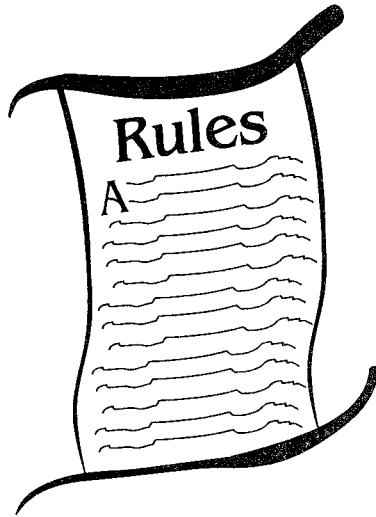


ALERT

National Association of Securities Dealers, Inc.

Volume 9, Number 3 October 1995



NASD Board Sets Rules For Broker/Dealer Conduct On Financial Institution Premises

On September 18, the NASD® Board of Governors approved rules governing members that conduct business on financial institution premises and authorized filing for approval of the rules with the Securities and Exchange Commission (SEC).

The rules attempt to reduce investor confu-

sion involving purchase of uninsured securities products and will require that a broker/dealer operating on financial institution premises take actions regarding its physical location at the financial institution, customer disclosure procedures, and promotional literature to clearly distinguish

(Continued on page 3)

Inadequate Supervisory Procedures Can Generate Disciplinary Actions

A cornerstone of securities industry self-regulation focuses on members establishing and implementing supervisory procedures and systems designed to achieve compliance with the NASD Rules of Fair Practice and federal securities laws. In order to achieve this goal, effective member supervisory procedures and systems are critical, particularly in light of rapid technological developments, frequent product advancements, and diversification of member business lines.

Consequently, it is important that members consider the adequacy, reasonableness, and scope of their supervisory procedures.

When reviewing any existing supervisory procedures, and in determining the need for new or enhanced supervisory initiatives, members are reminded of their affirmative obligations and responsibilities to comply fully with the supervision principles in Article III, Section 27 of the Rules of Fair Practice. Among other things, Section 27(a) states that "each member shall establish and maintain a system to supervise the activities

of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the rules of this Association. Final responsibility for proper supervision shall rest with the members." Importantly, adequate supervisory systems include the design and implementation of effective written supervisory procedures.

As a distinct part of the Rules of Fair Practice, Section 27 may be violated by a firm, an individual, or both, without the occurrence of separate underlying violations. As a result, failure to reasonably follow Section 27 provisions could subject members and associated persons to disciplinary action.

If you have questions regarding Article III, Section 27, or supervision generally, direct them to your local NASD District Office. □

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Rule Interpretations

New Customer Complaint Rules Get SEC Nod

On September 8, the SEC approved a new NASD rule under Article III, Section 50 of the Rules of Fair Practice that requires members to report to the NASD the occurrence of 10 specified events, as well as quarterly summary statistics concerning customer complaints.

The new rule, effective October 1, provides important new regulatory information to assist the NASD to promptly identify problem members, branch offices, and registered representatives in order to more aggressively investigate sales-practice violations. (Details are in *Special Notice to Members 95-81*, September 26, 1995.) The rule eliminates regulatory duplication by exempting members currently subject to similar reporting requirements of another self-regulatory organization.

As part of its increased regulatory role

in this arena in recent years, the NASD took these actions to enhance existing initiatives that:

- emphasize improvement in member-firm hiring and termination practices;
- commit additional resources to sales-practice cases;
- increase scrutiny of member supervisory systems, practices, and procedures; and
- increase sanctions for sales-practice violations.

New Customer Complaint Rule

To further enhance its efforts, the NASD adopted, and the SEC approved, a new customer complaint rule that will strengthen significantly NASD regulatory and surveillance efforts by requiring member firms to report the occurrence

of specific events and summary statistics regarding customer complaints.

Electronic filings of specified events that occur beginning October 1, or later, must be reported within 10 business days after a member knows of, or should have known of, the existence of the event. The first electronic submission of quarterly statistical data is due January 15, 1996.

Questions about this subject may be directed to Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911; David A. Spotts, Senior Attorney, at (202) 728-8014; Craig Landauer, Associate General Counsel, at (202) 728-8291; or to members' NASD District Offices. Questions regarding system implementation should be directed to Regulatory Systems, at (800) 321-6273, or (301) 208-2818. □

(*Broker/Dealers, continued from page 1*) broker/dealer-provided services from the financial institution's banking functions. After receiving the NASD rule filing, the SEC will publish the rules in the *Federal Register*, indicating a time period when members and others may submit comments. The new rules will not become final until approved by the SEC.

In conjunction with its approval of an SEC rule filing, the Board referred the risk disclosure and customer solicitation provisions of the bank broker/dealer proposal to appropriate NASD committees to determine if broader rules should be adopted to govern all members that sell FDIC-insured and uninsured securities products. Finally, the Board recommended that the referral-fee provisions of the proposal be reviewed by appropriate NASD committees to determine whether to adopt a referral fee rule applicable to all NASD members.

Investor Protection Principles

The proposed bank broker/dealer rules adopt many of the investor protection principles in the SEC staff no-action letter to Chubb Securities Corporation (the Chubb Letter) which established SEC policy regarding broker/dealers that operate under third-party networking arrangements. To be distinguished from the Chubb Letter, however, the NASD rules uniformly apply to bank-affiliated broker/dealers and broker/dealers engaged in networking arrangements. In addition, the NASD rules complement the *Interagency Statement on Retail Sales of Non-deposit Investment Products* (*Interagency Statement*) issued by the four banking regulators.

The bank broker/dealer proposal originally was published for member comment in *Notice to Members 94-94* (December 1994). The NASD received 284 comment letters in response to the proposal, reflecting a broad cross-section of views. The NASD Bank Broker/Dealer Committee analyzed these comments and recommended to

the Board specific amendments in response to concerns regarding regulatory consistency, inappropriate regulatory discrimination, and unnecessary regulatory duplication, thereby striking an appropriate balance with NASD investor protection obligations. The Board approved the recommendations.

Brokerage Affiliate Agreements

The Board approved rules requiring that a member operating on the premises of a financial institution enter into a written Brokerage Affiliate and Networking Agreement with the financial institution describing the parties' responsibilities and the compensation arrangements.

The revised agreement requires the NASD member to ensure that the agreement stipulates that:

- member supervisory personnel, SEC representatives, and the NASD will be permitted access to the financial institution's premises where the member conducts broker/dealer services in order to inspect the books and records and other relevant information maintained by the member regarding broker/dealer services;
- unregistered financial institution employees will not receive any cash or non-cash compensation that is conditioned on whether a referral results in a transaction; and
- the member will notify the financial institution if an associated person of the member employed by the financial institution is terminated for cause by the member.

The revised proposal also requires a member operating on a financial institution's premises to provide risk disclosures regarding securities products when an account is opened. The proposed risk disclosures are identical to those in the *Interagency Statement*.

Specifically, the NASD member must disclose that securities products are:

- not insured by the Federal Deposit Insurance Corporation;
- not deposits or obligations of the financial institutions; and
- subject to investment risk, including possible loss of principal invested.

Separate Physical Locations

To minimize customer confusion, the proposed rules require that wherever possible, the member's broker/dealer services shall be conducted in a physical location distinct from the retail deposit-taking area of the financial institution. This aspect of the proposal recognizes, as does the *Interagency Statement*, that physical constraints in some instances may prevent the broker/dealer from occupying a separate area. In all settings, the revised rules require the member to distinguish the broker/dealer services from the financial institution's retail deposit-taking activities.

The revised rules permit the member to use confidential financial information provided by a financial institution to solicit customers for its broker/dealer services, only with the customer's prior written consent. Finally, regarding customer communications, the revised rules permit the use of joint account statements of the member and the financial institution. However, the NASD member must clearly distinguish its uninsured securities products from FDIC-insured products or accounts of the financial institution.

For more information about this subject, contact R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8525; or Daniel M. Sibears and Sarrita Cypress, Regulatory Policy, at (202) 728-6911, or (202) 728-8203. □

Broad Confidentiality Clauses In Settlement Agreements Often Violate NASD Rules

Despite NASD warnings to the contrary, some members continue to use broad confidentiality clauses in settlement agreements with customers that are inconsistent with just and equitable principles of trade, and thus violate Article III, Section 1 of the NASD Rules of Fair Practice.

Members have been cautioned about using prohibitively broad non-disclosure clauses in *Notice to Members 86-36* (May 14, 1986) and in *Regulatory & Compliance Alert*, June 1994, page 14, and July 1995, page 10.

Recent NASD examinations and a special survey of members' settlement agreements with customers indicate frequent use by member firms of inappropriate confidentiality clauses that could impede NASD investigations.

The NASD recognizes that firms use settlement agreements as a normal part of resolving disputes with customers. However, many firms use agreements that contain confidentiality clauses that are so broad that they preclude the customer from disclosing the settlement terms (and the underlying facts of the

dispute) to anyone, including the NASD. In this regard, whenever settlement agreements contain clauses that refer to confidentiality or non-disclosure, the clauses should clearly indicate that the customer is not prohibited, inhibited, or discouraged in any way from responding to any inquiry from a securities regulator or self-regulator, such as the NASD, about the settlement or its underlying facts and circumstances.

Members should promptly review their settlement agreements and change all confidentiality clauses that impact a customer's ability to respond to regulatory inquiries to ensure compliance with Article III, Section 1 of the NASD Rules of Fair Practice.

Continued use of agreements with violative confidentiality clauses likely will result in NASD disciplinary proceedings, especially in view of prior warnings to members regarding non-compliance in this area.

As an example, members may consider using the following suggested provisions to correct existing settlement

agreements, or to include in future settlement agreements:

"You are hereby notified that the Settlement Agreement you previously executed with this firm should not be construed to preclude you from responding to any inquiry about the settlement or its underlying facts and circumstances by the Securities and Exchange Commission (SEC), the National Association of Securities Dealers, Inc. (NASD), or any other self-regulatory organization," or

"Any non-disclosure provision in this agreement does not preclude you from responding to any inquiry about this settlement or its underlying facts and circumstances by the Securities and Exchange Commission (SEC), the National Association of Securities Dealers, Inc. (NASD) or any other self-regulatory organization."

If you have questions about this subject, call your local District Office, or William R. Schief, NASD Enforcement, at (301) 208-2858. □

NASD Alerts Members About SEC Rule 17a-23

Effective June 1, 1995, the SEC implemented Rule 17a-23 and associated Form 17A-23 regarding broker/dealer-operated automated trading systems. A broker/dealer trading system (BDTS) is any facility that provides a fully or partially automated mechanism to both:

- collect, receive, disseminate, or display system orders; and
- match, cross, or execute system orders, or otherwise facilitate agreement to the basic terms of a purchase

or sale of a security between system participants, or between a system participant and the system sponsor, through use of the system or through the system sponsor. Under the Rule, a system order is any order or other communication or indication submitted by any system participant for entry into a trading system announcing an interest in purchasing or selling a security.

In *Notice to Members 95-24* (April 1995), the NASD introduced to mem-

bers the definitions and requirements of Rule 17a-23. Included in the Notice were relevant sections of the *Federal Register* that reflect adoption of the Rule by the SEC, including a copy of Form 17A-23.

Members should re-read the Notice and the associated *Federal Register* information to ensure that they are complying with the Rule. **If your firm uses a BDTS as so defined, then Part I, Form 17A-23, should be filed immediately with the SEC and the appropri-**

ate self-regulatory organization.

For filings submitted to the NASD, send Part I of the Form (and Part III if applicable) to the Market Surveillance Depart-

ment, 9513 Key West Avenue, Rockville, MD 20850-3389. (Part II for the quarter ending September 30, 1995, must be filed with the SEC by October 30.)

Questions about this subject may be directed to James C. Dolan, (301) 590-6460, or James J. Bohlin, (301) 590-6789, NASD Market Surveillance. □

Members Must Report Municipal Securities Activity With Issuers Under MSRB Rule G-37

Members are urged to review their requirements for filing reports under Municipal Securities Rulemaking Board (MSRB) Rule G-37. The Rule requires broker/dealers to disclose to the MSRB on Form G-37 information about political contributions, including the issuers with which the broker/dealer engaged in municipal securities business during the reporting period.

The Rule prohibits municipal securities broker/dealers from engaging in municipal securities business with an issuer within two years after proscribed contributions made by the broker/dealer; any municipal finance professional (MFP) associated with the broker/dealer; or any political action committee (PAC) controlled by the broker/dealer or any such associated municipal finance professional, to an official of the issuer, who can, directly or indirectly, influence awarding municipal securities business.

Broker/dealers must file Form G-37 with the MSRB under either of the following circumstances:

- when the broker/dealer or any MFP or PAC made contributions during the reporting period; or
- when the broker/dealer engaged in municipal securities business during the reporting period. (**Municipal securities business** defined in Rule G-37 means negotiated underwriting, if the dealer was a manager or syndicate member; private placement; financial adviser or consultant to an issuer on a negotiated bid basis; and remarketing agent on a negotiated bid basis.)

Additionally, if the broker/dealer has engaged in **municipal securities business**, it must also report the name, company, role, and compensation

arrangement of any person employed by the broker/dealer to obtain or retain **municipal securities business** from the issuers.

Reports must be submitted to the MSRB quarterly; the form must be signed by an officer of the broker/dealer and two copies filed with the MSRB. An original signature must appear on one copy. Forms should be submitted within 30 calendar days after the end of each calendar quarter, and sent by certified or registered mail, or another prompt method that provides the broker/dealer with proof of mailing. Failure to file Form G-37 could result in disciplinary action.

Questions about this subject may be directed to Walter J. Robertson, Director, NASD Compliance, at (202) 728-8236. □

NASD Files Rule Proposal With SEC Extending Suitability Obligations To Protect Institutions

The NASD Board of Governors approved a new interpretation to Article III, Section 2 of the NASD Rules of Fair Practice that would guide members in fulfilling their suitability obligations when making recommendations to institutional customers in all equity and debt transactions, except municipals. The new interpretation is pending approval by the SEC.

“Our rules require members to have a reasonable basis to believe that a recom-

mendation is suitable for the customer to whom it is made. The proposed guidelines clarify the customer-specific suitability obligations of brokers selling government and other securities to municipalities, retirement funds, and other institutional investors,” said John Pinto, Executive Vice President, Regulation.

The Board-approved proposal furnishes guidelines for members to determine whether they have fulfilled suitability

obligations to institutional customers regarding transactions in equity or debt securities. NASD suitability rules require members to have reasonable grounds for believing that a recommendation is suitable for each customer based on the customer’s other security holdings, financial situation, and needs. The proposal does not, nor is it intended to create, a safe harbor from suitability obligations. The new interpretation states that the two most important considerations in determining the scope of a

member's suitability obligations in making recommendations to an institutional customer are the customer's capability to assess investment risk independently and how much the customer intends to exercise independent judgment in evaluating a member's recommendation.

The proposal provides several considerations to assist members in determining a customer's capability and resources to make informed, independent investment decisions. These factors suggest that the member consider:

- whether the customer has the use of one or more consultants, investment advisers, or bank trust departments;
- the general level of the institutional customer's experience in financial markets and specific background with the type of securities instruments under consideration; and

- the customer's ability to independently evaluate how market developments would affect the security and the complexity of the security or securities involved.

A determination that the customer is making independent investment decisions depends on the relationship between the member and the customer. These considerations include:

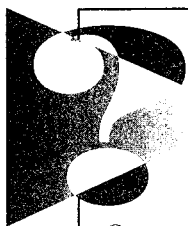
- any written or oral understanding that exists between the member and the customer about the nature of the relationship between them and the services to be rendered by the member;
- the presence or absence of a pattern of acceptance of the member's recommendations;
- the customer's use of ideas, suggestions, market views, and information, received from other members

or market professionals, particularly those relating to the same type of securities; and

- the extent to which the customer provides the member with current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information about its portfolio or investment objectives.

Additionally, Pinto said, "While this new interpretation is potentially applicable to any institutional customer, the guidance contained in it is more appropriately applied to institutional customers with at least \$10 million invested in securities in its portfolio and/or under management." For more information on the suitability proposal, see *Notice to Members 95-21* (April 1995) or call Walter J. Robertson, Director, NASD Compliance, at (202) 728-8236. □

Advertising



"ASK THE ANALYST"

"Ask The Analyst" provides member firms a forum to pose questions to the NASD Advertising/Investment Companies 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 contacting you directly. If you have any suggestions or comments, please do not hesitate to contact us. We look forward to hearing from you.

Q. Where does recruiting material fit into the Rules?

A. The NASD views recruiting material as a form of communication with the public, which is subject to the rules of fair practice. Recruiting material must not contain exaggerated or unwarranted claims or statements about the opportunities in the securities business, and should not refer to specific earnings figures or ranges that are not reasonable. Recruiting material also must fairly describe the position being offered. (See Article III, Section 35(d)(1) and (d)(2)(H) of the Rules of Fair Practice).

If a member firm is subject to one of the

pre-use filing requirements, or a spot check, as described in Article III, Section 35(c), its recruiting advertisements would have to be filed with the NASD.

Q. When a registered representative appears on a radio or television program to answer possibly unrehearsed questions (for example, during an audience call-in program), how does a firm ensure that the standards of the Rules of Fair Practice will be followed regarding the statements of the representative?

A. The NASD applies the standards for communications with the public to broadcasts as well as to other public

appearances or speaking activities. Member firms also have responsibility to properly supervise their representatives' securities-related activities. For firms that permit these public broadcasts, the NASD recommends establishing clear procedures for compliance review of the broadcasts by a registered principal. In addition, a firm must provide clear guidance to representatives regarding what may or may not be said, program formats, and the types of guests who may be invited.

Truly extemporaneous communications by radio or television are not subject to the filing requirements of Article III, Section 35(c) of the NASD Rules of Fair

Practice. However, scripted presentations would be considered advertisements that are subject to the filing requirements of Article III, Section 35(c).

Q. When can registered representatives use sales material that has already been reviewed and found consistent by the NASD for another NASD member firm?

A. A registered representative may use the material only after it has been approved by a registered principal of the firm. Of course, the representative's firm need not re-file with the NASD material previously found consistent by the NASD.

Q. What standards apply to the use of titles on business cards?

A. Degrees and/or designations earned by the individual may be used on business cards. For example, degrees and/or designations such as MBA, CFA, CPA, etc., are acceptable, provided they are not used to misrepresent the qualifications of the individual. Article III, Section 35(f)(2)(E) of the Rules of Fair

Practice states that communications that refer to individuals may not include, with respect to such individuals, references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.

Q. What factors should member firms use in determining whether the investment company Ranking Guidelines apply to information in advertising and sales literature?

A. For purposes of the Ranking Guidelines, an investment company ranking classifies or ranks investment companies based on their relative performance. To determine whether the Ranking Guidelines apply to a communication, member firms should consider the following criteria: Is the investment company being evaluated within a group of investment companies? Is the investment company's position within the group based on its performance? If the group of investment companies is listed, is the position of an investment company—high or low—related to its perfor-

mance results? Does the presentation use language that would suggest a ranking (e.g., references to numerical grades within the group or hyperbole such as "top performer" or "the best performers")? Although this discussion does not describe all the factors that can determine whether the Ranking Guidelines apply to investment company sales material, these are some of the factors considered by the NASD in evaluating the issue.

Q. When a member wishes to use sales literature on investment topics written and produced by a non-member publishing firm, is the publishing firm permitted to file the material with the NASD Advertising Regulation Department?

A. The Advertising Regulation Department does not generally correspond with non-member publishing firms because the NASD has no jurisdiction over their activities. The filing requirements and recordkeeping rules apply directly to NASD member firms. □

SEC Approves Changes To Requirements For Member Firm Advertising Or Sales Literature

Effective August 9, 1995, only registered principals may give internal approval to advertising or sales literature used by NASD member firms. Previously, a registered principal could delegate authority to a designee for internal approval of the firm's communications with the public. The SEC authorized this change as part of a package of amendments to the NASD Communications with the Public rules in Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules.

A further amendment requires that the registered principal approve any material **prior** to filing it with the NASD Advertising Regulation Department.

Member firms bear primary responsibility for the compliance review of their communications. By requiring internal approval of material prior to its submission, the NASD hopes to assure a higher level of compliance, particularly for those items used before they are submitted. The rule change should also result in fewer NASD requests for members to resubmit material because of extensive problems in the original submission.

Covers Telemarketing Scripts

The amendments add the term "electronic messages" to the definitions of advertising and sales literature in Article III, Section 35(a) of the Rules of Fair Practice and Section 8(a) of the Government Securities Rules.

Historically, the NASD has applied the same content standards to messages sent by computer as to any other communication with the public. However, some member firms have questioned whether the rules covered electronic communications. The inclusion of specific references to "electronic messages" in the definitions of both advertising and sales literature will help alleviate member confusion and assure consistent application of the rules.

As used in the definition of advertising, the term "electronic messages" means communications available to any and all subscribers to a computer network, including items displayed on network bulletin boards. Of course, the NASD

would not consider messages placed by a member of the public on a bulletin board sponsored by an NASD member firm as a communication by the member firm.

The definition of sales literature now includes electronic messages such as communications sent directly to a specific group of individuals via a computer network. The expanded definition of sales literature does not include a personalized communication sent to one particular individual via electronic mail. Such messages are treated as correspondence subject to review pursuant to the member firm's internal supervisory procedures.

The expanded definition of sales literature also excludes interactive electronic communications between a broker and a client or prospect, either through a direct link, or a so-called "chat room." These interactive electronic communications are not considered correspondence. However, all communications, whether oral, written, or electronic, are subject to the anti-fraud provisions of the federal securities laws, SEC rules, and the NASD rules.

The amendments also add telemarketing scripts to the definition of sales literature in both Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules.

Registered representatives may read these scripts to prospective clients over the telephone or a telemarketing service may deliver the script to prospects electronically. Telemarketing scripts differ from typical prospecting calls because the user will generally present the script without variation. The NASD views telemarketing scripts as comparable to a form letter delivered orally. The addition of the term "telemarketing scripts" to the definitions of sales literature should help members apply the content standards of the rules to these communications.

Disclosure Of Use

Members must now disclose the date an item was first used or is intended to be used when sending it to the Advertising Regulation Department for review. This new standard applies only to items required to be filed by Article III, Section 35(c) of the Rules of Fair Practice and Section 8(c) of the Government Securities Rules. Member firms submit material to the NASD in various stages of development, from draft copy through final printed form, making it difficult for the staff to determine conclusively whether the filing requirements are being met. By requiring firms to provide the date of first use (or intended use) upon submission, the NASD can more accurately determine compliance with the filing requirements. In addition, the NASD will be able to

provide comments consistent with the production state of the particular item of advertising or sales literature.

The NASD is also deleting an obsolete provision of the filing requirements dating from their initial adoption. This provision assured compliance with the "new member" pre-filing requirement when the rule first went into effect.

Recommendations

Previously, literal wording of the rules required that any communication containing a recommendation disclose the price of the recommended security. Historically, except in cases where it would be misleading, the NASD has permitted members to omit this disclosure in items that recommended securities other than corporate equities. The amendments conform the rule to this practice: the requirement to disclose price now will apply only to recommendations of corporate equities. However, the general disclosure requirements of Section 35 and Section 8 would require disclosure of the price of a security if the omission of such information would make the communication misleading.

The rule amendments appear in *Notice to Members 95-74* (September 1995). Please contact the Advertising Regulation Department at (202) 728-8330 with questions about these rule changes. □

Regulation

NASD Scrutinizes Electronic Communications Sent To Public Via Network Bulletin Boards

Increased use of the Internet and electronic bulletin boards by registered representatives raises a number of customer protection issues that concern the NASD and federal and state securities regulators. In view of the importance of these investor protection issues, the NASD and the North American Securities Administrators Association (NASAA)

formed a joint committee, which includes participation by SEC representatives.

The joint committee is considering whether current regulatory rules and initiatives are adequate in light of rapidly changing technologies that impact securities sales practices, as well as new

problems arising from the use of electronic communications in securities promotion.

Another aspect of this joint project is an NASD and NASAA review of the types of business that registered representatives conduct using electronic systems such as Prodigy, America Online,

CompuServe, and the Internet. This effort complements the NASD's surveillance of electronic bulletin board systems and the Internet for violative activity, including a review of solicitations, offers, and sales of securities. Members are reminded that their internal controls and supervisory procedures should be designed to adequately ensure that registered representatives do not misuse electronic communication systems or engage in any misconduct while "on line."

In a related event, the NASD recently updated its rules by broadening the definitions of "advertisement" and "sales literature" to include electronic communications. On August 9, the SEC approved NASD proposed amendments to Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules. The revised rules now state that an advertisement includes materials published in an electronic medium and that sales literature encompasses elec-

tronic communications distributed or made generally available to the public. (See article on electronic message advertising elsewhere in this issue of *Regulatory & Compliance Alert*.)

In the past, the NASD applied its standards for communication with the public to electronic messages sent via computer. These new definitions now make it explicit that the rules apply to all communications by members that are network subscribers. □

Compliance Questions & Answers

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

Q. When a broker/dealer enters into a reverse repurchase agreement transaction for its own account, is the contract value permitted to be treated as an allowable asset for net capital purposes?

A. The contract value of the reverse repurchase agreement transaction is permitted to be treated as an allowable asset for net capital purposes when the securities subject to the agreement are in the possession or control of the broker/dealer and outside the control of the counterparty. When the securities are held by the counterparty in a Special Reserve Bank Account to satisfy a reserve requirement, the reverse repurchase contract is also permitted to be treated as an allowable asset by the broker/dealer.

Q. When a broker/dealer enters into a matched repurchase agreement transaction for its own account, is the contract value of the reverse repurchase transaction permitted to be treated as an allowable asset for net capital purposes?

A. Yes. That is because the broker/dealer has control of the securities subject to the reverse repurchase agreement transaction. The broker/dealer may request the return of the securities from the counterparty of the repurchase transaction at any time in exchange for the cash it received.

Q. If an introducing broker/dealer clears its commodities business through a National Futures Association (NFA) member that is not an NASD member, is the required clearing deposit an allowable asset for net capital purposes?

A. Yes. It is allowable to the extent that it is a required deposit evidenced by a written agreement with the clearing firm.

Q. What is the proper net capital treatment for deferred income tax liabilities?

A. Deferred income tax liabilities are excluded from aggregate indebtedness (AI), including those that may be added back to net worth. Deferred tax liabilities should not be confused with accrued taxes payable. See SEC Rule 15c3-1(c)(2)(i)(C).

Q. Is it permissible for an introducing broker/dealer to have a money market sweep arrangement with its customers? Would this activity increase the firm's minimum net capital requirement?

A. Yes. Firms may establish facilities with local banks that would permit customers to authorize payments to the firms employing electronic funds transfer systems under sweep arrangements. It is permissible for an introducing firm to offer such an arrangement on a fully disclosed basis without an increase in its minimum net capital requirement, provided that the funds are sent directly to the clearing firm.

Q. Is a broker/dealer that has a \$5,000 minimum net capital requirement and whose business consists exclusively of selling privately issued or registered insurance-related products required to become a member of the Securities Investor Protection Corporation (SIPC)?

A. No. SIPC membership is not required because the security is offered by an insurance company. SIPC does not distinguish between private or registered products. A firm conducting this type of business must file a SIPC-3 form claiming its exemption from SIPC membership.

Q. Must a broker/dealer that is not required to join SIPC maintain a fidelity bond?

A. No. A member that is not required to join SIPC does not need to maintain a fidelity bond under Article III, Section

32 of the Rules of Fair Practice.

Q. What are the required time parameters to which a broker/dealer must adhere when transferring a customer account to another broker/dealer via the Automated Customer Account Transfer System (ACATS)?

A. Effective December 2, 1994, the SEC approved amendments to Uniform Practice Code Section 65 relating to

ACATS transfers. The amendments reduced the validation and delivery process from five days, to three days for validation and to four days for delivery. Identical amendments were also approved to the New York Stock Exchange and National Securities Clearing Corporation rules pertaining to ACATS.

Q. If a broker/dealer has been the subject of an arbitration judgment against the firm, should the amount be reflected in the firm's net capital computation?

A. Yes. The award should be charged against the firm's net capital at the time the judgment is rendered, even though the appeal process has not been exhausted, because grounds for revision or appeal are very limited. □

Members Must Monitor For Marking The Opening

The NASD urges members to review their compliance procedures to inform traders and sales personnel with respect to illegally affecting in any way a security's opening share price, known as "marking the opening." Attempts to mark the opening improperly often occur for a variety of reasons, including a desire to affect the settlement price of an index option, or to peg the price of securities that are part of a program trade to be executed at the opening price.

To discourage traders and others from these practices, the NASD suggests that

members regularly review their trading activities for such abuses, especially considering their firm size, degree of trading volume, and adequacy of compliance procedures.

Members should be especially watchful regarding unusual trading patterns during the opening at expiration of various index options, and when engaged in any program trading that involves opening prices. Since daily trading activity of large firms often is significantly high, the NASD believes that large firms should consider implementing automated exception report systems. These are

highly effective in detecting unusual, beginning-of-day trading patterns.

In reviewing marking the opening cases, the NASD will continue to examine closely a firm's compliance and supervisory systems to evaluate whether they are adequate in view of the firm's size and scope of business.

If you have questions or need further information on this subject, please call Robert Yabroff, Assistant Director, Market Surveillance, at (301) 590-6440. □

New Rule Effective April 1, 1996

Broker/Dealers Must Collect And Keep Additional Information When Using \$3,000+ Wire Transfers

The Department of the Treasury published a final rule under the Bank Secrecy Act that will require broker/dealers to obtain additional information on wire transfers of \$3,000 or more and to maintain certain records. The original effective date of the rule, January 1, 1996, is delayed to April 1, 1996.

Each domestic financial institution involved in a wire transfer will have to collect and retain the information,

although the requirements will vary depending on the type of financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution. The new rule will require broker/dealers that send wire transfers of \$3,000 or more, that act as intermediaries in these transactions, or that receive such wire transfers, to collect and retain certain documents for each transfer. Firms will have to obtain, among other things, the name, address,

and account number of the transmitter of the wire transfer, the amount of the order, the date of receipt, and identity of the recipient.

Although the rule sets different requirements for established customers and those who are not, members should anticipate that most transfers by broker/dealers will involve "established customers," as that term is defined in the rule. In addition, firms will have to keep records accessible within a reasonable

period of time. Records must be retained for five years, which is the present requirement under the Bank Secrecy Act.

Federal law enforcement agencies believe that wire transfers are used in money laundering operations. These new recordkeeping rules will be useful in criminal, tax, and regulatory investigations, and will help investigators trace proceeds of illegal activity and identify participants in money laundering

schemes. The Treasury Department encourages broker/dealers to notify appropriate law enforcement agencies about transfers structured in amounts less than \$3,000 that appear to intentionally evade the new regulation requirements.

See *Notice to Members 95-69* (August 1995) for a summary of the rule requirements. Members are also urged to review the entire final rule amendments published in the *Federal Register* on

January 3, 1995, including pertinent parts of the Bank Secrecy Act, background information, and a discussion of industry comments. The August 24, 1995, *Federal Register* contains the amendment delaying the effective date of the rule to April 1, 1996.

For additional information about this subject, contact Louise Corso, Senior Attorney, at (301) 208-2835. □

New Payment For Order Flow Rules Effective October 2

New Rule 11Ac1-3 and amendments to Rule 10b-10 under the Securities Exchange Act of 1934 relating to payment for order flow, as adopted October 27, 1994 (Securities Exchange Act Release No. 34902, 59 FR 55006) became effective October 2, 1995. None of the additional payment for order flow proposals in Securities Exchange Act Release No. 34903 (October 27, 1994), 59 FR 55015, were adopted.

Rule 11Ac1-3 requires broker/dealers to disclose, in annual account statements and new account forms, their policies regarding the receipt of payment for order flow, and to provide a detailed description of the nature of the compensation received. Rule 11Ac1-3 also requires broker/dealers to provide information to customers about order-routing policies for orders subject to payment for order flow, including an explanation of the extent to which orders can be exe-

cuted at prices superior to the best bid and offer. Rule 10b-10 as amended, requires broker/dealers to state on confirmations whether they receive payment for order flow, and that the source and nature of the compensation will be provided on written request.

The effective date of these rules was extended from April 3, 1995 to October 2, 1995 (Securities Exchange Act Release No. 35473, 60 FR 14366). □

Arbitration/Mediation

Rule To Help Resolve Securities Disputes

SEC Approves Rule Regarding Failure To Honor Arbitration Or Mediation Settlements

The SEC approved an NASD-proposed rule that allows it to suspend or expel member firms or associated persons for failing to honor a written and executed arbitration or mediation settlement. The new rule permits the NASD to suspend or cancel the membership of firms or registration of associated persons for failing to honor an arbitration or mediation conducted under NASD auspices.

"The NASD initiative is pre-emptive, providing a tougher disincentive for firms to abandon arbitration and mediation settlements," said Deborah Masucci, Vice President and Director of

Arbitration. "Compliance by firms to pay such settlements is high, but the new rule will eliminate those few occasions when a firm reaches a settlement and then fails to honor the agreement, leading in turn to another round of mediation or arbitration proceedings."

When it proposed the rule, the NASD pointed out that failing to honor written settlement agreements increased the costs to the aggrieved party and impugns the credibility of the arbitration process.

In addition, the NASD incurs further

expenses when it appoints fresh arbitrators and arranges new hearings to review the case.

In approving the rule, the SEC said that requiring members or their associated persons to abide by agreements entered into in compromise of a dispute pending in arbitration or mediation will enhance the effectiveness of arbitration and mediation as an alternative dispute resolution method and eliminate the unfair impact and waste of resources experienced by the public, other litigants, and the arbitration/mediation forums that result from the failure to honor a settle-

ment agreement.

Additionally, the SEC agreed with the NASD that the failure of a member or associated person to honor a settlement

agreement entered into in connection with an NASD arbitration or mediation proceeding should have the same consequences as the failure to pay an arbitration award.

For more information on this subject, see *Notice to Members 95-76* (September 1995), or call Deborah Masucci, Vice President and Director of Arbitration, at (212) 858-4400. □

Education

More Computerized Training Tools For Continuing Education Coming This Fall

As part of its effort to provide education and preventive compliance programs to its members, the NASD this fall will make available to members Release 2.0 of the Training Analysis and Planning Tool. Release 2.0 is an enhancement of Release 1.0, mailed to members free of charge in June 1995, to help them comply with the Firm Element portion of the Continuing Education rules that took effect July 1, 1995.

The Training Analysis and Planning Tool is the first component of an NASD member compliance support system, which will consist of a series of software aids designed to help members access, understand, and comply with important NASD rules and regulations. Building significantly on the capabilities of Release 1.0, Release 2.0 will include:

- the ability to prepare, track, and manage the Firm Element continuing education progress of covered persons;
- increased on-line help and tutorial screens; and
- an indexed data base of training courses and vendors that can be used to match the training needs of covered persons.

These additional features will help members comply with the Firm Element requirement to implement their written continuing education training plans by January 1, 1996. The software will be available to members at reasonable cost.

Releases 1.0 and 2.0 require this basic hardware:

- a 386 IBM-compatible platform, although the system operates more efficiently with a 486 unit;
- a minimum of four megabytes of RAM;
- a Windows 3.1 or higher operating environment; and
- a standard 16-color VGA at 640x480 screen resolution or higher.

More information on this subject will be furnished to members in future editions of *Notices to Members* and *Regulatory & Compliance Alert*. If you have specific questions about the Continuing Education Program, call (301) 590-6500, or your Quality & Service Team. □

Violations

A.R. Baron To Pay \$1.5 Million In Fines And Restitution For Excessive Markups, Other Violations

The NASD imposed fines and ordered restitution of more than \$1.5 million against A.R. Baron & Co., Inc., New York, NY; Andrew Bressman, President; Mark A. Goldman, Chief Financial Officer, Trader and Assistant Compliance Officer; and Burton W. Blank, Chief Operating Officer.

The NASD disciplinary action was based on a settlement reached with its Market Surveillance Committee and

approved by the National Business Conduct Committee (NBCC) in which A.R. Baron and other persons consented to findings without admitting or denying the allegations. The settlement requires the firm to pay more than \$960,000 in restitution to customers who were charged fraudulently excessive markups when purchasing Cypros Pharmaceutical Corporation securities from the firm, Goldman, and Blank. Customers who will be reimbursed live in 15 states

including New York, New Jersey, Illinois, Florida, and California, as well as several foreign countries. Restitution will be paid to customers from an interest-bearing escrow account controlled by an independent agent. In addition, A.R. Baron and other persons agreed to pay \$585,000 in fines, including \$85,000, \$65,000, and \$35,000 assessed against Goldman, Blank and Bressman. Goldman and Blank also were suspended in all capacities for 60 days and

Bressman for one week.

Fraudulently Excessive Markups

Goldman and Blank consented to findings that from November 3, 1992 through December 31, 1992, the firm, acting through them, charged prices in the sale of Cypros securities that were marked up so excessively in 216 transactions as to be fraudulent. The markups ranged from 10.2 percent to 47.3 percent above the firm's contemporaneous cost. These trades were executed at a time when A.R. Baron dominated and controlled the securities of Cypros to such an extent that there was no independent, active market for the securities. As part of the settlement, these customers will be reimbursed more than \$960,000, representing the amount that they were overcharged, plus interest.

Separately, Bressman consented to violating NASD Rules of Fair Practice. Acting as a salesman, Bressman sold Cypros to his customers at unfair prices in 41 trades between November 3, 1992 and December 31, 1992. In those trades, up to 21.7 percent of the total cost to the customers represented compensation to

Bressman which he split with the firm.

Initial Public Offering

Several additional charges related to the initial public offering of Cypros which was underwritten by A.R. Baron in November 1992. First, the firm, Goldman, and Blank consented to findings of violating Article III, Section 1 of the NASD Rules of Fair Practice, and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-6. The violative activity began during the initial public offering for Cypros when the firm and the named individuals placed Cypros units into customer accounts that had not given A.R. Baron orders to purchase those securities. Consequently, customers from 120 accounts canceled orders in their accounts totaling 8.7 percent of the offering. This resulted in A.R. Baron engaging in aftermarket trading in Cypros before it completed the public distribution of the offering.

In addition, as sole underwriter, the firm placed the entire Cypros offering with its own customers. As part of the offering, the firm sold 20 percent of Cypros

to shareholders of The Baron Group Inc., a company whose sole asset was A.R. Baron. These securities began trading immediately at a premium over the initial offering price. The sale of such a significant amount of units to these shareholders should have been, but was not disclosed, to the investing public. The firm, Goldman, and Blank also consented to findings that they failed to establish, maintain, and enforce adequate written supervisory procedures.

"This enforcement action by the NASD further demonstrates our abilities and dedication to address fraudulent activity in the securities industry and to protect individual investors," said John Pinto, Executive Vice President, Regulation. "Through the first half of 1995," Pinto said, "the NASD brought more than 450 disciplinary actions, ordered approximately \$3 million in restitution to investors, while imposing fines in excess of \$10 million. In addition, we have suspended or expelled nine firms from membership and barred or suspended 302 individuals because of violative conduct." □

COMPLIANCE SHORT TAKES

The SEC approved new NASD mediation rules, effective August 1, that govern proceedings to resolve securities industry disputes. The action enables the NASD to launch a mediation program that offers investors and securities professionals an informal alternative to dispute resolution such as arbitration or litigation. Under the new rules, all matters eligible for arbitration under the NASD Code of Arbitration will be eligible for mediation. For more information, see *Notice to Members 95-62* (August 1995) and *Regulatory & Compliance Alert*, July 1995, page 10.

In a related action, the NASD established a hotline through which the

public can provide suggestions for improving the arbitration process used to resolve disputes with brokers. The toll-free number, (800) 925-0278, is available 24-hours-a-day for voice-mail messages. □

The SEC approved a new NASD rule that prohibits brokerage firms from trading ahead of research reports on securities. The rule prohibits member firms from purposefully establishing or changing inventory positions in Nasdaq-listed stocks or exchange-listed stocks traded in the third market in anticipation of their own research report on the secu-

rity. The rule also applies to derivative products, including options, that underly these securities. Member firms are urged to establish comprehensive internal procedures to prevent the flow of research information across departmental lines.

For additional information, see *Notice to Members 95-75* (September 1995) or call Halley Milligan, NASD Market Surveillance, at (301) 590-6464, or Eugene A. Lopez, Assistant General Counsel, at (202) 728-6998. □

On April 20, the SEC approved an

NASD proposal to amend Section 33(b)(3) of the Rules of Fair Practice to increase the position and exercise limits for certain equity securities not subject to standardized options trading. With this amendment, if a security qualifies for a position limit of 7,500 contracts or 10,500 contracts, it will be subject to the higher position limit, regardless of whether it has standardized options traded on it or not.

The NASD instituted this change because members' legitimate hedging activities were unduly constrained under previously mandated exercise limits for trading options. For more information on this subject, see *Notice to Members*

95-47 (June 1995) or call Thomas R. Gira, Assistant General Counsel, at (202) 728-8957.

Effective June 9, the SEC approved amendments to Article III, Section 21 of the NASD Rules of Fair Practice to require members to make and maintain a centralized do-not-call list of persons who do not want to receive telephone solicitations from members or their associated persons. For more information about this subject, see *Regulatory & Compliance Alert*, July 1995, page 13, *Notice to Members* 95-54 (July 1995), or call Daniel M.

Sibears, Director, NASD Regulatory Policy, at (202) 728-6911.

The SEC approved an NASD-proposed rule change to amend Schedule C, Part XII, of its By-Laws to include government securities principals and representatives. For the purpose of the Continuing Education rules, the term "registered person" now means any person registered with the NASD pursuant to Parts II, III, IV, or XI of Schedule C to the By-Laws.

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NASD DISCIPLINARY ACTIONS

In May, June, and July 1995, 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

Yvonne Renee Halsell (Registered Representative, Atlanta, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that

Halsell misappropriated and converted for her own use \$10,375 belonging to public customers. Halsell also failed to respond to NASD requests for information.

Kimitaka Okohara (Registered Representative, Honolulu, Hawaii) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kimitaka failed to respond to NASD requests for information regarding customer complaints.

Herbert Josef Radley (Registered Representative, Rancho Cordova, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$323,791.25 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radley consented to the described sanctions and to the entry of findings that he received from public customers \$323,791.25 to purchase certificates of deposit and securities, and misappropriated and converted the proceeds for his own use and benefit.

Richard Allen Wheeler (Registered Representative, Stockton, California) submitted an

Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$18,345.21 in restitution to a member firm. Without admitting or denying the allegations, Wheeler consented to the described sanctions and to the entry of findings that he received from a public customer \$20,000 for the purchase of mutual funds and misappropriated and converted the funds for his own use and benefit. The findings also stated that Wheeler failed to respond to NASD requests for information.

June Actions

Gerald Edward Donnelly (Registered Representative, Lafayette, California) was fined \$25,000, suspended from association with any NASD member in any capacity for 16 business days, and required to requalify by examination before reassociating with any NASD member. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Donnelly recommended and effected the purchase and sale of securities

in the accounts of public customers that were excessive and unsuitable. In addition, Donnelly exercised discretionary power in the accounts without obtaining prior written authorization from the customers and without his member firm's acceptance of the accounts as discretionary.

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

Richard Pierce Steele (Registered Representative, Pleasanton, California) submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in any registered capacity in which he intends to function. Without admitting or denying the allegations, Steele consented to the described sanctions and to the entry of findings that he made unsuitable recommendations of securities to public customers.

Robert James Yu Loo (Registered Representative, Foster City, California) submitted an Offer of Settlement pursuant to which he was fined \$18,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Yu Loo consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer and recommended to the customer purchases and sales of securities that were unsuitable for the customer, considering the size and frequency of the transactions and the facts disclosed by the customer as to her other security holdings, financial situation, and needs.

July Actions

Jose Alamil Acuna (Registered Representative, Fairfield, California) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Acuna consented to the described sanction and to the entry of findings that he forged customer signatures to checks totaling \$6,488.50 and deposited the checks to his personal bank account.

Dan Patrick Dougherty (Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Dougherty consented to the described sanctions and to the entry of findings that he recommended and sold common stock to public customers without performing due diligence and investigating and understanding the securities that he was recommending to his customers.

Gregory Sheil Pipeson (Registered Representative, San Francisco, California) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pipeson, pledging shares of stock to obtain a loan from an issuer, falsely represented to the issuer that he had not, nor would he mortgage, pledge, or otherwise encumber such shares, when in fact he had pledged the same shares in support of a loan from another individual.

Sound Advice Investments (Danville, California), Gray Emerson Cardiff (Registered Principal, Moraga, California), and Leland Stanford Bright, III (Registered Principal, Sonoma, California) submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally, and Cardiff was suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry

of findings that the firm, acting through Cardiff and Bright, issued a sales literature communication to the public that was not based upon principles of good faith and fair dealing and did not provide a sound basis for evaluating the facts in regard to the security described in the communication. The findings also stated that the communication contained exaggerated, unwarranted, and misleading statements.

Kenneth Robert Winton (Registered Representative, Redding, California) submitted an Offer of Settlement pursuant to which he was fined \$11,728, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination. Without admitting or denying the allegations, Winton consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of securities without having reasonable grounds for believing such recommendations were suitable for the customers in light of their other security holdings, financial situations, and needs.

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

May Actions

Waymon Hobby (Associated Person, Altadena, California) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hobby failed to respond to NASD requests for information regarding his termination from a member firm.

Gene Morgan Financial (Los Angeles, California) and Gene Ray Morgan (Registered Principal, Los Angeles, California) were fined \$50,000, jointly and severally. Morgan was suspended from association with any NASD member in any capacity for 45 days and ordered to requalify by examination in any capacity. In addition, the firm was ordered to file all advertisements and sales literature with the NASD Advertising Department at least 10 days before use for six months. The firm also was ordered to retain an independent consultant to review its advertising procedures and policies and recommend appropriate corrective measures to ensure compliance with the NASD advertising rules for six months, and, at the end of which, to submit to the NASD a report describing all procedures adopted and implemented to ensure compliance with the rules. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that the firm, acting through Morgan, breached the standards for public communications by failing to provide a sound basis for the public to evaluate an initial public offering and by making communications to the public that contained untrue statements of material facts or were otherwise exaggerated, false, or misleading.

The Perkins Group (San Diego, California) and Randel L. Perkins (Registered Principal, Rancho Santa Fe, California) were fined \$30,000, jointly and severally. Perkins also was suspended from association with any NASD member in any capacity for 30 days and suspended from participating in any underwritings for three months. The sanctions were based on findings that the firm, acting through Perkins, participated in a contingent offering of securities on a minimum-maximum basis and failed to return investors' funds when the terms of the offering were not met. The firm, acting through Perkins, also failed to transmit investor funds promptly to a separate bank escrow account and permitted the offering proceeds to be disbursed from the escrow account before the minimum amount was raised.

June Actions

Daniel Steven Katz (Registered Representative, Woodland Hills, California) was fined \$50,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination in any registered capacity in which he intends to function. In addition, Katz must pay \$7,000 in restitution to a customer. The NBCC imposed the sanctions following review of a Los Angeles DBCC decision. The sanctions were based on findings that Katz executed unauthorized purchases of stock in the accounts of public customers.

July Actions

Atlanta-One, Inc. (Irvine, California), Kevin Michael McCarthy (Registered Principal, Newport Beach, California), and Thomas William Blodgett (Registered Principal, Irvine, California). The firm was fined \$100,000 and suspended from membership in the NASD for 30 days. McCarthy was fined \$75,000 and suspended from association with any NASD member in any capacity for 30 days. Blodgett was fined \$50,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, McCarthy and Blodgett must requalify by examination before again acting in any capacity requiring qualification. Furthermore, the fines will be reduced by any amounts of restitution that the respondents have paid to customers. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a March 1992 NBCC decision. The sanctions were based on findings that the firm, acting through McCarthy and Blodgett, charged unfair commissions in 353 foreign-currency options transactions. Specifically, the respondents charged commissions ranging from \$50 to \$89 per options contract, which represented between 16 and 89 percent of the customers' investments.

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

Richard Cedrone (Registered Representative, Boca Raton, Florida) was fined \$27,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cedrone guaranteed public customers against loss in connection with their purchases of securities. In addition, Cedrone failed to respond to NASD requests for information.

Curt Gearen (Registered Representative, Lomita, California) submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Gearen consented to the described sanctions and to the entry of findings that he participated in private securities transactions with a public customer while failing to give his member firm written notice describing in detail the proposed transactions and his proposed role in them. The findings also stated that Gearen failed to obtain prior written authorization from his member firm to share in profits in the same customer's account.

Parvin Namaki (Registered Representative, San Diego, California) was fined \$30,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm \$6,773.33. The sanctions were based on findings that Namaki engaged in numerous purchase and sale transactions of securities for the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions and the customer's financial situation and needs. Namaki also failed to respond to NASD requests for information.

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

May Actions

Charles S. Akers (Registered Representative, Scottsdale, Arizona) was fined \$88,500, barred from association with any NASD member in any capacity, and ordered to pay \$13,700 in restitution to customers. The sanctions were based on findings that Akers obtained from public customers \$13,700 and misappropriated the funds for his own use and benefit. In addition, Akers failed to respond to an NASD request for information.

Michael David Borth (Registered Representative, Leavenworth, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borth consented to the described sanctions and to the entry of findings that he filed a misleading Uniform Application for Securities Industry Registration (Form U-4) with the NASD.

Gregory Lee Cornia (Registered Representative, Bellingham, Washington) submitted an Offer of Settlement pursuant to which he was fined \$34,000. Without admitting or denying the allegations, Cornia consented to the described sanction and to the entry of findings that he exercised discretion and executed transactions in the account of a public customer without obtaining prior written discretionary authorization from such customer and without written acceptance of such account by his member firm. The findings also stated that Cornia exercised effective control over the account of a public customer and caused purchase and sales transactions to be executed without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the frequency and nature of the recommended transactions and the customer's financial situation, circumstances, objectives, and needs.

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

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

Duane P. Horan (Registered Representative, Littleton, Colorado) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$315.12 in restitution to a member firm. The sanctions were based on findings that Horan obtained a \$315.12 check from his member firm payable to an insurance customer, endorsed the check in the customer's name without the customer's knowledge or consent, and deposited the proceeds into his personal bank account. Horan also failed to respond to NASD requests for information.

June Sheldon Jones (Registered Representative, Portland, Oregon) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notification of such activities to his member firm.

Bernabe M. Leynes (Registered Representative, Renton, Washington) 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, Leynes consented to the described sanction and to the entry of findings that he received from eight public customers \$61,502.67 intended for the purchase of securities and failed to remit the funds for their intended purpose. Instead, the NASD found that Leynes used the funds for his own benefit.

Ginger Lee Thomas (Registered Principal, Elizabeth, Colorado) was fined \$8,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomas caused a check to be issued to her from her member firm through its payroll service that included an unauthorized disbursement of \$1,000 in addition to her semi-monthly salary. In addition, Thomas attempted to have another check issued to her from the firm through its payroll service that included an unauthorized \$600 vacation pay disbursement.

June Actions

None

July Actions

James Arthur DeJon (Registered Representative, Bend, Oregon) was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeJon completed and submitted to a member firm a Uniform Application for Securities Industry Registration or Transfer (Form U-4) that failed to disclose his arrest for first degree theft.

Kent Robert Feldsted (Registered Representative, Arlington, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$17,778 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Feldsted consented to the described sanctions and to the entry of findings that he exercised discretion granted pursuant to oral authority and executed at least 62 transactions in the account of public customers without obtaining prior written discretionary authorization from such customers and without written acceptance of such discretionary account by his member firm.

Flemming, Anderson, Cohen and Lee, Inc. (Littleton, Colorado), Fred S. Altberger (Registered Principal, Englewood, Colorado), and G. David Marin (Registered Principal, Littleton, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$5,000, jointly and severally, and the firm was required to submit a fully executed Form BDW to withdraw from membership in the NASD. In addition, the firm and Altberger were fined \$20,000, jointly and severally, and the firm and Marin were fined \$10,000, jointly and severally. Altberger was suspended from association with any NASD member as a financial and operations principal for 30 days and required to requalify by examination as a financial and operations principal prior to acting in such capacity. Marin was suspended from association with any NASD member as a general securities principal for 15 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Altberger, conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS reports with the NASD. The findings also stated that the firm, acting through Marin, failed to comply with the firm's restriction agreement in that it exceeded the inventory parameters set forth in this agreement on at least eight occasions. The NASD also determined that the firm, acting through Marin and Altberger, allowed

an unregistered person to function as a representative in contravention of Schedule C of the NASD By-Laws.

James Barrie Maes (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$125,271.88 in restitution to a member firm. Without admitting or denying the allegations, Maes consented to the described sanctions and to the entry of findings that he borrowed from a public customer on four separate occasions funds totaling \$102,521. According to the findings, Maes failed to provide the customer with any loan documentation or collateral for such loans and failed to repay any portion of the loans to the customer.

Bruce W. Moulds (Registered Representative, Fort Collins, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moulds consented to the described sanctions and to the entry of findings that he sent inaccurate and misleading correspondence to five customers of his former member firm and sent to public customers letters containing recommendations concerning mutual funds when he knew or should have known that the letters failed to comply with applicable requirements. The findings also stated that Moulds made unsuitable recommendations to customers concerning mutual funds and failed to respond truthfully and accurately to an NASD request for information.

Danny G. Pinkerton (Registered Principal, Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member for 10 business days. Without admitting or denying the allegations, Pinkerton consented to the described sanctions and to the entry of findings that he entered or caused to be entered orders to sell shares of stock from the accounts of five customers without their authorization.

Robert Lloyd Scharnhorst (Registered Representative, Twin Falls, Idaho) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scharnhorst consented to the described sanctions and to the entry of findings that he received from two public customers two checks for \$10,133 each, made payable to a life insurance consulting firm with which he was associated. The findings stated that the customers understood that these sums would be used to pay premiums on policies they owned if they chose not to purchase a new variable life policy and if they chose the new policy, the customer funds would be applied to advisory fees the majority of which would go to Scharnhorst. The NASD determined that Scharnhorst deposited into his personal bank account a check from the insurance company that included \$16,000 of the customer's funds which he considered payment of advisory fees. Although the customers chose not to purchase the new variable life policy, the NASD found that Scharnhorst did not refund the \$16,000 advisory fee payment until a later date.

Donald K. Stunoff (Registered Representative, Scottsdale, Arizona) was fined \$125,000, barred from association with any NASD member in any capacity, and required to pay \$45,250 plus interest in restitution to a customer. The sanctions were based on findings that Stunoff withdrew approximately \$45,250 from the securities account of a public customer using an automated teller machine access card without the authority of the customer. These funds

were not used for the benefit of the customer. Furthermore, in response to an NASD request for information, Stunoff provided false documentation which purportedly authorized his withdrawal of funds from the customer's account and bore signatures allegedly belonging to the customer's daughters. Based on information obtained from the customer's daughters, neither of them signed the aforementioned document, nor did they authorize anyone to make withdrawals from their father's securities account.

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

May Actions

Michael Joseph Butkus (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,268.96 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Butkus consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he signed the customer's name to an amendment of her life insurance application.

William George Krebs, Jr. (Registered Principal, Deephaven, Minnesota) 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. Without admitting or denying the allegations, Krebs consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer and recommended for the account numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the account in view of the size and frequency of the transactions and the nature of the account.

Danny Curtis Ross (Registered Representative, Nevada, Missouri) 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, Ross consented to the described sanction and to the entry of findings that he borrowed \$25,000 from a public customer, which was withdrawn from the customer's account and caused her to incur a \$1,952.88 surrender charge, and made a material misstatement to the customer. Specifically, the NASD found that Ross indicated to the customer that he would purchase a \$25,000 insurance policy that named the customer as beneficiary and, instead, he purchased a policy naming his wife as beneficiary.

David Craig Selden (Registered Representative, Brighton, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with NASD member in any capacity for six months, and required to pay \$14,000 in restitution to public customers. Without admitting or denying the allegations, Selden consented to the described sanctions and to the entry of findings that he recommended to public customers numerous purchases and sales of securities without having reasonable grounds to believe that such recommendations were suitable for the customers in view of the size and frequency of the recommended transactions and the customers' financial situations and needs.

June Actions

None

July Actions

Mark Dale Kaufman (Registered Representative, Clinton, Illinois) 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, Kaufman consented to the described sanctions and to the entry of findings that he received a \$960 check issued by his member firm to a public customer, for the return of the premium on a life insurance policy. According to the findings, Kaufman misused the customer's funds in that he endorsed and cashed the check, without the customer's knowledge or consent.

Terry Herron Stringer (Registered Representative, Houston, Texas) submitted an Offer of Settlement pursuant to which she was fined \$20,845.15 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stringer consented to the described sanctions and to the entry of findings that Stringer converted \$4,169.03 from a bank at which she was employed by authorizing debits to two bank general ledger accounts and depositing those funds to checking accounts under her control.

Mark Alan Williams (Registered Representative, Malvern, Iowa) was fined \$66,000, barred from association with any NASD member in any capacity, and ordered to pay restitution of \$13,200 plus interest to entitled parties. The sanctions were based on findings that Williams made improper use of insurance customer funds totaling \$13,200 by signing the customers' names to checks, and endorsing the checks to himself without the knowledge or consent of the customers. In addition, Williams failed to respond to NASD requests for information.

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

May Actions

The Biedenharn Investment Group, Inc. (Shreveport, Louisiana) and James McCurry (Registered Principal, Shreveport, Louisiana) submitted an Offer of Settlement pursuant to which the firm was expelled from NASD membership. McCurry 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 McCurry, acting through a non-registered entity of which he had ownership interest, participated in the distribution of promissory notes issued by another company, and accepted compensation for his participation that was not recorded on the books and records of his member firm. In doing so, McCurry acted in the capacity of an unregistered broker/dealer. The findings also stated that the firm, acting through McCurry, sent misleading correspondence to public customers that misrepresented certain safety features of notes and failed to adequately disclose the risks of offerings. In addition, the NASD found that the firm failed to supervise properly the correspondence transmitted by its employees and failed to supervise properly the activities of an employee.

Donnye D. Collins, Sr. (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$55,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collins consented to the described sanctions and to the entry of findings that he received from a public customer cash totaling \$400 to purchase shares of stock, failed to submit the customer's application or the funds to his member firm, and instead, without the customer's knowledge or consent, converted the funds for his own use and benefit. In addition, the findings stated that Collins provided false and misleading information to the NASD and his member firm during their examinations of the customer complaint filed in connection with the aforementioned

payment.

Thomas Y. Lanier (Registered Principal, Antioch, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lanier consented to the described sanctions and to the entry of findings that he executed unauthorized purchase and sale transactions of municipal bonds in the accounts of public customers without their knowledge or consent. The findings also stated that Lanier canceled a \$73,806.04 sell transaction in municipal bonds in the account of a public customer and re-executed the sale at a price unrelated to the prevailing market price. In addition, the NASD found that Lanier executed purchase and sale transactions in the accounts of public customers at prices that were not reasonably related to the then current market price for the security.

James L. Rasmussen (Registered Representative, Crescent Springs, Kentucky) 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, Rasmussen consented to the described sanctions and to the entry of findings that he prepared for a public customer false documentation, purporting to establish the existence of an insurance policy that was to collateralize a loan for the customer, which was given to a third-party financial institution.

Ted A. Rice, Jr. (Registered Representative, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,575 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Rice purchased shares of a new issue that traded at a premium in the secondary market. The findings also stated that Rice failed to notify his member firm, in writing, before executing any transactions, that he had established and maintained a personal securities account with another member firm.

William C. Staton, Jr. (Registered Representative, Jackson, Mississippi) submitted an Offer of Settlement pursuant to which he was fined \$80,000, barred from association with any NASD member in any capacity, and ordered to pay \$9,612.85 in restitution to his member firm. Without admitting or denying allegations, Staton consented to the described sanctions and to the entry of findings that he received from a public customer a \$9,612.85 check for investment in a growth fund. According to the findings Staton failed to execute the purchase of the fund and, instead, converted the funds for his own use and benefit without the customer's knowledge or consent. The NASD also determined that Staton failed to establish a brokerage account for the same customer and prepared and sent a falsified account statement to the customer that falsely indicated that he had made an investment in the fund on the customer's behalf. In addition, the NASD found that Staton failed to respond timely to NASD requests for information.

June Actions

Larry E. Brewer (Registered Representative, Memphis, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he entered 16 purchase orders to his member firm for shares of a common stock in the accounts of public customers

that were not paid for by the customers and subsequently canceled, without having a reasonable basis for entering the orders for eight of the customers.

Darrell B. Hall (Registered Representative, Catlettsburg, Kentucky) was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. The NBCC affirmed the sanctions following review of a New Orleans DBCC decision. The sanctions were based on findings that Hall received from an insurance customer \$10,000 to be invested in life insurance policies. Instead, Hall misappropriated \$981 of the customer's funds by applying the funds to three policies of other customers.

Heidtke & Company, Inc. (Nashville, Tennessee) and **Lyman O. Heidtke (Registered Principal, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Heidtke, failed and neglected to verify pricing for purchase and sales transactions executed by an individual at the firm in the accounts of public customers, at prices that were not reasonably related to the then-current market prices for the securities. The NASD also found that the firm, acting through Heidtke, allowed the same individual to cancel a sell transaction of municipal bonds in the account of a public customer and re-execute the sale at a price unrelated to the then-current market price. Furthermore, the findings stated that the firm, acting through Heidtke, failed and neglected to exercise reasonable and proper supervision over the same individual and failed to supervise properly trades initiated and executed by the individual.

Robert A. Shepherd (Registered Principal, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days (suspension deemed served). Without admitting or denying the allegations, Shepherd consented to the described sanctions and to the entry of findings that, at the request of a public customer, he signed the name of a customer's daughter to an annuity application that was to be submitted to his member firm. In addition, the NASD found that Shepherd, at the request of a public customer, signed the customer's name to a letter authorizing the wire transfer of funds to the customer's account.

July Actions

Jennifer H. Robertson (Registered Representative, Denham Springs, Louisiana) submitted an Offer of Settlement pursuant to which she was fined \$45,000, barred from association with any NASD member in any capacity, and ordered to pay \$1,777.01 in restitution to her member firm. Without admitting or denying the allegations, Robertson consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, she forged the signatures of customers to applications for annuity contracts that caused her member firm to pay her \$1,777.01 in commissions.

Hugo E. Urrea (Registered Representative, Mandeville, Louisiana) 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 three weeks. Without admitting or denying the allegations, Urrea consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer, in that he purchased shares of stock for the account, without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

District 6—Texas

May Actions

Richard Allen Anders (Registered Representative, Austin, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anders, before opening an account or placing an initial order to purchase or sell securities with a member firm, failed to notify his member firm in writing of his actions. Anders also failed to respond to NASD requests for information.

Robert Francis Doviak, II (Registered Principal, Dallas, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that a member firm, acting through Doviak, failed to file its annual certified audit within the time required and failed to maintain a blanket fidelity bond. In addition, Doviak, acting on behalf of the firm, failed to maintain its minimum required net capital and failed to record properly bank deposits on the firm's books and records.

June Actions

Richard Arlen Osborne (Registered Representative, San Antonio, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Osborne failed to respond to NASD requests for information in connection with an investigation regarding transactions made with a public customer.

July Actions

Daniel Joseph Avant (Registered Representative, Spring Texas) was fined \$2,500 and suspended from association with any NASD member in any capacity for seven days. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that Avant failed to pay a \$28,000 NASD arbitration award timely. Avant has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Dallas Securities Investment Corporation (Dallas, Texas), Steven Craig Christenson (Registered Principal, Plano, Texas) and **Charles Kenneth Maretzky, Jr. (Registered Principal, Dallas, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$5,000, jointly and severally, and ordered to disgorge \$14,000 in commissions, 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 Christenson and Maretzky, failed to purchase or sell securities at prices that were fair, taking into consideration all relevant circumstances including market conditions at the time of such transactions.

Cheryl Ann Rodgers (Registered Representative, Dallas, Texas) submitted an Offer of Settlement pursuant to which she was fined \$22,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Rodgers consented to the described sanctions and to the entry of findings that, by means of manipulative, deceptive, or other fraudulent devices or contrivances, Rodgers effected unauthorized and excessive transactions in the accounts of public customers at losses totaling \$378,000, without having reasonable grounds for believing that such transactions were suitable for the customers based on their other security holdings, financial situations, and needs.

Donald Eugene Smith (Registered Representative, San Antonio, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$206,639 and barred from association

with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he made improper use of customer funds in that he obtained loans against insurance policies totaling \$36,639, forged the customers' signatures on 54 checks, and converted the proceeds for his own use and benefit. The findings also stated that Smith failed to respond to NASD requests for information.

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

May Actions

Michael L. Beasley (Registered Representative, Tallahassee, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$61,529.25, barred from association with any NASD member in any capacity, and ordered to pay \$12,305.85 in restitution to his member firm. Without admitting or denying the allegations, Beasley consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$12,305.85 intended for the purchase of insurance products, but converted the funds for his own use and benefit.

Richard G. Dunn (Registered Representative, Navarre, Illinois) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dunn forged the signatures of five adult children of a public customer on documents needed for a payment to a joint account.

Paul W. Latshaw (Registered Representative, Lilburn, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that, while taking the Series 7 examination, Latshaw possessed notes relating to the subject matter of the examination and reviewed such notes during the examination.

Brian A. Lennon (Registered Representative, Safety Harbor, Florida) 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 20 days. Without admitting or denying the allegations, Lennon consented to the described sanctions and to the entry of findings that he failed to respond timely to an NASD request for information concerning allegations that had been made against him by his former member firm regarding a former customer's failure to pay for a trade.

Litwin Securities, Inc. (Miami Beach, Florida) and **Harold A. Litwin (Registered Principal, Miami Beach, Florida)** were fined \$10,000, jointly and severally. The firm also was prohibited from effecting principal transactions of any nature for one year, and Litwin was suspended from association with any NASD member in any principal capacity for six months and ordered to requalify by examination in any principal capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm, acting through Litwin, violated its restriction agreement with the NASD by executing non-riskless principal securities transactions without authorization.

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

Hector Juan Montes (Registered Representative, Miami, Florida) was fined \$160,000, barred from association with any NASD member in any capacity, and ordered to pay \$329,710 in restitution to a member firm. The sanctions were based on findings that Montes caused his member firm to fail to make accurate certain books and records and caused the firm to file materially inaccurate FOCUS Parts I and IIA reports. Montes also misappropriated and converted for his own use and benefit \$329,710 from the oper-

ating bank account of his member firm. In addition, Montes failed to respond to NASD requests for information.

Jack Murr, Jr. (Registered Representative, MacClenny, Florida) was fined \$35,000, barred from association with any NASD member in any capacity, and ordered to pay \$2,894 in restitution to his member firm. The sanctions were based on findings that Murr received from public customers \$2,894 for an insurance premium payment and for investment in a growth fund and, without the customers' knowledge or authorization, failed to apply the funds as he had been directed. In addition, Murr failed to respond to NASD requests for information.

Robert M. Roberts (Registered Representative, Pompano Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roberts failed to respond to an NASD request for information concerning his termination from a member firm.

Paul W. Sullivan (Registered Representative, Indian Rocks Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined \$35,643.40 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he caused two public customers to surrender their life insurance policies and give him the proceeds. According to the findings, Sullivan, without the customers' knowledge or authorization, remitted only a portion of the proceeds for premiums on new policies and kept the remaining funds for his own use and benefit. The findings also stated that Sullivan failed to respond to an NASD request for information.

Ian L. Williamson (Registered Representative, Dunedin, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$50,002 in restitution to his member firm. Without admitting or denying the allegations, Williamson consented to the described sanctions and to the entry of findings that he received from a public customer an \$80,000 check, negotiated the check, deposited it into his personal bank account, and converted \$50,002 of the funds for his own use and benefit.

June Actions

Richard N. Jensen (Registered Representative, St. Petersburg, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000, barred from association with any NASD member in any capacity, ordered to disgorge commissions in the amount of \$7,650, and required to pay restitution to public customers. Without admitting or denying the allegations, Jensen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his association with his member firm, without providing prior written notice to and obtaining approval from the firm.

Donald R. Krueger (Registered Representative, Seminole, Florida) was fined \$20,000, barred from association with any NASD member in any capacity, ordered to disgorge \$31,841.19, and required to pay restitution to public customers. The sanctions were based on findings that Krueger induced public customers to make investments in a security outside the regular course or scope of his association with his member firm without providing prior written notice of his involvement to the firm and without obtaining approval from the firm. In addition, Krueger failed to respond to an NASD request for information.

Thomas A. Pinataro (Registered Representative, Brandon, Florida) submitted an Offer of Settlement

pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Pinataro consented to the described sanctions and to the entry of findings that he forged the signatures of two public customers on Individual Retirement Account Distribution Request Forms.

Ramiro Jose Sugranes (Registered Representative, Miami, Florida) was fined \$16,988.38 and suspended from association with any NASD member in any capacity for three months. The SEC affirmed the sanctions following appeal of a May 1994 NBCC decision. The sanctions were based on findings that Sugranes provided an institutional customer with a letter in which he falsely stated that a certificate of deposit the customer purchased was backed by a letter of credit from a bank. In addition, Sugranes provided that same customer with copies of wires indicating that the bank issued irrevocable standby letters of credit for certificates of deposits when, in fact, the wires were prepared by Sugranes and the bank had no such standby letters. Sugranes has appealed this action to a U.S. Court of Appeals, and the sanctions are not in effect pending consideration of the appeal.

July Actions

Escalator Securities, Inc. (Tarpon Springs, Florida) and Howard A. Scala (Registered Principal, Tarpon Springs, Florida) were fined \$50,000, jointly and severally. The firm was also ordered to pay \$119,335.90 in restitution and barred from executing principal transactions in equity securities with retail customers except for unsolicited liquidating transactions. Scala was barred from association with any NASD member in any principal, proprietary, or supervisory capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm and Scala charged excessive prices to its public customers in the sale of equity securities and debentures. The prices charged included markups ranging from 5 to 350 percent above the prevailing market price. In addition, the firm, acting through Scala, charged fraudulently excessive markups in excess of 10 percent above the prevailing market price.

The firm and Scala have appealed this action to the SEC. The bar against Scala acting in a principal or supervisory capacity, and the bar imposed on the firm, are in effect pending consideration of the appeal. The other sanctions are not in effect pending consideration of the appeal.

Harold H. Hammer, Jr. (Registered Representative, Palm Harbour, Florida) submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Hammer consented to the described sanctions and to the entry of findings that, while associated with a member firm, he acted as vice president and treasurer of an unrelated corporation but failed to give written notification of his association to his member firm. The findings also stated that Hammer engaged in private securities transactions outside the scope of his regular employment with a member firm without providing written notice to and obtaining written approval from the firm.

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

Kimo N. Andrews (Registered Representative, Shepherds, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which

he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$39,250 in restitution to a member firm. Without admitting or denying the allegations, Andrews consented to the described sanctions and to the entry of findings that he wrongfully obtained checks from public customers. The findings stated that Andrews failed to follow the customers' instructions, and used the funds, which totaled \$15,900, for other purposes than intended. The NASD also found that Andrews received from customers checks totaling \$3,350 as a result of improper billings. The NASD also determined that Andrews participated in private securities transactions and failed to give written notice of his intention to engage in such activity to his member firm and receive the firm's approval before engaging in such activity.

Donald R. Beck (Registered Representative, Westlake, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$33,500, barred from association with any NASD member in any capacity, and required to pay restitution to his member firm. Without admitting or denying the allegations, Beck consented to the described sanctions and to the entry of findings that he obtained from his member firm checks totaling \$8,608.56 made payable to public customers that were to be applied to customers' insurance policies. According to the findings, Beck failed to apply \$6,696.03 of the funds as requested and used the funds for some purpose other than the benefit of the customers.

The Chicago Corporation (Chicago, Illinois) and James Terrance Kinsella (Registered Principal, Winnetka, Illinois) submitted an Offer of Settlement pursuant to which they were fined \$25,000, jointly and severally, and Kinsella was required to requalify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kinsella, failed to establish, maintain, and enforce written supervisory procedures and failed to otherwise take reasonable steps to supervise two registered representatives.

Martin David Corr (Registered Representative, Elmhurst, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Corr consented to the described sanctions and to the entry of findings that he submitted to his member firm eight mutual fund account applications on behalf of a public customer and signed the customer's name to each of the account applications without the written or oral authorization of the customer.

Paul L. Cunningham (Registered Representative, Cleveland Heights, Ohio) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham failed to respond to NASD requests for information regarding his termination from a member firm.

Timothy W. Garrity (Registered Representative, Evanston, Illinois) 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, Garrity consented to the described sanctions and to the entry of findings that he purchased a life insurance policy for a public customer and signed the customer's name to a life insurance application without the customer's knowledge or consent and in the absence of any written or oral authorization from the customer to purchase a life insurance policy on the customer's behalf.

James T. Grande (Associated Person, Midlothian, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Grande consented to the described sanctions and to the entry of findings that during a Series 6 examination, he possessed notes and study materials relevant to the examination, which were available for his inspection and review during the examination.

Randall B. Huggins (Registered Representative, Springfield, Illinois) was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution to a member firm. The sanctions were based on findings that Huggins received from public customers a \$10,000 check with instructions to use the funds for investment purposes. Huggins failed to follow the customers' instructions, and used the funds for other purposes. Huggins also failed to respond to NASD requests for information.

Arthur Steven Miller (Registered Representative, Highland Park, Illinois) 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, Miller consented to the described sanctions and to the entry of findings that he signed a public customer's name to several forms that caused the surrender of an insurance policy owned by the customer, used the proceeds of the policy for the purchase of a variable annuity, and signed the customer's name to the application for variable annuity without the customer's knowledge or consent.

Thaddeus M. Mirochna (Registered Representative, Shelby Township, Michigan) was fined \$65,000, barred from association with any NASD member in any capacity, and required to pay \$10,000 in restitution to a customer. The sanctions were based on findings that Mirochna participated in a private securities transaction while failing to give written notice of his intention to engage in such activities to his member firm. In addition, Mirochna guaranteed a public customer against a loss in the customer's securities account and failed to respond to NASD requests for information.

Mark A. Sims (Registered Representative, Bloomington, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sims consented to the described sanctions and to the entry of findings that he requested a loan from a public customer's insurance policy and obtained a \$15,000 check payable to the customer. According to the findings, Sims signed the customer's name on the check and deposited the check in an account in which he had a beneficial interest.

Ronald J. Viemont (Registered Principal, Morton, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$200,000 in restitution to customers. Without admitting or denying the allegations, Viemont consented to the described sanctions and to the entry of findings that he obtained letters of authorization to transfer \$200,000 from two pension fund investment accounts purportedly signed by members of the public who controlled the accounts, transferred the funds into another account without the customers' knowledge or consent, and used the funds for some purpose other than to benefit the customers. The findings also stated that Viemont participated in private securities transactions while failing to give prompt written notice of his intention to

engage in such activities to his member firm and failed to respond to NASD requests for information.

George Yamada (Registered Representative, Springfield, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$40,000 in restitution to a member firm. Without admitting or denying the allegations, Yamada consented to the described sanctions and to the entry of findings that he received from a public customer a \$92,252.80 check with instructions to use the funds to purchase mutual fund shares. The NASD determined that Yamada failed to follow the customer's instructions in that he used \$52,252.80 as instructed, but used \$40,000 for some purpose other than the benefit of the customer. The findings also stated that Yamada failed to respond to an NASD request for information.

June Actions

Gustavo A. Buenrostro (Registered Representative, Chicago, Illinois) was fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$591 in restitution to a member firm. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Buenrostro received \$791 in cash from insurance customers with instructions to use the funds to purchase insurance policies. Buenrostro failed to follow the customers' instructions, used only \$26.70 as instructed, and used the remaining funds for some purpose other than for the benefit of the customers.

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

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

Timothy P. Graham (Registered Representative, Friendship, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$315 in restitution to his member firm. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he obtained from a public customer checks and cash totaling \$420 that were to be applied to the customer's insurance policy. According to the findings, Graham failed to apply \$315 of the funds as requested and used the funds for some purpose other than for the benefit of the customer.

July Actions

Alcan Securities Corporation (Fort Wayne, Indiana) and Kenneth Robert Edelbrock (Registered Principal, Fort Wayne, Indiana) submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally, and Edelbrock was barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Edelbrock, effected transactions in securities

while failing to maintain its minimum required net capital and failed to maintain accurate books and records. In addition, the NASD found that the firm, acting through Edelbrock, submitted inaccurate FOCUS Parts I and II reports. The findings also stated that the firm, acting through Edelbrock, failed to abide by the terms of its restrictive agreement with the NASD in that the firm received customer funds on approximately 12 occasions.

Gerald W. Bradford (Limited Registered Representative, Rockton, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bradford consented to the described sanctions and to the entry of findings that he participated in 27 private securities transactions by assisting members of the public in the purchase of stock without first notifying his member firm in writing and before receiving written approval from his member firm to engage in such activities.

The Equitable Life Assurance Society of the United States (New York, New York), Lawrence Edward Zupancic (Registered Principal, Barrington, Illinois), and James Alan Schlesinger (Registered Principal, Northbrook, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. As part of a 1991 Membership Continuance proceeding, the firm, Zupancic, and Schlesinger agreed, on behalf of a statutorily disqualified individual, to establish and maintain a supervisory plan with respect to that individual which required on-site supervision by Zupancic and/or Schlesinger at the firm's Chicago branch office. Further, as part of that 1991 proceeding, the firm, Zupancic, and Schlesinger also agreed that any change in the statutorily disqualified individual's location would be subject to prior notice and approval by the NASD.

Without admitting or denying the allegations, respondents Equitable Life, Zupancic, and Schlesinger consented to the described sanction and to the entry of NASD findings that the respondents did not act in accordance with the terms of the above referenced Membership Continuance agreement in that the statutorily disqualified individual changed branch office locations and on-site supervisors without the required prior notice to and approval by the NASD.

Robert J. Goetz (Registered Representative, Homewood, Illinois) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Goetz signed an insurance customer's name to Disbursement Request Forms without the customer's knowledge or consent, resulting in dividends or loans from the customer's insurance policy totaling \$2,491.71. Goetz applied the funds to pay for other insurance policies, for the customer, without the customer's knowledge or consent. Goetz also participated in a private securities transaction without providing prior written notice of his intention to engage in such activities to his member firm and receiving written approval from the firm prior to engaging in such activities. In addition, Goetz failed to respond to NASD requests for information.

David D. Gruel (Registered Representative, Kaukauna, Wisconsin) 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, Gruel consented to the described sanctions and to the entry of findings that he received from a public customer an \$800 check with instructions that the check be deposited as a premium payment on a life insurance policy. The NASD found that Gruel deposited the check in an account in which he had a beneficial interest and

used the funds for some purpose other than for the benefit of the customer.

Ronald Lee Mikkelson (Registered Representative, Madison, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$60,000, barred from association with any NASD member in any capacity, and required to pay \$47,307 in restitution to customers. Without admitting or denying the allegations, Mikkelson consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give his member firm written notice of his intention to engage in such activities and to obtain written permission from the firm prior to engaging in such activities.

John E. Moore (Registered Representative, Reeseville, Wisconsin) was fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$82 in restitution to a bank. The sanctions were based on findings that Moore took \$82 in coins from coin bags owned by and located at a bank he was employed by and used the funds for his personal benefit, without the knowledge or consent of the bank.

Irma T. Parks (Registered Representative, Chicago, Illinois) was fined \$11,582 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Parks received from public customers \$1,771.56 in checks and cash with instruction to use the funds as payment for insurance policies. Parks failed to follow the customers' instructions and used \$1,316.37 of the amount for some purpose other than for the benefit of the customers.

Jamie W. Senaratna (Registered Representative, Green Bay, Wisconsin) was fined \$95,000, barred from association with any NASD member in any capacity, and required to pay \$14,360 in restitution to a member firm. The sanctions were based on findings that Senaratna made cash withdrawals totaling \$14,360 from his investment account maintained by his member firm and paid for these withdrawals and other expenses on his account by giving his member firm a check for \$15,000. Senaratna subsequently stopped payment of the check and used the \$14,360 for some purpose other than the benefit of the member firm and failed to compensate the member for the cash withdrawals. Senaratna also failed to respond to NASD requests for information.

Charles Sanford Turner (Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000, barred from association with any NASD member in any capacity, and required to pay \$12,216 in restitution. Without admitting or denying the allegations, Turner consented to the described sanctions and to the entry of findings that he obtained from a public customer a total of \$12,216 from six different insurance policies owned by the customer by submitting to his member firm various forms requesting policy loans, dividend withdrawals, and surrender values from the policies. Without the customer's knowledge or consent, Turner signed or caused to be signed the customer's name to the forms, and to the checks payable to the customer issued by his member firm, and retained the funds for his own use and benefit. The findings also stated that Turner obtained from a public customer \$941.80 in cash with instructions to apply the funds as payment on the customer's insurance policy. The NASD determined that contrary to the customer's instructions, and without his knowledge or consent, Turner retained the funds for his own use and benefit.

Rodney R. Welsh (Registered Representative, Bloomfield, Michigan) 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, Welsh consented to the described sanctions and to the entry of findings that he was employed by and/or accepted compensation from five entities outside the scope of his employment with his member firm and failed to provide prompt written notice to his member firm of his activities. The findings also stated that Welsh failed to respond to NASD requests for information.

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

May Actions

Roland J. Bernard (Registered Principal, Charlottesville, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Bernard consented to the described sanctions and to the entry of findings that a member firm, acting through Bernard, effected securities transactions while failing to maintain its minimum required net capital and failed to prepare and maintain accurate books and records. The findings also stated that the firm, acting through Bernard, filed inaccurate FOCUS Part I and IIA reports and failed to give timely telegraphic notice of its net capital deficiencies.

Bobby L. Conover (Registered Representative, Gettysburg, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Conover consented to the described sanctions and to the entry of findings that he received from a public customer a request to terminate the customer's policy and to surrender it for its cash value. According to the findings, without the customer's knowledge or approval, Conover completed a disbursement request form in such a manner as to request a policy loan rather than the surrender of the policy and then submitted the form to his member firm. The NASD also determined that Conover delivered to the customer a \$1,750 insurance check that he represented as being the surrender proceeds of the policy, but was actually a policy loan check.

At the same time, the NASD found that Conover induced the customer to sign a multi-purpose request form by representing that it was needed in connection with the purported surrender of the policy. The findings stated that Conover, without the customer's knowledge or consent, completed the request form in such a manner as to request that ownership of the policy be transferred to him and that he be designated as beneficiary of the policy. Conover then submitted the form to his member firm and became owner and beneficiary of the policy.

Marcus D. Dukes (Registered Representative, Alexandria, Virginia) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dukes purchased shares of stock for a customer's account without the customer's knowledge or consent. In addition, Dukes failed to respond to NASD requests for information.

John E. Emrich (Registered Representative, Lebanon, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$12,500, barred from association with any NASD member in any capacity, and required to pay \$2,500 in restitution to a member firm. Without admitting or denying the allegations, Emrich consented to the described sanctions and to the entry of findings that he received

from a public customer a \$2,500 check for investment purposes. The NASD determined that Emrich negotiated the check, failed to apply the proceeds to their intended purpose, and retained the funds for his own use and benefit.

M. Lynn Grinnell (Registered Representative, Liberty, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grinnell consented to the described sanctions and to the entry of findings that he affixed or caused to be affixed, to disbursement request forms and to a request for surrender of paid-up additional insurance, signatures purporting to be those of public customers, without their knowledge or consent, and thereafter submitted such forms to his member firm as genuine.

John P. Kelly (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$1,775 in restitution to a member firm. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he forged or caused to be forged a public customer's signature on disbursement request forms and submitted the forms to his member firm as genuine. The findings also stated that Kelly received from two public customers \$1,775 to pay insurance premiums, but failed to remit such funds to his member firm.

Thomas P. Kelly (Registered Principal, Pittsburgh, Pennsylvania) 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, Kelly consented to the described sanction and to the entry of findings that he induced public customers to make two separate \$450,000 investments with a third party, which was outside the scope of his employment with his member firm. In connection with the above activities, the NASD determined that Kelly failed to conduct a reasonable independent inquiry to determine the legitimacy and soundness of the investments, made representations to customers concerning the investment and which were without basis in fact, and failed to disclose material information concerning certain concurrent financial dealings and agreements between himself and the third party.

Robert J. Lopez, Jr. (Registered Representative, Lawrenceville, New Jersey) was fined \$35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lopez caused his member firm to change the address of record for a public customer's annuity policy to his own home address and caused the policy to be surrendered to his member firm for its cash value. Thereafter, the firm issued a \$6,934 check to the order of the customer. Lopez forged the customer's signature on the check and deposited it to his personal bank account without the customer's knowledge or consent.

Christopher A. Meier (Registered Representative, Falls Church, Virginia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Meier failed to respond to NASD requests for information regarding his termination from a member firm.

Vernon L. Pepersack, Jr. (Registered Representative, Belair, Maryland) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pepersack forged the endorsement of two insurance customers on checks totaling \$4,929.87, negotiated the checks, and converted the

proceeds for his own use and benefit. In addition, Pipersack failed to respond to NASD requests for information.

Andrew T. Poulterer (Registered Representative, Richmond, Virginia) was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a general securities representative. The sanctions were based on findings that Poulterer accepted oral discretionary authority over the accounts of public customers and used the authority to effect discretionary securities transactions without written authority or his member firm's acceptance. Poulterer also failed to respond to NASD requests for information in a timely manner.

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

June Actions

Philip M. Hiestand (Associated Person, Villanova, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and barred from association with any NASD member in any capacity with a right to apply after five years. Without admitting or denying the allegations, Hiestand consented to the described sanctions and to the entry of findings that, while taking the Series 6 examination, he retained in his possession notes relating to the subject matter of the examination. Hiestand also failed to respond to NASD requests for information.

John O. Woodring, Jr. (Registered Representative, York, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Woodring failed to respond to NASD requests for information concerning his financial dealings with customers.

July Actions

John L. Augustine, Jr. (Registered Principal, Mountaintop, Pennsylvania) 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, Augustine consented to the described sanctions and to the entry of findings that he opened an account at his member firm under a fictitious name and thereafter effected transactions in the account in connection with which he created or caused to be created various inaccurate records. According to the findings, Augustine also failed to disclose that the name on the account was fictitious and that he controlled, or had a beneficial interest in, the account.

Furthermore, the NASD found that Augustine participated in private securities transactions and effected transactions or caused them to be effected at prices that were not reasonably related to the current market prices of the securities. In addition, the NASD determined that Augustine violated Regulation T of the Federal Reserve Board. Augustine credited or caused to be credited to a customer's account his own check to pay for a securities purchase in the account and then credited the customer's check, when it arrived, to his personal securities account. The NASD also found that Augustine forged a customer's endorsement on checks payable to the customer and caused them to be deposited to a bank account maintained by a member firm and failed to respond fully to an NASD request for information.

In addition, the findings stated that Augustine, acting for a member firm, prepared inaccurate books and records in that, in connection with numerous checks and other instruments received at the firm,

Augustine failed to credit the funds properly to the account of the customer for whose benefit they were received and failed to reflect properly on the firm's books and records from whom or for whose benefit the funds were received.

Penn Capital Financial Services, Inc. (Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which the firm was fined \$15,000, jointly and severally with other respondents. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected securities transactions while failing to maintain its minimum required net capital and failed to give notice on a timely basis of its net capital deficiency. The findings also stated that the firm failed to notify the NASD in writing of an action taken against three associated persons by the SEC, failed to update supervisory procedures, and effected municipal securities transactions without having a properly registered municipal securities principal. Furthermore, the NASD determined that the firm allowed an individual actively to manage the firm's securities business without being registered as a general securities principal and failed either to ensure he was properly registered or preclude him from acting in a manner that required registration as a principal.

Nicholas A. Sepe (Registered Representative, Howell, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sepe consented to the described sanctions and to the entry of findings that he arranged or conspired to have an imposter appear to take the Series 7 qualification examination on his behalf. The findings also stated that Sepe 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

Ying Kit Cheung (Associated Person, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cheung consented to the described sanctions and to the entry of findings that, without his member firm's permission or authorization, he made out a check drawn on his firm's account for \$300, endorsed it, and converted the funds for his own personal use.

Joseph Stephen Diadema (Registered Representative, Port Washington, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Diadema consented to the described sanction and to the entry of findings that he hired an individual to take a Series 7 examination on his behalf.

Michael Jack DiMartino (Registered Representative, Huntington Station, New York) was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that DiMartino, without having obtained the necessary permission to do so, removed from his member firm's offices qualified leads and Dun and Bradstreet market identifiers that were purchased by, and were the property of, the firm.

Martin L. Fearrington, Sr. (Registered

Representative, Irvington, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fearrington failed to respond to NASD requests for information concerning a customer complaint.

Ronald Fussman (Registered Representative, Herzelia Pituach, Israel) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$45,125 in disgorgement. Without admitting or denying the allegations, Fussman consented to the described sanctions and to the entry of findings that he established and maintained fictitious accounts to effect securities transactions for his own personal benefit. The findings also stated that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Fussman purchased shares of an initial public offering that traded at a premium in the immediate aftermarket and then sold the securities on the same day the offering went public at a \$45,125 profit.

Idongesit Sunday Udoh (Registered Representative, New York, New York) was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$60,730 in restitution to public customers. The sanctions were based on findings that Udoh made investment recommendations to public customers without having a reasonable basis to believe that such recommendations were consistent with the customers' stated investment objectives nor suitable for the customers based on their financial needs. According to the findings, the customers relied upon Udoh's misrepresentations and omissions of material facts in determining to purchase the aforementioned investments. In addition, Udoh engaged in private securities transactions without providing prior written notice to his member firm and failed to respond to NASD requests for information.

June Actions

None

July Actions

Michael Bonacci (Registered Representative, Brooklyn, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bonacci failed to respond to NASD requests for information regarding his association with a member firm.

Grady and Hatch & Company, Inc. (New York, New York), Raymond A. Hatch (Registered Principal, New York, New York) and Robert E. Grady (Registered Principal, Dix Hills, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. Hatch was also required to requalify as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hatch, failed to maintain its required minimum net capital while conducting a securities business. In addition, the findings stated that the firm, acting through Grady, failed to establish an escrow account in connection with a best efforts underwriting of a stock.

Charles Todd Sanders (Registered Representative, Bogota, New Jersey) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sanders failed to appear for two on-the-record interviews at the NASD regarding his association with a member firm.

Michael F. Sckipp (Registered Representative, Nesconset, New York) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Sckipp consented to the described sanction and to the entry of findings that he entered the examination room of the PROCTOR Certification Testing Center while having in his possession a folded sheet of study material containing financial formulas.

Brian Evan Shapiro (Registered Representative, Brooklyn, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Shapiro failed to respond to NASD requests for information regarding customer complaints.

Raymond Trentacost (Registered Representative, Basking Ridge, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$79,243.80 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trentacost consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he applied for two policy loans in the customer's name, and upon receipt of checks totaling \$15,848.76 from his member firm, he forged the customer's signature, negotiated the checks, and deposited the funds.

Alberto Van Der Mije (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and ordered to disgorge \$3,740 in profits. Without admitting or denying the allegations, Van Der Mije consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Van Der Mije purchased shares of a new issue that traded at a premium in the immediate aftermarket. In addition, the NASD found that Van Der Mije failed to notify his member firm and the executing member firm, in writing, of his association with the other member, prior to opening an account or placing an initial order for the purchase or sale of securities with the executing member.

Weatherly Securities Corp. (New York, New York) and **Michael Taglich (Registered Principal, Northport, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$16,040, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in connection with the sale of bonds, the firm and Taglich charged its retail customers unfair markups ranging from 5.86 to 10.93 percent above the prevailing market price.

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

Joseph P. Barry (Registered Representative, Plymouth, Massachusetts) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Barry failed to respond to an NASD request for information concerning his termination from member firms.

David L. Cowan (Registered Representative, North Haven, Connecticut) 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, Cowan consent-

ed to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his association with his member firm without providing prior written notice to the firm.

Joyce M. Desforges (Registered Representative, Fall River, Massachusetts) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Desforges withheld and misappropriated customer funds totaling \$1,113.39, for her own use and benefit.

Floyd J. Sharpe, Jr. (Registered Representative, Danbury, Connecticut) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sharpe failed to respond to NASD requests for information concerning his termination from a member firm.

Samuel E. Swain (Registered Representative, Ware, Massachusetts) 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, Swain consented to the described sanctions and to the entry of findings that he misappropriated insurance customer funds totaling \$8,821 intended for payment of insurance premiums.

June Actions

David F. Connare (Registered Representative, Manchester, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$200,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Connare consented to the described sanctions and to the entry of findings that he received from public customers \$150,270 intended by the customers for securities investment and, without their knowledge or consent, he misappropriated their funds for his own use and benefit.

John F. Fulone (Registered Representative, Mashpee, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fulone consented to the described sanctions and to the entry of findings that he forged disbursement forms requesting a \$3,000 loan and a \$1,200 dividend from a customer's life insurance policy. The findings also stated that Fulone forged that customer's signature, cashed the checks, and held the monies for four months.

July Actions

Robert S. Holland-Stanley, Sr. (Registered Representative, Yarmouth, Maine) was fined \$100,000 and barred from association with any NASD member in any capacity. However, Holland-Stanley's fine may be reduced by any amount of restitution he makes to a public customer. The NBCC imposed the sanctions following review of a Boston DBCC decision. The sanctions were based on findings that Holland-Stanley caused a public customer's bond account to be redeemed and that Holland-Stanley obtained, endorsed, and deposited the customer's check for \$55,707.05 into his personal checking account.

Edward S. Walters (Registered Representative, Storrs, Connecticut) was fined \$100,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Boston DBCC decision. The sanctions were based on findings that Walters withheld and misappropriated for his own use and benefit \$45,645.11 representing funds intended for insurance premium payments and investments in securities without the knowledge or consent of his member

firm or the customers. In addition, Walters failed to respond to NASD requests for information.

Market Surveillance Committee

May Actions

Gilford Securities, Inc. (New York, New York), Elias D. Argyropoulos (Registered Representative, Canoga Park, California), and Ralph Worthington, IV (Registered Principal, New York, New York) submitted Offers of Settlement pursuant to which the firm and Worthington were fined \$30,000, jointly and severally. In addition, the firm agreed to amend and strengthen its supervisory procedures. Argyropoulos was fined \$200,000 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 Argyropoulos effected, or caused to be effected, transactions in the account of a public customer without obtaining prior written discretionary authority from the customer and without the firm accepting the account.

The findings also stated that Argyropoulos executed purchase transactions in the account of a public customer that were not authorized by the customer, and recommended and purchased stocks for the accounts of public customers without having reasonable grounds for believing these recommendations were suitable for each of the customers in light of the nature and the size of the transactions, the customers' investment objectives, and financial needs. Furthermore, the NASD found that Argyropoulos shared in the losses of public customers by writing checks for trading losses previously suffered in the customers' accounts held at the firm and guaranteed public customers against losses in their accounts held at the firm. The NASD also determined that Argyropoulos solicited, arranged, and effected transactions that involved no change of beneficial ownership and orders to purchase or sell a common stock, with the knowledge of or reckless disregard for, the fact that corresponding orders of the same size, at the same time, and at the same price had been or would be entered, to create a false and misleading appearance. The NASD also found that the firm and Worthington failed to reasonably supervise Argyropoulos to detect and deter his conduct.

Christian Girodet (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$150,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Girodet consented to the described sanctions and to the entry of findings that he engaged in improper directed trading of a common stock that involved transactions in retail accounts maintained at a member firm. The NASD also found in seven instances, Girodet placed shares into the accounts of public customers without obtaining their authorization. The NASD determined that this conduct caused trade reports to be disseminated that interfered with the natural flow of volume and price information available to the public during the relevant time period.

A.J. Michaels & Co., Ltd. (Hauppauge, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,400. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to indicate on order tickets whether the sale was a long or short sale. The NASD also found that the firm failed to establish, maintain, and enforce its written supervisory procedures.

June Actions

Nathan B. Batalion (Registered Principal, Upper Nyack, New York) and Joseph Marasciullo (Registered Principal, Flushing, New York) sub-

mitted an Offer of Settlement pursuant to which Batalion was fined \$2,500, suspended from association with any NASD member in any capacity for two months, and required to requalify by examination as a principal. Marasciullo was suspended from association with any NASD member in any capacity for 14 days and required to appear for an NASD staff interview. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of finding that Marasciullo executed transactions in and moved the quotes in a common stock that resulted in the price manipulation of the stock from \$2.50 to \$5.25 per share. The findings also stated that Batalion failed to enforce his member firm's written supervisory procedures and failed to supervise reasonably Marasciullo to detect and deter the above conduct. Marasciullo's suspension began July 1, 1995, and ended July 14, 1995. In addition, Buenrostro failed to respond to NASD requests for information.

Joseph D. Burleson (Registered Principal, Durango, Colorado) and Iris Suzanne Burleson (Registered Representative, Durango, Colorado) J. Burleson was fined \$62,250, suspended from association with any NASD member in any capacity for three months, and must requalify by examination in all capacities before reassociation with a member firm. I. Burleson was fined \$10,000, suspended from association with any NASD member in any capacity for three months, and must requalify by examination in all capacities. The sanctions were based on findings that J. and I. Burleson were identified as market makers in a common stock that resulted in I. Burleson submitting buy and sell orders to her member firm's agency desk and directing the agency trader to execute the transactions with J. Burleson's member firm. Through the scheme, J. and I. Burleson were able to dominate the market and set arbitrary prices for the stock.

Patten Securities Corp. (Far Hills, New Jersey) and John L. Patten (Registered Principal, Far Hills, New Jersey) submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally. In addition, the firm was expelled from NASD membership and ordered to pay \$5,215.64 in restitution to public customers. Patten was suspended from association with any NASD member in any capacity for three years (suspension deemed served). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they effected transactions and induced the purchase and sale of a stock by means of manipulative, deceptive, and other fraudulent devices and contrivances resulting in a stock price increase of 316 percent over the public-offering price.

July Actions

Herman Ralph Garcia, Jr. (Registered Principal, Staten Island, New York), Paul Thomas Russo (Registered Principal, New York, New York) and Barbara Hosman (Registered Principal, Deer Park, New York) were each fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Garcia, Russo, and Hosman each failed to provide testimony in response to NASD requests.

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

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

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