

SPECIAL NASD NOTICE TO MEMBERS 96-32

Members Reminded To Use Best Practices When Dealing In Speculative Securities

Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

Executive Summary

In recent months, NASD Regulation, Inc., has observed instances of sharp price changes and increases in trading activity in stocks of low-priced companies. In response, NASD Regulation is issuing this *Special Notice to Members* to emphasize to its members their obligations to customers, particularly when dealing in speculative securities.

Questions or comments concerning this Notice may be directed to Daniel M. Sibears, Director, Regulation, at (202) 728-6911.

Discussion

NASD Regulation has undertaken a sales practice initiative in response to concerns related to trading in low-priced, speculative securities, including review for market manipulation, misrepresentations, high pressure sales tactics and fraudulent markups. Members are urged strongly to consider the following subjects that will be aggressively reviewed by NASD Regulation examination and enforcement staffs.

Suitability

Members are cautioned to take special care with respect to their suitability analyses where the securities involved are low-priced or speculative in nature. The NASD's suitability requirement under Article III, Section 2 of the Rules of Fair Practice is fundamental to fair dealings and is intended to promote ethical sales practices and high standards of professional conduct. Members' responsibilities include having a reasonable basis for recommending a particular security or strategy. In addition, the know-your-customer requirement embedded in Article III, Section 1 of the Rules of Fair Practice requires a careful review of the appropriateness of transactions in

low-priced, speculative securities, whether solicited or unsolicited.

Disclosure Of Material Adverse Facts And Interests To Customers

When a registered representative recommends the purchase or sale of a stock to a customer, he or she must not only avoid affirmative misstatements, but must also disclose material adverse facts about which the salesperson is, or should be, aware. Particular care should be taken with respect to the accuracy and completeness of information concerning low-priced, speculative securities. In this connection, members should focus on the completeness of disclosure concerning securities issued by companies whose ability to operate as a going concern is subject to question or contingent on gaining additional financing. This includes disclosure of any conflicts of interest that could influence the salesperson's recommendation or the customer's decision to purchase or sell the security.

Valuations

Firms should also be very careful with respect to the value given to speculative, low-priced securities, not only with regard to proprietary inventory positions, but also to valuation as collateral underlying customer balances. Substantial additional margin must be required where the securities carried are subject to unusually rapid or violent changes in value.

Supervision

Supervision is the cornerstone of securities industry self-regulation and depends on members establishing and implementing supervisory procedures and systems designed to achieve compliance with the NASD Rules of Fair Practice and federal

securities laws. Consequently, it is especially important that members consider the adequacy, reasonableness, and scope of their supervisory procedures in light of the recent volatility of some low-priced securities. When reviewing existing procedures, and determining the need for new or enhanced supervisory initiatives, members are reminded that they have final responsibility for ensuring that they comply fully with the requirements of Article III, Section 27 by establishing and maintaining a system to adequately supervise the activities of each registered representative and associated person. We note that Article III, Section 27 may be violated by a firm, an individual, or both, without the occurrence of separate underlying violations.

Heightened Supervisory Responsibility

Members assume a higher level of supervisory responsibility when they hire a representative with a significant regulatory history. Routine supervision is not sufficient when a member hires a representative who, for example, has a pattern of serious customer complaints or a disciplinary history, or for an existing representative who becomes the subject of such problems. In these instances, members must develop and impose special supervisory practices designed to address the particular areas of concern presented by the individual representative.

Cold Call Requirements

Members must supervise the cold calling activities of their sales force and ensure that all applicable telemarketing rules are complied with fully. This includes compliance with Article III, Section 21(g) of the Rules of Fair Practice, which requires each member to make and maintain a centralized "do not call" list of persons who do not wish to receive telephone solicitations from members or members' associated persons.

Members must be the effective first line of defense in our shared investor protection mission by ensuring that the rules, regulations, and best practices addressed in this Notice are actively and effectively implemented.

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NASD

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National Association of Securities Dealers, Inc.

May 1996

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NASD NOTICE TO MEMBERS 96-33

NASD Clarifies Rules Governing RR/IAs

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Executive Summary

On May 15, 1994, the NASD[®] issued *Special Notice to Members 94-44*, which clarified the applicability of Article III, Section 40 of the NASD Rules of Fair Practice to investment advisory activities of registered representatives (RRs) who also are investment advisers (RR/IAs). In particular, the Notice addressed the supervision of securities transactions conducted by RR/IAs away from the NASD members with which they are associated. Since the issuance of *Notice to Members 94-44*, the NASD has responded to questions concerning the types of records that may be used and recordkeeping systems that may be established by an NASD member to ensure that investment advisory transactions subject to Article III, Section 40 are properly recorded and the RR/IA adequately supervised. The NASD also has responded to other general compliance and interpretive questions relating to Article III, Section 40. To further facilitate member firm compliance with Article III, Section 40, this Notice discusses recordkeeping approaches and presents the answers to some of the most frequently asked questions regarding Section 40 since the release of *Notice to Members 94-44*.

Questions regarding this Notice may be directed to Daniel M. Sibears, Director, Regulation, at (202) 728-6911; or Mary Revell, Senior Attorney, Regulation, at (202) 728-8203.

Background

As reviewed in *Notice to Members 94-44*, Article III, Section 40 requires that any person associated with an NASD member who participates in a private securities transaction must, before participating in the transaction, provide written notice to the member with which he or she is associated. The written notice must describe the transaction, the associated person's

role, and disclose whether the associated person will or may receive selling compensation. Thereafter, the NASD member must advise the individual in writing whether it approves or disapproves the associated person's participation in a private securities transaction. If the member approves the transaction, the transaction must be recorded on the member's books and records, and the member must supervise the associated person's participation as if the transaction were executed on behalf of the member.

Most notably, *Notice to Members 94-44* clarifies the analysis that members must follow to determine whether the activity of an RR/IA falls within the parameters of Section 40. Fundamental to this analysis is whether the RR/IA participates in the execution of a securities transaction such that his or her actions go beyond a mere recommendation, thereby triggering the recordkeeping and supervision requirements of Section 40.

Where the RR/IA does not participate in the execution of securities transactions, *Notice to Members 94-44* reminds members and their RR/IAs that while Section 40 may not apply, the activity, nonetheless, may be subject to the notification provisions of Article III, Section 43. That section requires an RR to provide written notice to the NASD member with which he or she is associated of any proposed employment or outside business activity pursuant to which he or she will receive compensation from others. The form and content of an Article III, Section 43 notice is to be determined by the NASD member.

Article III, Section 40 Books And Records Relating To Investment Advisory Transactions

Where a member has approved an RR/IA's participation in private securities transactions for which he or she

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will or may receive selling compensation, the member must develop and maintain a recordkeeping system that, among other things, captures the transactions executed by the RR/IA in its books and records and facilitates supervision over that activity. Recordkeeping systems that simply record all transactions will not result in adequate supervision under Article III, Section 27 of the Rules of Fair Practice. Rather, the records created and recordkeeping system used, together with relevant supervisory procedures, must enable the member to properly supervise the RR/IA by aiding the member's understanding of the nature of the service provided by an RR/IA, the scope of the RR/IA's authority, and the suitability of the transactions.

Since the transactions subject to Section 40 by definition occur at and through another member or directly with a product sponsor, the NASD member licensing the RR/IA is not required to record the activity in the same manner it records transactions executed on behalf of its own firm (i.e., on its purchase and sales blotter). Rather, members may develop and use alternative approaches that meet their specific needs and business practices, such as special blotters, separate Section 40 recordation forms and files, and unit systems, for capturing the RR/IA activity that occurs through other firms. In this regard, Section 40 recordkeeping systems may involve many of the following books and records:

- dated notifications from the RR/IA detailing the services to be performed by the RR/IA and the identity of each RR/IA customer serviced at another firm in a private securities transaction;
- dated responses from the NASD member to the RR/IA acknowledging and approving or disapproving the RR/IA's intended activities;

- a list of RRs who also are IAs;
- a list of RR/IAs approved to engage in private securities transactions;
- a list of RR/IA customers, including those that are customers of both the member firm and the RR/IA, with a cross reference to the RR/IA;
- copies of customer account opening cards to determine, among other things, suitability;
- copies of discretionary account agreements;
- duplicate confirmation statements;
- duplicate customer account statements;
- a correspondence file for RR/IA customers;
- investment advisory agreements between the RR/IA and each advisory client;
- advertising materials and sales literature used by the RR/IA to promote investment advisory services wherein the RR/IA holds himself or herself out as a broker/dealer, complemented by a process that shows whether proper filings have been made at the NASD and whether the RR/IA is using any electronic means, such as the Internet, to advertise services or correspond with customers;
- exception reports, where feasible, based on various occurrences or patterns of specified activity, such as frequency of trading, high compensation arrangements, large numbers of trade corrections, and cancelled trades; and
- supervisory procedures fully responsive to Article III, Section 27 requirements and designed to address Section 40 compliance. The procedures may include such items as the

identity of persons responsible for Section 40 compliance, the recordkeeping system to be used and followed, and memoranda or compliance manuals that notify RR/IAs of the member's procedural requirements for Section 40 compliance.

Neither the federal securities laws nor the NASD Rules of Fair Practice mandate the supervisory system or structure that a member must use. Rather, each member can develop and implement its own supervisory system that is reasonably designed to detect and prevent violations. In this regard, no single document or combination of the referenced documents is specifically required or necessarily adequate to comply with Section 40 requirements. Rather, each member that determines to permit its associated persons to transact securities business through another broker/dealer must decide which tailored combination of records is necessary to develop an adequate supervisory system that addresses the allowable activities of RR/IAs. For example, obtaining duplicate confirmation statements directly from the RR/IA alone would permit a member to fulfill recordation requirements for the trades represented by confirmations received, but would not necessarily permit a member to reasonably ensure that it is capturing all trades. However, an arrangement under which the member obtains duplicate confirmation statements directly from the firm (or firms) that executes transactions for the RR/IA should be sufficient to ensure that the member captures all trades.

Member firms have tremendous flexibility to develop and implement recordkeeping and supervisory systems that meet the unique nature and scope of their own operations, and the permitted activities and services provided by their dually registered persons. In all circumstances, however, recordkeeping and supervision

must be adequate to ensure that full and complete transaction information is captured, and be reasonably designed to detect and/or prevent misconduct that could violate the federal securities laws and NASD Rules.

Answers To Frequently Asked Questions Concerning The Application Of Article III, Section 40 To Investment Advisory Activities

Question #1: Does Article III, Section 40 require prior approval of each transaction executed by an RR/IA away from his or her NASD member firm if the compensation received by the RR/IA is not transaction based?

Answer: An RR/IA may be involved in numerous transactions on a daily basis for which he or she receives asset-based or performance-based fees. Requiring prior notice of each trade effected under these conditions may hinder investors from properly receiving the investment advisory services provided by RR/IAs. Accordingly, the Board of Governors, acting on the recommendation of a special Ad Hoc Committee, has interpreted Article III, Section 40 to require prior notice of the investment advisory services that will be provided by the RR/IA for an asset-based or a performance-based fee, rather than prior notice of each trade effected by an RR/IA for a particular customer. This interpretation is intended to vigorously apply the investor protection concepts of Article III, Section 40 to investment advisory activities in a practical manner.

A member must receive prior written notice from an RR/IA requesting approval to conduct investment advisory activities for an asset-based or performance-based fee on behalf of each of his or her advisory clients. This notice must include details such as:

- a declaration that the individual is

involved in investment advisory activities;

- the identity of each customer to whom the notice would apply;
- the types of securities activities that may be executed away from the firm;
- a detailed description of the role of the RR/IA in the investment advisory activities and services to be conducted on behalf of each identified customer;
- information regarding the RR/IA's discretionary trading authority, if any;
- compensation arrangements;
- the identity of broker/dealers through which trades away will be executed; and
- customer financial information.

Only after written approval from the NASD member may the RR/IA engage in the disclosed activities. If there is a change in the RR/IA's proposed role or activities for any customer from what the member initially approved, the RR/IA must provide the member with a subsequent written notice that details the changes and requests the member's further approval to conduct advisory activities on behalf of the customer. The employer member must thereafter record subsequent transactions on its books and records and supervise activity in the affected accounts as if it were its own.

Members are reminded, however, that if the RR/IA receives transaction-based compensation, the member's prior approval of each trade is required.

Question #2: Does Article III, Section 40 apply to persons employed by or associated with registered invest-

ment advisory firms if such persons are not registered in an individual capacity with the Securities and Exchange Commission (SEC) or various states?

Answer: Yes. Article III, Section 40 of the Rules of Fair Practice applies to all of an associated person's private securities transactions, regardless of whether or not such associated persons are also registered with other regulatory authorities such as the SEC or the states. The reference to registered investment advisers in *Notice to Members 94-44* does not limit the applicability of Article III, Section 40 to only those persons individually registered as such with other regulatory entities. In addition, if the advisory service is not registered with any regulatory agency, a member should ensure that such registration is not required.

Question #3: Is it appropriate for a limited principal (i.e., a Series 26 Investment Company Principal) to supervise Article III, Section 40 transactions in products such as equity securities that are not covered by that registration category?

Answer: Limited principals may not supervise Article III, Section 40 transactions in products not covered by their registration category. Therefore, if a firm only has principals registered in a limited capacity, associated persons engaging in Article III, Section 40 transactions may do so only in products covered by the licenses of the firm's principals.

Question #4: Is it appropriate for a limited representative (i.e., a Series 6 Investment Company Representative) to execute Article III, Section 40 transactions in products such as equity securities that are not covered by that registration category?

Answer: A limited RR who is otherwise in compliance with applicable

federal and state registration requirements, such as the SEC's investment adviser registration requirements, may not execute transactions in securities not covered by his or her NASD registration. Registration with the NASD as a representative subjects an individual to all NASD rules, regulations, and requirements, including qualification requirements. Those rules preclude a limited representative from acting as a representative in any area not covered by his or her registration category. A limited representative who wishes to execute transactions in securities not covered by his or her registration category is required to pass an appropriate qualification exam.

Question #5: If an RR/IA is registered with more than one NASD member, must all members approve, supervise, and record the Article III, Section 40 transactions?

Answer: All members with whom a person is registered are responsible for the registered representative's involvement in Section 40 transactions. Members may develop a detailed, formal allocation arrangement whereby at least one member agrees and is able to provide the supervision and recordkeeping required by Article III, Section 40. However, the other members would be required to take the reasonable steps necessary to ensure that Section 40's recordkeeping and supervisory requirements are being carried out since members cannot delegate, by contract or otherwise, their ultimate responsibility for compliance with regulatory requirements.

Question #6: What is a member's responsibility with regard to supervising Section 40 securities transactions where an advisory client of an RR/IA refuses to provide information to the member, citing the confidentiality of client information provisions of an investment advisory agreement?

Answer: Article III, Section 40, which was adopted in 1985, and its predecessor Interpretation of the Board of Governors have always stipulated that a member that allows an associated person to participate in a Section 40 transaction is responsible for supervising that transaction as if it were its own. If a member determines that in order to meet its supervisory obligations under Section 40, it must have certain information from the customer and if the customer refuses to provide the information, the member should deny the associated person's request who would then be precluded from participating in the Section 40 activity.

Question #7: Are there circumstances under which income received as salary payments may be deemed selling compensation as defined by Article III, Section 40?

Answer: As explained in *Notice to Members 94-44*, selling compensation is broadly defined to include any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security. If salary payments are direct or indirect compensation for an RR/IA's participation in the execution of securities transactions away from his or her member firm, the salary payments would be deemed "selling compensation," and the activities would be subject to Article III, Section 40.

Question #8: Where investment seminars are conducted by RR/IAs away from their employing NASD member and seminar participants are charged a fee for attendance, would any income derived from the seminar for this investment advisory activity be governed by Article III, Section 40 or Section 43 of the Rules of Fair Practice?

Answer: If an investment seminar itself does not result in the execution

of securities transactions, Article III, Section 43 would govern the investment advisory activity. In determining whether Article III, Section 40 applies, the NASD has focused primarily upon the RR/IA's participation in the execution of securities transactions and whether the participation goes beyond a mere recommendation. If after an investment seminar, however, participants decide to engage in securities transactions with the participation of the RR/IA, that subsequent activity and any compensation received in connection therewith would be subject to Section 40.

Question #9: Must a member review performance reports produced by RR/IAs to properly discharge its supervisory responsibilities under Article III, Section 40?

Answer: It has come to the NASD's attention that some RR/IAs use information supplied by the broker/dealer through which they conduct private securities transactions or by the investment advisory service corporations with which they are associated to create performance reports for their advisory clients. These reports may be individualized performance reports that provide customized information for a specific client or standardized performance reports that provide general information to multiple clients. With regard to this practice, members and RR/IAs are cautioned that in creating or recreating performance reports, a risk is taken that calculations for securities transactions may be inaccurate, incomplete, or misleading, thus resulting in material misrepresentations being made or material facts being omitted. NASD member supervisory responsibilities should include a determination as to whether to permit associated persons to develop performance reports for securities transactions. If this activity is permitted, the member firm must review the performance reports.

Standardized reports sent to multiple clients are considered sales literature and must be reviewed by a registered principal at the member firm before distribution by the RR/IA to clients. If the RR/IA uses the same standardized format for different clients, principal approval before use is required only on the performance report prototype. This review must ensure that the reports are accurate, not misleading, or otherwise in violation of NASD or SEC Rules. In particular, members should review the standards set forth in Article III, Section 35 of the NASD Rules governing member communications with the public, as well as applicable SEC regulations.

Individualized performance reports are considered correspondence. As such, review by the member firm before RR/IA distribution to clients

is not required. However, the firm must have appropriate procedures in place, as required by Article III, Section 27 of the NASD Rules of Fair Practice, for review and retention of individualized performance reports and other correspondence.

Question #10: Must NASD members that employ RR/IAs provide training to this segment of their associated persons under the Firm Element of the Continuing Education requirements?

Answer: The Firm Element of the Continuing Education requirements (see Schedule C of the NASD By-Laws) is designed to be flexible and to permit firms to develop tailored educational programs based on their business practices and needs. In this regard, each member that permits its associated persons to conduct securi-

ties transactions through another firm should assess the need to provide specific Firm Element training with regard to Section 40 requirements. Where the assessment establishes a need for educational initiatives for all or some portion of the covered persons conducting business away from the member, the firm's written training plan should include defined and scheduled Section 40 training for specified individuals.

Although this Notice and previously issued *Notices to Members 91-32* and *94-44* clarify the application of Article III, Section 40 to investment advisory activities, Section 40 has been in effect since November 12, 1985 (see *Notice to Members 85-84*). Accordingly, members and their RR/IAs are expected to be in compliance with Article III, Section 40.

NASD NOTICE TO MEMBERS 96-34

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of April 30, 1996

Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

As of April 30, 1996, the following bonds were added to the Fixed Income Pricing System (FIPSSM).

Symbol	Name	Coupon	Maturity
DOMT	Dominion Textile USA Inc	9.250	4/1/06
BORN.GA	Borden Inc	8.375	4/15/16
BORN.GB	Borden Inc	9.875	11/1/97
BORN.GC	Borden Inc	9.250	6/15/19
BORN.GD	Borden Inc	9.200	3/15/21
BORN.GE	Borden Inc	7.875	2/15/23
LFI.GC	Levitz Furniture Corp	13.375	10/15/98
STCI.GC	Station Casinos Inc	10.125	3/15/06
CHK.GA	Chesapeake Energy Corp	9.125	4/15/06
FLCN.GA	Falcon Drilling Inc	8.875	3/15/03
KHEF.GA	XHE Finance Inc	11.250	4/15/02
VCEL.GA	Vanguard Cellular Sys Inc	9.375	4/15/06
AMIC.GD	Amercold Corp	12.875	5/1/08
CON.GB	Continental Homes Hdlg Corp	10.000	4/15/06
JEFF.GA	JeffBanks Inc	8.750	4/1/06
SLCM.GB	Southland Corp	4.000	6/15/04
SLCM.GC	Southland Corp	4.500	6/15/04
SLCM.GD	Southland Corp	12.000	6/15/09
TACA.GA	Trump A.C. Assoc/Trump A.C. Fdg Inc	11.250	5/1/06
PNF.GG	Penn Traffic Co New	11.500	4/15/06
CLUR.GA	Cellular Inc	11.750	9/1/03
PNDC.GA	Penda Corp	10.750	3/1/04
PCCO.GA	Penn Central Corp	9.750	8/1/99
PCCO.GB	Penn Central Corp	10.625	4/15/00
PCCO.GC	Penn Central Corp	10.875	5/1/11
ICEL.GA	InterCel Inc	12.000	5/1/06

As of April 30, 1996, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
BORW.GA	Borg Weimer Corp	8.000	4/1/96
PMWI.GA	Pace Membership WHSE Inc	13.000	4/15/96
WX.GA	Westinghouse Electric Corp	7.750	4/15/96

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to trade-reporting rules should be directed to James C. Dolan, NASD Market Surveillance, at (301) 590-6460.

NASD RULE FILING STATUS

Rule Filings Status
As of April 29, 1996

To help members track the status of NASD[®] Rule filings submitted to the Securities and Exchange Commission (SEC), the NASD will publish this information bimonthly in *Notices to Members*.

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

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

96-15

Amend Schedule A to the By-Laws to modify the exception for interest and dividend income from gross revenue for assessment purposes.

96-14

Amend Article IV, Section 5 of the Rules of Fair Practice (Rule 8210) to require members to provide information in response to requests by other regulators for regulatory information.

95-61

Amend Article III, Sections 26 and 29 of the Rules of Fair Practice (Rules 2830 and 2820) to regulate the receipt by members and their associated persons of cash and non-cash compensation for the sale of investment company and variable contract securities.

95-40

Amend The PORTAL Rules, Sched-

ule I to the NASD By-Laws (Rule 5300) to adopt a pilot program for reporting transactions in PORTAL securities.

Rule Filings Published For Comment But Not Yet Approved By The SEC

96-09

Amend Schedule D, Part II (Rules 4310 and 4320) to recommend that issuers distribute interim reports and consider technological methods to communicate other information to registered and beneficial shareholders. Published for comment in SEC Rel. No. 34-37010 (03/21/96); 61 F.R. 13909 (03/28/96).

95-63

Amend the Rules of Fair Practice to adopt a new section to regulate the conduct of a broker/dealer on the premises of a financial institution. Published for comment in Rel. No. 34-36980 (03/15/96); 61 F.R. 11913 (03/22/96).

95-39

Amend Rules of Fair Practice to apply the Rules of Fair Practice to exempted securities (except municipal securities), including government securities, and amend Article III, Section 2 of the Rules of Fair Practice to adopt a new Interpretation of the Board of Governors—Suitability Obligations to Institutional Customers. Published for comment in Rel. No. 34-36383 (10/17/95); 60 F.R. 54530 (10/24/95). Republished for comment in Rel. No. 34-36973 (03/14/96); 61 F.R. 11655 (03/21/96).

Rule Filings Recently Approved By the SEC

96-16

Plan of Allocation and Delegation setting forth the purpose, function,

governance, procedures and responsibilities of the NASD and its subsidiaries. Accelerated approval granted by the SEC in Rel. No. 34-37107 (4/11/96); 61 F.R. _____ (4/___/96).

96-04

Amend Schedule C, Part III to allow persons in good standing with the Canadian securities regulators to qualify as general securities representatives by exam. Accelerated approval granted by the SEC in Rel. No. 34-36825 (02/09/96); 61 F.R. 6052 (02/15/96).

96-03

Modify the NASD's FOCUS Filing Plan to standardize the requirements with those of the other SROs. Accelerated approval granted by the SEC in Rel. No. 34-36780 (01/26/96); 61 F.R. 3743 (02/01/96).

96-02

Delete Article V and Amend Articles VII and X of the By-Laws to reconfigure the Board of Governors and establish a national Nominating Committee. Temporary accelerated approval granted by the SEC in Rel. No. 34-37106 (4/11/96); 61 F.R. _____ (4/___/96).

95-62

Amend Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities, Article III, Section 1 of the Rules of Fair Practice, to provide that “blanket assurances of availability” may be used to satisfy affirmative determination requirements. Published for comment by the SEC in Rel. No. 34-36717 (01/16/96); 61 F.R. 1805 (01/23/96). Accelerated approval granted by the SEC in Rel. No. 34-36859 (02/20/96); 61 F.R. 7127 (02/26/96).

95-59

Amend Section 65 of the Uniform Practice Code Rule (11870) to require that a registered clearing agency use electronic facilities for account transfers. Published for comment by the SEC in Rel. No. 34-36638 (12/26/95); 61 F.R. 206 (01/03/96). Approved by the SEC in Rel. No. 34-36955 (03/11/96); 61 F.R. 11070 (03/18/96).

95-53

Amend Section 1 (Rule 11100) and add new Section 73 of the Uniform Practice Code to require the use of standardized limited partnership transfer forms. Published for comment by the SEC in Rel. No. 34-36611 (12/20/95); 60 F.R. 67146 (12/28/95). Approved by the SEC in Rel. No. 34-36783 (01/29/96); 61 F.R. 3955 (02/02/96).

DISCIPLINARY ACTIONS

Disciplinary Actions Reported For May

The NASD® has taken disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, May 20, 1996. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

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

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

Gilbert Marshall & Company (Greeley, Colorado) and Michael A. Usher (Registered Principal, Greeley, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$25,000, jointly and severally. In addition, the firm was suspended from recommending any penny stock transactions, as defined by Securities Exchange Act Rule 3a51-1, for two years and required to establish and maintain written supervisory procedures adequate to ensure compliance with the penny stock rules. Furthermore the firm must employ a compliance assistant to assist the firm's Compliance Officer and Usher is required to requalify by exam as a

general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the sale of a penny stock, the firm, acting through Usher, failed to complete, or cause to be completed, written suitability statements for the purchasing customers and failed to obtain manually signed and dated copies of the written suitability statements from the purchasing customers.

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

D.E. Frey & Company, Inc. (Denver, Colorado), Stanley Baker (Registered Principal, Aurora, Colorado), and Brian O'Toole (Registered Representative, Littleton, Colorado) submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. O'Toole was

fined \$12,500, required to pay \$59,921.79 in restitution to customers, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by exam as a general securities sales representative. Baker was fined \$5,000, suspended from association with any NASD member as a general securities principal for five business days, and required to requalify by exam as a general securities principal. In addition, Baker is required to hire a management consultant familiar with the securities industry to review the supervisory and operations procedures in place in the branch office in which he is the branch office manager to determine their adequacy and ability to detect possible violations of securities rules and regulations. The consultant will perform this review and will prepare a report to submit to the NASD. Based on the findings of this report, Baker will begin to implement any recommended changes to the supervisory and operations procedures in this branch office.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that O'Toole effected transactions in the discretionary account of public customers that were excessive in size or frequency in view of the financial resources and character of these customers' securities account. The findings also stated that O'Toole effected transactions on margin in the customers' account and incurred margin debts that were excessive. According to the findings, these transactions were implicitly recommended to these customers by O'Toole without having reasonable grounds for believing that the recommendations were suitable for these customers. Furthermore, the NASD found that O'Toole exercised discretion in the customers' account without having this account accepted by his member

firm in writing as a discretionary account. The NASD determined that the firm, acting through Baker, failed to adequately supervise O'Toole's activities in order to detect and prevent the excessive trading effected by O'Toole. In addition, the NASD found that the firm failed to establish, maintain, and enforce written procedures to supervise the activities of registered representatives to prevent and detect excessive trading activity.

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

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

Firm And Individual Fined Commonwealth Equity Services, Inc. (Waltham, Massachusetts) and David L. Kelly (Registered Principal, Waltham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$20,000, jointly and severally. The firm also agreed to implement certain improvements in its supervisory, compliance, and management structure and was ordered to pay \$55,235 in restitution

to customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to entry of findings that the firm, acting through Kelly, failed to enforce its written supervisory procedures to achieve compliance with applicable securities laws and regulations and with the NASD rules.

Firms Fined

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

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

Trimark Securities Inc. (White Plains, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$15,000 and must undertake to implement its supervisory procedures to prevent a pattern or practice of late trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported, or caused to be reported, transactions through the Automated Confirmation Transaction (ACTSM) Service, contrary to provisions of

Section 2(a)1 and 2(a)5 of Schedule G to the NASD By-Laws and the Interpretation of the Board of Governors concerning the obligation of members to report transactions within 90 seconds of execution.

Individuals Barred Or Suspended

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

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

Donald Eugene Bline (Registered Representative, Brazil, Indiana) was fined \$35,750, barred from association with any NASD member in any capacity, and required to pay \$2,350 in restitution to a member firm. The sanctions were based on findings that Bline received from a public customer \$3,150 with instruc-

tions to deposit the funds in three policies with his member firm. Bline failed to follow the instructions and used the funds for some purpose other than for the benefit of the customer. Bline also failed to respond to NASD requests for information

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

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

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

James W. Bullard, Jr. (Registered Representative, Miami Beach, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Bullard was also suspended from association with any NASD

member in any principal capacity for two years and ordered to appear and give on-the-record testimony to the NASD. However, if Bullard fails to appear, the suspensions will automatically convert to a bar from association with any NASD member in any capacity. The sanctions were based on findings that Bullard failed to respond completely to NASD requests for information.

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

Albert T. Carazolez (Registered Representative, San Diego, California) and **John Morris (Registered Principal, Del Mar, California)** were each fined \$5,000. Carazolez was also suspended from association with any NASD member as a general securities representative for 20 business days and ordered to pay \$5,411.76 in restitution to public customers. Morris was suspended from association with any NASD member as a general securities principal for 15 business days and required to requalify by exam as a general securities principal should he seek to become associated in such capacity. The sanctions were based on findings that Carazolez recommended transactions for the accounts of public customers without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the frequency of the recommended transactions; the risks associated with the transactions; and the customers' financial situa-

tions, objectives, circumstances, and needs. Morris failed to follow his member firm's written supervisory procedures or to respond adequately to red flags to ensure compliance with applicable NASD rules by Carazolez.

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

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

been intended for deposit into the accounts of public customers.

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

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

Robert W. Dempsey (Registered Representative, Lake Hopatcong, New Jersey) was fined \$60,000 and

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

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

Dane Stephen Faber (Registered Principal, Sausalito, California) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Faber

consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer that were unsuitable for the customer based upon the facts disclosed by her as to her other security holdings, financial situation, and needs, and in light of the size and frequency of the transactions.

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

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

Thomas Warner Graham (Registered Representative, Sioux City, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he received

from two public customers \$283.18 to pay their monthly insurance premiums. According to the findings, Graham did not apply these monies as instructed and, instead, without the customers' knowledge and consent, deposited the cash into his personal bank account and issued checks from his account to his member firm for the premiums that were returned for insufficient funds. The NASD also found that Graham failed to return the monies to one of the customers until a later date, and failed to send the premium amounts to his member firm until a later date at which time the monies were deducted from his commissions account and used to pay premiums due for one of the customer's insurance policy.

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

Roger Philip Holland (Registered Representative, Tyler, Texas) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Holland consented to the described sanctions and to the entry of findings that, without the prior approval of a principal of his member firm, he published advertisements and sent or made available to the public, sales literature that made false and misleading statements of fact, exaggerated, unwarranted, and misleading statements or claims and that omitted to state material facts or qualifications that would have caused such advertisements and

sales literature not to be misleading in the offering of investments in tax-advantaged limited partnerships.

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

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

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

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

file FOCUS reports in a timely manner. Jones also failed to timely deposit customer checks in an escrow account.

Ajay R. Joshi (Registered Principal, Winnetka, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Joshi consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice of, and receive prior written approval from, his member firm to engage in such activities.

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

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

James W. Lyons (Registered Representative, Atlanta, Georgia) was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that

Lyons caused \$200 to be removed from the clearing account of a bank which employed him and converted the funds for his own use and benefit.

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

Robert E. McDaniel (Registered Principal, South Palm Beach, Florida) was fined \$10,000 and suspended from association with any NASD member in any principal capacity for two years. The NBCC affirmed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that McDaniel paid a representative of another member firm \$32,546.69 in commissions for mutual fund sales and reinvestments without the prior oral or written authorization of their member firms.

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

Steven J. Motosicke (Registered Representative, Apollo, Pennsylvania) was fined \$40,000 and barred

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

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

Roger A. Mullins (Registered Representative, Atlanta, Georgia) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mullins caused the address on the joint securities account of public customers to be changed without the customers' knowledge or authorization and executed three sales of securities for the account without their knowledge or consent. In addition, Mullins caused

three checks to be issued from the account, forged a customer's signature on the checks, deposited the checks in his personal bank account, and converted the proceeds for his own use and benefit. Mullins also failed to respond to an NASD request for information.

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

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

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

John D. Perez (Registered Representative, Mayaguez, Puerto Rico)

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

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

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

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

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

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

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

prior written approval from, his member firm of these transactions.

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

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

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

authorization from his member firm to engage in such activities.

Oliver J. Williams, Jr. (Registered Principal, Miami, Florida) was fined \$40,000, barred from association with any NASD member in any principal capacity, and ordered to requalify by exam as a general securities representative. The sanctions were based on findings that a member firm, acting through Williams, effected transactions in non-exempt securities and conducted a securities business while failing to maintain sufficient net capital and failed to compute its net capital accurately. The firm, acting through Williams, also filed materially inaccurate FOCUS Part I reports with the NASD and failed to timely send telegraphic notice as required by SEC Rule 17a-11 with regards to its net capital deficiencies. In addition, Williams permitted the firm to conduct a securities business without a registered financial and operations principal and failed to file a FOCUS Part I report in a timely manner.

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

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

Individuals Fined

Harvey Hertz (Registered Principal, St. Petersburg Beach, Florida) was fined \$10,000, required to requalify by exam as a general securities principal, and was made subject to special supervision. The sanctions

were based on findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Hertz sold shares of securities that traded at a premium in the immediate aftermarket to a restricted account.

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

Firm Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations Westfield Financial Corporation, New York, New York

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of Article IV, Section 5 of the NASD Rules of Fair Practice and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Cameron Phillips Securities Group, Inc., New York, New York (April 8, 1996)

Conservative Securities Company, Colorado Springs, Colorado (April 8, 1996)

Coolidge Securities Corporation, New York, New York (April 8, 1996)

First Wall Street Securities of New York, Great Neck, New York (April 8, 1996)

Freeman Financial Services Corporation, San Mateo, California (April 8, 1996)

Glaser Securities, Inc., New York, New York (April 8, 1996)

James Harold Goode, Jr., San Clemente, California (April 8, 1996)

Greenstone Securities, Inc., Placerville, California (April 8, 1996)

Helix Securities, Inc., Salt Lake City, Utah (April 8, 1996)

International Capital Markets Group, Inc., Chicago, Illinois (April 8, 1996)

Land Mark, Inc., Brewer, Maine (April 8, 1996)

Long Island Network Securities, Inc., Oceanside, New York (April 8, 1996)

Magdensburg Securities Corp., New York, New York (April 8, 1996)

Meridian Equities Company, Jackson, New Jersey (April 8, 1996)

Metropolitan Resources, Inc., Chevy Chase, Maryland (April 8, 1996)

Mid Continent Securities, Inc., Lakewood, Colorado (April 8, 1996)

On-line Notes & Mortgages, Inc., Albuquerque, New Mexico (April 8, 1996)

RBG Investments, Inc., Chicago, Illinois (April 8, 1996)

U.S. Investments, Inc., Dallas, Texas (April 8, 1996)

Werlitz Securities, Inc., Garden City, New York (April 8, 1996)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Restitution In Connection With Violations Russell B. Anderson, Orem, Utah

Ray A. Forrester, Chicago, Illinois

Thomas L. Gottschalk, Arvada, Colorado

Lyle A. Hodgerson, Riverside, California

Linda M. King, Marietta, Georgia

Alan F. McIntyre, Germantown, Tennessee

Michael I. Pinsler, Chicago, Illinois

Donnell G. Vaughn, West Des Moines, Iowa

Thomas E. Warren, III, Tulsa, Oklahoma

Davis W. Wetmore, Bellaire, Texas

NASD Regulation, Inc. Bars Penny Stock Broker; Orders \$7.8 Million In Customer Restitution
NASD Regulation, Inc., (NASD Regulation) ordered penny stock broker Franklin N. Wolf, former President and owner of F.N. Wolf & Co., Inc., to pay almost \$7.8 million in restitution to hundreds of investors who purchased penny stocks. He was also fined \$250,000 and barred for life from the securities industry.

Richard T. Sullivan, Vice President and Director of Compliance for F.N. Wolf & Co., was fined \$10,000, censured, and suspended from acting in any supervisory capacity in the securities industry for one year. To regain his status as a general securities prin-

cipal, Sullivan will have to requalify by examination.

“We consider the violations so serious that ordering the almost \$8 million in restitution and barring Wolf from the securities industry for life are necessary to protect the investing public and serve as a deterrent to anyone thinking about taking advantage of investors now or in the future,” said NASD Regulation President Mary L. Schapiro.

John E. Pinto, NASD Regulation Executive Vice President agreed. “Less than two years ago, the NASD brought a major disciplinary action against the firm, Wolf, and others—also for sales-practice abuses in the sale of penny stocks to investors. Shortly after that NASD action, F.N. Wolf closed its doors and went out of business.”

Today’s action is important because even though Wolf Financial and Wolf & Co., filed for bankruptcy court protection in August 1994, the restitution ordered by the NASD positions the affected investors to recapture some of their money.

The focus of the NASD disciplinary action concerned F.N. Wolf’s sales of Nacoma Consolidated Industries, Inc., an over-the-counter security, in violation of penny stock rules established by the SEC designed to reduce high-pressure sales tactics and increase customer awareness of the sale of penny stocks by broker/dealers. After an extensive investigation, the NASD found that Wolf effected more than 2,500 sales of Nacoma to customers without complying with required penny stock sales-practice rules, designed to protect investors.

During a six-month period, F.N. Wolf sold more than 2.5 million shares of Nacoma to customers, generating \$7.8 million in proceeds. The SEC’s penny stock rules require that prior to

each retail sale, every customer must be provided with a written determination regarding that particular sale, which the customer then must sign and return, confirming that the security in question is a suitable investment. Furthermore, the firm must obtain written authorization from the customer to purchase a particular penny stock. The SEC has said this rule is designed to regulate the sales practices of broker/dealers active in the market for low-priced securities that are not listed on The Nasdaq Stock MarketSM or the stock exchanges, and is intended to be a “means reasonably designed to prevent fraud.”

The NASD also found that Wolf and Sullivan failed to establish or enforce adequate supervisory procedures requiring compliance with the Penny Stock Rule.

According to the NASD findings, Wolf understood the requirements of the highly publicized Penny Stock Rule, despite his protests that he did not comprehend the rule’s implications. Furthermore, Wolf was deemed responsible for making the ultimate decision to market Nacoma to his customers. The NASD also decided that Wolf “well knew that compliance with the Penny Stock Rule would effectively kill the lucrative plan which had been set up for Nacoma.”

Finally, the NASD found that given the gravity of Wolf’s misconduct and his extensive disciplinary history, the public’s best interest could only be served by barring him from the securities industry for life.

The case was decided by the New York DBCC, and affirmed on appeal by the NASD NBCC. These Committees are responsible for disciplining NASD members and their associated persons who fail to comply with NASD rules and related

securities laws. The decision stems from an investigation conducted by the NASD New York District Office.

This enforcement action is part of an on-going effort by the NASD to eradicate abusive sales practices in the sale of penny stock to investors.

Wolf is appealing his case to the SEC.

NASD Regulation Fines Stratton Oakmont \$325,000 For Fraud And Other Violations; Suspends And Fines Head Trader

NASD Regulation fined Stratton Oakmont, Inc., of Lake Success, N.Y., \$325,000 for fraud and other violations in connection with its underwriting of an initial public offering (IPO). The firm’s head trader and manager of its trading department, Steven P. Sanders, was also suspended and fined \$50,000.

The settlement requires Stratton and Sanders to pay their fines by April 15. Sanders will be suspended for 45 days from associating with any NASD member, and has agreed not to engage in any trading-related activities for any NASD member firm for 50 days. The settlement also requires that Stratton file certain new supervisory procedures with the NASD.

NASD Regulation President Mary L. Schapiro, said, “By violating the integrity of the capital raising process, Stratton abused underwriting procedures and benefited at its customers’ expense.”

This settlement results from a joint investigation by the NASD New York District Office and its Enforcement Department in Washington, DC.

Without admitting or denying the alleged violations, Stratton and Sanders consented to the NASD’s

entry of findings that Stratton served as lead underwriter in the IPO of IPS Health Care, Inc., units, and sold more than 70 percent of the offering to its own customers. At the same time, Stratton's registered representatives encouraged their customers to purchase units in the IPO before the SEC declared the registration statement effective. By accepting payments from customers before the SEC declared the IPO effective, Stratton violated NASD rules and federal securities laws. During this pre-effective period, Stratton sold 64,975 units—13 percent of the total units it sold—to 71 customers for a total of \$573,562.50.

Additionally, the NASD found that Stratton solicited and received customer sale orders from more than 300 customers for 236,650 IPS Health Care warrants, which were a component of the IPS units. These trades, totaling 306 orders, were solicited before the offering was effective, and thus violated federal securities laws because Stratton was bidding for securities before completing its role in the distribution. In the two weeks following the offering, Stratton resold these warrants, profiting by approximately \$300,000.

Stratton and Sanders were also found to have violated SEC and NASD anti-fraud provisions. Stratton, acting through Sanders, fraudulently purchased IPS Health Care warrants from its customers in a rising market at arbitrary prices shortly after trading in the warrants began. Stratton, through Sanders, arbitrarily gave certain customers, whose sell orders were received early in the morning, at \$1.00 a share, while other customers, whose sell orders were received hours later, received \$.50 per share, even though the market had risen during the day.

Separately, in more than 700 transactions, Stratton failed to disclose to its

customers that it was a market maker in IPS Health Care securities.

The NASD also found that Stratton and Sanders failed to establish and enforce written supervisory procedures and that they failed to provide adequate supervision in violation of the NASD Rules of Fair Practice.

The federal securities laws require that IPO sales occur only after the SEC declares the registration statement effective. Sales by a firm during this pre-effective period undermine the purpose of these restrictions—to enable investors to become thoroughly apprised of information concerning the issuer and to arrive at a reasoned decision concerning the merits of the investment. In addition, an underwriter is prohibited from soliciting sales while engaged in a distribution. During this period, the market for a security is especially sensitive and susceptible to artificial price influences by those involved in the distribution.

NASD Regulation Executive Vice President John Pinto said: "Stratton's violations are serious. The rules are designed to prevent premature selling as well as soliciting purchases during a distribution. Both are essential to ensuring the integrity of the underwriting process. It is critical that firms remain vigilant in their adherence to these rules. Those that don't will face NASD enforcement actions."

The terms of the settlement were approved by the New York DBCC. The Committee's acceptance of the settlement was approved by the NASD NBCC.

NASD Regulation Fines And Censures Gruntal & Co.

NASD Regulation has fined Gruntal & Co., Inc. (Gruntal) \$200,000 and censured the firm for trading ahead

of its customers' limit orders; reporting trades late; and failing to adequately supervise in these areas. In addition, Gruntal agreed to reimburse customers who may have been disadvantaged by these practices.

"Today's enforcement action against Gruntal demonstrates the importance of the NASD limit-order rules and our intention to rigorously enforce them," said NASD Regulation President Mary L. Schapiro.

These violations were uncovered by the NASD New York District Office during its current routine examination of Gruntal, and decided by the DBCC.

Without admitting or denying the allegations, Gruntal agreed to NASD findings that it failed to comply with the NASD limit-order protection rules by executing transactions for its own account without first executing its customers' limit orders, a practice known as "trading ahead." While these limit orders were eventually executed, Gruntal's trading ahead represented a failure to fulfill the limit-order protection obligation incumbent on all NASD member firms.

Under the terms of the settlement, Gruntal is required to pay \$100,000 of the fine to the NASD immediately, with the remaining \$100,000 designated to reimburse any customers who were harmed as a result of Gruntal's improper activities. Gruntal has 45 days to hire an independent consultant to identify any customers who may have been harmed and therefore merit restitution. In the event that the total restitution does not equal \$100,000, the difference will be paid to the NASD within 60 days after the consultant issues its final report.

Mandating the use of outside professionals to monitor and periodically

report on regulatory compliance in areas such as internal controls and supervisory systems, as well as to recommend new or enhanced policies, has been used successfully by the SEC and NASD in the past as part of disciplinary sanctions imposed in enforcement actions. To date, Gruntal has reimbursed customers \$7,800.

“The NASD will not tolerate instances where a member places its own interests ahead of those of its customers,” said John Pinto, NASD Regulation Executive Vice President.

The NASD also found that Gruntal failed to timely report 103 transactions in securities listed on The Nasdaq Stock Market within 90 sec-

onds of execution, as required under NASD regulations. Gruntal also failed to make any report of two other transactions it was obliged to report.

Finally, the NASD found that Gruntal failed to enforce its supervisory procedures to ensure compliance with NASD regulations.

FOR YOUR INFORMATION

Correction To Notice To Members 96-26

The registration status for Series 37 and Series 38 was listed incorrectly in the chart on page 202 in *Notice to Members 96-26*. The correct registration status for the Series 37 is CD and for the Series 38 is CN. If you have any questions regarding this correction, please call the NASD[®] Qualifications Department at (301) 590-6696.

Direct Participation Programs In The OTC Bulletin Board

The NASD has filed a proposed Rule change with the Securities and Exchange Commission to permit the quotation of Direct Participation Programs (DPPs) in the OTC Bulletin

Board[®] and to require the reporting of transactions in DPPs through the Automated Confirmation Transaction (ACTSM) Service. As proposed, reports of secondary market transactions in DPPs generally will be submitted on the next business day (T+1) after the date of execution between 8 a.m. and 1:30 p.m., Eastern Time. The proposed Rule change would centralize a fragmented market and provide greater transparency.

The proposed Rule change was published for comment in the *Federal Register* on April 25, 1996.

Questions concerning this proposal may be directed to Andrew S. Margolin, Attorney, The Nasdaq Stock MarketSM, at (202) 728-8869.