflect his home address as the address of record for the customer and to reflect other erroneous information. Furthermore, the NASD determined that Robinson caused the credit balance of \$2,464.64 to be withdrawn from this account, including a proceeds check for \$2,298.46, which was converted to his own use and benefit.

David Thomas Stover (Registered Representative, Seattle, Washington) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, he must requalify by examination

in any registered capacity and is required to pay \$55,000 in restitution to a public customer.

Without admitting or denying the allegations, Stover consented to the described sanctions and to the entry of findings that on several occasions he made unsuitable recommendations to two public customers. The NASD also found that Stover exercised discretion in one of the aforementioned customer's account without obtaining prior written discretionary trading authority from the customer and without obtaining written acceptance of such account by his member firm.

July Actions

CENPAC Securities Corp. (Phoenix, Arizona) and **Gerald Nelson Bovee (Registered Principal, Phoenix, Arizona)** were fined \$20,000, jointly and severally. In addition, Bovee was suspended from association with any NASD member in any capacity for 10 business days and required to requalify by examination as a financial and operations principal. The sanctions were based on findings that the firm, acting through Bovee, conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS Part IIA reports.

Kenneth R. Clark (Registered Representative, Laramie, Wyoming) was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination in any capacity. The sanctions were based on findings that Clark effected two unauthorized transactions in the joint account of two public customers.

Richard A. Crosby (Registered Representative, Denver, Colorado) 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, Crosby consented to the described sanctions and to the entry of findings that he failed to pay a \$1,450 NASD arbitration award.

Gary L. Cunningham (Registered Representative, Monte Vista, Colorado) was fined \$3,800 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham received from two public customers \$1,000 intended for the purchase of an insurance policy. Cunningham, however, caused \$760 of the funds to be deposited into a bank account over which he exercised control and failed to return these funds to the customers for approximately two months.

First American Biltmore Securities, Inc. (Phoenix, Arizona) and **J. Gordon Nevers (Registered Principal, Phoenix, Arizona)** were fined \$25,000, jointly and severally, and required, jointly and severally, to pay restitution to customers in the amount of \$98,978.28, plus interest at the prime rate plus 3 percent from the date the trades were executed. In addition, Nevers was suspended from association with any NASD member in any capacity for 30 days and required to requalify by examination as a financial and operations principal before acting in that capacity with any NASD member.

The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that the firm, acting through Nevers, conducted a securities business when it failed to maintain its minimum required net capital and effected transactions in, and induced others to effect transactions in, shares of securities at unfair prices with markup/markdowns ranging from 7.69 to 52 percent above or below the prevailing market price of the securities.

Moreover, the firm, acting through Nevers, engaged in, and induced others to engage in, deceptive and fraudulent devices and contrivances in connection with the purchases and sales of the aforementioned securities.

First Inland Securities, Inc. (Spokane, Washington) and **Glen Lamoyne Ottmar (Registered Principal, Bothell, Washington)** were fined \$5,000, jointly and severally, and required to pay \$29,393.70, jointly and severally, in restitution to customers. Ottmar was also required to requalify by examination as a general securities princi-

pal. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that the firm, acting through Ottmar, effected 14 sales of common stock at unfair prices. Specifically, the respondents charged markups ranging from 15 to 57 percent over the prevailing market price, in violation of the NASD's Mark-Up Policy.

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

Hutchison Financial Corporation n/k/a Princeton American Equities Corporation (Phoenix, Arizona) was fined \$25,000, suspended from membership in the NASD in any capacity for six business days, and had its operations restricted. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a February 1992 NBCC decision. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS Part I reports with the NASD.

This action has been appealed to the United States Court of Appeals for the Ninth Circuit, and a stay was granted following the term of the suspension.

The firm's suspension commenced July 12, 1993, and concluded July 19, 1993.

Stuart J. D. Mills (Registered Principal, Englewood, Colorado) and **Vincent J. Albanese (Registered Representative, Commack, New York)**. Mills was fined \$10,000 and suspended from association with any NASD member in any capacity for one year, and Albanese was fined \$11,624. In addition, Mills and Albanese were required to requalify by examination before acting in any capacity with any member firm. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Mills and Albanese either solicited, or otherwise caused customer orders to be received and processed for purchases of securities, at unfair and unreasonable prices with gross commissions ranging from 23.08 to 40 percent of the total price paid by customers. Moreover, the respondents failed to disclose to their customers that these prices were unfair and unreasonable.

Mills has appealed this action to the SEC, and the sanctions imposed against him are not in effect pending consideration of the appeal.

Richard R. Perkins (Registered Representative, Englewood, Colorado) and **Michael D. Pittman (Registered Representative, Aurora, Colorado)**. Perkins was fined \$97,500 and Pittman was fined \$44,500. In addition, Perkins and Pittman were suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of a March 1992 NBCC decision.

The sanctions were based on findings that Perkins and Pittman caused over 250 securities transactions to be effected with retail customers at unfair prices, in violation of the NASD's Mark-Up Policy. In addition, Perkins caused the distribution of sales literature regarding such securities that contained misleading information or failed to contain material information. Specifically, the literature failed to discuss the risks involved, contained promissory statements, and failed to disclose that Perkins' firm was a market maker in the securities. Furthermore, Perkins failed to have this literature approved for use by his member firm before its distribution.

Michael D. Pittman (Registered Principal, Aurora, Colorado) was fined \$33,547 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions on review of a Denver DBCC decision. The sanctions were based on findings that Pittman effected principal sales of securities to public customers at unfair and excessive prices ranging from 6.52 to 58.73 percent above the firm's contemporaneous cost for the securities. Moreover, Pittman knew, or should have known, that the prices being charged to customers were unfair and unreasonable.

Randy Romero (Registered Representative, Englewood, Colorado) was fined \$100,000 and barred from association with any NASD member in any capacity.

In addition, he is required to disgorge \$200,000 in gross commissions and must offer rescission to customers.

The sanctions were based on findings that Romero effected securities transactions through an unregistered broker/dealer and failed to provide written notification of these transactions to his member firm. Furthermore, Romero effected transactions in the securities of a corporation without providing customers involved in these transactions with material information regarding the risks, merits, and nature of these investments, as well as the current financial condition of the corporation.

Securities America, Inc. (Omaha, Nebraska) and Charles Felix Tummino (Registered Representative, Rogue River, Oregon). The firm submitted an Offer of Settlement pursuant to which it was fined \$10,000. Tummino, in a separate decision, was fined \$39,139 and required to requalify by examination before registering with any NASD member in any capacity. The sanctions were based on findings that Tummino distributed to customers and to the public a sales brochure that failed to disclose material facts, made exaggerated, unwarranted or potentially misleading statements or claims, and made promises of specific results. Moreover, Tummino placed advertisements soliciting attendance to seminars he conducted, distributed a seminar invitation letter to the public, and published an advertisement in the newspaper when such material was not approved by a registered principal of his member firm before use.

Without admitting or denying the allegations, Securities America, Inc., consented to the described sanction and to the entry of findings that it failed to establish, maintain, and enforce adequate written supervisory procedures or otherwise failed to adequately supervise the activities of registered representatives of the firm to ensure compliance with applicable NASD rules.

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

May Actions

Jeffrey Dale Givens (Registered Representative, West Des Moines, Iowa) 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 4 District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Givens failed to respond to NASD requests for information concerning his termination from a member firm.

Thomas G. Kibler (Registered Representative, Circle Pines, Minnesota) was fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a registered representative. The SEC affirmed the sanctions following an appeal of a June 1992 NBCC decision. The sanctions were based on findings that Kibler executed transactions involving a common stock in the accounts of three public customers without their authorization.

VSR Financial Services, Inc. (Leawood, Kansas) and Donald J. Beary (Registered Principal, Overland Park, Kansas) submitted an Offer of Settlement pursuant to which they were fined \$14,955, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Beary, failed to record transactions on its books and records or to maintain copies of any documents relating to the transactions in its files. In addition, the NASD found that the firm, acting through Beary, failed to properly supervise another individual.

June Actions

Van Clemens & Company, Inc. (Minneapolis, Minnesota) and Thomas John Vanyo (Registered Principal, Robbinsdale, Minnesota) were fined \$10,400, jointly and severally. However, the fine may be reduced by \$5,400 if paid in restitution to public customers. The NBCC imposed the sanctions on review of a District 4 DBCC decision. The sanctions were based on findings that the firm, acting through Vanyo, charged unfair and excessive commissions in agency transactions ranging from 7 to 9 percent.

July Actions

Douglas Duane Chapman (Registered Representative, Salina, Kansas) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Chapman consented to the described sanctions and to the entry of findings that he instructed public customers who wished to purchase a variable annuity to redeem shares of mutual funds, deposit the proceeds, and then purchase the annuity.

In connection with these transactions, the findings stated that Chapman made a material misstatement or omitted to state a material fact by failing to advise the customers that they could have acquired the variable annuity through a free exchange, thereby avoiding the 8.5 percent sales commission that the customers would have been charged on the anniversary dates of their purchases.

Claude Ray Parrish (Registered Representative, Mexico, Missouri) 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, Parrish consented to the described sanctions and to the entry of findings that he received from an insurance customer \$4,500 to be applied to a life insurance policy premium. The findings also stated that Parrish failed to apply the funds as instructed and, instead, converted the monies to his own use and benefit without the customer's knowledge or consent.

Robert Lloyd Patrick (Registered Representative, Chesterfield, Missouri) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions are based on findings that Patrick failed to respond to NASD requests for information concerning his termination from a member firm.

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

May Actions

Kenneth E. Cooner (Registered Principal, Destin, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for two weeks. Without admitting or denying the allegations, Cooner consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce proper supervisory procedures governing access of unauthorized personnel to the cashiering area at a branch office of his member firm.

Jack W. Pruitte (Registered Representative, Clarksville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pruitte consented to the described sanctions and to the entry of findings that, in an attempt to mislead a public customer into believing that a transaction was effected in his account, Pruitte altered a copy of another customer's confirmation that reflected a sell transaction. Specifically, the findings stated that Pruitte changed the customer's name on the confirmation and sent it to the first customer.

Lenora Warren (Registered Representative, Baton Rouge, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warren consented to the described sanctions and to the entry of findings that she accepted two \$5,000 cashiers' checks from a public customer, endorsed, and deposited the checks into her personal account, thereby converting the funds to her own use without the customer's knowledge or consent.

June Actions

Robert A. Amato (Registered Representative, New Orleans, Louisiana), Charles D. Block, Jr. (Registered Representative, New Orleans, Louisiana), and William C. Boehmer, Jr. (Registered Representative, Metairie, Louisiana). Amato was fined \$20,000, suspended from association with any NASD member in any capacity for four weeks, and required to requalify by examination as a registered representative. Block and Boehmer were each fined \$5,000, suspended from association with any NASD member in any capacity for one week, and required to requalify by examination as a registered representative.

The SEC affirmed the sanctions following appeal of an August 1991 NBCC decision. The sanctions were based on findings that, in violation of the NASD's Mark-Up Policy, the respondents engaged in securities transactions with public customers at prices that reflected unfair markups in excess of 10 percent.

Amato appealed this action to the U.S. Court of Appeals, and the sanctions as to him are not in effect pending consideration of the appeal.

Duane M. Barr (Registered Representative, Broken Arrow, Oklahoma) 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, Barr consented to the described sanction and to the entry of findings that he made misrepresentations to public customers causing them to remit checks totaling \$6,214 for investment and insurance purposes. The findings stated that Barr converted the funds to his own use and benefit by depositing the monies into a checking account he established.

Dante M. Bramblett (Registered Representative, Birmingham, Alabama) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two months and required to requalify by examination as a general securities representative.

Without admitting or denying the allegations, Bramblett consented to the described sanctions and to the entry of findings that he recommended and effected transactions in the accounts of two public customers without having reasonable grounds for believing that such recommendations and transactions were suitable. In addition, the NASD found that Bramblett executed unauthorized transactions in the same accounts.

Willis H. Brewer, Jr. (Registered Principal, Metairie, Louisiana) and Scott R. Gray (Registered Principal, Metairie, Louisiana) were each fined \$5,000, suspended from association with any NASD member in any capacity for one week, and required to requalify by examination as registered representatives. The SEC affirmed the sanctions following appeal of a September 1991 NBCC decision. The sanctions were based on findings that a former member firm, acting through Brewer and Gray, effected, as principal for its own account, over-the-counter sales of a common stock to public customers at unfair prices. The markups in these transactions ranged from 18.7 to 105.2 percent over the prevailing market price, in violation of the NASD's Mark-Up Policy.

James H. Hicks (Registered Representative, Tulsa, Oklahoma) 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, Hicks consented to the described sanctions and to the entry of findings that he recommended and executed purchase transactions in the account of a public customer without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customer based on his financial situation, objectives, and needs.

Frank S. Hiegel (Registered Principal, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any principal capacity, with a right to reapply for a principal license after three years. Without admitting or denying

the allegations, Hiegel consented to the described sanctions and to the entry of findings that he failed to properly supervise the handling of the margin account of a public customer and to properly supervise the activities of employees at his member firm.

Mark T. Kent (Registered Representative, Huntsville, Alabama) 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, Kent consented to the described sanctions and to the entry of findings that he signed customers' names to certain account documents.

James H. O'Bryan, Jr. (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for one week, and ordered to pay \$48,000 in restitution. Without admitting or denying the allegations, O'Bryan consented to the described sanctions and to the entry of findings that he exercised discretion in the account of public customers without obtaining prior written acceptance of the account as discretionary by his member firm. In addition, the NASD found that O'Bryan engaged in a pattern of excessive trading in the same account and that the transactions were not suitable for the customers.

Stephen E. Parker (Registered Principal, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Parker consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to and approval from his member firm.

Reece D. Rogers (Registered Representative, Memphis, Tennessee) was fined \$20,000, suspended from association with any NASD member in any capacity for five years with credit given for four and one-half years that he has not been in the securities industry, and required to requalify by examination in any capacity. The NBCC imposed the sanctions following appeal of a District 5 DBCC decision. The sanctions were based on findings that Rogers exercised discretionary power in public customer accounts without their prior written authorization and prior written acceptance of the accounts as discretionary by his member firm.

Rogers also recommended and engaged in option transactions in public customer accounts without having reasonable grounds for believing that such recommendations were suitable for the customers. In addition, Rogers exercised unauthorized options transactions in public customer accounts and failed to respond to NASD requests for information.

Jim D. Swink, Jr. (Registered Principal, Little Rock, Arkansas) and **Jim D. Swink, Sr. (Associated Person, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which Swink, Jr., was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. Swink, Sr., was fined \$50,000 and barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through Swink, Jr., and Swink, Sr., (the Swinks), opened margin accounts through its clearing firm and executed a series of municipal securities transactions without payment, in violation of the margin account requirements of its clearing firm. Such failure to maintain the required margin balances in the accounts was not detected by the clearing firm, nor was it brought to their attention by the Swinks when they knew, or should have known, it could have caused the clearing firm to violate a comparable rule of the New York Stock Exchange governing the margining of securities.

The NASD also found that the Swinks, acting for their member firm, executed a series of transactions involving municipal securities in which a joint account

naming Swink, Sr., was interposed between public customers of their firm and the best inter-dealer market, to the harm and detriment of the customers. In addition, the findings stated that the Swinks executed transactions involving municipal securities at unfair and unreasonable prices, in violation of requirements of the Municipal Securities Rulemaking Board. The NASD also determined that Swink, Jr., failed to indicate on order tickets that transactions executed for a joint account naming Swink, Sr., had been entered pursuant to discretionary power by Swink, Jr., and failed to evidence the order-entry time on 36 order tickets for joint accounts naming the Swinks.

Furthermore, the findings stated that Swink, Jr., acting for the same firm, failed to supervise certain individuals and to establish, maintain, and enforce a supervisory system reasonably designed to ensure compliance with all applicable securities laws and regulations and NASD rules.

Robert L. Williams (Registered Representative, Jasper, Alabama) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that, based on misrepresentations, he recommended and executed four investment transactions in public customer accounts without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers.

July Actions

Larry E. Brewer (Registered Representative, Germantown, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$13,500 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he recommended and engaged in mutual fund and securities transactions in the account of a public customer without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customer based on the customer's financial situation, investment objectives, and needs. In addition, Brewer exercised discretionary power in the same customer's account without obtaining the customer's prior written authorization or his member firm's prior written acceptance of the account as discretionary.

Keith T. Willett (Registered Representative, Louisville, Kentucky) 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 \$90,000 in restitution to public customers. Without admitting or denying the allegations, Willett consented to the described sanctions and to the entry of findings that he engaged in the sale of unregistered securities, in violation of Section 5 of the Securities Act of 1933.

In addition, the NASD determined that Willett failed to exercise due diligence and examine the operations and assets of an entity before offering and selling the subject investments in the form of shares of collateral to be posted by the entity. The NASD also found that Willett failed to disclose to investors that he had not exercised due diligence and had not verified certain claims made by an individual negotiating a collateralized loan for the entity. Furthermore, the findings stated that Willett engaged in private securities transactions without prior written notice to, and approval from, his member firm.

District 6—Texas

May Actions

Toney L. Reed (Registered Principal, Irving, Texas) was fined \$25,000, suspended from association with any NASD member as a principal for one year, and required to requalify by examination as a principal. In addition, Reed is required to pay \$40,175 in restitution to public customers. The NBCC imposed the sanctions following an appeal of a District 6 DBCC decision. The sanctions

were based on findings that a former member firm, acting through Reed, failed to comply with the NASD's Mark-Up Policy in that it effected corporate securities transactions as principal with retail customers at prices that were not fair and reasonable.

In addition, the firm, acting through Reed, allowed eight individuals to function as representatives of the firm before the effective date of their registration with the NASD, and understated the assessable income on its 1989 Assessment Report. The firm, acting through Reed, also failed to comply with the NASD's Rules of Fair Practice relating to supervision in that a principal had not approved in writing certain correspondence and transactions in private direct participation programs. Furthermore, the firm, acting through Reed, failed to maintain inventory account statements, a principal trade blotter, and principal transaction order tickets.

The firm, acting through Reed, failed to fully perform due diligence in two direct participation programs sold by the firm. Also, the firm, acting through Reed, maintained principal registrations for 12 individuals who were not acting in a principal capacity, and permitted another individual to engage in the securities business of the firm and to receive commissions without being registered in any states.

Trend Securities, Inc. (San Antonio, Texas), Thurman Earl Bachman (Registered Principal, San Antonio, Texas), Lloyd C. Gage (Registered Representative, San Antonio, Texas), Steve Jay Kitchen (Registered Principal, San Antonio, Texas), and Gary Dean Cadena (Associated Person, San Antonio, Texas). The firm was fined \$10,000, expelled from NASD membership, and required to disgorge \$48,462. Bachman and Gage were each suspended from association with any NASD member in any capacity for five years.

Kitchen and Cadena submitted an Offer of Settlement pursuant to which they were suspended from association with any NASD member in any capacity for five years. Without admitting or denying the allegations, Kitchen and Cadena consented to the described sanctions and to the entry of findings that the firm, acting through Bachman, Gage, Kitchen and Cadena, permitted persons associated with the firm to sell units of non-exempt securities when such persons were not qualified or registered with the NASD as representatives.

June Actions

None

July Actions

John Earl Law (Registered Representative, Morgan, Texas) submitted an Offer of Settlement pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$657,886 in restitution to his member firm and public customers. Without admitting or denying the allegations, Law consented to the described sanctions and to the entry of findings that he converted to his own use and benefit customers' funds totaling \$657,886.58 without their knowledge or consent.

Calvin Thomas McKibben (Registered Principal, Dallas, Texas) and Hector Cristobal Carreno (Registered Principal, Dallas, Texas). McKibben was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a principal. Carreno was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity. The sanctions were based on findings that a member firm, acting through McKibben, engaged in securities transactions while failing to maintain its required minimum net capital and failed to maintain accurate books and records.

In addition, the firm, acting through Carreno, fraudulently induced and recommended the purchase of promissory notes to two public customers through the use of false statements while failing to disclose material facts to the customers.

Touchstone Capital Corporation (Dallas, Texas) was fined \$20,000 and required to disgorge \$16,122.63 in commissions paid to unregistered salesmen. The sanctions

were based on findings that the firm permitted five individuals associated with the firm to sell nonexempt securities without proper qualification or registration with the NASD. In addition, the firm violated Section 5 of the Securities Act of 1933 and Rule 506 of Regulation D by selling unregistered, nonexempt securities to public customers who were not eligible to buy those securities.

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

May Actions

Gary Clifford Smith (Registered Principal, Carthage, North Carolina) was fined \$5,000, barred from association with any NASD member in any capacity except Series 6 registration, and required to function only under daily one-to-one supervision. The NBCC imposed the sanctions following an appeal of a District 7 DBCC decision. The sanctions were based on findings that Smith failed to pay a \$71,274.22 arbitration award and \$3,750 in forum fees.

June Actions

Robert Bruce Orkin (Registered Principal, Boca Raton, Florida) was fined \$15,000 and suspended from association with any NASD member in any principal capacity for 90 days. The SEC affirmed the sanctions following appeal of a September 1991 NBCC decision. The sanctions were based on findings that a member firm, acting through Orkin, effected, as principal for its own account, over-the-counter sales of corporate securities to public customers at unfair prices. The markups on these transactions ranged from 16.67 to 100 percent over the prevailing market price, in violation of the NASD's Mark-Up Policy.

Orkin appealed this action to a Court of Appeals, and the sanctions are not in effect pending consideration of the appeal.

July Actions

Atlanta Securities & Investments, Inc. (Atlanta, Georgia) was fined \$70,000, jointly and severally with other individuals and required to pay \$118,300 in restitution, plus interest, to customers. The sanctions were based on findings that the firm conducted a securities business while failing to maintain sufficient net capital and failed to make a record of customer funds received and forwarded. The firm also sold shares of common stocks, as principal, to its public customers at unfair prices with markups exceeding 128 percent.

Furthermore, the firm permitted an individual to function as president and sales representative of the firm without proper registration with the NASD as a general securities principal or registered representative. In addition, the firm failed to file documents with the NASD required by the Interpretation of the Board of Governors concerning Review of Corporate Financing, in connection with public offerings. Also, the firm made false representations concerning offering contingencies, in violation of SEC Rule 10b-9, and failed to establish, maintain, and enforce its written supervisory procedures.

Charles King Baldwin (Registered Representative, Charlotte, North Carolina) was fined \$26,250, barred from association with any NASD member in any capacity, and ordered to pay \$1,250, plus interest, in restitution to a public customer. The sanctions were based on findings that Baldwin received checks from a public customer totaling \$1,250 for the purchase of a security and, instead, converted the funds to his own use and benefit without the knowledge or consent of the customer. In addition, Baldwin failed to respond to an NASD request for information.

Brian J. Bonner (Registered Representative, Coral Springs, Florida) was fined \$10,926.25 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bonner liquidated a mutual fund account for \$2,185.25 which he knew did not belong to him and misappropriated the proceeds to his own use and benefit without the owner's knowledge or authorization.

Don Allen Burk (Registered Principal, Delray Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Burk failed to respond to an NASD request for information concerning customer complaints.

Cyrus B. Follmer, Jr. (Registered Representative, Greenville, North Carolina) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$53,000, plus interest, in restitution to public customers. The sanctions were based on findings that Follmer solicited and accepted from public customers checks totaling \$53,000 for the purchase of securities but, instead, deposited the funds in a bank account of a company he owned, and applied the proceeds to his own use and benefit. In addition, Follmer provided to the same customers false and misleading account statements reflecting investments when no such investments had been made.

Andrew H. Geyer (Registered Representative, Kings Park, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Geyer consented to the described sanctions and to the entry of findings that he effected the purchase of shares of a common stock in the account of a public customer without the knowledge or authorization of the customer.

Stephen F. Hinch (Registered Representative, Charlotte, North Carolina) was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$99,673.13, plus interest, in restitution to his member firm. The sanctions were based on findings that Hinch effected eight unauthorized transactions in the account of a public customer, converted to his own use and benefit funds received from the same customer totaling \$58,672.13 without the customer's knowledge or consent, and forged the customer's endorsement on four checks.

Hinch also opened a joint securities account with a member firm in his name and the name of the aforementioned customer using a post office box he controlled and forged the customer's signature on the customer account agreement.

Furthermore, Hinch caused the accounts of two other public customers to be transferred from his member firm to another member firm by using a post office box he controlled, forged the same customers' signatures on account transfer authorization forms, and effected unauthorized transactions in these accounts. In addition, Hinch wrote several checks totaling \$187,802.15 on their accounts, and attempted to negotiate the checks by forging the customers' signatures. He also converted \$41,000 from one of these customers' accounts.

The NASD found that Hinch opened a joint securities account and maintained an individual securities account at a member firm without notifying the firm in writing that he was associated with another member firm and failed to notify his member firm in writing of the existence of the accounts. Hinch also failed to respond to an NASD request for information.

Ellen Lapin Margaretten (Registered Principal, North Miami, Florida) was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The suspension will continue thereafter until two arbitration awards have been paid and satisfactory proof of such payments are provided to the Atlanta NASD District staff. The sanctions were based on findings that Margaretten failed to pay \$12,000 in NASD arbitration awards.

Charles Frances Molnar (Registered Principal, Lawrenceville, Georgia) submitted an Offer of Settlement pursuant to which he was fined \$3,500 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Molnar consented to the described sanctions and to the entry of findings that, in violation of the NASD's Mark-Up Policy, a member firm, acting through Molnar, effected principal transactions of a

common stock with public customers at prices that were unfair.

Stanley S. Schlorholtz (Registered Representative, Palm Harbor, Florida) was fined \$135,000, barred from association with any NASD member in any capacity, and required to pay \$16,080.17, plus interest, in restitution to a public customer. The sanctions were based on findings that Schlorholtz engaged in private securities transactions with two public customers without providing prior written notification to his member firm. In addition, Schlorholtz solicited and accepted from a public customer four checks totaling \$16,080.17 for investment purposes and, instead, applied the proceeds to his own use and benefit. Schlorholtz also failed to respond to an NASD request for information.

TriPark Securities, Inc. (Chapel Hill, North Carolina) was fined \$15,000 and expelled from NASD membership. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm engaged in activity contrary to representations contained in the private placement memoranda for three offerings of limited partnership interests. Specifically, for two of the offerings, the firm knew that the general partner had failed to purchase units that remained unsold by the termination date of the offerings, and sold these units to investors subsequent to the specified offering termination date. In addition, the firm failed to place investors' funds in escrow accounts for these offerings as required.

TriPark Securities, Inc. (Chapel Hill, North Carolina) and **Jeffrey R. Boak (Registered Principal, Chapel Hill, North Carolina)** were fined \$15,000, jointly and severally. Boak was barred from association with any NASD member in any principal or supervisory capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm, acting through Boak, failed to file its FOCUS Part I reports and its annual audited reports in a timely manner. In addition, the firm, acting through Boak, failed to designate a financial and operations principal, as required by Schedule C of the NASD's By-Laws.

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

May Actions

Charles A. Arrington, Jr. (Registered Representative, Alsip, Illinois) 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, Arrington consented to the described sanctions and to the entry of findings that he signed two public customers' names to disbursement request forms without their knowledge or consent and used the funds totaling \$1,273.65 to pay premiums on unrelated customers' life insurance policies.

John R. Banks (Registered Representative, Warren, Ohio) was fined \$15,000, barred from association with any NASD member in any capacity, and required to pay \$485 in restitution to insurance customers. The sanctions were based on findings that Banks misappropriated insurance customer funds totaling \$485 intended for payment of monthly premiums. In addition, Banks failed to respond to NASD requests for information.

William Corley Hagan (Registered Representative, Des Plaines, Illinois) was fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hagan participated in private securities transactions without notifying his member firm that he intended to engage in such activities. Hagan also failed to respond to NASD requests for information.

Barry A. Loomis (Registered Representative, Ottawa, Illinois) was fined \$114,000 and barred from association with any NASD member in any capacity. The sanctions

were based on findings that Loomis received from insurance customers \$17,502.62 intended for the purchase of insurance. Loomis failed to follow the customers' instructions and, instead, used the funds for other purposes. Loomis also failed to respond to NASD requests for information.

Michael H. Novick (Registered Principal, Boulder, Colorado) was fined \$52,754.27 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following an appeal of a District 8 DBCC decision. The sanctions were based on findings that a former member firm, acting through Novick, effected principal sales of common stocks to public customers at unfair and unreasonable prices. The markups on these transactions ranged from 6 to 97.2 percent over the prevailing market price.

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

James Allen Piersma (Registered Representative, Holland, Michigan) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Piersma engaged in private securities transactions without notifying his member firm in writing that he intended to engage in such activities. In addition, Piersma failed to respond to NASD requests for information.

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

Damon Stephan Ridley (Registered Representative, Indianapolis, Indiana) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ridley failed to respond to NASD requests for information concerning his termination from a member firm.

Albert F. Smith (Registered Representative, Buffalo, New York) was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$633.30 in restitution to his member firm. The sanctions were based on findings that Smith misappropriated insurance customer funds totaling \$633.30 that were designated for insurance premium payments. In addition, Smith failed to respond to NASD requests for information.

Raymond O. Wagoner (Registered Representative, Indianapolis, Indiana) was fined \$176,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wagoner received from 42 insurance customers \$81,154.67 with instructions to use such funds to pay for insurance policies. Wagoner failed to follow the customers' instructions and applied only \$39,078.27 as instructed, and used the remaining \$42,076.40 for purposes other than to benefit the customers.

In addition, Wagoner received from a public customer \$14,448.39 with instructions to purchase mutual funds. Wagoner failed to follow the customer's instructions and used the funds for purposes other than to benefit the customer. Wagoner also failed to respond to NASD requests for information.

June Actions

James E. Enneper (Registered Representative, Green Bay, Wisconsin) submitted an Offer of Settlement pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Enneper consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling \$6,200.34 with instructions to use such funds to purchase hospitalization insurance. The NASD found that Enneper used only \$4,560.34 as instructed and used \$1,640 for other purposes.

The findings also stated that Enneper requested the cash surrender value of another customer's life insurance policy, obtained a \$6,886.64 check made payable to the customer, cashed the check, and forwarded \$4,886.64 to the life insurance company for the customer's insurance policy without the customer's knowledge or consent.

According to the findings, Enneper used \$2,000 of the check proceeds for purposes other than the customer's benefit.

In addition, the NASD determined that Enneper completed and submitted to the NASD a *Uniform Application for Securities Industry Registration (Form U-4)* in which he failed to fully disclose the circumstances surrounding his termination from a member firm and customer complaints received by the member firm. Enneper also failed to respond fully to NASD requests for information.

Michael G. Hayden (Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hayden consented to the described sanctions and to the entry of findings that he received from a public customer a \$5,000 check to purchase mutual fund shares and, instead, deposited the funds in a bank account he owned or controlled.

Eva S. Johnson (Registered Representative, Robbins, Illinois) submitted an Offer of Settlement pursuant to which she was fined \$135,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that, without a public customer's knowledge or consent, Johnson obtained a partial surrender of the customer's insurance annuity totaling \$85,000. Furthermore, the findings stated that Johnson had the customer sign a promissory note with a general partnership that was controlled, in part, by Johnson to use the funds as operating capital for the partnership.

The findings also stated that, in connection with the above, Johnson engaged in private securities transactions while failing to give written notice to her member firm of her intention to engage in such activity. Johnson also failed to respond fully to NASD requests for information.

Reuben Fleece Logan, III (Registered Representative, Lombard, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Logan consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, Logan submitted to his member firm mutual fund and life insurance applications. According to the findings, Logan thereafter submitted to his member firm a request for a policy loan and withdrawals of dividends from insurance policies owned by some of the customers, and used the proceeds to pay for the aforementioned purchases.

July Actions

None

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

May Actions

None

June Actions

Bryn Mawr Investment Group, Inc. (Rosemont, Pennsylvania) and Howard H. Flesher (Registered Principal, Rosemont, Pennsylvania) were fined \$10,000, jointly and severally, and Flesher was required to pass the general securities principal examination. In addition, the firm was fined \$2,000, jointly and severally, with another registered representative. The NBCC imposed the sanctions following appeal of a District 9 District Business Conduct Committee (DBCC) decision.

The sanctions were based on findings that the firm, acting through Flesher, effected transactions in securities

when it failed to maintain its minimum required net capital and filed inaccurate FOCUS Parts I and IIA reports.

In addition, the firm, acting through Flesher, failed to prepare, keep current, and preserve complete and accurate books and records, and sold as principal warrants and bonds to customers at unfair and unreasonable prices. Moreover, the respondents failed to comply with SEC Rule 10b-10(a)(8) by not disclosing markups on the confirmations of eight principal transactions.

Edward M. Stewart (Registered Representative, Birdsboro, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a District 9 DBCC decision. The sanctions were based on findings that Stewart failed to respond to NASD requests for information. Specifically, the NASD requested he make a written report concerning the alleged forgery of policyholder signatures on two checks and a failure to submit a mutual fund application.

Stanley L. Swoyer (Registered Representative, Frederick, Maryland) and Kenneth E. Nightingale (Registered Representative, Towson, Maryland) were each fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity in which they desire to function. The NBCC imposed the sanctions following appeal of a District 9 DBCC decision. The sanctions were based on findings that Swoyer and Nightingale failed to respond to NASD requests for information concerning business records.

July Actions

Donald C. Alaimo (Registered Representative, Mt. Laurel, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alaimo failed to respond to NASD requests for information regarding allegations that he falsified insurance policies and related documents.

Robert J. Berry (Registered Representative, Sewell, New Jersey) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Berry received from a public customer a \$2,000 check intended for the purchase of an individual retirement account. Instead, Berry converted the funds to his own use and benefit. In addition, Berry failed to respond to NASD requests for information.

Dominick & Dominick, Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to supervise two registered representatives properly and that its written supervisory procedures were inaccurate and failed to reasonably provide for appropriate supervision of its branch offices and account representatives. The findings also stated that the firm failed to conduct an annual examination of a branch office and an annual compliance meeting with its registered representatives of that branch.

John M. Hulley (Registered Representative, Grafton, West Virginia) was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hulley forged or caused to be forged a public customer's signature on a life insurance policy application and on a request to withdraw \$604.75 in accumulated dividends from the same customer's existing life insurance policy. He then caused the policy dividends to be applied to the new application without the customer's authorization or consent.

Michael J. Janik (Registered Representative, Cherry Hill, New Jersey) was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. In addition, Janik must requalify by examination as a general securities representative before becoming associated with any member in that capacity. The sanctions were based on findings that Janik executed unauthorized transactions in the joint account of two public customers.

Paul A. Mochinal (Registered Representative, Arlington, 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, Mochinal consented to the described sanctions and to the entry of findings that he submitted a fictitious address change for an insurance customer's life insurance policy to reflect his own address and requested a \$1,048 loan against the policy. According to the findings, Mochinal forged the customer's endorsement on the check and converted its proceeds to his own use and benefit.

The NASD also determined that Mochinal submitted to his member firm a fraudulent insurance form for another insurance customer without the customer's knowledge or consent.

John R. Moyssey (Registered Principal, Great Falls, Virginia) 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 principal, supervisory, or managerial capacity. In addition, Moyssey was prohibited from having a proprietary interest in a member firm except that he may maintain a non-controlling 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. Moreover, Moyssey was suspended from association with any NASD member in any capacity for 10 business days.

Without admitting or denying the allegations, Moyssey consented to the described sanctions and to the entry of findings that he failed to supervise two registered representatives properly and thus failed to detect and prevent violations by these individuals.

Shahrokh Naghdi (Registered Representative, Ellicott City, Maryland) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, on two occasions, Naghdi indicated on his *Uniform Application for Securities Industry Registration or Transfer* (Form U-4) that he was employed with a firm when, in fact, he was never associated with the firm in any capacity. Naghdi also failed to respond to NASD requests for information.

Michael J. Paetzold (Registered Representative, Carlisle, Pennsylvania) was fined \$120,000 and barred from association with any NASD member in any capacity. In addition, he was ordered to pay restitution of the amounts he converted including interest from the dates of conversion. The sanctions were based on findings that Paetzold caused checks totaling \$114,247.14 to be issued against customer securities accounts maintained with his member firm and negotiated such checks by depositing the funds to his personal bank account, without the customers' authorization or consent.

Paetzold also failed to respond to NASD requests for information.

Michael A. Parker (Registered Representative, Baltimore, Maryland) 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, Parker consented to the described sanctions and to the entry of findings that he misrepresented to a public customer that there would not be any sales charges associated with a mutual fund investment when, in fact, there was a 4.5 percent front-end sales charge.

The findings also stated that Parker prepared for the same customer's signature a mutual fund disclosure form indicating that there would neither be a front-end nor deferred sales charge for the fund. Furthermore, the NASD determined that Parker forged the same customer's signature on another disclosure form indicating that there was a front-end sales charge of 4.5 percent totaling \$893.86, and submitted the forged disclosure form to his member firm.

Robert L. Prohaska (Registered Representative, Wheeling, West Virginia) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Prohaska received from an insurance customer \$126.32 in payment

of a life insurance premium and, thereafter, retained the money and failed to remit it to the insurer. In addition, Prohaska received from another insurance customer \$77 in payment of an automobile insurance premium, retained the money, and failed to remit it to the insurer. Moreover, Prohaska provided the customer with a falsified certificate of insurance bearing a nonexistent policy number.

Prohaska also failed to respond to NASD requests for information.

Scott F. Yermish (Registered Representative, Chevy Chase, Maryland) was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Yermish must pay restitution to all aggrieved customers. The sanctions were based on findings that Yermish received from two public customers checks totaling \$41,490.81 intended for the purchase of securities. Yermish, instead, negotiated the checks and converted the funds to his own use and benefit.

In addition, Yermish received from another customer a \$19,123 check intended as payment on an Individual Retirement Account. Yermish applied only \$9,000 of the funds to the account and converted the balance of \$10,123 to his own use and benefit. Yermish also received from the same customer a \$7,000 wire transfer into his account for the intended purpose of purchasing municipal securities. Yermish never purchased any securities and converted the funds to his own use and benefit.

Furthermore, Yermish operated as an off-site representative through an entity and represented to a customer that the entity was a subsidiary of his member firm when, in fact, it was never a subsidiary or affiliate of the member. Yermish also prepared and delivered to another customer at least two account statements indicating that the customer had an account at his member firm; however, no such account had ever been established.

Yermish also failed to respond to NASD requests for information.

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)

May Actions

Dwight Hastings Barlow (Registered Representative, Staten Island, New York) was fined \$75,000 and barred from association with any NASD member in any capacity. The fine may be reduced by any amount of restitution that Barlow pays to a public customer. The sanctions were based on findings that Barlow executed transactions in the account of a public customer without the prior authorization, knowledge, or consent of the customer. To facilitate this activity, Barlow caused the address of the same customer to be changed so that her confirmations were mailed directly to his home address.

Philip Jay Cooper (Registered Representative, Bronx, New York) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cooper failed to pay a \$7,360 NASD arbitration award plus a \$200 filing fee. In addition, Cooper failed to respond to NASD requests for information.

Jack M. Mardack (Registered Representative, Jackson Heights, New York) was fined \$50,000 and barred from association with any NASD member in any capacity. The fine may be reduced by any amount of restitution paid to customers or his member firm. The sanctions were based on findings that Mardack executed transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers. In addition, Mardack failed to respond to NASD requests for information.

Gordon Scott Venters (Registered Representative, Orlando, Florida) was fined \$2,500, suspended from association with any NASD member in any capacity for

one day, and required to requalify by examination as a registered representative. The SEC affirmed the sanctions following an appeal of a February 1992 NBCC decision. The sanctions were based on findings that Venters recommended and caused shares of a common stock to be purchased in the account of a public customer without having reasonable grounds for believing such recommendations were suitable for the customer.

Alexander J. Wu (Registered Representative, New York, New York) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, without obtaining necessary permission to do so, Wu removed from his branch manager's file cabinet prospecting leads that were owned by other brokers at the branch office. In addition, Wu failed to respond to NASD requests for information.

June Actions

Richard S. Chancis (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Furthermore, Chancis will be barred from association with any NASD member in any capacity if he defaults on any payment due to an arbitration claimant under their agreement, with the proviso that he may apply to remove the bar upon showing that he has honored the arbitration award.

Without admitting or denying the allegations, Chancis consented to the described sanctions and to the entry of findings that he failed to pay an \$11,592 NASD arbitration award. In addition, the NASD determined that Chancis failed to respond to NASD requests for information.

Chancis failed to comply with the aforementioned sanctions; therefore, he is barred from association with any NASD member in any capacity.

Ana Beatriz Concepcion (Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Concepcion consented to the described sanctions and to the entry of findings that she requested a \$500 loan against a public customer's insurance policy, forged the customer's signature on the check, and converted the funds to her own use by depositing the check into her personal account without the knowledge or consent of the customer.

Jerome J. Cusimano (Registered Representative, Hempstead, New York) 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 \$9,000 in restitution to his former member firm. Without admitting or denying the allegations, Cusimano consented to the described sanctions and to the entry of findings that he submitted applications for insurance policies with fictitious names for the purpose of obtaining commissions totaling \$9,000.

F.B. Horner & Associates, Inc. (New York, New York) and **Fred B. Horner (Registered Principal, New York, New York)** were fined \$99,201.20, jointly and severally. The SEC affirmed the sanction following appeal of a November 1990 NBCC decision; a challenge to the SEC's decision was denied by the U.S. Court of Appeals for the Second Circuit on May 18, 1993. The sanction was based on findings that the firm, acting through Horner, made two sales of zero coupon bonds to an institutional customer at unfair prices. The excessive markups on the transactions were 8.09 and 6.91 percent above the prevailing market price, in violation of the NASD's Mark-Up Policy.

Stephen F. Hickey (Registered Representative, Powell, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hickey consented to the described sanctions and to the entry of findings that he accepted funds from a public

customer for the purpose of executing securities transactions. However, the findings stated that the transactions were effected at another firm without the knowledge or approval of Hickey's member firm.

Ilmi Mehmedovic (Associated Person, Glendale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mehmedovic consented to the described sanctions and to the entry of findings that he hired an individual to take the Series 7 examination on his behalf.

Paul M. Michalovsky (Registered Representative, New York, New York) was fined \$20,000, suspended from association with any member of the NASD in any capacity for 30 business days, and required to pay \$56,100 in restitution to a public customer, jointly and severally with another individual. The NBCC imposed the sanctions following appeal of a District 10 DBCC decision. The sanctions were based on findings that Michalovsky received a \$56,100 check from a public customer to purchase shares of an unregistered common stock, endorsed the check, deposited the funds into his brokerage account at another firm, but failed to deliver the shares to the customer.

Keith Scott Phillips (Registered Representative, New York, New York) was fined \$100,000 and barred from association with any NASD member in any capacity. Any amount paid in restitution to a public customer will offset against the fine. The sanctions were based on findings that Phillips executed transactions in a public customer's account without the prior authorization, knowledge, or consent of the customer.

Furthermore, Phillips recommended and caused the purchase of securities in another public customer's account without having reasonable grounds for believing that such transactions were suitable given the customer's financial situation and needs. In addition, Phillips falsely represented to this customer that he had purchased a \$25,000 municipal bond for the customer's account. Phillips also failed to respond to NASD requests for information.

Edward R. Yaman (Registered Representative, New York, New York) 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 five business days. Without admitting or denying the allegations, Yaman consented to the described sanctions and to the entry of findings that he failed to pay a \$7,303.54 NASD arbitration award.

Yaman was barred from association with any NASD member in any capacity for failure to pay the award under an agreement with the claimant. However, Yaman may apply to remove the bar upon satisfaction of the award.

July Actions

William Bezemer (Registered Representative, Gilching, Germany) 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 five days. Without admitting or denying the allegations, Bezemer consented to the described sanctions and to the entry of findings that he purchased shares of a common stock in the securities account of a public customer without the customer's knowledge or consent.

Adam Stuart Levine (Registered Representative, New York, New York) was fined \$40,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a October 1992 NBCC decision. The sanctions were based on findings that Levine effected seven unauthorized transactions in public customer accounts. In addition, without the knowledge or consent of two public customers, Levine transferred their accounts from one member firm to another.

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)

May Actions

Cambridge-Newport Company, Inc. (Springfield, Massachusetts) and **Eric J. Youngquist (Registered Principal, Windsor, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were each fined \$20,000. In addition, the firm was prohibited from self clearing mutual fund wire-order transactions, and Youngquist was barred from association with any NASD member in any managerial, supervisory, or principal capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Youngquist, engaged in a securities business while failing to maintain its required minimum net capital. The NASD also found that the firm, acting through Youngquist, failed to prepare and maintain its books and records and filed false and misleading FOCUS reports with the NASD. In addition, the NASD determined that the firm, acting through Youngquist, failed to comply with Securities and Exchange Commission (SEC) Rule 15c3-3 by improperly withdrawing funds from the firm's Special Reserve Account for the Exclusive Benefit of Customers and depositing the funds into other accounts of the firm and its parent company.

James Eldridge Cartwright (Registered Principal, West Hempstead, New York) was fined \$20,000, barred from association with any NASD member as a general securities principal, and required to requalify by examination in any capacity that he chooses to function.

The sanctions were based on findings that a former member firm, acting through Cartwright, failed to employ a registered financial and operations principal as required by a previous disciplinary action. The firm, acting through Cartwright, also effected securities transactions without maintaining its required minimum net capital and failed to disclose certain loans on its general ledger.

In a separate action, Cartwright was fined \$20,000, required to demonstrate payment of an arbitration award, and barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions in the latter case for Cartwright's failure to pay an arbitration award.

June Actions

Bison Securities, Inc. (Amherst, New York) and **Michael Tripi (Registered Principal, Tonawanda, New York)** were fined \$90,000, jointly and severally, and the firm was suspended from NASD membership for six months. In addition, Tripi was suspended from association with any NASD member in any capacity for six months and required to requalify by examination as a principal. The SEC affirmed the sanctions following appeal of a November 1991 NBCC decision.

The sanctions were based on findings that the firm, acting through Tripi, sold common stocks as principal to retail customers at unfair and unreasonable prices. The markups on these transactions ranged from 60 to 100 percent above the prevailing market price of the securities, in violation of the NASD's Mark-Up Policy.

The firm and Tripi also executed transactions with customers in which the offsetting side of the trade was the firm's trading account. Bison and Tripi then sent to customers confirmations that indicated the transactions had been executed on a dual-agency basis when they actually were executed on a principal basis. Furthermore, the firm, acting through Tripi, failed to prepare and maintain accurate books and records and failed to file proper FOCUS Part IIA reports with the NASD.

July Actions

None

Market Surveillance Committee

May Actions

None

June Actions

Michael T. Kear (Registered Representative, Somerville, New Jersey) 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, Kear consented to the described sanctions and to the entry of findings that, in a private placement offering, he failed to make certain disclosures and made numerous material misrepresentations to investors and officers of the issuer. In addition, the findings stated that Kear misappropriated customer funds to his own use, and engaged in private securities transactions without notifying his member firm.

July Actions

Harold B. Hayes (Registered Representative, Pleasant Hill, California) was fined \$300,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that Hayes entered into a payment arrangement with the issuer of common stock whereby he purchased the stock offering with the proceeds from subsequent sales, in violation of SEC Rule 10b-5. Hayes then effected a series of transactions in the common stock that created actual and apparent trading activity for the purpose of inducing the purchase or sale of the stock by others. However, Hayes failed to disclose to his customers the special payment arrangement, the fact that he was paying for the stock with the proceeds of its sales at higher prices to the customers, or that his self-interest could influence recommendations to his customers. As a result of this fraudulent activity, Hayes realized profits of \$277,000.

As a creditor and a customer, Hayes arranged for the extension of credit to himself in his payment arrangement with the issuer of the common stock in violation of Regulation T, and, as a borrower who caused an extension of credit, violated Regulation T, thereby violating Regulation X of the Federal Reserve Board. In furtherance of the manipulative scheme, Hayes solicited customers and recommended purchases of the aforementioned stock by making misrepresentations and omissions of material facts. In addition, he knowingly, or with reckless disregard, executed transactions in a registered representative's account without using reasonable diligence to determine that the execution of the transactions would not adversely affect the interests of the representative's member firm.

Furthermore, in his plan to manipulate the stock, Hayes was an undisclosed underwriter in the securities in that he purchased the stock from the issuer, and offered and sold the stock for the issuer, in its distribution.

J. W. Gant & Associates, Inc. (Englewood, Colorado), Charles F. Kirby (Registered Representative, Littleton, Colorado), and James Patrick Driver (Registered Principal, Englewood, Colorado). The firm was fined \$125,000, jointly and severally with one individual, fined another \$125,000, jointly and severally with another individual, and fined \$62,500, jointly and severally with a third individual. The firm was also required to submit satisfactory proof of payment of \$687,500 in restitution, jointly and severally with an individual, to customers. Kirby was fined \$5,000, jointly and severally, and suspended from association with any NASD member in any capacity for five business days. James Driver submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity.

The sanctions were based on findings that the firm, acting through Kirby and others, dominated and controlled the market in a stock such that there was no independent, competitive market in the security in that they effected transactions in, and induced others to effect

transactions in, the stock at unfair and unreasonable prices with markups ranging from 5.14 to 83.77 percent over the prevailing market price for the securities. Furthermore, the firm, Kirby, and others failed to disclose to their customers that the prices at which they were selling the stock were not fair or reasonable.

In addition, the firm engaged in excessive markups involving two other stocks, in violation of the NASD's Mark-Up Policy, without disclosing these markups to its customers. The markups on these transactions ranged from 5.74 to 77.33 percent over the prevailing market price.

Moreover, J. W. Gant failed to establish and maintain a system to supervise the activities of its registered representatives to assure compliance with respect to markups. James Driver was responsible for the firm's compliance; however, he failed to enforce its supervisory procedures concerning excessive markups.

Driver's suspension commenced July 26, 1993, and concluded August 24, 1993.

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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 Jean M. Robinson, Editor, *NASD Regulatory and Compliance Alert*, 1735 K Street, N.W., Washington, D.C. 20006-1500, (202) 728-8945.

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