Regulatory & Compliance Alert

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The NASD Provides Guidance On OATS Clock Synchronization

Under National Association of Securities Dealers, Inc. (NASD®) Order Audit Trail System℠ (OATS℠) Rule 6953, all member firms with an obligation under any NASD rule to record the date and time of any market event must synchronize their business clocks, including computer system clocks and mechanical clocks. The clock synchronization requirements apply to all members with a time-reporting obligation under any NASD rule or By-Law, but not to members that may have time-reporting obligations under another regulatory scheme. For example, members that are required to record the time an order was received under NASD Rule 6954 or the time of transactions in fixed income securities under NASD Rule 6420 must record the time from a synchronized source. Firms that do not have obligations under NASD rules or By-Laws to record the time of market events, but may have such requirements under Securities and Exchange Commission (SEC) rules, such as firms that deal only in mutual funds, are not covered by NASD Rule 6953.

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NASD REGULATION, INC.

The NASD Provides Guidance On OATS Clock Synchronization, From page 1

Under NASD Rule 6957, all computer clocks used to record time associated with electronic order handling or execution software were required to have been synchronized by August 7, 1998. In addition, all mechanical clocks, including manual devices used to record time, must be synchronized by July 1, 1999. This means that members that use mechanical time-stamping devices or record order receipt time on order tickets manually must do so from a synchronized business clock. Member firms may synchronize business clocks to any source that is accurate to within three seconds of the National Institute of Standards and Technology (NIST).

According to OATS Rules 6954 and 6955, any member firm that receives or handles orders in Nasdaq® securities must record and report certain information about the orders to the NASD.[1] Specifically, the Rules cover orders received from customers for handling or execution; orders received from another member firm for handling or execution; and those orders originated by a department or desk within a firm for execution by another department or desk within the same firm.[2] Included in the information that must be recorded and reported in each of the Phases are several times relating to orders received or handled in Nasdaq securities including: order receipt time, the time the order was routed to another firm for handling or execution, the time the order was modified or canceled, and the time the order was executed. These times must be recorded in hours, minutes, and seconds.

In Phases 1 and 2 of the OATS implementation schedule, the times recorded by a member firm's electronic order handling or execution system is sufficient for OATS reporting. In Phase 3, when manual orders are reportable to OATS, member firms must record and report the actual time that an order is received from a customer or another member firm, even if the order is received outside of the main office by a registered representative or an independent contractor. An order is "received" when all of the specific details of the orders are understood and the order arrives at a place where it can be handled or executed. Registered representatives and independent contractors who immediately, electronically or otherwise, transmit their orders to the main office of a member firm may use the time the order was transmitted (as recorded by the person who receives the order) as order receipt time; thus, they would not be required to maintain at their location a synchronized clock that displays or records time in seconds. However, if there were any delay in transmitting the order to the firm or if the firm did not agree to maintain the

1 Under NASD Rule 6957, OATS recording and reporting will be implemented in Phases. By March 1, 1999 (Phase 1), information about electronic orders received at trading desks and all orders received by Electronic Communication Networks (ECNs) must be reported to the NASD. By August 1, 1999 (Phase 2), all electronic orders must be reported to OATS, including electronic orders received by order entry firms. By July 31, 2000 (Phase 3), all orders must be reported to OATS, including all non-electronic or manual orders, and orders filled for a customer via the Small Order Execution System℠ (SOES℠) and SelectNet℠.

2 Orders not covered by NASD Rules 6950 through 6957 include orders a Market Maker places for its proprietary market-making account; orders received on SOES and SelectNet in response to proprietary orders placed in the normal course of market-making activities; proprietary orders filled on an ECN solely for market-making activities; and orders received for Bulletin Board, Pink Sheet, or listed securities.

proper times, the independent contractor or the registered representative in the branch office would have an obligation to maintain a synchronized clock for recording the times required under the OATS Rules. Member firms that use a third party, such as another broker/dealer or a financial service bureau, to report on their behalf must have their own synchronized source of time when orders are not immediately transmitted to the third party or when there are temporary technical breakdowns.

The following are frequently asked questions received from member firms regarding OATS and clock synchronization issues. To obtain additional information about OATS and to see updates to these frequently asked questions visit the OATS Web Pages maintained at *www.nasdr.com*. You many also call Business and Technology Support Services at (800) 321-NASD for more OATS information.

Note: These clock synchronization questions are excerpted directly from the OATS Frequently Asked Questions Web Page; therefore, we have retained the headings, format, and question numbers in order to mirror what is available on the Web Page and for ease of use by the reader of these questions in both print and Internet formats.

Compliance

C12. My firm is not required by NASD rules or By-Laws to record the date and time of market events. Are we required to synchronize our business clocks?

No. Only NASD member firms with an obligation under NASD rules or By-Laws to record the time of a market event must synchronize their business clocks. For example, firms that only sell mutual funds and have such an obligation only under SEC rules or related guidance to record the time of market events are not required to synchronize their business clocks. See C13, C21, and S6. (*Last updated 11/03/98*)

C13. My firm is required by NASD rules to record the date and time of market events, but we do not accept orders for Nasdaq securities and have no OATS reporting responsibilities. Are we required to synchronize our business clocks?

Yes. All NASD member firms with an obligation under NASD rules or By-Laws to record the time of a market event must synchronize their business clocks. See C12, C21, and S6. (*Last updated 9/08/98*)

C14. Do the OATS Rules allow us to continue to write the time on order tickets or are we required to purchase mechanical time clocks?

Under the OATS Rules you may continue to use handwritten timestamps. However, a firm that uses handwritten timestamps must be confident that it is complying with the OATS Rules and all other NASD rules or By-Laws. This includes referencing a synchronized clock and recording hours, minutes, and seconds when writing timestamps for OATS reportable events. (*Last updated 7/17/98*)

C15. What time am I supposed to report as order receipt time when I receive a customer order on the golf course?

An order is "received" when all of the specific details of the order are understood and the order arrives at a place where it can be handled or executed. For example, if an order is communicated on the golf course, the "receipt" would occur when you called or brought that order to the office. (*Last updated 9/08/98*)

C21. My firm deals only in mutual funds. Do we need to synchronize our business clocks, as specified in the OATS Rules?

No. Firms that deal only in mutual funds and have no obligations under NASD rules or By-Laws to record the time of a market event have no requirement to synchronize their business clocks. See also C12, C13, and S6. (*Last updated 9/08/98*)

C30. If I receive an order when I am outside of my office, do I have to immediately reference a synchronized clock and record the time of receipt?

An order is "received" when all of the specific details of the order are understood and when the order arrives at a place where it can be handled or executed. For example, if you received an order while you were at a restaurant, the "receipt" would occur when you called or brought that order to the office. See C15. (*Last updated 11/20/98*)

Technical

T20. Do I have to report times in Eastern Time?

Yes. All timestamps must be reported to OATS in Eastern Time, in order to allow the NASD to link order events. (*Last updated 7/17/98*)

Clock Synchronization

S1. When will I need to start synchronizing my clocks?

NASD Rule 6953 applies to all member firms that record order, transaction, or related data required by the By-Laws or other NASD rules. It requires member firms to synchronize all business clocks, including both computer system clocks and mechanical time-stamping devices. According to NASD Rule 5957(a), the requirements of this Rule are effective on August 7, 1998, for all computer system clocks and on July 1, 1999, for all mechanical clocks. See S11. (*Last updated 7/6/98*)

S2. To what source should the business clocks be synchronized?

All computer system clocks and mechanical time-stamping devices must be synchronized to any source within three seconds of the National Institute of Standards and Technology (NIST) standard. All of your clocks and time-stamping devices must remain accurate within a three-second tolerance of the NIST clock, including:

- the difference between the NIST standard and a time provider's clock;
- transmission delay from the source; and
- the amount of drift of the clock.

For example, if you use a Network Time Protocol (NTP) server that is accurate to within one second of the NIST standard, the maximum allowable drift for any computer system is two seconds. (*Last updated 7/6/98*)

S3. When during the day should clocks be synchronized?

Computer system and mechanical clocks must be synchronized every business day before market open. To maintain clock synchronization, clocks should be checked against the standard clock and re-synchronized, if necessary, at pre-determined intervals throughout the day. Member firms must document and maintain their clock synchronization procedures. (*Last updated 3/12/98*)

S4. If I process some orders in my firm manually and some orders in my firm electronically by what date should my business clocks be synchronized?

The requirements of this Rule remain the same, even if you process orders both electronically and manually in your firm. They are effective on August 7, 1998, for all computer system clocks and on July 1, 1999, for all mechanical clocks. (*Last updated 7/6/98*)

S5. What is our obligation to ensure that the clocks a non-member uses for reports on our behalf are actually in synchronization?

You must obtain a current copy of the procedures used by the non-member entity. Your firm is ultimately responsible for compliance with the OATS Rules; therefore, if you have some indication that the non-member is not in compliance with the OATS Rules, you should contact the non-member entity and the NASD and, if the problem cannot be rectified, select another third party to record and report OATS data for you. (*Last updated 7/17/98*)

S6. Are we required to synchronize all clocks at our firm?

No, you are only required to synchronize the clocks that are used to record the date and time of those market events that you are obligated to record under NASD rules or By-Laws. See also C12, C13, and C21. (*Last updated 7/17/98*)

S7. Shouldn't we just synchronize to the NIST atomic clock because we can't ensure that our time provider is actually in synchronization with the NIST standard?

Not necessarily. You can synchronize your clocks with any time provider. Most time providers provide information about the difference between their clocks and the NIST clocks. Use this information in order to determine if your business clocks are actually in synchronization. If your chosen time provider does not consistently provide this information, or you have reason to believe that the information is inaccurate, contact the time provider and the NASD and, if the problem cannot be rectified, choose another time provider. Your firm is ultimately responsible for its compliance with the OATS Rules. (*Last updated 7/17/98*)

S8. Am I responsible for synchronizing my Nasdaq Workstation II?

No, members are only responsible for synchronizing their own computerized system clocks, mechanical time clocks, or other business clocks that are used to record the date and time of the market events they are obligated to record under NASD rules or By-Laws. (*Last updated 9/08/98*)

S9. We synchronize all business clocks prior to market open; however, in order to keep our trading systems functioning properly, we cannot reset our clocks during the trading day. What should we do if we find that our clocks are out of synch during the trading day?

The requirement of NASD Rule 6953 is that firms maintain the synchronization of their business clocks. Therefore, every effort should be made to keep your clocks in synchronization; however, if your business clocks do go out of synch during a trading day, and you are unable to adjust them, maintain a record of the synchronization problem in your books and records and notify the NASD that you experienced synchronization problems. If the problem is persistent, the NASD requires that you find a new source for synchronization or create new procedures for ensuring that your business clocks are in synch. (*Last updated 11/03/98*)

S10. We want to buy mechanical time clocks that record the date and time in compliance with the OATS Rules. Can you provide us with a list of vendors?

The NASD is aware of several manufacturers of mechanical time clocks that claim their clocks can record the date and time in hours, minutes, and seconds and can be synchronized as the NASD prescribes in the OATS Rules and in the *OATS Reporting Technical Specifications*. Many vendors distribute these and other clocks. Contact NASD Business and Technology Support Services to obtain a list of the manufacturers. NOTE: The NASD does not recommend or endorse any manufacturer, vendor, or product, nor will it receive any consideration as a result of providing the information about any such manufacturer or vendor. When the Association becomes aware of any other manufacturers of mechanical time-stamp machines that claim they meet the requirements of OATS Rule 6953, they will be added to the list maintained by NASD Business and Technology Support Services. (*Last updated 9/21/98*)

S11. We would like to buy an inexpensive desk or wall clock that can be synchronized in compliance with the OATS Rules because we have very few manual orders. Can you provide us with a list of vendors?

The NASD is aware of several manufacturers of clocks that can be synchronized as the NASD prescribes in the OATS Rules and in the OATS Reporting Technical Specifications. Many vendors distribute these and other clocks. Contact NASD Business and Technology Support Services to obtain a list of the manufacturers. NOTE: The NASD does not recommend or endorse any manufacturer, vendor, or product, nor will it receive any consideration as a result of providing the information about any such manufacturer or vendor. When the NASD becomes aware of other manufacturers of clocks that meet the requirements of OATS Rule 6953, they will be added to the list maintained by NASD Business and Technology Support Services. See C14. (*Last updated 11/03/98*)

S12. I need to synchronize my computer clocks. Do I need to synchronize my system time or the time associated with my order handling system software?

You must synchronize the time associated with your order handling system software. This is the time that is recorded for your electronic orders. Thus, you are not necessarily required to synchronize the time recorded by your computer hardware or your system. You would only be required to synchronize this time if your order handling system software refers to it. See also C12, C13, C21, and S6. (*Last updated 11/03/98*)

S13. I am an independent contractor. Am I required to synchronize my business clocks?

If an independent contractor has an agreement with a member firm to process orders and if that contractor immediately transmits orders to the member firm for handling, either electronically or manually, the independent contractor is not required to maintain a separate synchronized clock. However, by Phase 3, if there is ever any delay in transmitting any orders to the firm, or if the member firm does not agree to maintain the proper times required under OATS Rules, an independent contractor must maintain a synchronized clock for recording the times. (*Last updated 11/23/98*)

S14. All of the orders received at our branch offices are immediately transferred to the trading desk at our main office. Are these branch offices required to synchronize their clocks?

If a branch office immediately transmits orders to the main office for handling, either electronically or manually, the branch office is not required to maintain a separate synchronized clock. However, by Phase 3, if a branch office receives any orders that are not transmitted immediately to the main office for order handling, then that branch office is required to maintain a synchronized clock for recording the times required under OATS Rules. (*Last updated 11/23/98*)

S15. Our clearing firm is performing all OATS reporting on our behalf and they are recording all times required by the OATS Rules using their own synchronized clocks. Are we required to synchronize our clocks?

If the times required under OATS Rules are all recorded by your clearing firm or another third party, you are not required to synchronize your business clocks. However, if there are any cases when you must record the time yourself, such as when the computer system malfunctions and you must record the order on a paper ticket, you must maintain a synchronized clock for recording the times required under OATS Rules. (Last updated 11/23/98)

S16. Are we required to synchronize the business clocks used to record the time of execution of securities reported to the Fixed Income Pricing System℠ (FIPS℠)?

Yes. NASD Marketplace Rule 6240 requires members to record the time of execution for these transactions. You are required to synchronize the clocks that are used to record the date and time of any market events that you are obligated to record under NASD rules or By-Laws. (*Last updated 11/23/98*)

OATS Registration Confirmation Sent To All Phase 1 Firms

Market Makers and Electronic Communications Networks (ECNs) that will begin reporting order information to OATS in Phase 1 (beginning March 1, 1999) should have received their OATS Registration Confirmation (Confirmation) from the NASD. The Confirmation notifies member firms that their OATS Subscriber Initiation and Registration Form has been received and processed.[1] In addition, it informs member firms of the date they should begin reporting order information to OATS and the procedures required to begin reporting.[2] The Confirmation also provides information on how to request a circuit from the private network provider and the deadline for doing so. Only member firms that plan to submit order data via File Transfer Protocol (FTP) need to contact the network provider. Member firms that plan to submit order information to OATS via e-mail will not need access to the private network; however, access to the OATS Web application will be needed. Instructions on how to obtain user IDs and passwords for accessing OATS, including the Web application, are also included with the Confirmation.

Shortly after receiving the Confirmation, member firms reporting to OATS in Phase 1 should have also received the *OATS Subscriber Manual (Manual)*. The *Manual* describes procedures for transmitting data to OATS, performing self-administration, and using the OATS application on the Web. Any firm that plans to submit order information to OATS in Phase 1 and has not received a Confirmation or *Manual* should contact Business and Technology Support Services at (800) 321-NASD.

Member firms or service bureaus transmitting data to OATS via FTP must contact the private network provider to obtain access to the network immediately upon receiving the Confirmation. All paperwork for ordering a circuit must be submitted to the network provider at least 120 days before the member firm's assigned Report Date to allow sufficient time for testing and to ensure that members can begin reporting on time. Although certification is no longer required prior to reporting to OATS, all entities transmitting order information via FTP must test their systems before their assigned Report Date.

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1 Market Makers and ECNs that are required to report order information to OATS under NASD Rules 6950 through 6957 should have completed and returned the OATS Initiation and Registration Form (Form) to the NASD by September 14, 1998. The Form should have also been completed by any third party transmitting order information to OATS on behalf of a member firm. Additional information regarding the Form can be found in the September 1998 *Regulatory & Compliance Alert, NASD Notice to Members 98-73*, and on the OATS Web Pages on the NASDR Web Site (*www.nasdr.com*). Members may also call Business and Technology Support Services at (800) 321-NASD.

2 Market Makers and ECNs that are required to report order information to OATS in Phase 1, beginning March 1, 1999, will be assigned a Report Date. While some of these firms will begin reporting on March 1, 1999, others will be assigned Report Dates in a staggered fashion. Please note, regardless of a member firm's Report Date, members that are scheduled to report in Phase 1 must begin retaining order information on March 1, 1999. However, firms should wait to start transmitting order information to OATS until their assigned Report Date. Data generated between March 1, 1999, and the assigned Report Date should be recorded but should not be transmitted to OATS.

Member firms should not assume that they are transmitting order information for another member firm or that a third party is transmitting on their behalf without verification with the appropriate member firm or third party. In addition, all firms and third parties should verify their reporting arrangements. Thus, if a member firm uses one or more electronic order routing or trading systems, all entities must understand their role in reporting to OATS. Also, if more than one entity transmits data for the same firm to OATS, the entities should not send duplicate records. Only the first valid record will be accepted. Finally, any member firm or service bureau that reports to OATS must be in possession of all data elements required under OATS Rules 6950 through 6957 in order to submit a report. Incomplete records will be rejected by OATS.

Member firms using a third party to report on their behalf should be aware that although they may not be required to report to OATS until Phase 2 or Phase 3, their reporting entity may start reporting to OATS on their behalf in Phase 1, at the same time the entity starts reporting for other firms that are required to report to OATS in Phase 1. Member firms using a third party to submit data to OATS on their behalf that will start reporting to OATS in Phase 1 must register with OATS to have access to record rejections, the on-line rejection repair utility, and reporting statistics, even if the firm does not itself have a reporting obligation in Phase 1. There must be a written agreement describing reporting responsibilities of all parties involved before any party begins transmitting to OATS.

To obtain additional information about OATS visit the OATS Web Pages maintained at www.nasdr.com. *You many also call Business and Technology Support Services at (800) 321-NASD for more OATS information.*

Year 2000 Update

Testing

Mandatory Testing Rule Approved—In early December, the SEC approved a new NASD rule that would mandate Year 2000 testing for clearing firms, Market Makers, and government securities firms. Members should check the NASD Regulation Web Site (*www.nasdr.com*) and watch for the January issue of *Notices to Members* for details. Clearing firms should already have registered for Securities Industry Association (SIA)-sponsored industry testing and have performed all prerequisite testing such as point-to-point testing. To schedule industry-wide testing with the SIA call (888) Y2K-4SIA (888-925-4742).

It is envisioned that members required to test will be able to satisfy the requirement by participating in all or a combination of the following types of tests: connectivity, point-to-point, extended point-to-point, and SIA-sponsored industry testing.[1] All firms would be required to report test results to the NASD. It is likely that Market Makers that are not clearing firms and that only use Nasdaq Workstation II® (NWII)

terminals for their market-making activity will not be required to participate in mandatory testing because the NASD has completed testing of the NWII system.

Testing With The NASD—Along with the industry-wide testing, NASD Test Centers are open with scheduling opportunities available for member firms to test NASD, NASD Regulation, and Nasdaq applications. To schedule testing or obtain information about NASD, NASD Regulation, or Nasdaq applications please contact:

- Nasdaq Customer Test System (800) 288-3783
- NASD, NASD Regulation Testing (888) 227-1330

SEC 1999 BD-Y2K Independent Public Accountant's Report

As discussed in other NASD publications, the SEC adopted an amendment to its Rule 17a-5 requiring that broker/dealers file Year 2000 readiness reports (BD-Y2K); the first report was due August 31, 1998, and a second report is due April 30, 1999. Broker/dealers with minimum net capital requirements of $100,000 or greater as of March 15, 1999, and broker/dealers that were required to file Part II of Form BD-Y2K on August 31, 1998, are required to file both Part I and Part II of Form BD-Y2K due April 30, 1999.

As part of the amendments to SEC Rule 17a-5, Part II filers must also file a report prepared by an independent public accountant regarding the broker/dealer's process for addressing Year 2000 problems. The independent accountant's report must be prepared in accordance with standards that have been reviewed by the SEC and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards. Such standards do not have to involve an attestation engagement.

In conjunction with adopting the independent public accountant reporting requirement, the SEC reviewed the procedures included in Statement of Position 98-8 (SOP 98-8), issued by the American Institute of Certified Public Accountants' Auditing Standards Board, and concluded that an independent public accountant's report prepared in accordance with SOP 98-8 would satisfy the independent public accountant reporting requirement. Details of the amendment to SEC Rule 17a-5 are available on the SEC Web Site (*www.sec.gov*). Details of SOP 98-8 are available on the American Institute of Certified Public Accountants' Web Site (*www.aicpa.org*). The independent public

1 Definitions:

Connectivity/Point-to-Point—Point-to-Point is a one-day test in a Year 2000 environment between firms, a firm and an exchange, or a firm and a utility. This test, which covers the communication links/external interfaces, can be initiated between any facilities with an electronic connection to each other.

Extended Point-to-Point—This mimics the Point-to-Point test, but is sponsored by the SIA, with testing dates available between November 14, 1998, and February 13, 1999. Extended Point-to-Point also is a one-day test, but includes all participating exchanges/utilities acting together.

Industry Testing—Industry testing is sponsored by the SIA, and is a four-date test, allowing for rollover of trade dates/settlements. Participants must have completed either Point-to-Point or Extended Point-to-Point testing as a pre-requisite for registration, which closed November 30, 1998.

accountant's report becomes Part III of the Form BD-Y2K submission due to the SEC and the NASD by April 30, 1999.

Year 2000 Education

The NASD Year 2000 Program Office is holding a variety of workshops in January, including Virtual Workshops (meaning conducted via conference call) and on-site workshops in three NASDR Districts. For instructions on how to register see the December issue of *Notices to Members* and/or call the Year 2000 Program Office at (888) 227-1330.

For more information, contact the NASD Year 2000 Program Office by calling (888) 227-1330 or via e-mail at y2k@nasd.com. *Visit the Year 2000 Web Pages on the NASD* (www.nasd.com) *and the NASDR* (www.nasdr.com) *Web Sites. Also, please review the monthly* NASD Notice to Members *Year 2000 Update for more timely information.*

NASD Events

Topic	Date	Location
[illegible]	January 12	Virtual
Mandatory Testing	January 14	Virtual
BD-Y2K for Small Firms	January 20	Virtual
Mandatory Testing	January 20	Dallas District
Mandatory Testing	January 25	Denver District
Mandatory Testing	January 26	Los Angeles District
SOP, Part III of BD-Y2K	January 27	Virtual
Mandatory Testing	January 28	Virtual

SIA Events

Year 2000 Industry Testing Seminar; February 2-3; New York City

Visit the SIA Web Site (*www.sia.com*) to register and for more information.

Fall Securities Conference Provides Forum For Regulatory Information

NASD Regulation held its annual Fall Securities Conference from November 4-6, 1998, in San Francisco. The conference attendees—NASD member firms and other securities professionals—were provided with practical, up-to-date information to help them comply with industry rules and regulations.

The conference opened with remarks by NASD Regulation President Mary L. Schapiro, who spoke about "the State of the SRO." She addressed microcap regulation, Central Registration Depository (CRD℠) system modernization, OATS, risk-based examinations, mutual fund fee disclosure, and arbitration and mediation. The morning session continued with remarks by NASD Regulation Chief Operating Officer Elisse B. Walter and a question and answer period, where NASD Regulation senior staff addressed questions from the audience.

The conference offered a total of 21 workshops addressing key compliance and regulatory issues. Each workshop featured a panel of experienced industry leaders and NASD Regulation staff. The panelists provided information, interpretations, and practical experiences on continuing education, the examination program, Internet compliance, handling customer complaints, the disciplinary process, independent contractors and financial planners, and securities laws, among other areas. Note: See the advertisement on page 40 to purchase audiotapes of individual sessions from the 1998 Fall conference.

This conference also included a number of lively open forums—this year focusing on OATS and Year 2000 readiness—as well as a discussion with NASD Regulation District Directors. (See the article on page 14 for more on the District Directors Forum). Future conferences will continue to hold forums on the key regulatory topics of the day.

The next national conferences will be: the 1999 Spring Securities Conference, May 19-21, New Orleans; and the 1999 Fall Securities Conference, October 20-22, Seattle. NASD Regulation will mail program information and registration materials to NASD members and to past attendees.

For more information on the securities conferences or other future programs, please visit the NASD Regulation Web Site (www.nasdr.com) *or call NASD Meetings & Conferences, at (202) 728-8383.*

District Directors Answer Questions At Conference Open Forum

At the November 4-6, 1998, NASD Regulation Fall Securities Conference, an open forum was conducted with NASD Regulation District Office Directors and home office executives. Conference attendees, primarily representatives of NASD members, asked a number of questions encompassing a variety of subjects. This article is the first in a two-part series to capture many of the questions and the answers provided during this session. Part 2 will appear in the March 1999 issue of the Regulatory & Compliance Alert. *Participating in the forum were: Mary Alice Brophy, Executive Vice President, Member Regulation; Daniel M. Sibears, Vice President and Deputy, Member Regulation; Frank J. Birgfeld, Vice President and District Director, Denver; James Dawson, Associate District Director, Seattle; Elisabeth P. Owens, District Director, San Francisco; Jack Rosenfield, Vice President and District Director, Kansas City; and Lani M. Woltmann, District Director, Los Angeles. The questions and answers have been grouped by related topics and edited for clarity. Considering the forum in which the answers were provided, readers should not rely on this article as definitive guidance or formal interpretive advice.*

General

Q: The rules and regulations are getting complex and hard to understand, especially regarding exceptions. Will we see a simpler version of the NASD Manual*? Is there one in the works?*

A: The existing *Manual* is a newer version that came out about two and a half years ago. However, in most people's eyes, it still does not get to the heart of this question. There is a major initiative now underway to literally scour the rules to find those that might be antiquated or could possibly be deleted. The NASD is looking to make the whole rule book more user-friendly and understandable.

Q: What is the status of the NASD's "Compliance School"?

A: The project is called the NASD Institute for Professional Development. It is expected to roll out in 1999, and will be an exciting program available to self-regulators, regulators, and industry people. The initial program is designed for compliance-oriented people. It will be an advanced educational opportunity that, at least initially, will offer some very in-depth sessions on a broad breadth of issues for a week at a time. It is not designed to be a supplement or substitute for initial training, but to be truly advanced training. Attendees will feel a sense of accomplishment, and that they're better trained and educated than others who have not been through the program. The program is expected to expand over the years.

Q: How does one get on the District Committee?

A: It is a very open process. A *Notice to Members (Notice to Members 98-93)* just went out last week that identified those who have been nominated for the Committee this coming year. Publishing the *Notice* is a change from past years. The *Notice* was published so you can see the Committee members across the whole country for all of the District Offices. It also lists the people who have been appointed to the nominating committees. Firms or individuals nominate themselves or someone else through the District Nominating Committee. The District Nominating Committee then meets, usually in the Fall of each year, reviews the various applications, and selects a slate of candidates. The slate is published and, absent a contested election, the slate becomes the final candidates. All of the District Committees are always looking for good people to serve, people who are dedicated and willing to volunteer their time to address various policy and other issues that come before the District. It is helpful to have a representative sample on the committee, people from different size firms, different types of firms, and different locations within the District area. Anyone who is interested is encouraged to apply.

Q: What is the status of the NASD's Guide to Supervision that was discussed in past years and had been circulated to the SIA and others for comment?

A: That document has been through a lot of different iterations and the subject of very differing opinions. A revised version is in the works and is closer to being published. It takes a slightly different tack than in the past. There has been a real conflict between issuing something that gets too specific, that would have to be updated every day or week, and something that's too general. Hopefully, the new version is a good, higher-level version of the past one. It has been reviewed by the Membership Committee and others. It should be out early next year.

Q: What are the hot buttons, what things will NASD Regulation be targeting in 1999?

A: First and foremost, one hot button is anything that was a deficiency before. As part of the examination preparation work, an examiner will look back to ensure that past problems were in fact corrected. Second, as always, examiners will look at suitability issues on the sales practice side, specifically at suitability as it relates to government securities. Other areas include Year 2000 issues, municipal rules, and yield-burning issues. Certainly, trading and market-making activities are a focus, specifically compliance with a number of the new rules in the trading area, as well as general compliance and telemarketing issues. Continuing education is also a focus, since it is an area that has recently been the subject of more Letters of Caution than any other area. There were a number of new initiatives this past year regarding microcap securities, which obviously affects some firms more than others. Problem registered representatives, people with a pattern of complaints, will be a focus of any sales practice examination. And finally, variable annuities has been a hot button and is an issue for both NASD Regulation and the

SEC. Not necessarily a short list, but NASD Regulation will focus on these in each member's examination.

Customer Complaints

Q: Is the NASD thinking of creating some kind of a numeric break point with respect to a number of customer complaints by an individual broker that would trigger an investigation?

A: As the CRD system is getting more sophisticated and providing a better regulatory tool, it will become easier to see who has patterns of complaints. As a responsible regulator or as a responsible industry person, that's something anybody would want to know. But it is doubtful that NASD Regulation would have a specific number, a magic number, because numbers can be very misleading. One might have two totally frivolous complaints that never went anywhere and that arose for reasons other than the broker's actual conduct. On the other hand, saying that, any time one sees multiple complaints, it's wise to look at them and determine whether there should be a further investigation. In addition to CRD information, NASD Rule 3070 reports are being filed by all of you, and they're coming directly to the District Offices. On a quarterly basis Districts are looking at those reports quite closely and using the information in them to determine when to open an examination to check the complaints or to investigate the person against whom these complaints have been filed. It is a tool that is looked at carefully. There is no set threshold per se, yet you will be questioned about an individual who has a number of complaints. Also if a particular firm has a pattern of customer complaints involving a number of different registered representatives, then that may very well trigger an investigation.

Q: Can something be done to ensure that staff requests for information focus on necessary information, that they don't involve tedious, unnecessary documentation?

A: If you're having a particular problem where a request is just wholly unsatisfactory with respect to making unintelligent inquiries, or making inquiries for too much documentation, pick up the phone. Call the District Director and lay out your problem. Or, call the examiner, discuss the request, and determine, based on your system, whether more easily accessible information will satisfy the request. Ideally examiners hone in on what the real issue is and are experienced enough to know exactly what they need. Also, you should be aware that full and complete investigations are necessary whenever there are serious allegations of wrongdoing.

Q: In light of the New York Stock Exchange (NYSE) recently giving notice to its members that they must report verbal complaints under NYSE Rule 351, is the NASD planning to require similar reports?

A: NASD Rule 3070 (the Rule) essentially is a mirror image of NYSE Rule 351. It requires that members report written customer complaints, either on a quarterly basis with certain summary information or essentially on a real-time basis (within 10 business

days) if specified events occur as outlined in the Rule. There are no plans at the moment to include verbal complaints within the scope of that reporting requirement.

New Member Process

Q: How can the new member process be eased?

A: First of all, the key issue is that there's a clock that starts when you submit an application. It's a clock for the NASD, but it's also a clock for you, and there are very specific rules on this. The application process must be completed within 180 days, although the staff certainly wants to do it in much less time than that; 180 days is a long time to spend getting your business up and running. To facilitate the process, come in and speak with the staff before you make the filing so that you get some idea of what is going to be requested of you. If you know what the rules require, you can prepare a more comprehensive application. Once that clock starts, you have only a certain amount of time to submit all your information, or the application lapses and goes back to the beginning. For instance, one requirement is a business plan. You should learn what the NASD looks for in a business plan, and what's going to be satisfactory. It's not the same kind of plan that you give to a venture capitalist, but it's also not one sentence that says "I'm going to open up a brokerage firm and do a good, honest job." The more you think it through, the more answers you can provide and the more you demonstrate that you're prepared to run a good, sound business. This approach eases the process.

Q: Is there anything you can do to take the test before you start the new member process?

A: Not really. You need a firm to handle your registration. As soon as you put in the application you get a membership number, and you can take the examination under the auspices of that member firm. Basically, you get registered with one firm at a time.

Q: How long does the new member process generally take?

A: To some degree, it's going to depend on the District and the number of applications presently under review. However, all Districts are working within the required time frames. We've certainly been processing everything in 180 days. Districts with highly experienced staff are running somewhere between three and four months to complete an application.

Q: Once the application's being processed, who can the applicant call at the District Office and at headquarters with any questions?

A: Under the new rules, within 30 days of the District Office receiving the application, you will receive a letter from the District Office either indicating that the initial application is complete or, more likely, indicating that there is some additional information that must be submitted. The letter is signed by the analyst or the examiner who's handling the application and that is your District Office contact. But there also is a dedicated staff in the Executive Office that runs the program from a national perspective. They

make sure that no matter where the application is being processed, the rules are being applied and interpreted in a uniform manner. The main number for Member Regulation in Washington, D.C. is (202) 728-8221. If you call that number, just ask to speak to someone regarding the new member application program.

Consistency By District Staff

Q: What steps are being taken to ensure consistency in how rules are interpreted and enforced across the Districts?

A: In terms of what steps are being taken to ensure consistency in rule interpretations and enforcement, NASD Regulation does extensive training. The training for new examiners has substantially increased and become more formalized in the past several years. A standardized program takes examiners through the first year of their training. This goes a long way towards consistency and understanding of rules and procedures. With respect to interpretations, there are set policies on how interpretations may and should be given to members. Within NASDR, the Office of General Counsel is responsible for policy and interpretive letters to the members. The NASD Regulation Web Site (*www.nasdr.com*) makes available previously issued interpretive letters.

Q: What are you doing to reduce turnover? It seems that there is a very high rate in most Districts.

A: With respect to turnover, like any organization, it seems to go in cycles, and the NASD has experienced an increase in turnover during the past two or three years. Recent turnover rates have been, at points, as high as 24 percent, and that's very significant and very difficult to deal with. A lot of you in the audience are either in a compliance or a legal function, and you know what it's like to try to get a new person in and get them up to speed on the complexities and diversities of the issues. So it's a big challenge. The NASD has a solid training program that's being enhanced in a number of ways. Technology is being used more, so that examiner time can be spent on prioritizing and focusing on the important issues rather than spending a lot of time gathering information; they should be focusing their efforts and their training on analyzing data, rather than gathering it. Also, you should remember, from a national perspective, that Member Regulation has over 800 people; that's tremendous expertise and experience. If things are approached more from a national—or even a regional basis—the pools of expertise expand a little bit. This allows examiners to do a better job, to develop more specialization and expertise. And, that's easier to do on a larger basis than on an office-by-office basis.

Q: How is the NASD reacting to the relative inexperience level of staff in certain Districts?

A: The NASD has recently emphasized more of a national examination program than we have in past years. If there are pockets of inexperience in a particular District Office, experienced examiners are moved so the

best job can be done. Experienced staff are matched with the most challenging examinations.

Q: How can members draw on District Offices as a resource?

A: There are a couple of ways. One, every office has an examiner, each day, assigned to respond to walk-ins and telephone calls. Recently the Quality of Regulation Committee was asked to formalize a structure that's been in place for a long time—it's called the preventative compliance program. It's really a communications program that all Districts have had over the years, whereby they reach out to members and associated persons, as well as investors, through seminars, breakfasts, conferences, etc. At a rough tally, including individual firm visits, roundtable discussions, and membership meetings, there have been about 181 different programs across the country, reaching at least 20,000 individuals. In the past, each of the 13 District Offices has gone about it in a little different fashion, taking a slightly different approach. So, the Quality of Regulation Committee is looking to formalize and standardize the program; to provide roughly 5,600 members throughout the country with some form of standardization and uniform consistency with regard to these programs. So, the bottom line answer is that the NASD is expanding its communications and will be providing information and educational opportunities to members and associated persons. In that regard, if members have any ideas or would like to provide some input, please call your local District Office.

Q: In terms of using the staff as a resource and for guidance, let's say we call the District Office with a question regarding our monthly FOCUS report, is this going to throw up a red flag? Will our firm be looked at more closely?

A: That's an unfortunate perception. The NASD wants you to be in compliance. The NASD wants to see you stay in business and become profitable. The NASD is there to take your phone calls and to help in any way we can. The NASD's role is investor protection and regulation of the industry, and there's really two ways to do that. The NASD can pick up the pieces and use its enforcement powers to fix something after problems are discovered, or it can help guide people to do it right the first time. It's harder to do it by guiding and helping, but that's certainly the preferred way to do it. But as a good regulator, the NASD certainly could not turn a blind eye to a very egregious violation. For the most part, when firms call or individuals call in a genuine effort to help make something right or stop something from veering in the wrong course, the NASD is literally there to help the process, because the end result is really what is important. Conversely one thing that is very counterproductive: answer shopping. A firm representative will, for example, ask a question of some staff members in one part of the organization or, maybe ask just part of a question, and then ask somebody else the other part of the question in another part of the organization. You get some conflicting answers and often end up with a mess. It's not a tactic you want to foster.

Q: Have you considered a chat room for subject discussion and/or for anonymous discussion on problems or questions?

A: Actually, that's not been discussed specifically, although the NASD is constantly looking at the Web Site, which a lot of people seem to like, and looking at ways to use technology to advance its programs. It's certainly something to think about. One of the difficult things about anonymity is often there are a lot of factors to consider before the proper advice can be given. And, sometimes that's a little challenging on an anonymous basis. Perhaps one approach would be for the NASD to open up a forum so that members can chat with each other.

Questions about this article may be directed to NASD Regulation's Member Regulation Department at (202) 728-8221.

DISPUTE RESOLUTION

NASD Regulation Publishes Frequently Asked Questions Relating To Arbitration Of Employment Discrimination Claims

A change to the NASD Code of Arbitration Procedure, Rule 10201 (Required Submission), relating to the arbitration of employment discrimination claims, will go into effect on January 1, 1999. (See the text of the rule change as amended at the end of this article.) In response to questions concerning this rule change, the Office of General Counsel of NASD Regulation has prepared a list of frequently asked questions and their answers.

The answers expressed below are staff opinions only and have not been reviewed or endorsed by the Board of Directors of NASD Regulation, nor have they been submitted to or approved by the SEC. They do not address any other NASD rule or interpretation, or all the possible regulatory and legal issues involved.

Q: What exactly does the amendment do?

A: It creates an exception to the requirement in NASD Rule 10201 for associated persons to arbitrate all disputes arising out of their employment or termination of employment with a member. The exception says that claims alleging employment discrimination, including sexual harassment claims, in violation of a statute are not required to be arbitrated. Such claims remain eligible but may be arbitrated only if the parties have agreed to arbitrate them, either before or after the dispute arose.

Q: Does this rule change affect or prohibit private agreements between employees and their member firms to arbitrate disputes?

A: No, the rule change applies only to the NASD's arbitration requirement. Therefore, the questions and answers below relate only to NASD Rule 10201, and do not address any private agreements between employees and member firms that may require arbitration of all disputes.[1]

Q: When will the rule change be effective?

A: It will be effective on January 1, 1999, for claims filed on or after that date.

Q: What is a "claim"?

A: The term "claim" includes claims filed in arbitration and complaints filed in court. It does not include charges filed with an administrative agency such as the United States Equal Employment Opportunity Commission (EEOC) or a similar state or local fair employment practices agency.

Q: What if an employee has an existing arbitration claim of employment discrimination but wants to withdraw it and re-file it in court after January 1, 1999?

A: The employee should consult counsel as to the effect of this action and any detriment that might result from withdrawing the claim. All applicable arbitration fees must be paid up to the time of withdrawal. Furthermore, some claimants will not be able to withdraw a claim without the consent of the respondent(s).

Q: Will the rule affect pending litigation in which an employee has filed a discrimination claim in court (prior to 1/1/99) and the member is seeking a motion to compel arbitration?

A: No. If the court compels arbitration (either before or after 1/1/99), our forum is available. We will obey the court order.

Q: What is considered to be a "statutory claim" of employment discrimination?

A: The term includes claims of employment discrimination in violation of a "statute," which is defined broadly to include a federal, state, county, or municipal law or ordinance, as well as regulations or interpretations under such law or ordinance issued by a governmental body. This would include, for example, a claim of sexual harassment or pregnancy discrimination in violation of EEOC Guidelines issued pursuant to Title VII of the Civil Rights Act of 1964, even though such forms of discrimination are not mentioned specifically in the statute itself.

1 Note that the U.S. Court of Appeals for the Ninth Circuit has held that employers may not, as a condition of employment, compel individuals to waive their right to a judicial forum in cases alleging employment discrimination under Title VII of the Civil Rights Act of 1964. Duffield v. Robertson Stephens & Co., 144 F.3d. 1182 (9th Cir. 1998), cert. denied, 1998 WL 635704 (U.S. Nov. 6, 1998). The jurisdiction of the Ninth Circuit includes the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. See *NASD Notices to Members*, June 1998, "For Your Information," pages 346-347.

Q: How will a non-statutory claim of discrimination be handled; for example, disparate treatment based on personal appearance, where personal appearance is not a protected category under applicable law?

A: The non-statutory employment discrimination claim must be arbitrated unless all parties agree to have it decided in court.

Q: What will happen if an employee alleges both statutory employment discrimination and discrimination under a non-statutory (judicially created) cause of action?

A: The statutory discrimination claim may be taken to court or decided in arbitration, as the employee decides. The non-statutory claim must be arbitrated unless all parties agree to have it decided in court.[2]

Q: If a claimant files a statutory discrimination claim in arbitration, may the adverse party opt to take the claim to court?

A: Yes. Revised Rule 10201(b) states that, "A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated." Therefore, there will be no duty on any party to arbitrate statutory claims of employment discrimination, including sexual harassment, unless all parties have agreed to do so, either before or after the dispute arose.

Q: What if the claim of statutory discrimination is a counterclaim to an arbitration claim filed by the member against an associated person?

A: The claim may be filed separately as an original claim in court, or as a counterclaim in arbitration. Other claims may not be taken to court unless the adverse party (in this case, the member) agrees. Therefore, the two claims could proceed separately.[3]

Other Resources

SEC Approval Order for Rule 10201, as well as the underlying rule filing SR-NASD-97-77, as amended—available on the NASD Regulation Web Site at *www.nasdr.com* under "Arbitration/Mediation" > "Rules and Procedures" > "Dispute Resolution Rule Filings".

NASD Notice to Members 98-56, announcing the SEC's approval order, also on the Web Site—available by using the drop-down box found next to the phrase "Select Destination Here" and selecting "Notices to Members" > "July 1998" > "98-56".

NASD Notices to Members, June FYI, relating to a recent case involving arbitration of discrimination claims in the Ninth Circuit, also on the Web Site—available by using the drop-down box found next to the phrase "Select Destination Here" and selecting "Notices to Members" > "June 1998" > "For Your Information".

2 See note below on a related rule change proposal.

3 A proposed rule change to deal with the "bifurcation" issue was approved by the NASD Regulation and NASD Boards in October 1998. The NASD Regulation Web Site contains further information on this proposed rule change, which must be approved by the SEC.

Press Release of October 8, 1998, announcing Board approval of enhancements to the arbitration process for the handling of employment discrimination claims—available on the Web Site under "Press Room" > "Press Releases".

For further information, please see the resources listed above. Any additional questions may be directed to Jean I. Feeney, Assistant General Counsel, NASD Regulation, Inc., at (202) 728-6959.

CODE OF ARBITRATION PROCEDURE

Effective January 1, 1999

10200. INDUSTRY AND CLEARING CONTROVERSIES

10201. Required Submission

(a) Except as provided in paragraph (b), [Any] a dispute, claim, or controversy eligible for submission under the Rule 10100 Series between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, shall be arbitrated under this Code, at the instance of:

(1) a member against another member;

(2) a member against a person associated with a member or a person associated with a member against a member; and

(3) a person associated with a member against a person associated with a member.

(b) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.

[(b)] (c) Any dispute, claim or controversy involving an act or failure to act by a clearing member; a registered clearing agency; or participants, pledgees, or other persons using the facilities of a registered clearing agency, under the rules of any registered clearing agency with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures shall be arbitrated in accordance with such agreement and the rules of such registered clearing agency.

NASD Elaborates On Member Firms' Supervision Responsibilities For Trade Reporting And Market-Making Activities

During the last two years, NASD Regulation has initiated numerous disciplinary actions against member firms for supervisory deficiencies, particularly in the areas of trade reporting and market-making activities. Indeed, much of the recent focus in the area of written supervisory procedures has been in the context of NASD Regulation's trading and market maker examination programs. Accordingly, the purpose of this article is to reiterate for members in the context of trading and market-making activities the requirements of NASD Rule 3010. The Rule focuses on supervision and a member firm's obligation to establish, maintain, and enforce a supervisory system and written supervisory procedures which reflect that system.[1]

Establishing, maintaining, and enforcing written supervisory procedures is a cornerstone of self-regulation within the securities industry. Supervisory procedures reasonably designed to achieve compliance with applicable rules, and to detect and deter rule violations by a member firm and its associated persons, enable the firm to identify and respond to regulatory concerns in a manner that can reduce the risk of disciplinary action by NASD Regulation.[2] Moreover, appropriately designed and implemented supervisory systems and written supervisory procedures serve as a "front-line" defense to protect investors from fraudulent trading practices and help to ensure that members are complying with rules designed to promote the transparency and integrity of the market. As a result, effective supervisory systems within member firms enhance investor confidence and, in turn, promote the fairness, liquidity, and efficiency of the market for all market participants.

As markets evolve and become more complex, it is essential that firms have in place effective supervisory systems and written supervisory procedures. At most member firms front-line supervisors have responsibilities for firm revenues in addition to their supervisory responsibilities with regard to applicable laws, rules, and regulations. Appreciating both the significance and the compatibility of these dual responsibilities, NASD Regulation believes that an effective supervisory system contemplated by NASD Rule 3010 includes a strong overall commitment on the part of supervisors to establish and maintain clearly defined procedures for compliance with applicable laws, rules, and regulations, and a climate of intoler-

1 For additional guidance concerning NASD Rule 3010, see *NASD Notices to Members 88-84* and *89-34*.

2 Self-imposed disciplinary action at the firm level is an integral part of the self-regulatory process—one that often constitutes a mitigating factor with respect to sanctions. However, self-imposed disciplinary action does not necessarily preclude the imposition of appropriate sanctions by NASD Regulation where it is deemed warranted after review of the facts and circumstances regarding a particular matter.

ance for lax compliance by the persons they supervise.

NASD Rule 3010 requires each member to establish, maintain, and enforce written supervisory procedures with respect to the types of business in which it engages. The procedures must be "reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules . . . ."[3] Because many of the failure to supervise charges recently imposed on members are based on inadequacies revealed during trading and market-making examinations, including trade reporting, market-making, and equity order handling areas, this article focuses on elements of adequate supervisory procedures and systems in these areas. Given the differences among member firms in terms of their business mixes, and the fact that compliance with NASD Rule 3010 can be achieved through a variety of procedures and systems, this article only addresses some of the general elements that member firms should consider in assessing their supervisory systems and written procedures. NASD Regulation is not mandating any particular type or method of supervision. Nor is the article designed to provide a checklist of steps guaranteed to constitute adequate written supervisory procedures. NASD Regulation will continue to examine closely member firms' supervisory systems and written procedures and, where appropriate, initiate disciplinary action against both firms and their supervisory personnel for failure to adopt, implement, and enforce appropriate supervisory procedures.

Requirements Of NASD Rule 3010

NASD Rule 3010 provides that each NASD member must "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."[4] In addition to the creation of supervisory systems, NASD Rule 3010 also requires member firms to establish, maintain, and enforce companion written supervisory procedures.[5] Thus, a member and/or individual can violate NASD Rule 3010 in several different ways. Specifically, it is a violation if the member and/or individual fails to establish and maintain a supervisory system and/or fails to describe the operation of that system in written supervisory procedures. In addition, it is a violation if the member and/or individual fails to enforce a supervisory system and/or written supervisory procedures. Either type of violation can occur in the absence of an underlying rule violation.

There is an important distinction between written guidelines for compliance and written supervisory procedures. Guidelines for compliance generally set forth the applicable rules and describe prohibited practices.[6] While such compliance guidelines certainly serve a

3 NASD Rule 3010(b)(1).

4 NASD Rule 3010(a).

5 See NASD Rule 3010(b) (1) and (2).

6 See In Re Bryant, Securities Exchange Act Release No. 32357, 54 SEC Docket 345.

valuable regulatory purpose, and can represent an important element of an effective supervisory system, compliance guidelines in and of themselves do not constitute an adequate supervisory system or procedures. Beyond compliance guidelines, member firms must also adopt written supervisory procedures that describe the actual supervisory system established by the firm to achieve compliance with applicable rules and regulations. Specifically, the firm's written supervisory procedures should include a description of the controls and procedures used by the firm to deter and detect misconduct and improper activity. The written supervisory procedures should also identify the specific personnel who perform the various supervisory functions.

A firm's supervisory system may include a range of techniques and controls in addition to formal reviews and examinations of exception reports, which always should be included. For example, an effective supervisory system can include the maintenance of a comprehensive training and continuing education program that promotes a thorough understanding by associated persons of the applicable laws, rules, and regulations. In addition, elements of an effective supervisory system can include internal and external audits, and periodic reviews by "audit committees" or similar bodies constituted to evaluate a firm's controls. It can also include less formal monitoring and oversight by a qualified supervisor, or designee, actively involved in the business. Ultimately, an effective supervisory system may be comprised of many different elements, both objective—such as regular reviews of specific areas of activity—and subjective, including placing competent, qualified, and experienced individuals in supervisory roles. In addition, a tone should be set from the top of the firm that lax compliance with—and deliberate violation of—laws, rules, and regulations will not be tolerated.

The supervisory system should be designed to ensure that delegated responsibilities are diligently exercised. Policies and procedures are not sufficient if there are no auditing systems to determine whether they are being followed as described.

Accordingly, written supervisory procedures should describe the following:

a) specific identification of the individual(s) responsible for supervision—either by name or by title and position;

b) the supervisory steps and reviews to be taken by the appropriate supervisor—this need not be a detailed description, but it should identify any exception reports and/or other documents being reviewed and the substantive area being reviewed (*e.g.*, Limit Order Protection, trade reporting, etc.). If a member firm employs automated systems as part of its supervisory system, those systems should also be generally described.

c) the frequency of such reviews—this should be more specific than simply providing for "a review" or "a review from time to time." The frequency of reviews should be described,

e.g., daily, weekly, monthly, quarterly, or annually (how frequently a firm conducts any such reviews will depend upon the nature, type, or level of firm activity in that particular area); and

d) how such reviews shall be documented—the firm should describe how the review will be documented, for example, initialing order tickets, initialing blotters, or filling out review logs. The procedures should also provide for the documentation of steps taken as a result of supervisory reviews (*e.g.*, trades broken, restitution for best execution violations, etc.). The staff recognizes that there are a variety of ways, in addition to those noted, that reviews can be documented as having been conducted, particularly where the review is conducted on-line. Firms should document reviews in a manner sufficient to demonstrate to firm management and regulators that a review has been conducted.

Subject Areas Typically Addressed In The Written Supervisory Procedures Of Firms Engaged In Market-Making Activity

As the staff has pointed out during the course of trading and market-making examinations, the written supervisory procedures and supervisory systems of firms engaged in market-making activities must address, at a minimum, trading practice rules (*i.e.*, passive market making, best execution, firm quote rule compliance, limit order protection, short-sale rules, markups and markdowns, and the SEC's Order Handling Rules), trading systems such as Small Order Execution System℠ (SOES℠) and SelectNet℠, trade reporting, Automated Confirmation Transaction System℠ (ACT℠) Rules compliance, and any other material aspect of the firm's market-making business.

In August 1996, the SEC issued a Report of Investigation that detailed deficiencies in the NASD's performance of its duty to oversee The Nasdaq Stock Market® (Section 21(a) Report). As a result, NASD Regulation has been examining carefully member firm policies, practices, and procedures that encompass all of the areas referenced in the Section 21(a) Report. In particular, NASD Regulation has been looking closely at whether a firm's written supervisory procedures address the following subject areas:

- pricing conventions;
- size conventions;
- coordination of quotations, trades, and trade reports;
- exchange of proprietary and customer information;
- improper collaboration and coordination of Market Maker activities;
- failure to honor quotations;
- harassment;
- late and inaccurate trade reporting; and
- other trading rules and regulations that relate to market-making activities.

In addition, both the NASD and the SEC have recently emphasized the importance of a bro-

ker/dealer's best execution obligations. Whether a firm has fulfilled these obligations depends upon the different facts and circumstances present at each member firm. Nevertheless, as the SEC has repeatedly stated, to comply with the supervisory obligations that flow from best execution, a supervisory system must provide a mechanism for regularly and rigorously comparing execution quality likely to be obtained from different markets or Market Makers, and for determining that such analyses are performed.

Obligation To Update And Amend Written Supervisory Procedures And Supervisory Systems Upon The Implementation Of Rule Changes; Awareness Of Market Practices

Members must keep abreast of changes in laws, rules and regulations, market practices, and indicated patterns of non-compliance and must modify their supervisory procedures and systems as necessary. In this connection, NASD Rule 3010(b)(3) provides that "each member shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations, including the Rules of this Association." What constitutes a "reasonable time" depends on, among other things, the complexity of the rule change and the changes (if any) required to be made in the supervisory system, the magnitude of any such changes, the extent to which the rule change imposes new requirements or modifies pre-existing requirements, and the amount of advance notice provided about the effective date of the rule change. Significant rule changes generally are promulgated and approved in a manner that affords members sufficient time to prepare for implementation of the rule change.

When rule changes necessitate a modification of a member firm's supervisory system and written supervisory procedures, a firm can comply with NASD Rule 3010(b)(3) by preparing and distributing a supplemental memorandum or other similar document describing the modification or amendment being made and updating in some manner relevant supervisory materials.

Supervisory Responsibilities Of Firms That Enter Into Give-Up Or Other Arrangements

Many member firms enter into give-up or other arrangements that allow another firm to report trades on their behalf. Although a firm may allow another firm to perform its trade reporting responsibilities, the firm has the ultimate obligation to report trades in compliance with the rules and to supervise its activities to detect and deter violations of the trade reporting and ACT rules. These obligations cannot be contracted away. Thus, any firm that agrees to allow another firm to report trades on its behalf must establish, maintain, and enforce supervisory procedures which allow it to determine that the other firm is reporting those transactions in compliance with the rules. In this connection, NASD Regulation notes that executing "Attachment 2" to the ACT agreement does not relieve a member firm of any of its obligations in this area.

Use Of Automation As Part Of A Firm's Supervisory System

Written supervisory procedures may incorporate the use of automated systems to assist in determining compliance with applicable rules. As part of its supervisory system, a firm must test and monitor such systems periodically to determine that they are operating properly. In addition, personnel using the systems should be trained so that they understand how the systems work. For example, programmers should be advised of the regulatory requirements the system is being designed to address. Supervisory and compliance personnel should understand the system's capabilities and limitations. These principles apply whether or not the system software is designed by the firm or purchased from an outside source.

Additionally, when purchasing or designing a system, the firm should determine that such a system can reasonably assist the member firm in meeting its supervisory obligations. A system programming error or the failure of software need not result in a charge of failure to supervise if the firm has in place an effective supervisory procedure reasonably designed to detect such errors or failures. Indeed, the existence of an appropriate supervisory system that detects a particular error or failure and permits the firm to take appropriate remedial action may in certain instances be a mitigating factor in determining the necessity and severity of disciplinary action. Despite the means or procedures to detect system errors or failures, however, repeated system failures or errors without corrective action would weigh heavily against any mitigation that such procedures may provide.

Automated Assistance From NASD Regulation And Nasdaq

In a number of areas, resources are provided by NASD Regulation and Nasdaq to assist member firms in meeting their supervisory responsibilities. For example, NASD Regulation presently seeks to contact member firms engaged in underwriting activities on a real-time basis if it detects trading or quotation activity that may be inconsistent with the SEC's "passive market-making" rule, Rule 103 under Regulation M.

Additionally, NASD Regulation and Nasdaq provide the membership with transaction and market data that may be accessed through the Nasdaq Trader℠ Web Site (*www.nasdaqtrader.com*) on the Proprietary Trading Data Web Page. Information currently available includes monthly "report cards" that compare a firm's level of late trade reporting to industry-wide averages and the member's direct peers. The "report card" also provides similar information with respect to the firm's compliance with the firm quote rule and the best execution rule. Through this Web Site, members also have access to daily share volume reports for a broker/dealer, daily share volume reports for a security, monthly summaries, and historical research reports such as Market Maker Price Movement Reports and Equity Trade Journals.

The provision of such reports and trade information by NASD Regulation and Nasdaq do not obviate the need for member firm supervision. Nevertheless, member firms may appropriately incorporate such resources into the overall design and implementation of their written supervisory procedures and systems.

Common Supervisory Deficiencies Noted During Trading And Market-Making Examinations

To assist the membership in developing adequate written supervisory procedures, the following are examples of supervisory procedures most frequently found to be deficient by the staff during the course of trading and market-making examinations. Merely avoiding these bad practices in no way ensures that a firm's written procedures will be found to be adequate. Avoiding these particular practices, however, could assist member firms significantly in developing adequate written supervisory procedures.

1. The Written Supervisory Procedures Merely Recite the Applicable Rules: The staff has observed many instances where the written supervisory procedures merely recite applicable NASD and SEC rules without any description of a procedure that will achieve compliance with those rules. While such documents can be an important component of a member firm's supervisory system, duplicating or restating the rules and identifying prohibited activities, without describing a procedure to determine whether there is compliance with those rules, is not sufficient to serve as the firm's written supervisory procedures.

2. Failure to Designate Responsible Supervisory Personnel in the Procedures: The staff has observed instances where firms have failed to designate the person or persons responsible for conducting supervision in each type of business. The specific person charged with conducting a particular review or procedure should be identified—either by name or by title.[7] Merely stating that the "Compliance Department," "Trading Department," or a "principal" will conduct the review is not sufficient. The procedures should state, for example, that "John Doe will review" or "the Head Trader will review." Additionally, the person designated to carry out the review should be adequately experienced and qualified to do so.

3. Failure to Describe the Review Process Adequately: As stated above, the supervisory steps and reviews do not necessarily have to be set forth in a detailed description. Nevertheless, the staff has observed instances where the description of the supervisory procedure or review has been so vague that firm management, firm supervisory personnel, and regulators cannot determine what the review entails. For example, it is not sufficient to provide that "John Doe will review for compliance with all NASD trade reporting rules, limit order protection, etc."

4. Failure to Document Reviews: The staff has observed instances where firms have failed to preserve and maintain the documentation that reflects the fact that particular supervisory reviews have been conducted.

7 It should be noted that NASD Rule 3010(b)(2) provides that a member firm shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

5. Failure to Denote Specifically the Frequency of Reviews: The staff has observed instances where firms have failed to designate the frequency with which particular supervisory reviews are conducted.[8]

6. Failure to Monitor Adequately the Performance of Automated Compliance Systems: The staff has observed instances where firms have failed to test periodically the performance of automated trade execution, reporting, and other automated compliance systems that assist the firm in complying with applicable rules.

7. Failure to Monitor Adequately the Performance of Service Bureaus and Other Members to Which The Firm Has Delegated Its Trade Reporting Responsibility: The staff has observed instances where firms have failed to implement procedures to review periodically the accuracy and timeliness of trade reporting conducted by another member or service bureau on the firm's behalf.

8. Failure to Reflect Supervisory Systems in the Firm's Written Supervisory Procedures: The staff has observed instances where firms that in fact have effective supervisory systems in place fail to describe them in the firm's written supervisory procedures. It has also been the staff's experience that firms which conduct effective supervisory reviews sometimes fail to describe them in their written supervisory procedures. This is particularly true for firms that use automated systems to ensure compliance with applicable rules. Such systems should be generally described in the firm's written supervisory procedures.

9. Failure to Describe the Steps the Firm Will Take When Potential Deficiencies Are Identified: The staff has reviewed written supervisory procedures that fail to describe the steps a supervisor should take when deficiencies are found. Because each situation may have aggravating or mitigating factors, general procedures, versus specific steps to be taken, will be adequate for purposes of the written supervisory procedures. For example, the procedures may indicate that the supervisor will discuss the matter with the compliance, audit, or legal department and the supervisor and/or representatives from one or more of these other areas will follow up with the registered person or persons involved to determine the reason for a deficiency, the possible need for further training, etc.

10. Failure to Update Procedures Within a Reasonable Period to Reflect New Regulatory Requirements or Firm Procedures: The staff has observed numerous instances where members have failed to establish and maintain written supervisory procedures by the effective date of a new rule.

8 NASD Rule 3010 clearly does not require, however, that a member firm must review all of its trading activity for compliance with applicable rules. In these instances, the following have been found insufficient: a) reviews will be conducted as warranted or as needed; b) reviews will be conducted from time to time; c) reviews will be conducted regularly; and d) reviews will be conducted on a "spot check" basis.

11. Failure to Preserve and Maintain Written Supervisory Procedures That Were in Effect During Past Time Periods in Accordance with SEC Rules 17a-3 and 17a-4: The staff has reviewed instances where members allege that written supervisory procedures were in effect for a specified business line during a specified time period, but were unable to document that the procedures actually existed at that time.

Firms should review their existing supervisory systems and written supervisory procedures in light of the guidance provided in this article. Deficiencies in supervisory systems should be addressed immediately.

If you have any questions about this article, please call the Legal Section of the Market Regulation Department, NASD Regulation, Inc., at (301) 590-6410, or your local NASD Regulation District Office.

ADVERTISING REGULATION

Internal Rate Of Return In Variable Life Hypothetical Illustrations

Under certain conditions, NASD Regulation is permitting wider use of internal rates of return (IRR) by member firms in hypothetical illustrations used with prospectuses on behalf of variable life insurance policies. NASD Regulation recognizes that IRR can help investors to understand how policy costs affect cash value and death benefit for different time periods. Effective immediately, member firms may include IRR in variable life insurance policy hypothetical illustrations directed to retail customers as well as sophisticated investors. Since 1990, NASD Regulation had limited the use of IRR to hypothetical illustrations of split dollar plans that were directed to sophisticated investors. NASD Regulation based this restriction on an advisory position taken by the Variable Contracts Committee, a former standing committee of the NASD Board of Governors. Upon further review of the manner in which IRR is presented in variable life prospectuses, and the potential benefit to investors from this information, NASD Regulation has determined to permit wider use of this information in supplemental sales material. In developing this position the staff has consulted with the Variable Insurance Products Committee, the NASD Regulation standing committee that now serves in this area.

Hypothetical Illustrations

NASD Conduct Rule 2210(d)(1) generally requires that all member communications with the public provide a sound basis for evaluating the facts regarding a particular security and that they include material qualifications necessary to ensure that the communications are fair, balanced, and not misleading. The Rule also prohibits the use of exaggerated, unwarranted, or misleading statements or claims. IM-2210-2, entitled, "Communications with the Public About Variable Life Insurance and Variable Annuities" sets forth specific guidance for how hypothetical illustrations may be used in members' communications with the public (the Variable Product Guidelines).

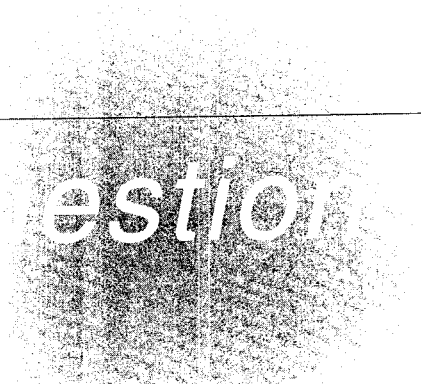
The Variable Product Guidelines permit member firms to use hypothetical illustrations that demonstrate the operation of a given variable life insurance policy. Using assumed rates of return, the illustrations show how the performance of the variable investment accounts that underlie the policy could affect its cash value and death benefit over time. Members may use assumed rates of return of up to 12% provided that a 0% illustration is also included. Illustrations must depict the effect of the maximum (guaranteed) mortality and expense risk charges. The presentation also must explain prominently that the illustration is hypothetical, that it is intended to show how the performance of the underlying investment accounts could affect policy cash value and death benefit, and that it may not be used to project or predict investment results.

IRR Disclosures

Under the new policy, member firms may incorporate IRR in the form of additional columns in standard hypothetical illustrations used with variable life insurance policy prospectuses. Because the selective use of IRR for a single time period may mislead customers to believe that the figure is indicative of the future performance of the variable life insurance policy, the illustrations must depict IRR for each time period included. In addition, the illustrations must include IRR columns for both the cash value and death benefit to provide the customer with a complete picture of the relationship of costs to policy values over time. Finally, because the concept of IRR may not be familiar to all investors, illustrations featuring IRR must include a clear explanation of what the measure reflects.

Member firms are reminded that the format of hypothetical illustrations for variable life policies registered under the Investment Company Act of 1940 must be filed with the Advertising/ Investment Companies Regulation Department within 10 days of first use as required by NASD Conduct Rule 2210(c)(1). Revision of a previously reviewed illustration to include IRR would constitute a material change to that illustration and would require its resubmission.

Questions regarding the use of IRR may be directed to the Advertising/Investment Companies Regulation Department at (202) 728-8330.



Ask The Analyst

This "Ask the Analyst" features answers to questions of general interest raised during the Advertising Regulation Seminars held in Washington, D.C. on October 15-16, 1998, and in San Francisco, California on November 4, 1998. The seminars covered a variety of topics relating to communications with the public including electronic media, mutual funds, variable products, and general brokerage. If you have any questions or comments about this column, or suggestions for topics to be covered in future "Ask the Analyst" columns, please contact the Advertising Regulation Department at (202) 728-8330.

General

Q. Will NASD Regulation be looking for any specific disclosures with respect to the introduction of the euro in January 1999?

A. The introduction of the euro in January 1999 does not in and of itself require additional disclosure in members' communications with the public. Members advertising securities products that invest in European companies must ensure that their communications describe the conversion accurately without overstating the benefits. Members should recognize that a critical test of a communication's compliance is whether it provides a balanced discussion of risks and rewards.

Q. In the sale of pension products, the initial proposal may be presented to an employer who may be a single individual, or sometimes a committee consisting of several decision makers, who make the selection of the product for employees of the firm in their retirement program. Is the proposal correspondence or sales literature for purposes of compliance with NASD Conduct Rule 2210?

A. Effective November 16, 1998, NASD Conduct Rule 2210 defines correspondence as "...[a]ny written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public." Since there is only one customer in the situation described in the question (*i.e.*, the company sponsoring the retirement plan), the proposal would be deemed correspondence, regardless of the number of individual decision makers who received it.

Mutual Funds And Filing Requirements

Q. Would an advertisement that merely listed the names of the mutual funds that my firm offers need to be filed with the Advertising Regulation Department? We would not include any other information about the funds such as their objectives.

A. If your communication will merely include a reference to "mutual funds" as part of a list of product types offered by your firm, then you do not need to file the material. However, if the communication names specific funds or fund families, NASD Conduct Rule 2210(c)(1) requires that you file it within 10 days of first use. Generally, a list of this type must also offer prospectuses as required by SEC Rule 134. In order to avoid repetitive filings of this type of fund list, some member firms develop a standard format communication which they file once and use over and over again as a separate part of different communications. While the list may vary as different funds are added or removed, the format remains the same from use to use and does not require additional filing.

Q. If you use a third-party mutual fund performance ranking (e.g., one from Lipper Analytical Services, Inc.) in an advertisement, do you still have to provide documentation when you file the advertisement?

A. Yes, you must always file a copy of the actual ranking as required by NASD Conduct Rule 2210(c)(1). Please note that you may only use rankings created by third-party ranking entities that are independent of the investment company being ranked and its affiliates. (Please see IM-2210-3 "Use of Rankings in Investment Companies Advertisements and Sales Literature.")

Mutual Funds

Q. The Rankings Guidelines require that advertisements featuring mutual fund performance rankings also disclose one-year, five-year, and ten-year performance rankings (or short, medium, and long-term rankings if the specified time period rankings are not available). Do these additional rankings need to be presented with equal prominence? Can the additional rankings be shown in a footnote?

A. Although the Rankings Guidelines do not require that the additional rankings appear with equal prominence to other ranking data, nevertheless, you must ensure that they are presented in a manner that is clear and enhances the reader's understanding of the information. For example, an advertisement could mislead if it featured a favorable one-year ranking prominently in the headline, while relegating a relatively poor five-year ranking to a footnote.

Q. We would like to calculate current yield for our mutual fund based on shares outstanding on the last day of the period instead of an average during the 30-day period. Can this performance figure appear in advertising prior to prospectus delivery?

A. No. The presentation of income or yield performance in mutual fund communications used prior to prospectus delivery is limited to the standardized 30-day yield calculated in accordance with the formula set forth in SEC Form N-1A. That formula requires the use of the average number of shares outstanding during the period that were

entitled to receive dividends. (Please see SEC Rule 482(e)(1) and Form N-1A for further information regarding yield quotations in mutual fund advertising.)

Electronic Communications

Q. If a registered representative's Web site contains one page regarding mutual funds, must the entire Web site be filed with the Advertising Regulation Department, or can the firm submit just this page (assuming the other sections of the site have no material effect on the mutual fund section)?

A. The representative's NASD member firm need only file the page concerning mutual funds within 10 days of first use in order to comply with NASD Conduct Rule 2210(c)(1); however, the entire Web site must be reviewed and approved by a registered principal of the NASD member firm prior to use (and prior to filing with the NASD). Please note that the NASD Regulation staff may require further information about the Web site in order to evaluate the page that is required to be filed. To facilitate the review process you should provide a site map and the Web site address when submitting Web material.

Variable Products

Q. What are the filing requirements, if any, for variable annuity and variable life hypothetical illustrations?

A. A member firm need not file a hypothetical illustration created for an individual customer; such a communication would be deemed correspondence under NASD Conduct Rule 2210. However, member firms must file the format for hypothetical illustrations used in the promotion of variable annuities or variable life insurance policies that are registered investment companies. Unlike an individualized illustration, the format for a hypothetical illustration is used with more than one customer and, therefore, qualifies as sales literature under the Rule. Members must file investment company sales literature (and advertising) within 10 days of first use as required by NASD Conduct Rule 2210(c)(1).

Q. Do group variable annuity communications need to state that the products are "variable annuities"?

A. Yes. In order to assure that investors understand exactly what product is being discussed, all communications for group variable annuities must clearly describe the product as a variable annuity. However, if the proprietary name for the product includes the phrase "variable annuity" and is used in the communication, members need not include a generalized description. (Please see IM-2210-2, "Communications with the Public About Variable Life Insurance and Variable Annuities" for further information.)

Options And Filing Requirements

Q. Must we file a seminar script and slides if the subject is a purely general, educational discussion about options?

A. Regardless of the level of detail provided at

the seminar about options, seminar scripts and slides are deemed to be sales literature as defined in NASD Conduct Rule 2220 and are not required to be filed. Nevertheless, the Compliance Registered Options Principal (CROP) must approve the script and slides prior to use and ensure that they comply with content standards set forth in NASD Rule 2220. In addition, all options sales literature, including seminar presentations, must be preceded or accompanied by the appropriate options disclosure document (ODD).

REGULATORY SHORT TAKES

NASD Clarifies Policy On Corrective Action And Mitigation Statements

Respondents in a settled disciplinary action may submit a Corrective Action Statement and/or a Mitigation Statement to NASD Regulation. This article clarifies the NASD policies regarding such Statements.

A Letter of Acceptance, Waiver and Consent (AWC) permits a respondent in an NASD Regulation disciplinary action to settle the matter prior to the filing of a formal complaint. A Corrective Action Statement may be attached to the AWC, which is filed with the SEC and available to the public, provided such statement is: (1) limited to demonstrable steps taken to correct a problem associated with the disciplinary action; (2) generally no longer than 2-3 pages; and (3) contains the following legend:

> *This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by NASD Regulation, Inc., nor does it reflect the views of NASD Regulation, Inc., or its staff.*

Separately, respondents may submit a Mitigation Statement for consideration by NASD Regulation and the National Adjudicatory Council. Generally, such Statements are used to describe mitigating circumstances surrounding the violation for the decision maker to consider in its review of the terms of a settlement. Unlike Corrective Action Statements, Mitigation Statements are *not* attached to the AWC or public order.

Respondents may also settle a matter after the complaint is filed by submitting an Offer of Settlement. While both Corrective Action and Mitigation Statements may be submitted to NASD Regulation in connection with Offers of Settlements, these Statements are not attached to the final Order Accepting the Offer of Settlement, which is filed with the SEC and available to the public.

NASD Regulation will not accept Corrective Action or Mitigation Statements that deny the allegations or are inconsistent with the findings in the settlement.

Questions about this article may be directed to Katherine A. Malfa, Director, Enforcement, NASD Regulation, Inc., at (202) 728-2853.

NASD Announces Agreement-In-Principle With EDS To Create NasTech Alliance

On October 19, 1998, the NASD announced an agreement-in-principle with EDS Corporation to create a strategic alliance, called the NasTech Alliance, to provide state-of-the-art technology services to NASD Regulation and to the NASD. The new alliance will provide the NASD and NASD Regulation with a technology capability to maintain a leadership role in the rapidly expanding securities marketplace, but will not manage the operations and technology of The Nasdaq Stock Market.

NasTech will be responsible for applications development and maintenance, Internet and intranet development, Web hosting, and distributed systems support, among other programs. In addition, NasTech will manage the NASD's ongoing vendor relationships. Over the next several months the NASD and EDS will evaluate the viability and the extent of the partnership, targeting a launch in the first quarter of 1999.

Combining the NASD's unique industry position and strategic technology vision with EDS's extensive reach and operational expertise, the NasTech Alliance will be one of the largest such alliances in the securities industry and the first in the exchange marketplace, realizing significant cost efficiencies in future years.

Treasury Makes Two New Mailing Lists Available Via The Internet

Recently, the U.S. Department of the Treasury (Treasury) allowed interested parties to register for the following two new mailing list notification pages via the Public Debt's Web Site:

- One page contains three mailing lists related to government securities market regulation and allows individuals to receive e-mail notification of new regulatory developments.
- The other page contains three mailing lists related to the auction of Treasury securities and allows individuals to receive e-mail notification of new press releases.

Government Securities Market Regulation Area

In the government securities market regulation area, anyone signing up for the *Auction Rule (Uniform Offering Circular) Amendments and Interpretations* mailing list will receive an e-mail notification when Treasury issues any rule amendments or interpretations specifically related to 31 CFR Part 356. Those registering for the *Government Securities Act Rule Amendments Interpretations and Exemptions* mailing list will receive an e-mail whenever there are any new notices specifically related to 17 CFR Chapter IV.

Persons registering for the *Notification of Calls for Large Position Reports* mailing list will be notified by e-mail any time Treasury announces a call (test or actual) for large position reports. Large position notifications are for entities that may potentially have a reportable position of $2 billion or more in a particular Treasury security. Treasury advises market participants not to rely solely on their inclusion in this mailing list for notice of a call. As in the past, whenever Treasury announces a call, it will continue to issue a press release and a *Federal Register* notice, post information on its Web Site, and ask industry groups and regulators to notify their members.

The sign-up page for these regulatory issuances can be found at:

http://www.publicdebt.treas.gov/cgi-bin/cgiwrap/~www/signup.cgi?cat=gsrs

This page may also be accessed by going to the Public Debt's Web Site (*www.publicdebt.treas.gov*), selecting the "Government Securities Market Regulation" image, then choosing the "Sign up for our Government Securities Market Regulation mailing lists" option.

Treasury Securities Auction Area

Persons registering for the *Auction Announcement Press Releases, Auction Results Press Releases,* and *Inflation-Indexed Security CPI Press Release* mailing lists will receive an e-mail whenever a new related press release is issued. The sign-up page for these auction-related press releases is located at:

http://www.publicdebt.treas.gov/cgi-bin/cgiwrap/~www/signup.cgi?cat=of

This same page may be accessed by going to the Public Debt's Web Site (*www.publicdebt.treas.gov*), selecting "auction information" in the paragraph of text relating to "T-bills, Notes and Bonds," then choosing the "Sign up for our Treasury Marketable Securities mailing lists" option.

Questions regarding the government securities market regulation mailing lists may be directed to the U.S. Department of Treasury, Government Securities Regulations staff, at (202) 219-3632. Questions regarding the auction information mailing lists may be directed to the U.S. Department of Treasury, Office of Financing, at (202) 219-3350.

Audio Tape Order Form • NASD Regulation, Inc.
Fall Securities Conference
November 4-6, 1998 San Francisco, California

1998 Advertising Regulation Seminar

- ❍ A01 General Session/Internet
  - Introductory Remarks
  - Discussion Of New Rules
  - Internet & Electronic Communications
- ❍ A02 Nuts & Bolts
- ❍ A03 Fundamentals Of Mutual Funds & Variable Insurance Products
- ❍ A04 General Brokerage
- ❍ A05 Advanced Variable Insurance Products
- ❍ A06 Case Studies
- ❍ A07 Advanced Mutual Funds

Please Check Selection Numbers

1998 Fall Securities Conference

- ❍ S01 General Session
  - Welcome Address—State Of The SRO, Mary L. Schapiro, President, NASD Regulation, Inc.
- ❍ S02 Continuing Education
- ❍ S03 Internet Compliance Issues
- ❍ S04 Managing Compliance Issues And Branch Operations By Small Broker/Dealers
- ❍ S05 Dynamics Of Customer Complaints
- ❍ S06 Examination Program: Process & Priorities
- ❍ S07 Hot Deals, Underwriting, And The NASD Rules
- ❍ S08 A Look Inside The Disciplinary Process
- ❍ S09 Effective Supervision
- ❍ S10 Open Forum With District Directors
- ❍ S11 CRD/Public Disclosure Issues
- ❍ S12 Securities Law
- ❍ S13 Market Regulation Issues
- ❍ S14 Independent Contractors/ Financial Planners/Investment Advisers
- ❍ S15 Rules Roundup
- ❍ S16 Enforcement Developments
- ❍ S17 Year 2000 Readiness

Complete To Order

Post-Conference Prices:

Number of Individual Sessions		_____ x $12.00	= $ _____
5% discount when eight or more sessions purchased (includes storage album)	$ _____ x5% =	< _____ >	= $ _____
Complete set of Fall Securities Conference (includes 10% discount and storage album)		_____ x $183.60	= $ _____
Complete set of Advertising Regulation Seminar (includes 10% discount and storage album)		_____ x $75.60	= $ _____
Complete set of Fall Securities and Advertising Programs (includes 15% discount and storage album)		_____ x $244.80	= $ _____
		Sessions Sub-total	= $ _____
Sales Taxes: Maryland shipping addresses only	$ _____ x5% =	_____	= $ _____
		Sales Tax Sub-total	= $ _____

Shipping Charges:

$2.25 for the first session — $2.25

$1.25 for each additional tape ($21.00 maximum shipping charge) — _____ x $1.25 = $ _____

$15.00 extra shipping charge for orders outside of the US Postal System — = $ _____

Shipping Sub-total = $ _____

Grand Total = $ _____

Your Name _____

Company _____

Street Address _____ MS/Fl/Suite/Apt. # _____ City _____

State _____ Zip Code _____ Day Phone _____ Fax _____ E-mail _____

For Mail or Fax Charge Card Orders:

❑ Visa ❑ Mastercard ❑ Discover ❑ AMEX ❑ Check (*payable to A.V.E.R. Associates*)

Cardholder Name _____ Card Number _____

Card Expiration Date _____ Cardholder Signature _____

Mail or Fax completed form and payment to:
A.V.E.R. Associates, 6974 Ducketts Lane, Elkridge, MD 21075, Phone 410-796-8940, Fax 410-796-8962

Received _____ Auth # & Date _____ Shipped _____ Updated _____

Members Must File Schedule I By January 27, 1999

NASD Regulation reminds all members to file Schedule I of Form X17A-5 by Wednesday, January 27, 1999, electronically via PC FOCUS. Members are required to make this filing regardless of their fiscal year end. Firms that engage in municipal securities activities must disclose income from such activities under the NASD Miscellaneous Information section on PC FOCUS.

Members encountering difficulty filing FOCUS reports electronically may refer to Appendix A—Error Messages and Appendix B—Troubleshooting in the *PC FOCUS User Guide* (Version 2.01). In addition, Appendix E—Schedule I of the Informational Guide contains information on common errors and error resolution for Schedule I specifically.

Questions regarding the information filed on Schedule I may be directed to the appropriate District Office. Questions concerning software, hardware, or the transmission of FOCUS filings may be directed to the NASD toll-free hotline at (800) 321-NASD.

Market Regulation Compliance Report Cards

On September 24, 1998, staff of the Market Regulation Department (Market Regulation) of NASD Regulation began making available quantitative reports for each member firm. The reports address compliance with trade reporting, firm quote, and best execution rules and regulations. The reports are provided to firms as a compliance aid to assist firms in ensuring that they are submitting transaction reports in a timely manner, handling SelectNet liability orders in compliance with the firm quote rule, providing best execution to customers, and, if necessary, taking appropriate measures to improve performance in these areas. Each report contains information for the previous calendar month and is available on the 24th of each month or the first business day after the 24th if that day falls on a weekend or holiday. The reports are available to view at *www.nasdaqtrader.com*. However, given the proprietary nature of the firm-specific reports, a firm must subscribe to the Proprietary Trading Data section of the Site to access any of the reports. For a detailed description of each of the reports and subscription information, please call Nasdaq Subscriber Services at (800) 777-5606. Although these reports are designed and intended to be a preventive compliance tool, the information contained in these reports may indicate the existence of rule violations that may be pursued by NASD Regulation staff.

Questions concerning the Trade Reporting report card may be directed to Patricia Casimates, Market Regulation, NASD Regulation, Inc., at (301) 590-6447. Questions concerning the Firm Quote Compliance or Best Execution report cards may be directed to Joe McDonald, Market Regulation, NASD Regulation, Inc., at (301) 212-3835.

NASD Ombudsman Office Available To Help Member Firms

The NASD Ombudsman Office provides a forum for member firms and their associated persons, public investors, staff members of the NASD and its subsidiaries, and issuers on The Nasdaq Stock Market and the Bulletin Board (collectively constituents) to voice their concerns of unfair practices or disparate treatment. The objective of the Ombudsman Office, as an independent, neutral, and confidential source of assistance, is to receive and address concerns and complaints from any source concerning the operations, enforcement, or other activities of the NASD, NASD Regulation, and Nasdaq. Where a structured dispute resolution and/or appellate process currently exists, the Ombudsman's role is limited to informing persons of the existence of the appropriate process for resolution and, if necessary, to monitor the outcome. The Ombudsman will assist all parties in identifying and evaluating options for positive actions, and will remain neutral in doing so. The Office reports to the NASD Board of Governors Audit Committee and to the NASD Chief Executive Officer and Chief Operating Officer.

The Ombudsman Office was created in response to a recommendation from the NASD Select Committee on Structure and Governance and ratified by the NASD Board of Governors Audit Committee. It has unrestricted access to all company functions, records, and personnel. The Ombudsman Office does not have direct authority over NASD personnel or the departments it reviews.

The Ombudsman Office, as designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to its attention unless given permission to do otherwise. The only exception, at the sole discretion of the Ombudsman, is where a threat of serious physical harm to individuals appears imminent or a critical breach of security is probable. The Ombudsman will take all reasonable steps to protect any records and files pertaining to confidential discussions from inspection by all other persons, including management.

For more information, contact the NASD Ombudsman Office at:

NASD Ombudsman • 1390 Piccard Drive • Rockville, MD 20850 • Phone: (301) 212-2515 • Toll-Free Number: (888) 700-0028 • E-Mail: *ombuds@nasd.com*

You may also find out about and contact the NASD Ombudsman Office via its Web Pages on the NASD's various Web Sites: www.nasd.com; www.nasdr.com.

Comment Period Extended To January 15, 1999 On Institutional Customer Exceptions

NASD Regulation has extended the comment period to January 15, 1999, on whether some rules should be repealed as obsolete or amended to provide institutional customer exceptions. See *NASD Notice to Members 98-81* for details.

Important Publishing Note

Beginning January 1999, the primary method of publishing the *Regulatory & Compliance Alert* and *Notices to Members* will be via the Internet. To read these newsletters on-line, please visit the NASDR Web Site (*www.nasdr.com*) on a regular basis.

To place your name on an e-mail list that will alert you to new issues of these publications, go to the NASDR Web Site and click on the button on the Home Page that says "Subscribe To Our E-Mail Notifications." For those who still want a hard-copy edition, each Executive Representative will be eligible for one subscription to a hard-copy version of *Notices to Members* at cost, $15 per year. Each branch office will be eligible for one subscription to the hard-copy version of the *Regulatory & Compliance* Alert at cost, also $15 per year. Hard-copy versions of these publications can be purchased by calling NASD MediaSource℠ at (301) 590-6142.

Fixed Income Securities Update

The Fixed Income Pricing System℠ (FIPS®) began operation in 1994 for member firms trading high-yield corporate bonds. FIPS is operated by The Nasdaq Stock Market, Inc., and collects, processes, and displays quotations and summary transaction information for corporate debt securities rated BB+ or lower by Standard & Poor's Corporation. A routine review of high-yield corporate bond transactions indicates that certain member firms may not be properly registered or properly reporting their transactions in accordance with NASD Rule Series 6200.

FIPS Registration

NASD Rule 6230 requires that dealers in FIPS securities must be registered with the NASD and authorized as a FIPS participant if they hold themselves out as brokers or dealers engaging in the business of effecting transactions for their own account or the accounts of others on a regular basis.

FIPS Reporting

FIPS transaction reporting is mandatory for member firms for "sell-side" transactions in eligible securities with a par value $1,000 or more, regardless of whether the member firm is acting in an agent or principal capacity. FIPS securities transactions are to be reported to the NASD using a FIPS terminal (certain exceptions exist) and in accordance with the timing, participant information, and trade information specified in Rule 6240.

Member firms that execute high-yield corporate debt transactions—either directly or by using the facilities of a clearing firm—are reminded of their obligation to register and report their transactions. The failure to register as a FIPS participant or accurately report FIPS trades as required, may result in disciplinary action.

If you have questions about your firm's FIPS registration please contact Joan Rizzo at (212) 858-3975. To request a FIPS Participant Subscriber Agreement contact FIPS Subscriber Services at (800) 777-5606. See also published responses to frequently asked FIPS questions contained in NASD Notices to Members 98-10 *and* 98-55.

Compliance Questions & Answers

NASD Regulation's Member Regulation Department frequently receives inquiries from members. To keep members informed on matters of common interest, Member Regulation provides this question-and-answer feature through the *Regulatory & Compliance Alert.*

Registered Investment Companies

Q: What is the net capital treatment for concessions receivable from the sale of shares in registered investment companies that are registered under the Investment Company Act of 1940?

A: Under SEC Rule 15c3-1(c)(2)(iv)(C), concessions receivable from the sale of shares in registered investment companies that are registered under the Investment Company Act of 1940 are treated as an allowable asset when computing net capital, as long as the concessions have been outstanding no more than 30 days from the date they arise.

Conversion Of Subordinated Debt To Equity

Q: May a member convert subordinated debt to equity capital?

A: Yes. A member may convert subordinated debt to equity, including those instances in which the subordinated debt has been effective for less than one year, under the following conditions:

- The prepayment must be approved by NASD Regulation.
- The prepayment must be for the purpose of converting subordinated debt to equity.
- The prepayment results in no significant lessening of a firm's net capital.
- The conversion to equity is simultaneous with the prepayment.
- The lenders agree, before the prepayment, that none of the prepaid funds will be withdrawn from the member during the period that the relevant subordination agreement would have been in force.

(Letter from SEC Staff of Division of Market Regulation to NASD, May 29, 1981; NASD Guide to Rule Interpretations, 1996)

Q: How long must equity capital remain in a member before it may be withdrawn?

A: The SEC has emphasized that the net capital maintained in a member should be permanent capital and not a temporary infusion of funds. Permanency of capital has been deemed to be a minimum of one year duration. The SEC Division of Market Regulation has taken the position that funds temporarily deposited into a member entity and withdrawn shortly thereafter should be regarded as a loan and considered a liability of the member.

(48 SEC Docket 464, Release No. 34-28927, February 28, 1991)

Q: What procedure does a member follow in order to convert subordinated debt to equity capital?

A: To convert subordinated debt to equity capital, a member should submit a written request to the NASD Regulation District Office detailing the transaction, and stating that:

- the conversion will result in no significant reduction in the firm's net capital;
- the conversion will be a simultaneous transaction with no money leaving the firm; and
- the lender has agreed in writing that the converted funds will not be withdrawn from the firm before the maturity date of the respective subordinated loan.

Q: Must a member obtain SEC approval to convert subordinated debt to equity capital?

A: In most circumstances, there is no requirement to obtain SEC approval. However, the member must follow the procedures described above and obtain approval from NASD Regulation.

Electronic Customer Signatures

Q: Is it permissible to use an electronic signature to accept a new account?

A: Yes, it is permissible. On November 26, 1997, in a staff interpretation on the use of electronic signatures under NASD Rule 3110(c)(1)(C), and NASD Rule 3010(d), the Office of the General Counsel for NASD Regulation issued an opinion permitting members to use electronic signatures, provided the member complies with the following safeguards:

- The member's system for storing and maintaining records in electronic format or form (the system) allows NASD examination staff immediate access to required records and contains appropriate indexing and cross-referencing capabilities to assure access to all relevant documents and records, and retention of the records and documents is consistent with the NASD's and SEC's record-retention requirements and rules.
- The system permits examination staff to download documents, records, and information and permits printing these documents in hard copy.
- The system provides for adequate security and restriction of access to authorized employees and principals only. Company-wide user profiles are created with previously approved authority to conduct reviews and approvals. Passwords are changed periodically and are safeguarded against unauthorized use.
- The member maintains, at each branch site that uses the system, current written policies and procedures that accurately describe the system, its safeguards, and its operating procedures to assure compliance with the NASD and SEC rules.

- The member conducts periodic reviews, at least annually, of the policies, procedures, and operations to assure that the system operates as designed and documented and in accord with the requirements of NASD and SEC rules.

(Letter from NASD Regulation to member firm, see www.nasdr.com.*)*

Update To Question Published In The Regulatory & Compliance Alert, January 1995

Q: Can the annual compliance meeting by the Compliance Director of a broker/dealer as mandated by NASD Rule 3010 be conducted over the telephone?

A: Yes. Technological advances in electronic communications led NASD Regulation to reconsider in February 1998 the various means of communications through which members can effectively conduct the compliance conference required by NASD Rule 3010(a)(7). NASD Regulation now permits members to hold the required conference with registered representatives via video conference, interactive classroom setting, or other electronic means (including telephone), provided certain safeguards are met.

Members choosing to conduct compliance conferences other than in person must ensure the communication used permits interactive communication. This means, at a minimum, that representatives must be able to hear presenters live, and, in an active environment, ask questions and engage in dialogue with presenters. In addition, members have a heightened responsibility to ensure that representatives arrive on time and stay for the entire conference.

No standardized procedures are specified by NASD Rule 3010; however, firms written supervisory procedures must be designed and implemented to reasonably ensure compliance with subparagraph (a)(7) of the Rule. The procedures may include, among other things, designating an appropriate person to oversee compliance, implementing and maintaining a tracking system, and proctoring the compliance conference.

(See NASD Notice to Members 98-18 *or contact Daniel M. Sibears, Vice President and Deputy, Member Regulation, NASD Regulation, Inc., at (202) 728-6911.)*

Questions regarding this information may be directed to the Member Regulation Department at (202) 728-8221.

Year-End Compliance Regulation Roundup

Non-Cash Compensation Arrangements—Effective January 1, 1999, member firms will be required to comply with amendments to NASD Rules 2820 (Variable Contracts Rule) and 2830 (Investment Company Rule) that regulate non-cash compensation arrangements for the sale and distribution of variable contracts and investment company securities. The amendments, approved by the SEC on July 15, 1998, adopt new definitions, impose record-keeping requirements, and limit the manner in which members can pay or accept non-cash compensation. *NASD Notice to Members 98-75* (October 1998) details the Rule changes and outlines an implementation plan. Questions concerning this Rule change may be directed to R. Clark Hooper, Executive Vice President, Office of Disclosure and Investor Protection, NASD Regulation, Inc., at (202) 728-8325, and Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8176.

Fidelity Bonding Requirements—Effective September 1998, NASD Regulation staff may adjust a member's fidelity bonding requirement under certain circumstances. This is a result of SEC approval of amendments to NASD Rule 3020, which governs member fidelity bonding requirements. The Rule specifies that members are required to maintain fidelity bonds to ensure against certain losses and the potential effect of such losses on firm capital. The Rule applies to all members with employees who are required to join the Securities Investor Protection Corporation and who are not covered by the fidelity bond requirements of a national securities exchange. The required amount of a member's coverage is linked to the member's required net capital under SEC Rule 15c3-1. The amendment to the Rule permits the NASD Regulation staff to adjust the fidelity bond requirements to reflect changes in a member's business and allows members relief from maintaining unnecessarily high fidelity bond coverage without compromising investor protection. More information regarding this Rule change may be found in *NASD Notice to Member 98-67* (August 1998). Questions may be directed to John M. Ramsay, Vice President and Deputy General Counsel, Office of General Counsel, NASD Regulation, Inc., (202) 728-8159, or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

Books And Records/Suitability—NASD Regulation amended NASD Conduct Rules 2310 and 3110 to change the definition of "institutional account" to include the accounts of investment advisers that, under the National Securities Markets Improvements Act of 1996 and new rules adopted by the SEC, are now required to register with the states; and to exclude certain customer accounts from the requirement to obtain certain retail customer information. The SEC approved these Rule changes in May 1998. The NASD announced the approval of the rules in *NASD Notice to Members 98-47* (July 1998).

- Institutional Account Definition—amends NASD Rule 3110 to take into account the bifurcation of investment advisers regulation between the SEC and the states by changing the definition of "institutional account" to include investment advisers required to register with the SEC and those required to register with the states. Thus, state-regulated advisory accounts will continue to be treated as "institutional accounts" for purposes of Rules 2310 and 3110.
- Accounts Limited to Transactions in Mutual Fund Shares—changes to NASD Rule 3110 eliminates requirements to obtain certain retail customer information (tax information, customer name and employer's address, and associated person status) for institutional accounts and accounts that are limited to mutual fund shares for which no recommendations are made.

Further information regarding this topic can be found in SEC Release No. 34-40048 (June 8, 1998) and in *NASD Notice to Members 98-47* (July 1998). Questions concerning this information can be directed to Joe Price, Director, Corporate Financing, NASD Regulation, Inc., at (202) 728-8877, and Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8176.

Individual Correspondence—Effective November 1998, amendments to NASD Rule 2210 (Communications with the Public) subjects individual correspondence to the general standards and certain specific standards of the Rule. Generally, no material fact or qualification may be omitted if the omission would cause the correspondence to be misleading. Also, the correspondence may not make exaggerated, unwarranted, or misleading statements or claims. Further information about this Rule can be found in *NASD Notice to Member 98-11* (January 1998), *NASD Notice to Member 98-38* (May 1998), *and NASD Notice to Members 98-83* (October 1998). Questions regarding this Rule may be directed to Thomas A. Pappas, Director, Advertising Regulation, NASD Regulation, Inc., at (202) 728-8330, and Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8176.

Supervision Of Correspondence—Amendments to NASD Rules 3010 and 3110 allow firms to develop flexible supervisory procedures for the review of correspondence with the public, and include provisions requiring members to review incoming and outgoing, written and electronic correspondence between registered representatives and their customers. NASD Regulation provided guidance to member firms in an *NASD Notice to Members*. The SEC approved a further amendment to Rule 3010, requiring firms to review incoming, non-electronic correspondence to identify and ensure proper handling of customer complaints and funds. An *NASD Notice to Members* providing guidance will be issued in January 1999. Further information about this Rule can be found in *NASD Notice to Members 98-11* (January 1998), the *Regulatory & Compliance Alert* (March 1998), SEC Release No. 40723 (November 30, 1998), and *NASD Notice to Members 99-03* (January 1999).

Questions regarding this Rule change can be directed to Mary N. Revell, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8203.

Derivatives—Effective January 4, 1999, the SEC is adopting rules and rule amendments under the Exchange Act that tailor capital, margin, and other broker/dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, that are active in over-the-counter derivatives markets.

Registration as an OTC derivatives dealer under these rules is optional and is an alternative to registration as a broker/dealer under the traditional broker/dealer regulatory structure. It is available only to entities that engage in dealer activities in eligible over-the-counter derivative instruments and that meet certain financial responsibility and other requirements. Further information regarding these rules can be found in SEC Release No. 34-40594 (November 3, 1998).

QUALIFICATIONS/CONTINUING EDUCATION/TESTING

Update On The NASD's Registration Rules

On April 1, 1998, NASD Regulation implemented amendments to the registration rules governing the qualification of representatives who trade equity securities in The Nasdaq Stock Market (Nasdaq) or over-the-counter. The amendments to the rules establish a registration category (ET) and qualification examination (Series 55) for equity traders. (Refer to *NASD Notice to Members 98-17* for full details on the amendments to the registration rules.) Below are responses from NASD Regulation to a number of questions from member firms and/or registered representatives regarding the scope of the equity trader registration category.

Q: A broker/dealer runs a "day trading" operation where customers can execute their own Nasdaq trades directly with a specific Market Maker. Would the supervisor at this firm be required to pass the Series 55 Exam?

A: Yes. As stated in *NASD Notice to Members 98-66*, any member firms that provide their customers with the ability to execute trades through a Nasdaq execution service must ensure that such trades comply with SEC and NASD rules. The member is responsible for effectively monitoring and supervising the entry of such orders and for honoring all executions that occur. Therefore, the supervisors at such firms must satisfy all applicable NASD qualification and examination requirements including the Equity Trader Exam-Series 55.

Q: A broker/dealer uses an electronic order entry system to relay its customers' orders to the firm's clearing broker for execution. Would these registered representatives who accept these customer orders and input them in the order entry system be subject to the Series 55 requirements?

A: No. These registered representatives are not conducting proprietary trading, execution of agency transactions, or supervision of such activities within the meaning of Rule 1032(f).

Q: If a registered representative who originally had been granted the two-year grace period (until May 1, 2000), fails the Series 55 Exam, will the registered representative's registration continue to reflect the same May 1, 2000 expiration date?

A: Yes.

Q: How long must a registered representative wait before re-taking the Series 55 Exam after each failure?

A. With an original May 2000 expiration date
B. Without a May 2000 expiration date

A: Candidates granted the two-year grace period for the Series 55 Exam must wait 30 days before retaking a failed Series 55 Exam. If the candidate fails the Series 55 Exam more than three times, the waiting period continues to be 30 days, rather than the 180-day waiting period normally required after the third and all subsequent failures. This exemption applies **ONLY** to the Series 55 Exam, and it is **ONLY** for those candidates who are allowed the two-year grace period. The normal waiting periods apply in all other circumstances.

Q: A registered representative originally was entitled to the two-year grace period and then transferred to another firm. What will happen to the two-year grace period when the new firm attempts to register the registered representative for the Series 55 Exam?

A: The grace period will continue to be available to the transferred employee. In other words, the candidate will continue to be allowed until May 1, 2000, to pass the examination.

Q: Does the NASD provide any training materials for study of the Series 55 Exam?

A: No. The only specific information the NASD can provide is a study outline, which can be obtained from NASD MediaSource at (301) 590-6142. In addition, the *Nasdaq Trader Manual* contains valuable information covered on the test and is available as a viewable and printable file on the Nasdaq Trader Web Site at *www.nasdaqtrader.com*. Neither publication is intended, however, to be a training program for the examination.

Q: Are listed stock traders who sometimes execute transactions in 19c-3 securities in the Nasdaq market included in the definition of equity trader?

A: Yes. The definition of equity trader in NASD Rule 1032(f) includes all traders who effect any transactions in equity, preferred, or convertible debt securities in the Nasdaq or OTC markets. No exemption is provided to traders whose primary trading activities take place on a securities exchange and who only occasionally effect transactions in Nasdaq or OTC.

Q: Are listed stock traders who effect after-hours transactions in foreign markets engaged in OTC trading and, therefore, subject to the Series 55 requirement?

A: No. The new Rule is not intended to include trading activity conducted in foreign markets.

Q: Are institutional salespersons who report trades executed by their firms' traders for the salespersons' customers to ACT included in the definition of equity trader?

A: No. The mere reporting of trades to ACT does not bring institutional salespersons within the scope of the Rule. If, however, institutional salespersons effect transactions on behalf of their institutional customers in the Nasdaq or OTC markets, then they are acting as traders and must qualify through the Series 55 Exam.

Q: Are "order processors" who receive and transmit orders to a trading desk, either in their own firms or at another dealer, included in the definition of equity trader?

A: No. Such persons are not effecting trades in the Nasdaq or OTC markets. Such persons would be subject to the Series 55 requirement only if they executed a principal or agency transaction for their firms to fill the orders.

Q: Are a firm's proprietary traders included in the definition of equity trader, especially proprietary traders whose primary activities are in exchange-listed securities?

A: Yes. NASD Rule 1032(f) explicitly covers without exception proprietary traders who effect any transactions in equity, preferred, or convertible debt securities in the Nasdaq or OTC markets. For purposes of this Rule, "program" or "basket" traders would be considered proprietary traders.

Q: Does the definition of equity trader include persons in foreign offices who effect transactions in non-U.S. securities in non-U.S. markets that are reported to a non-U.S. exchange or regulatory body?

A: No. NASD Rule 1032(f) is intended for traders executing transactions in covered securities in the Nasdaq or domestic OTC market.

Q: Are bond traders who effect a small number of transactions in convertible securities included in the definition of equity trader?

A: Yes. There is no de minimis exemption for bond traders who do an occasional small dollar volume business in convertible securities.

Q: Are "buy side" traders in a member acting solely on behalf of advisory accounts under management by the member included in the definition of equity trader?

A: Yes. NASD Rule 1032(f) only exempts traders whose activities are conducted on behalf of an affiliated investment company that is registered under the Investment Company Act of 1940. This exemption does not apply to traders for advisory accounts managed by a member.

The following persons in NASD Regulation's Testing and Continuing Education Department may be contacted for additional information concerning this new qualification requirement and the Series 55 Exam: Eva Cichy at (301) 208-2789; Carole Hartzog at (301) 590-6696; and Elaine Warren at (301) 590-6135.

Items To Remember When Undertaking Your 1999 Firm Element Needs Analysis And Written Training Plan

The Securities Industry/Regulatory Council on Continuing Education (Council) provides the following suggestions and reminders to firms undertaking the annual Firm Element Needs Analysis and written Training Plan required by the Continuing Education requirements.

The Needs Analysis—The need for specific review of Firm Element training needs for managers or supervisors.

Effective July 1, 1998, firms are required to specifically address supervisory training needs in the annual Needs Analysis. Training for supervisors must be provided as determined by the firm to be necessary. In analyzing Firm Element training needs for supervisors, firms must focus on the importance of supervisory responsibilities imposed by industry rules and regulations. Firms should include in the analysis a review of the firm's internal supervisory policies, the use of internal monitoring or supervisory systems, and the sources of information or assistance available within the firm.

Needs Analysis surveys.

Although surveys are one way in which a continuing education Needs Analysis may be conducted, there are a variety of other techniques that can be used in place of, or in conjunction with, surveys. The Council anticipated that surveys connected with a firm's initial Needs Analysis may by necessity be wide-ranging and therefore relatively more time consuming than surveys conducted for subsequent Needs Analyses. Subsequent year's surveys may be tailored and conducted with audiences within those areas of the firm where changes have occurred. For example, a retail firm doing its first Needs Analysis survey might consider surveying each, or a representative sample, of its retail representatives in addition to the compliance, marketing, and the other groups suggested in the *Guidelines for Firm Element Training.* In subsequent years, the same firm might only survey new representatives, retail representatives who had compliance problems, registered representatives with product lines changes, or registered representatives involved in areas where there were changes to industry rules or company policies. A sample of the remaining retail population would generally suffice to validate what had been determined the year before. Note that material changes in business operations or activities may require a broad, new assessment.

How to use the quarterly report on Regulatory Element performance in planning the content of the Firm Element training programs.

The quarterly reports show the aggregate performance of a firm's registered employees who participated in the general Regulatory Element program training during the most recent quarter. The report contrasts the firm's performance to the average performance of the industry in each of the seven modules of the Regulatory

Element general program. When a firm's performance in a module is below the industry average and the firm is involved in the area of the business that the module represents, the firm should include that topic in its Firm Element training. For example, if a firm participates in new and secondary offerings and its aggregate performance is below the industry average in the "New and Secondary Offerings" module, the firm should evaluate the adequacy of the written training plan for this topic in its Firm Element training.

Needs Analyses and training plans for sole proprietorships.

Every firm must conduct a Needs Analysis and prepare a written training plan which is reasonable for its size and type of business it conducts or plans to conduct. The Needs Analysis of a sole proprietorship should contain a description of the firm's products and services and the sole proprietor's background and industry experience. The Needs Analysis and written training plan should address any pertinent recommendations from the *Firm Element Advisory*, which is published annually by the Council, and should briefly describe the sole proprietor's training plans for the upcoming year.

Training Plans

Minimum or maximum number of hours of continuing education.

There are no set schedules or required number of hours prescribed for the Firm Element, but coverage must be sufficient to meet the reasonableness criteria established by SRO rules.

Training materials or presentations provided by outside entities.

Training materials and presentations available through outside vendors may be used. However, the firm using such materials must ensure that they meet the standards of the Firm Element and are appropriate for a firm's needs. Materials are also available through regulators and industry trade and professional associations. Firms that elect to use any materials or presentations developed or provided by others retain responsibility for the content and the adequacy of their overall programs. Importantly, neither the SROs nor the Council approve or certify training materials or training programs.

Training in conjunction with professional designation programs.

Firms may determine that participation in a program designed to meet the requirements of an educational or continuing education program of another related industry (*i.e.*, insurance-licensed personnel) or of a professional designation program in a field related to the securities industry meets all or part of an individual's or group of individuals' Firm Element requirements. Whether additional training is necessary for a specific individual or group depends on whether the coverage and objectives of the training received through the other program is consistent with the firm's Needs Analysis and the scope of the individual's sales-related activities.

For example, if a covered person's sales-related activities are limited to insurance and insurance-based securities products, training

received through insurance industry continuing education might be sufficient. On the other hand, if the individual sells a wider range of securities products, participation in additional training would probably be necessary. For individuals participating in the initial or ongoing training related to a professional designation program, a firm might determine that the material adequately covered subjects planned for its own Firm Element. If not, the firm may require the individual to participate in segments of its own program. If an external educational or continuing education program is used to meet an individual's Firm Element training requirement, the firm must demonstrate the applicability of that program to the training plan and have training materials available for review during regulatory examinations.

Documentation

Records needed to document Needs Analyses, training plans, program content, and registered person participation for regulatory examinations.

Regulatory and self-regulatory staff members conducting examinations anticipate the availability of documents that describe the methodology firms used in conducting their Needs Analyses. These documents should, at a minimum, identify the factors considered, the kinds of information reviewed, and the conclusions reached from the analysis. It is essential that firms maintain materials such as surveys or past training evaluations, lists of areas or business units surveyed, assessments of the effectiveness of past training efforts, and other documentation of specific consideration.

The written training plan must accurately and adequately present the subject matter of the training, identify who will be trained, and where and how the training will take place. Written training plans and other applicable documentation (*e.g.*, training results, feedback, and attendance records) must be retained for regulatory examination during routine SRO examinations or upon request. The subject matter covered in training presentations can be documented by retaining copies of written materials used (*i.e.*, texts, hand-outs, case studies, discussion points, outlines, notes, or check-off sheets for items covered), as well as any non-written material such as audio-visual tapes.

Documenting participation in such activities as conference calls and "squawk box" meetings may be accomplished by participant sign-off or attestation, among others. In addition, written materials are sometimes disseminated in internal memoranda, compliance alerts, and regulatory bulletins, which must be read as part of Firm Element training. Participant sign-off or attestation should demonstrate completion.

The continuing education-related records are required to be maintained under SEC Rule 17a-4, which requires every broker or dealer to preserve records related to the conduct of their business for at least three years, the first two years in an easily accessible place.

Available Resources

The Council has several publications available to help firms address the Firm Element Continuing Education requirements.

- *Guidelines for Firm Element Training (NASD Notice to Members 96-69,* October 1996) offers direction to help firms devise

appropriate training programs consistent with their own unique needs, characteristics, and businesses.

- *Examples of Firm Element Practices and Council Commentary (NASD Special Notice to Members 97-66*, September 1997) provides observations from the Council through its comments on the Needs Analyses and Training Plans of seven securities firms of various sizes and client orientations.
- The annual *Firm Element Advisory (NASD Notice to Members 98-28*, March 1998) lists pertinent topics that the Council identified from a review of industry performance on the Regulatory Element, and regulatory advisories issued by industry regulators. Firms should review the *Advisory* to determine whether the topics are relevant to their training needs.
- *The Continuing Education Program Status Report (NASD Notice to Members 98-68*, August 1998) discussed the July 1, 1998 revisions to NASD Rule 1120 through a series of questions and answers. The Firm Element section of the *Status Report* (questions 47 through 68) addresses comments and questions posed to the Council about the *Guidelines for Firm Element Training.*

All of these publications are available to members on NASD Regulation's Web Site (*www.nasdr.com*), under "Members Check Here," then "Continuing Education."

Direct questions about the Continuing Education Program to John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932, or Daniel M. Sibears, Vice President and Deputy, Member Regulation, NASD Regulation, Inc., (202) 728-8221.

Regulatory Element Computer Training Fees Lowered

The Securities Industry/Regulatory Council on Continuing Education has lowered the cost of taking a Regulatory Element computer-based training session (General Program and Supervisor Program) to $65 from $75 effective January 1, 1999. The $10 per session reduction is expected to save the industry $1,400,000 as the Council expects that 140,000 Regulatory Element sessions will be administered in 1999.

The Council lowered the fee because it has recovered the substantial development costs of the Securities Industry Continuing Education Program and it believes that it can operate the Program with a reduced administrative fee. The Council will review the fee annually as part of its mandate to maintain the Program on a revenue neutral basis.

Certification Testing And Continuing Education Updates

To better serve NASD member firms, and to relay changes to policies/procedures regarding the scheduling and delivery of exam and continuing education sessions, NASD Regulation will continue to provide information in this publication each quarter.

Continuing Education Supervisors/ Regulatory Element Supervisors

On Monday, November 2, Sylvan Technology Centers currently delivering NASD sessions launched a new training session for industry managers and supervisors. The new training session is known as:

> Continuing Education Supervisor (CES), a.k.a. Regulatory Element Supervisors
> **Session 2-201**

The new curriculum incorporates audio and full motion video vignettes. Sylvan Technology Centers received upgraded equipment for the delivery of this new training session. CES sessions may be scheduled through either a local Sylvan Technology Center or Sylvan's Candidate Services Call Center (800-578-NASD, Option 1). Candidates with questions regarding eligibility requirements for this session should contact their firm's Registration/Compliance Department.

When notifying candidates of their registration eligibility for either the Continuing Education Regulatory Element or Continuing Education Supervisor session, firms must include the session number:

> Continuing Education Regulatory
> **Session 2-101**
>
> Continuing Education Supervisor
> **Session 2-201**

The session numbers are critical to ensure that the appropriate session is scheduled for the candidate.

Field Support Services (FSS) Information

Session Re-Takes (At No Charge) Due To Technical Problems At Sylvan Centers

Candidates who experience serious technical problems (which preclude them from completing a session) may be eligible to re-take a session at no additional charge to the firm. The candidate should report the problem to the Registration/Compliance Department at his/her firm within one to two days of the exam date.

Only the Registration/Compliance Department staff may contact Field Support Services (FSS) at (800) 999-6647 to report the problem and request that consideration be given for a free re-take of the session. FSS staff will investigate the problem and contact the firm within 10 business days as to whether the request has been approved or denied.

Late Cancellation Disputes

Firms that wish to dispute a late cancellation charge must do so within 30 days of such charge being posted to the CRD.

Firm Registration/Compliance Department staff must contact FSS at (800) 999-6647 to dispute the charge. **Charges will not be reversed, for any reason, after 30 days of posting to CRD.**

Consideration will be given to reversing a late cancellation fee due to:

- inclement weather;
- natural disasters; and/or
- center outages/equipment problems.

Charges **will not** be reversed for:

- candidates turned away due to improper ID and/or inappropriate behavior;
- personal/family-related issues; and/or
- work-related issues (*i.e.*, meetings, work schedules).

Requests For Additional Score Reports

Requests for additional score reports **must** come from the firm's Registration/Compliance Department, not individual candidates. Reports will be re-printed and sent via facsimile **only** if the requested department **does not** have access to the Firm Access Query System (FAQS). Score reports **will not** be sent via facsimile or mailed directly to candidates.

Group Appointments

Firms requesting Group Appointments (five or more candidates) must contact FSS at (800) 999-6647 at least 30 days in advance. However, this does not guarantee that the space will be available at the requested center for the requested date; many firms request reserved space months in advance. The sooner you enter the request, the better chance of getting the dates you want. The following is the procedure for requesting a Group Appointment:

- Submit your request to FSS at least 30 days in advance of the date(s) you are requesting. Include the date(s), center(s), and session series numbers.
- FSS will fax a verification form to you as soon as the spaces are reserved. Use this form to indicate the name, Social Security number, and session series number for each candidate in the group.
- Fax the completed verification form to FSS, (301) 590-6340, at your earliest opportunity. You should also call FSS at (800) 999-6647 to inform them that you are sending the completed fax. The completed verification forms must be returned to FSS at least 10 business days prior to the appointment date.
- Only appointments for candidates listed on the verification form will be honored. Any remaining reservations will be canceled. In addition, candidates without a valid registration seven days prior to the appointment date will be canceled without exception.

- If you need to cancel or re-schedule a valid appointment, you must do so at least two business days in advance of the appointment date before 12 p.m. If you need to cancel or re-schedule an individual from the group, you should contact Sylvan's Call Center at (800) 578-NASD. If you need to cancel or re-schedule the entire group, contact FSS.

Special Accommodations Appointments

The NASD is committed to providing reasonable and appropriate accommodations for candidates with diagnosed physical or learning disabilities. An individual with a disability is defined as one who has a physical or learning disability that substantially limits one or more life activities.

Individual candidates calling FSS with a request for special accommodations will be referred to their firm's Registration/ Compliance Department.

Requests for special accommodations must be placed by the firm's Registration/Compliance Department. The firm must contact FSS at (800) 999-6647 to schedule the appointment. If a candidate is currently scheduled at a testing center without special accommodations, the firm must either cancel the appointment and contact FSS to make the appropriate arrangements, or the candidate must take the examination without special accommodations.

FSS will attempt to schedule the special accommodations appointment in a timely manner, however, some accommodations may take longer to arrange than others. For example:

- Requests for extra time and/or a written examination can usually be scheduled quickly. Due to the many sessions administered, the session should be requested as far in advance as possible.
- Requests for a reader may take up to 30 days to arrange. This allows time for Sylvan's special accommodations team to make the appropriate arrangements.

To arrange for special accommodations, the following steps must be taken by the firm:

A letter of request must be submitted by the firm's Registration/Compliance Department on company letterhead. The letter must include the following information:

- Candidate name, Social Security number, and session series number.
- The type of accommodation needed.
- At least two requested appointment dates and the center location.

Documentation from a doctor or appropriate licensed professional must be submitted along with the firm's request. The documentation required is based on the type of disability. The guidelines are as follows:

Physical Disabilities—A letter indicating the type of disability and the need for specific accommodations. It should also contain the signature and title of the doctor or appropriate licensed professional.

Learning Disabilities—The medical report/letter must contain the following:

- Specific diagnosis.
- Signature and title of the doctor or appropriate licensed professional.

Questions about this information may be directed to Linda M. Christensen, Account Executive, Member Regulation, NASD Regulation, Inc., at (610) 627-0377.

Correction:
There was a misprint in the September issue of the *Regulatory & Compliance Alert* article titled "Testing And Continuing Education Examination Update."

In the "English As A Second Language" section, the last line should read:

"NOTE: Photocopies of a previously written letter WILL NOT be accepted."

Certification Testing & Continuing Education Delivery Location List

Current as of December 1998

Alabama	
Birmingham	*205-871-7444*
Decatur	*205-350-8324*
Dothan	*334-677-6334*
Mobile	*334-344-6284*
Montgomery	*334-262-0043*
Alaska	
Anchorage	*907-563-6601*
Arizona	
Chandler	*602-963-6260*
Phoenix (N. 35th Ave.)	*602-548-8220*
Tucson	*520-531-0431*
Arkansas	
Fort Smith	*501-484-0702*
Little Rock	*501-663-8280*
California	
Anaheim	*714-637-7323*
Atascadero	*805-462-8308*
Brea	*714-255-1155*
Culver City (5601 W. Slausen)	*310-337-6696*
Culver City (5731 W. Slausen)	*310-337-6696*
Diamond Bar	*909-861-1146*
Fremont	*510-745-8192*
Gardena	*310-329-1844*
Glendale	*818-545-7383*
Irvine	*714-552-0563*
LaJolla	*619-454-4384*
Piedmont	*510-428-4123*
Rancho Cucamonga	*909-944-9763*
Redlands	*909-792-9669*
Riverside	*909-353-8600*
Sacramento (Fair Oaks)	*916-961-7323*
San Diego	*619-481-3640*
San Francisco (Market St.)	*415-882-1212*
San Francisco (W. Portal St.)	*415-682-2220*
San Jose	*408-257-7699*
Walnut Creek	*510-934-3000*
Westlake/Ventura	*805-495-6367*
Canada	
Calgary	*403-777-1365*
Halifax	*902-422-7323*
Montreal	*514-876-8818*
Richmond BC	*604-231-1966*
Whitby	*905-404-1818*
Windsor	*519-974-8747*
Winnipeg	*204-988-5050*

Colorado	
Boulder	303-449-1700
Colorado Springs	719-593-1272
Denver	303-692-8745
Littleton	303-972-7276
Pueblo	719-545-0838
Connecticut	
Brookfield	203-775-9611
Glastonbury	860-659-0400
Hamden	203-287-9677
Delaware	
Dover	302-734-7543
Wilmington	302-998-3353
District of Columbia	
Washington, DC	202-955-5887
Florida	
Davie	954-423-0782
Ft. Myers	941-275-1130
Gainesville	352-371-6891
Jacksonville	904-739-3000
Maitland/Orlando	407-875-8118
Miami	305-825-2708
Sarasota	941-923-9399
Tallahassee	850-385-8696
Temple Terrace (Tampa)	813-989-9988
Winter Park	407-671-2332
Georgia	
Atlanta	404-255-9957
Augusta	706-868-1888
Jonesboro	770-478-5356
Macon	912-474-5909
Savannah	912-354-2660
Smyrna	770-801-0215
Valdosta	912-245-1069
Hawaii	
Honolulu County	808-263-6656
Idaho	
Boise	208-322-3555
Illinois	
Bloomington	309-452-4788
Carbondale	618-529-4664
Carpentersville	847-426-6606
Chicago (LaSalle St.)	312-609-2525
Chicago (S. Wabash)	312-663-5632
Homewood	708-798-0238
Northbrook	847-559-2461
Peoria	309-682-0825
Springfield	217-546-0381
Westchester	708-947-2800
Indiana	
Evansville	812-479-6855
Ft. Wayne	219-436-2710
Indianapolis (E. 86th St.)	317-257-7546
Indianapolis (Girl's School Rd)	317-247-7664
Lafayette	765-447-5996
Merrillville	219-736-1113
Mishawaka	219-254-1055
Iowa	
Bettendorf	319-359-1001
Cedar Rapids	319-393-0555
Des Moines	515-223-6650
Kansas	
Topeka	785-272-7500
Wichita	316-651-5350
Kentucky	
Lexington	606-269-3933
Louisville	502-423-0340
Louisiana	
Baton Rouge	504-293-8489
Bossier City	318-742-7349
New Orleans	504-245-2600
Maine	
Portland	207-775-5812
Maryland	
Bethesda	301-718-9893
Columbia	410-740-8137
Lanham	301-552-3400
Pikesville	410-486-9045
Salisbury	410-341-4100
Massachusetts	
Boston	617-345-8980
E. Longmeadow	413-525-4901
Waltham	781-890-0466
Michigan	
Ann Arbor	313-665-8916
Grand Rapids	616-957-0368
Lansing	517-372-7410
Livonia	313-462-2750
Portage	616-321-8351
Troy	248-643-7323
Utica	810-739-0270

Minnesota	
Bloomington	612-831-7461
Duluth	218-723-1494
Rochester	507-292-9270
St. Cloud	320-529-4830
Woodbury	612-702-6791
Mississippi	
Jackson	601-366-6400
Missouri	
Ballwin	314-394-7742
Creve Coeur	314-997-1555
Gladstone	816-468-7901
Springfield	417-882-0740
St. Joseph	816-671-9900
Montana	
Billings	406-259-1659
Helena	406-443-9205
Nebraska	
Columbus	402-564-2862
Omaha	402-334-9449
Nevada	
Las Vegas	702-876-4090
Reno	702-829-2700
New Hampshire	
Concord	603-228-2911
New Jersey	
East Brunswick	732-390-4040
Fairlawn	201-475-1670
Hamilton Township	609-631-9794
Union	908-964-2862
New Mexico	
Albuquerque	505-296-0609
New York	
Albany	518-869-6119
Amherst/Buffalo	716-565-0570
Brooklyn Heights	781-222-1277
East Syracuse	315-433-9038
Garden City	516-746-7367
Ithaca	607-277-4821
Melville	516-845-9063
NYC Manhattan Area	212-760-1137
NYC Midtown Area	212-809-5509
NYC Wall Street Area	212-809-5509
Rego Park	718-997-6356
Rochester	716-385-4810
Staten Island	718-980-3079
Vestal	607-798-1715
Wappingers Falls	914-297-8666
Watertown	315-788-2588
White Plains	914-289-0437
North Carolina	
Asheville	828-253-4224
Charlotte	704-364-7758
Gastonia	704-853-2038
Greensboro	336-288-1311
Greenville	919-756-0342
Raleigh	919-846-1933
North Dakota	
Bismarck	701-224-1171
Fargo	701-293-1234
Ohio	
Akron	330-784-5862
Cincinnati	513-671-7030
Columbus (Henderson Rd.)	614-451-4652
Columbus (Chatham Lane)	614-457-0105
Dayton	937-435-8417
Lima	419-331-7323
Mentor	216-255-0055
Niles	330-652-1886
Reynoldsburg	614-864-4090
Solon	216-349-4153
Strongsville	216-238-0530
Oklahoma	
Oklahoma City	405-947-6248
Tulsa	918-250-7323
Oregon	
Eugene	541-485-4589
Milwaukie	503-659-9575
Portland	503-254-2009
Salem	503-362-6474
Pennsylvania	
Allentown	610-791-5320
Clark Summit	717-586-4362
Erie	814-864-6100
Harrisburg	717-652-0646
Lancaster	717-391-6519
North Wales	215-412-7822
Philadelphia	215-238-8380
Pittsburgh (North Hills)	412-367-4620
Pittsburgh (Braddock Ave.)	412-247-4463
Plymouth Meeting	610-941-6284
York	717-755-7471

Puerto Rico	
Hato Rey	*787-753-6394*
Rhode Island	
Cranston	*901-942-8552*
South Carolina	
Charleston	*803-766-5599*
Greenville	*864-676-1506*
Irmo	*803-749-0356*
South Dakota	
Sioux Falls	*605-338-1446*
Tennessee	
Chattanooga	*423-894-6249*
Clarksville	*931-647-2003*
Franklin	*615-790-5018*
Knoxville	*423-690-0671*
Madison (Nashville)	*615-860-0376*
Memphis	*901-767-5006*
Texas	
Abilene	*915-698-7858*
Amarillo	*806-359-1037*
Arlington	*817-572-6690*
Austin	*512-441-7020*
Beaumont	*409-899-9798*
Corpus Cristi	*512-993-3793*
Dallas	*972-385-1181*
El Paso	*915-587-7323*
Houston (Saturn Ln)	*281-488-6144*
Lubbock	*806-785-4400*
Mesquite	*972-686-3310*
Midland	*915-520-9418*
San Antonio	*210-494-7263*
Sugar Land	*281-491-9200*
Waco	*254-772-2467*
Utah	
Orem	*801-226-5544*
Salt Lake City	*801-581-8733*
Vermont	
Williston	*802-872-0845*
Virgin Islands	
St. Croix	*809-773-5751*
St. Thomas	*809-777-8292*
Virginia	
Arlington/DC Area	*703-807-5813*
Dunn-Loring	*703-204-9100*
Lynchburg	*804-832-0778*
Mechanicsville	*804-730-5844*
Newport News	*757-873-0208*
Richmond	*804-750-2823*
Roanoke	*540-344-3688*
Washington	
Lynnwood	*425-774-3922*
Puyallup	*253-848-0771*
Spokane	*509-467-8715*
West Virginia	
South Charleston	*304-744-4144*
Wisconsin	
Brookfield	*414-796-0836*
Fox Point	*414-540-2223*
Racine	*414-554-9009*
Wyoming	
Casper	*307-235-0070*

Linking To The NASD Regulation And NASD Web Sites

Linking your Web site to the NASD and NASD Regulation Web Sites (*www.nasd.com* and *www.nasdr.com*) offers your customers and constituents easy access to areas such as: best practices for investors, how to work with a broker, Internet investing, the NASD Regulation Public Disclosure Program, as well as how to file complaints and resolve disputes through arbitration and mediation programs.

To link to the NASD and NASD Regulation Web Sites, you must observe the following guidelines:

- the link must be a text-only link clearly marked "NASD Regulation" or "NASD", depending on the site to which your site is linking;
- you may not use NASD or NASD Regulation logos or other names and trademarks without written permission;
- the appearance, position, and other aspects of the link may not be such as to damage or dilute the goodwill associated with the NASD's or NASD Regulation's name and trademarks or create the false appearance that an entity is associated with or sponsored by the NASD or NASD Regulation;
- the link, when activated by a user, must display these sites full-screen and not within a "frame" on the linked Web site; and
- NASD Regulation and the NASD reserve the right to revoke their consent to the link at any time at their sole discretion.

To link to the NASD or NASD Regulation Web Site, please notify us via e-mail (*iielistsrv@nasd.com*).

Members are reminded that Web sites are considered advertisements and are subject to the same NASD Regulation standards and NASD rules as other forms of advertisement. For additional information regarding members' responsibilities when using the Internet, please check the Internet Guide for Registered Representatives on the NASD Regulation Web Site (*www.nasdr.com*) at the Site's "Registered Rep Corner."

Questions regarding the NASD Regulation Web Site may be directed to Bruce Spates, Associate Director, Internet and Investor Education, NASD Regulation, Inc., at (301) 721-1149. Questions regarding the NASD Web Site may be directed to Dan McQuillen, Director, NASD/Market Communication Services, NASD, Inc., at (202) 728-6967.

NASD Disciplinary Actions

In October, November, and December 1998, 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

October Actions

Nicholas Robert Borissoff (Registered Representative, Concord, California) submitted an Offer of Settlement pursuant to which he was censured, fined $70,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borissoff consented to the described sanctions and to the entry of findings that he recommended to public customers and effected in their accounts the purchase and sale of securities which transactions were unsuitable for the customers in light of their size and frequency and in light of the facts disclosed by customers as to their other security holdings and their financial situations and needs. The findings also stated that Borissoff participated in private securities transactions while failing to give prior written notification of these transactions to his member firm.

Mitchell John Dabo, Jr. (Registered Principal, Hollister, California) submitted an Offer of Settlement pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Dabo participated in the purchase of limited partnership interests without providing prior written notification to his member firm.

Donald Clewell Maier (Registered Principal, Monte Sereno, California) was censured, fined $39,750, suspended from association with any NASD member in any capacity for 30 business days, and ordered to requalify by exam before reassociating with an NASD member firm. The sanctions were based on findings that Maier participated in private securities transactions without providing prior written notification to his member firm and filed an annual questionnaire with his firm that contained false information concerning private placements and unregistered securities.

Joel Dean Moore (Registered Principal, Redding, California) was censured and fined $11,900. The sanctions were based on finding that Moore recommended to public customers and effected for the customers' account the purchase of securities without having reasonable grounds for believing that such recommendations were suitable for the customers based upon the facts disclosed by the customers as to their other securities holdings and their financial situation and needs.

This action has been called for review by the National Adjudicatory Council (NAC) and the sanctions are not in effect pending consideration of the review.

November Actions

None

December Actions

Ashton Noshir Gowadia (Registered Representative, Newport Beach, California) was fined $10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a November 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Gowadia failed to respond to NASD requests for information.

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

October Actions

B. Riley & Company, Inc. (Los Angeles, California) and Bryant R. Riley (Registered Principal, Pacific Palisades, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined $12,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Riley, reported transactions to the Automated Confirmation Transaction ServiceSM (ACT℠) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations, and with applicable NASD rules relating to the designation of supervisory personnel, trade reporting, and recordkeeping.

George Glen Hartberg (Registered Principal, Los Angeles, California) and John Wesley Hartberg (Registered Principal, Los Angeles, California) were each censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that they failed to respond to NASD requests for information.

J. B. Oxford & Company (Beverly Hills, California) and Stephen M. Rubenstein (Registered Principal, Chatsworth, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined $20,000, jointly and severally. In addition, the firm was fined $5,000, jointly and severally, with another individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Rubenstein, failed to maintain margin requirements in certain customer accounts of its day traders. The findings also stated that the firm, acting under the direction and control of another individual, failed to compute accurately the amount required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers and failed to deposit the amount required to be deposited into the account no later than one hour after the opening of banking business on the second following business day.

Bernadette Jones (Registered Representative, Pomona, California) was censured, fined $3,500, barred from association with any NASD member in any capacity, and ordered to pay $2,516.56 in restitution to a member firm. NAC imposed the sanctions following the review of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Jones received $6,000 from a public customer for the purpose of purchasing a life insurance policy. Jones submitted an application for a different insurance policy with a money order for $1,483.44 to her member firm and misused the remainder of the funds received from the customer for her own use and benefit. In addition, Jones submitted a Form U-4 to her member firm that contained false and misleading information.

Ian Tamer Kideys (Registered Representative, Los Angeles, California) was censured, fined $84,811.37, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Kideys participated in private securities transactions, for which he received compensation, and failed to provide prior written notification to, or obtain written approval from, his member firm.

Joseph Anthony Simonell (Registered Representative, Rancho Palos Verdes, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $5,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Simonell consented to the described sanctions and to the entry of findings that he sent letters to investment product companies stating that he had recently conducted an investor seminar at which the companies' products were mentioned. The letters offered the companies the opportunity to participate in the seminars and referenced receipt from a local restaurant itemizing purported expenses he incurred. The NASD found that Simonell had not conducted a seminar nor had he incurred any expenses. Simonell received checks from two of the firms for $100 and $200, cashed the checks, and deposited the funds into his bank account.

Sy Leavitt Company, Inc. (Escondido, California), William L. Atkinson (Registered Principal, Carlsbad, California), Thomas G. Scalzo, Jr. (Registered Principal, Loma Linda, California), and William J. Schurmann (Registered Principal, Escondido, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were censured and fined $10,625, 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 under the direction and control of Atkinson, Scalzo, and Schurmann, participated in a contingency offering of securities and withdrew funds received from public customers from the bank escrow account to which they had been deposited before the terms of the contingency were met.

November Actions

Frank John Bursinger, III (Registered Representative, Seal Beach, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $7,280, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Bursinger consented to the described sanctions and to the entry of findings that he participated in private securities transactions but failed to provide prior written notification to and receive permission from his member firm.

Robert Vance Manuel English (Registered Principal, San Diego, California) submitted an Offer of Settlement pursuant to which he was censured, fined $232,858.45, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, English consented to the described sanctions and to the entry of findings that he received $20,571.69 from a public customer intended for investment purposes and without the customer's knowledge or consent, converted the funds to his own use and benefit by depositing the checks into his member firm's general operating bank account and wrote checks on the account payable to himself and to cash. In order to conceal his misconduct, English provided the customer with fabricated statements to mislead the customer into believing that her funds had been safely invested and were accumulating interest. English also failed to respond to NASD requests for information and to provide testimony.

Providential Securities, Inc. (Fountain Valley, California) and Henry Dack Fahman (Registered Principal, Huntington Beach, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined $28,500, jointly and severally. In addition, Fahman was ordered to requalify by exam 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 under the direction and control of Fahman, effected transactions in securities and/or induced or attempted to induce the purchase or sale of securities when the firm failed to have and maintain sufficient net capital. The findings also stated that the firm, acting through Fahman, failed to send public customers the requisite written notification or confirmation in securities transactions in that it did not disclose the difference in the price securities were purchased from and sold to customers and the firm's contemporaneous offsetting purchase or sale price to or from a Market Maker.

James Leonard Schermerhorn (Registered Representative, Santa Maria, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $40,762.70, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schermerhorn consented to the described sanctions and to the entry of findings that he received insurance premium payments from a public customer totaling $8,344.54, forwarded only $2,192 of the customer's funds to the insurance company, and converted the remaining funds for his personal benefit.

December Actions

Michael William Adams (Registered Representative, Rowland Heights, California) submitted an Offer of Settlement pursuant to which he was censured, fined $15,000, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he recommended numerous purchase and sale transactions in various securities accounts of public customers without having reasonable grounds for believing that they were suitable for the customers and accounts in view of the size, frequency, and nature of the recommended transactions and the facts disclosed by the customers as to their financial situation, objectives, circumstances, and needs. The findings also stated that Adams induced these purchase and sale transactions by means of manipulative, deceptive, or other fraudulent devices or contrivances.

E-W Investments, Inc. (San Gabriel, California) and John Arthur Pong (Registered Principal, San Gabriel, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined $10,000, jointly and severally, and ordered to reimburse public customers the total amount of commissions in excess of five percent ($2,411.78). In addition, the firm was ordered to hire a new financial and operations principal (FINOP), other than Pong, and retain the new principal for one year or until Pong successfully requalified as a FINOP should he elect to do so. Without admitting or denying the allegations, the respondents consented to the described sanctions, and to the entry of findings that the firm, acting under the direction and control of Pong, acted as an agent for public customers in securities transactions and charged the customers more than a fair commission, taking into consideration all relevant circumstances including market conditions with respect to such securities at the time of the transactions, the expense of executing the orders, and the value of any services they may have rendered by reason of experience in and knowledge of such securities and the markets. The findings also stated that the firm, acting under the direction and control of Pong, failed to have and maintain sufficient net capital.

Equitrade Securities Corporation (Lake Forest, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to reflect accurately the time of execution on order tickets for transactions in OTC equity securities, in Nasdaq National Market® securities, and a transaction in a Nasdaq SmallCap℠ Market security. In addition, the NASD determined that the firm failed to provide to a public customer the requisite written disclosures or confirmations concerning securities transactions variously executed in two brokerage accounts, and that the firm conducted a general securities business while failing to have and maintain sufficient net capital. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws pertaining to trade reporting.

Stuart S. Greenberg (Registered Principal, Agoura Hills, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association as a general securities principal for 10 business days. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that he permitted an individual subject to a statutory disqualification to function as an associated person of a member firm without having sought and obtained approval for such association from the NASD through its eligibility proceedings. The findings also stated that a member firm, acting under the direction and control of Greenberg, failed to have and maintain sufficient net capital as a result of Greenberg knowingly writing a bad check in the amount of $100,000.

Michael Hyat (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $24,308.58, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hyat consented to the described sanctions and to the entry of findings that he entered into an arrangement with a registered individual employed at another broker/dealer to participate in private securities transactions and to execute orders away from the outside sales representative's firm, without notifying his member firm, either orally or in writing of this arrangement.

Morton Kirschenbaum (Registered Principal, San Mateo, California) submitted an Offer of Settlement pursuant to which he was censured, fined $5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Kirschenbaum consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce a system to supervise the activities of his member firm's Office of Supervisors Jurisdiction that was reasonably designed to achieve compliance with applicable securities laws and regulations and with the rules of the NASD.

Lori Sue Koppel-Heath (Registered Principal, Trabuco Canyon, California) was censured, fined $59,021.31, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative before again acting in that capacity. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Koppel-Heath recommended purchases, sales, and redemptions of mutual funds, unit investment trust shares, and other investments in public customer accounts without having reasonable grounds for believing that they were suitable for the customers in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by the customers as to their other securities holdings, financial situation, circumstances, and needs.

Gregg Robert Leslie (Registered Representative, La Costa, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $45,241.42, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Leslie consented to the described sanctions and to the entry of findings that he entered into an arrangement with a registered individual at another broker/dealer to execute orders away from Leslie's member firm and participated in private securities transactions through the other broker/dealer, without notifying his member firm, either orally or in writing, of this arrangement.

Russell Wayne Millard (Registered Representative, Hemet, California) submitted an Offer of Settlement pursuant to which he was censured, fined $20,000, suspended from association with any NASD member in any capacity for two years, and ordered to offer recission to investors, and to the extent the offer of recission was accepted by any investors, Millard was ordered to exchange such investor's interests in the investment for full and complete restitution. Without admitting or denying the allegations, Millard consented to the described sanctions and to the entry of findings that he participated in contingent offerings and failed to deposit and retain customer funds in separate escrow accounts until the minimum number of units had been sold. Instead the funds were intentionally commingled with funds from other sources and used to cover, among other things, operating costs of affiliates and interest payments to investors of other private placements.

George Alfred Rendon (Registered Principal, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Rendon consented to the described sanctions and to the entry of findings that he participated in private securities transactions but failed to provide prior written notification to his member firm.

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

October Actions

Jeremy David Alk (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $31,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Alk consented to the described sanctions and to the entry of findings that he wrote checks drawn on a nonprofit social organization totaling $4,203 and, without authorization, used $4,000 of the funds for his personal benefit.

Dean K. Birkelo (Registered Representative, Colorado Springs, Colorado) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 30 days. The Denver DBCC imposed the sanctions following an order of remand by the NBCC. Without admitting or denying the allegations, Birkelo consented to the described sanctions and to the entry of findings that he engaged in a private security transaction and failed to provide prior written notice to his member firm.

Kevin Michael Dunnigan (Registered Representative, Kalispell, Montana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and fined $10,000. Without admitting or denying the allegations, Kalispell consented to the described sanctions and to the entry of findings that he recommended investments to public customers without having reasonable grounds for believing that such recommendations were suitable for these customers in view of the nature of the recommended investments, the facts disclosed by these customers as to their other security holdings, their financial situations, circumstances, objectives, and needs.

Empire Securities Incorporated of Washington (Spokane, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined $12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting and recordkeeping.

Michael Peter Finn (Registered Representative, Babylon, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted material facts in connection with his recommendations of securities to public customers. The findings also stated that Finn made fraudulent price predictions to customers in connection with his recommendations and made an unauthorized transaction in the account of a public customer.

Christopher Edward Jann (Registered Representative, Centereach, New York) was censured, fined $5,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to retake the Regulatory Element of the Continuing Education Requirements before reassociating with an NASD member. The sanctions were based on findings that Jann solicited members of the public to become customers of his member firm and purchase stock offered by the firm, and in connection with such solicitation, made certain representations about the securities and the offering that he knew, or should have known, to be false and misleading and omitted information that he knew, or should have known, to be material to the investment decision of the persons he solicited.

Mark Kevin Lammers (Registered Representative, Tucson, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $25,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Lammers consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm and therefore failed to receive written approval from his firm. The findings also stated that Lammers made misrepresentations and omissions in his solicitation of securities to public customers.

Wayne Albert McIntosh (Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement pursuant to which he was censured, fined $7,500, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, McIntosh consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation and failed to provide prior written notice to, or receive prior authorization from, his member firm.

Olsen Payne and Company (Salt Lake City, Utah) and James Dean Payne (Registered Principal, Salt Lake City, Utah) submitted an Offer of Settlement pursuant to which they were censured and fined $16,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Payne, reported transactions through ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm, acting through Payne, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD rules regarding trading ahead of customer limit orders, and short-sale rules.

Jeffrey L. Salzwedel (Registered Principal, Tualatin, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $107,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Salzwedel consented to the described sanctions and to the entry of findings that he made unsuitable recommendations for the purchase and/or sale of various securities in the accounts of public customers without having reasonable grounds for believing that such recommendations were suitable for these customers in view of the number of shares purchased and held, the nature of the recommended securities, the concentration of securities held in the accounts, and the customers' specific financial situations, circumstances, and needs.

Securities America, Inc. (Omaha, Nebraska) and Thomas Gerard Zielinski (Registered Principal, Omaha, Nebraska) submitted an Offer of Settlement pursuant to which they were each censured and fined $10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of find-

ings that Zielinski failed to take steps reasonably designed to ensure that a branch manager carried out his supervisory responsibilities over registered persons in a reasonable manner under the attendant circumstances, or that the registered persons ceased their participation in unsupervised sales of unapproved promissory notes away from the member firm. The findings also stated that the firm failed to establish adequate written procedures or unwritten procedures to ensure the reasonable supervision of a registered representative to ensure that he was reasonably performing his supervisory duties over the activities of registered persons in regard to their compliance with the applicable NASD rules.

Kelly Ray Webb (Registered Representative, Gilbert, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $25,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Webb consented to the described sanctions and to the entry of findings that he placed inaccurate information on order tickets that were submitted to an NASD member in connection with securities transactions. The findings also stated that Webb effected an unauthorized transaction in public customer accounts and effected mutual fund purchases for a public customer in amounts that, if aggregated, would have caused the account to be eligible for reduced sales charges.

November Actions

Darcie Coy (Registered Principal, Lakewood, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined $2,500, suspended from association with any NASD member in any capacity as a financial and operations principal for 30 days, and required to requalify by exam before functioning again in that capacity. Without admitting or denying the allegations, Coy consented to the described sanctions and to the entry of findings that her member firm acting through Coy failed to deposit promptly to an escrow account checks received from public customers of her firm in connection with the offer and sale of securities subject to a minimum sales contingency.

Michele Ann Desilets (Registered Principal, Littleton, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined $10,000, suspended from association with any NASD member in any principal capacity for 10 business days which shall be served in two five-business-day periods in successive months. Without admitting or denying the allegations, Desilets consented to the described sanctions and to the entry of findings that she failed to establish a supervisory system that was reasonably designed to achieve compliance with applicable SEC and NASD laws, rules, and regulations.

Desilets' second suspension for five business days will begin December 21, 1998, and will conclude at the close of business on December 28, 1998.

Michael Richard MacCaull (Registered Representative, Commack, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $185,673, barred from association with any NASD member in any capacity with the right to reapply after five years, and ordered to pay $23,672 in restitution to a public customer or demonstrate that he has paid the customer such amount as has been determined in an arbitration or other proceeding or settlement to be owed to the customer. Without admitting or denying the allegations, MacCaull consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that MacCaull guaranteed a public customer against loss in the customer's account; entered a purchase order in the account of a public customer without obtaining the customer's authorization; and made fraudulent, baseless, and unreasonable price predictions to customers. Furthermore, the NASD determined that MacCaull failed to follow a customer's instructions to sell securities in the customer's account.

Kent Davis Peterson (Registered Representative, St. George, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $15,000, suspended from association with any NASD member in any capacity for one month, and required to retake the Series 63 exam within 90 days of the conclusion of the suspension. Without admitting or denying the allegations, Peterson consented to the described sanctions and to the entry of findings that he made cash payments totaling $900 to an individual who made a public customer referral to him. The findings also stated that Peterson affixed the signatures of public customers to various documents required by his member firm to be signed by the customers, with the knowledge and consent of the customers, but failed to disclose to his firm that he, not the customers, had affixed the signatures.

Richard Ray Vaillant (Registered Representative, Tacoma, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vaillant consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

December Actions

Alan Barrie Best (Registered Representative, Vancouver, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Best consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notification to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received or might receive selling compensation in connection with the transactions.

Charles Douglas Brown (Registered Representative, Apache Junction, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $25,000, suspended from association with any NASD member in any capacity for 90 days, and required to pay $50,000 in restitution to public customers. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in outside business activities and private securities transactions, without giving prior written notice to his member firms.

William George Brunner (Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $20,000, suspended from association with any NASD member in any capacity, required to requalify as a general securities representative, and ordered to demonstrate that restitution in the amount of $24,781.25 has been made to a public customer or that he has paid the customer such amount as has been determined by an arbitration or other proceeding or settlement to be owed to the customer by Brunner. The fine of $20,000 shall be reduced, dollar for dollar, by the amount of any restitution payments made to the customer. However, the fine shall not be reduced less than $10,000. Without admitting or denying the allegations, Brunner consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his

recommendations of securities to public customers. The findings also stated that Brunner made fraudulent price predictions in connection with his recommendation of securities and failed to execute the sell order of a public customer.

Michael Walesby Davis (Registered Principal, Plano, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $125,000, barred from association with any NASD member in any capacity, and required to pay restitution in the amount of $1,049,792. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm, and participated in the operation of an unregistered broker/dealer. The findings also stated that Davis received funds from investors when no disclosure had been made to the investors that their funds would be used to pay broker/dealer expenses including payments to Davis.

Richard Kentner DeFreez (Registered Representative, Anchorage, Alaska) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $7,000, suspended from association with any NASD member in any capacity for seven business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, DeFreez consented to the described sanctions and to the entry of findings that he recommended purchases and sales of securities to public customers without having reasonable grounds for believing such transactions were suitable for them in view of the nature, size, and concentration of the recommended transactions and upon the basis of the facts disclosed by the customers as to their other securities holdings and as to their financial situation, objectives, and needs.

Timothy Eric McKeon (Registered Principal, Holbrook, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $86,312, barred from association with any NASD member in any capacity, and ordered to pay restitution to customers in the amount of $35,447. Without admitting or denying the allegations, McKeon consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that McKeon executed unauthorized transactions and failed to follow customer instructions.

Robert Edward Nicolosi (Registered Representative, Baldwin, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $70,000, barred from association with any NASD member in any capacity, and required to pay $41,970 in restitution to a public customer. Without admitting or denying the allegations, Nicolosi consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that Nicolosi made fraudulent price predictions in connection with his recommendations of securities to public customers, entered orders to purchase securities in the accounts of a public customer without first obtaining the authorization of the customer, and failed to testify truthfully at an NASD on-the-record interview.

Jon David Raymond (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $67,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Raymond consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of a public customer without obtaining prior written authorization from the customer and written acceptance by his member firm of the account as discretionary. The findings also stated that Raymond recommended, and executed, transactions on margin in the customer's securities accounts, without having reasonable grounds for believing that such recommendations were suitable for the customer.

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

October Actions

Donald Martin Hogan, Jr. (Registered Representative, St. Louis, Missouri) submitted an Offer of Settlement pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hogan consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Arlesta Mae Meyers (Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that she provided materially incomplete information to the NASD in response to requests for information.

Christopher Lee Rice (Registered Representative, Buffalo Grove, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $15,506.83, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Rice consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In addition, Rice executed unauthorized margin transactions in the account of public customers without the customers' knowledge, authorization, or consent that the transactions were done on margin rather than in the customers' cash account.

William Kevin Stewart (Registered Principal, Cape Girardeau, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he failed to respond completely to an NASD request for information.

Kevin Harrison Stricklin (Registered Principal, Cranston, Rhode Island) was censured, fined $10,000, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Stricklin, in recommending and urging public customers to buy speculative and/or unseasoned securities, made baseless price predictions and/or predictions of returns. In addition, Stricklin, in connection with the purchases of securities, made untrue statements of material facts and/or omitted to state material facts necessary to make the statements by them, in light of the circumstances in which they were made, not misleading.

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

Richard Leroy Valentine (Registered Representative, Goddard, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Valentine consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to and written approval and/or acknowledgment from his member firm.

November Actions

Gary Wayne Fenster (Registered Representative, Council Bluffs, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Fenster consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

John Kevin Finn (Registered Principal, Dubuque, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he failed to respond completely to NASD requests for information.

Steven Morris Goldsmith (Associated Person, Wayzata, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined $16,621. Without admitting or denying the allegations, Goldsmith consented to the described sanctions and to the entry of findings that he failed to advise his member firm that he opened an account with another firm, and failed to provide written notification to the executing firm of his association with the member firm. The findings also stated that Goldsmith purchased shares of stock that traded at a premium in the secondary market in violation of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Paribas Corporation (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in Nasdaq National Market, Nasdaq SmallCap, over-the-counter, and listed securities in which it had reporting responsibility. The findings also stated that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, and failed to provide written notification accurately disclosing the firm's reported price and the difference between the price to the customer and the reported trade price. Furthermore, the NASD determined that the firm failed to consistently and accurately reflect the time of entry and time of execution on order tickets and failed to implement and enforce adequate supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations relating to trade reporting.

Gerald Mark Wilkinson (Registered Representative, York, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $2,500, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Wilkinson consented to the described sanctions and to the entry of findings that he functioned as an investment company and variable contract products representative and engaged in a securities business by preparing a variable annuity application and accepting a customer check for such investment before his registration in such capacity was effective.

December Actions

Kenneth Eugene Banwart, Sr. (Registered Principal, Newport, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined $14,639. Without admitting or denying the allegations, Banwart consented to the described sanctions and to the entry of findings that he failed to provide written notice to his member firms that he had opened a securities account with another firm and failed to provide written notice to the executing firm, that he was registered with other member firms. The findings also stated that Banwart purchased shares of units of public offerings that traded at a premium when the secondary market commenced for each security.

John Loras Finn (Registered Principal, Dubuque, Iowa) submitted an Offer of Settlement pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

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

October Actions

Columbia Hospital Securities Corporation (Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed individuals to maintain their representative registrations with the firm, although they were not at all times actively engaged in the securities business of the firm. The findings also stated that the firm failed and neglected to achieve compliance with the Firm Element of the Continuing Education Requirements in that the firm failed to prepare adequate written training plans and failed to maintain adequate records documenting the content and completion of training programs by registered persons.

Hattier, Sanford & Reynoir, L.L.P. (New Orleans, Louisiana) and Gus A. Reynoir (Registered Principal, New Orleans, Louisiana) were censured and fined $10,000, jointly and severally. The sanctions were based on findings that the firm, acting through Reynoir, participated in the sale of municipal bonds and provided public customers with confirmations that failed to meet the requirements of MSRB Rule G-15. The firm, acting through Reynoir, issued confirmations that failed to disclose the lower of the yield to call or yield to maturity, the fact that the securities were initially offered at an "original issue discount", failed to disclose the fact that the securities were subject to the alternative minimum tax, and the fact that the securities were unrated. In addition, this decision serves as a Letter of Caution as to the firm, acting through Reynoir, for engaging in municipal securities sales transactions with public customers at prices that were unfair and unreasonable, taking into consideration all relevant factors.

The case was called for review to the NAC and the sanctions are not in effect pending consideration of the review.

David C. McLaurin (Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $2,500, and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, McLaurin consented to the described sanctions and to the entry of findings that he completed and signed a Form U-4 that contained inaccurate information. The findings also stated that McLaurin provided his member firm with a false college diploma that he had created on his personal computer.

Mike D. Nolan (Registered Representative, Denham Springs, California) submitted an Offer of Settlement pursuant to which he was censured, fined $700,000, barred from association with any NASD member in any capacity, and required to demonstrate that full restitution has been made to the appropriate parties. Without admit-

ting or denying the allegations, Nolan consented to the described sanctions and to the entry of findings that he received checks and cash totaling $116,550 from public customers for the purpose of investing in medical receivables, failed and neglected to invest these funds on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Nolan failed to respond to NASD requests for information.

Portfolio Management, Inc. (Little Rock, Arkansas) and Samuel L. Bowman, III (Registered Principal, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which they were censured and fined $14,500, 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 Bowman, allowed the entry of proprietary trades through the Small Order Execution System℠ (SOES℠) into an account controlled by Bowman. The findings also stated that the firm, acting through Bowman, failed and neglected to establish, maintain, and enforce proper supervisory procedures governing the entry of trades through SOES.

John S. Smoot, Jr. (Registered Representative, Jackson, Tennessee) submitted an Offer of Settlement pursuant to which he was censured, fined $75.000, barred from association with any NASD member in any capacity, and ordered to pay $6,300 in restitution to the appropriate parties. Without admitting or denying the allegations, Smoot consented to the described sanctions and to the entry of findings that he received payments from public customers for the purchase of, and as payment on, various homeowner's insurance policies, automobile insurance premiums and a life insurance policy, failed and neglected to submit these funds to his member firm on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. Smoot also failed to respond to NASD requests for information.

November Actions

Evan Russell Stoopler (Registered Principal, Jericho, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Stoopler consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Stoopler failed to indicate on the order tickets for these transactions that such trades were discretionary, and incorrectly indicated on the order tickets that such trades were unsolicited.

December Actions

Percy Barr (Registered Representative, Greenwood, Mississippi) submitted an Offer of Settlement pursuant to which he was censured, fined $373,500, barred from association with any NASD member in any capacity, and required to pay $49,700 in restitution to the appropriate parties. Without admitting or denying the allegations, Barr consented to the described sanctions and to the entry of findings that he received payments totaling $49,700 from public customers for the purchase of, and as payment on, annuities and mutual funds. The NASD found that Barr failed and neglected to submit these funds to his member firm on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Barr failed to timely respond to NASD requests for information.

Steven Ladd Fritz (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he effected unauthorized withdrawals and/or transfers involving an estimated $1,785,749 from the accounts of public customers. The NASD determined that Fritz converted approximately $598,428 of these funds to his own use and benefit, without the customers' knowledge or consent, by forging customers' signatures to Letters of Authorization, preparing and sending false account statements to the customers, and making false and misleading statements in an effort to conceal these activities. The findings also stated that Fritz failed to respond to NASD requests for information.

Ronald Lee Holifield (Registered Representative, Laurel, Mississippi) and Reginald Glen Holifield (Registered Representative, Laurel, Mississippi) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which Ronald Holifield was censured, fined $50,000, and barred from association with any NASD member in any capacity, and Reginald Holifield was censured, fined $10,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ronald Holifield engaged in private securities transactions without prior written notice to and approval from his member firm. The findings also stated that Reginald Holifield failed and neglected to exercise reasonable and proper supervision over Ronald Holifield in that he failed to monitor or report on private securities transactions being conducted by Ronald Holifield.

Steven Terrell Mayes (Registered Representative, Oak Ridge, Tennessee) was censured, fined $53,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mayes converted $1,700 in customer funds, intended for the purchase of shares in a mutual fund. Mayes also failed to respond to NASD requests for information and documents.

District 6 - Texas

October Actions

Graciela Armendariz (Registered Principal, El Paso, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined $25,000, and ordered to requalify as an investment company and variable contracts products representative by taking and passing the Series 6 exam prior to acting again in any registered capacity. Without admitting or denying the allegations, Armendariz consented to the described sanctions and to the entry of findings that, while associated with a member firm, Armendariz made payments of commissions received in connection with the sale of variable annuity products to an individual who was registered with another member firm that was not authorized to sell variable annuity products in the state where the sales took place. These payments were made without prior oral or written authorization from the member firm.

Cheryl Ann Rodgers (Registered Representative, Dallas, Texas) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rodgers failed to respond to an NASD request for testimony.

November Actions

Dillon-Gage Securities, Inc. (Dallas, Texas) and Stephen Watterson Miller (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and

Consent pursuant to which they were censured and fined $12,500, 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 Miller, participated in a public offering prior to filing the documents and information to be reviewed by the NASD, and receiving an opinion from the NASD that it has no objections to the proposed underwriting; and failed to enforce its own written supervisory procedures in that it failed to obtain a no-objection letter from the NASD prior to participating in an offering of securities. The findings also stated that the firm, acting through Miller, participated in a contingency offering and failed to disclose to purchasers that the minimum would be reached through sales to affiliates of the issuer and since the sale to an affiliate represented a significant and material amount, the offering memorandum failed to disclose such purchase as a risk factor.

December Actions

Jerry Enrique Chaverri (Registered Principal, DeSoto, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $2,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Chaverri consented to the described sanctions and to the entry of findings that he made improper use of customer funds by taking possession of a customer's check in the amount of $900, depositing the funds into his personal bank account, and failing to forward the customer's funds to his member firm until a later date.

Premier Capital Management, Inc. (Dallas, Texas) and Bryan James O'Leary (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined $10,000, jointly and severally. In addition, O'Leary was suspended as an introducing broker/dealer FINOP for 10 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 O'Leary, failed to post accurately on its general ledger and trial balance liabilities incurred for advertising expense. The findings also stated that the firm, acting through O'Leary, effected securities transactions while failing to maintain required minimum net capital.

Horacio Garcia Valle (Registered Representative, Dallas, Texas) submitted an Offer of Settlement pursuant to which he was censured, fined $10,000, suspended from association with any NASD member in any capacity for five business days, and required to honor an arbitration award by paying his member firm $15,000 and $3,000 each month thereafter until the award is satisfied. Without admitting or denying the allegations, Valle consented to the described sanctions and to the entry of findings that he failed to honor a New York Stock Exchange arbitration award in the amount of $53,252.21.

Richard Herbert Walls (Registered Representative, Lubbock, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Walls consented to the described sanctions and to the entry of findings that he recommended to and effected the purchase of securities for public customers outside of the regular course or scope of his association with his member firm and failed to provide the firm with written notice detailing the transactions, his proposed role therein and whether he had or would receive selling compensation in connection with these securities transactions.

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

October Actions

James Michael Dean (Registered Representative, Atlanta, Georgia) was censured, fined $185,245.50, barred from association with any NASD member in any capacity, and ordered to pay $14,549.10, plus interest in restitution to a public customer. The sanctions were based on findings that Dean forged the signature of a public customer on a letter of authorization in order to convert the public customer's funds to his own use and benefit; without the customer's knowledge or authorization, Dean deposited the checks into an unauthorized account, had checks drawn against the unauthorized account, and converted the proceeds of those checks to his own use and benefit.

In addition, Dean deposited a public customer's checks in an undisclosed securities account at another member firm and did not provide written notification to his member firm nor did he advise the executing firm of his association with another, caused checks made payable to himself and others in the amount of $14,549.10 to be drawn against the account. Dean also failed to respond to NASD requests for information.

Interstate/Johnson Lane Corporation (Charlotte, North Carolina) submitted an Offer of Settlement pursuant to which the firm was censured, fined $10,000 and ordered to disgorge $62,640 to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make and keep current a list of political contributions to officials of issuers. The findings also stated that the firm failed to list political contributions made by a registered representative and engaged in prohibited municipal securities business with the city of Charlotte, North Carolina.

Allen R. Prewitt (Registered Representative, Bradenton, Florida) was censured, fined $10,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following its review of an Atlanta DBCC decision. The sanctions were based on findings that Prewitt provided false information on a Form U-4.

Michael Dennis Shaw (Registered Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined $10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Shaw consented to the described sanctions and to the entry of findings that he effected the purchase of units in an initial public offering (IPO) for the account of a public customer without the customer's knowledge or consent.

Rooney Thomas (Registered Representative, Coral Springs, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined $50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he failed to enter sell orders per public customers' instructions and guaranteed the customers against losses in their account. The findings also stated that Thomas received $21,000 from a public customer for investment purposes and never invested the money as instructed, and instead, deposited the check in his personal bank account. Thomas also failed to respond to NASD requests for information.

Ted Daniel Wells (Registered Representative, Kennesaw, Georgia) was censured, fined $5,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanction following its review of an Atlanta DBCC decision. The sanctions were based on findings that Wells effected the sale of warrants for the account of a public customer without the customer's prior knowledge or authorization.

Bryan Scott Zimmerman (Registered Representative, Land O'Lakes, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $5,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Zimmerman consented to the described sanctions and to the entry of findings that he faxed a letter to a public customer that failed to conform to NASD prospectus requirements and included information regarding an IPO in which he made an unwarranted price prediction.

November Actions

Stanley Alan Anderson, Jr. (Registered Representative, Cartersville, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined $379,583.75, barred from association with any NASD member in any capacity, and ordered to pay $69,916.75 in restitution to a public customer. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he received a savings bond redemption check payable to a public customer in the amount of $8,732.04. Rather than depositing the check in a government fund account as instructed by the customer, Anderson deposited it in his personal bank account, purchased only $3,023.04 worth of the government fund, and converted the remaining $5,709.00 to his own use and benefit. The findings also stated that Anderson withdrew $2,029.66 from the customer's savings account and sold shares of stock totaling $34,219.71, without the customer's knowledge or authorization, and used the funds to purchase shares of the government fund for the customer. Furthermore, the NASD determined that Anderson made unauthorized sales from the customer's government fund, forged the customer's endorsement on redemption checks totaling $15,224.61, and converted the proceeds and deposited the funds in his bank account and converted a $4,750 check and additional funds totaling $44,233.14 from the bank account of the customer without the customer's knowledge or consent. In addition, the findings stated that Anderson made numerous misrepresentations to the customer regarding her investments, falsely represented himself as another employee of his member firm, submitted new accounts applications that contained false information regarding the accounts, and failed to respond to NASD requests for information.

Brad B. Fletcher (Registered Representative, Aventura, Florida) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fletcher failed to respond to an NASD request for information.

Jay J. Gelfenbaum (Registered Representative, Coral Springs, Florida) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gelfenbaum failed to respond to NASD requests for information.

Stuart Gordon Horowitz (Registered Representative, Boca Raton, Florida) was censured, fined $90,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Horowitz failed to amend a Form U-4 to disclose that his license to practice law had been suspended by the Supreme Court of Florida and that he was the subject of an investigation by the Florida Bar. Horowitz also failed to respond to NASD requests for information.

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

Steven Albert Kirschbaum (Registered Representative, Coral Springs, Florida) was censured, fined $50,000, and barred from association with any NASD member in any capacity. NAC imposed the sanctions following appeal and call for review of an Atlanta DBCC decision. The sanctions were based on findings that Kirschbaum forged the signatures of public customers on change of dealer forms or new account forms.

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

John David Morgan (Registered Representative, Dunedin, Florida) was censured, fined $10,000, and suspended from association with any NASD member in any capacity for three business days. The sanctions were based on findings that Morgan exercised discretion in a public customer's account without having a signed discretionary agreement giving him such authorization and effected unauthorized securities transactions in the account. Also, Morgan guaranteed the customer against loss in that he purchased additional shares of stock for the customer without the customer's knowledge in order to cover the drop in value of the first shares.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Wayne E. Warren-Young (Registered Representative, Atlanta, Georgia) was censured, fined $85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Warren-Young accepted a $50,000 check from a public customer for investment in mutual funds, deposited the check in a bank account of a private company contrary to the customer's instruction and, without his member firm's knowledge, failed to comply with the customer's demand for return of the money. Warren-Young also failed to respond to NASD requests for information.

December Actions

Christopher B. Dolan (Registered Representative, Palm Beach Gardens, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for 90 days. The $10,000 fine and the 90-day suspension shall be deemed paid and served by virtue of the $10,000 fine and 90-day suspension imposed against Dolan by his member firm. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the account of public customers.

Dolan's suspension began October 23, 1997, and concluded January 21, 1998.

Debra Lynn Hart (Registered Representative, Tallahassee, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined $117,070, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that she received funds totaling $23,414 from public customers for investment purposes and converted the funds to her own use and benefit.

Hunter International Securities, Inc. (Ft. Lauderdale, Florida) and Louis Nick Nizza, Jr. (Registered Principal, Deerfield Beach, Florida). The firm was censured and fined $40,000 and Nizza was censured, fined $20,000, barred from acting in the capacity of FINOP, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam before act-

ing in any capacity requiring registration. NAC imposed the sanctions after review of an Atlanta DBCC decision. The sanctions were based on findings that the firm, acting through Nizza, conducted a securities business while it maintained insufficient net capital and failed to maintain accurate books and records. In addition, the firm, acting through Nizza, filed materially inaccurate FOCUS Part I and IIA reports. Hunter International reported Nasdaq transactions erroneously, and failed to disclose its Market Maker status on confirmations and also to disclose the difference between a price paid by a customer and the price reported to Nasdaq. The firm also failed to disclose the markup or markdown it charged on confirmations.

Jaime Enrique Lemus (Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lemus consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on documents to facilitate the liquidation of a fixed annuity owned by the customer. The findings also stated that Lemus forged the customer's signature on the $24,462 annuity liquidation check and converted the proceeds by depositing the check into his personal business account. Lemus also failed to respond to an NASD request for information.

Merrill Lynch, Pierce, Fenner & Smith Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined $25,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by various public customers who included demands for punitive damages and/or attorneys' fees in the proceedings. According to the findings, each of the customers signed an agreement with the firm stating that the terms of the agreement would be governed by the laws of the state of New York. The NASD determined that in some of these proceedings, Merrill Lynch asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and that New York law precluded an award of punitive damages or attorneys' fees.

Jean Richard (Registered Representative, Lake Worth, Florida) submitted an Offer of Settlement pursuant to which she was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Richard consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

Waldith George Thompson (Registered Representative, Coral Springs, Florida) was censured, fined $85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thompson received funds totaling $10,285 from an insurance customer intended for investment in an insurance plan. Contrary to the misrepresentations Thompson made to the customer, he never invested any of the customer's funds in the plan or any other investment or products offered by his member firm, used the customer's funds for another purpose, and failed to reimburse the customer. Thompson failed to respond to NASD requests for information.

Leo Douglas Walter (Registered Representative, Clearwater, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walter consented to the described sanctions and to the entry of findings that he misappropriated at least $14,431.29 in premium payments made by customers for insurance policies.

Larry Anthony White (Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he signed the names of public customers on new account applications and mutual fund disclosure forms without their prior knowledge or authorization.

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

October Actions

Eric Scott Elkins (Registered Representative, Vincennes, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $360,000, barred from association with any NASD member in any capacity, and ordered to pay $57,029.98 in restitution. Without admitting or denying the allegations, Elkins consented to the described sanctions and to the entry of findings that he obtained a total of $57,029.98 in checks drawn on bank accounts of public customers, which funds represented the proceeds of mutual fund liquidations for the customers. The NASD determined that Elkins, without the knowledge or consent of the customers, caused the checks to be deposited in bank accounts and/or mutual fund accounts maintained in his name, and used the funds for some purpose other than for the benefit of the customers. Elkins also failed to respond to NASD requests for information.

Ronald Mills Johnston (Registered Representative, Rockford, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined $50,000, barred from association with any NASD member in any capacity, and required to pay $346,110.40 in restitution. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to give written notice of his intention to engage in such activities to his member firms and to receive written approval from the firms to engage in such activities.

Robert Charles Madrid (Registered Representative, Blue Island, Illinois) was censured and fined $10,000. The sanctions were based on findings that Madrid executed securities transactions in the account of a public customer without the customer's knowledge, authorization, or consent and in the absence of written or oral authorization discretion in the account.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review.

Jose Reynaldo Moreno (Registered Representative, Phoenix, Arizona) was censured, fined $20,000, suspended from association with any NASD member in any capacity for three years, and ordered to requalify by exam before reassociating with any NASD member firm. The sanctions were based on findings that Moreno failed to respond completely to NASD requests for information.

Joel Jacob Reznick (Registered Representative, Wheeling, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined $5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Reznick consented to the described sanctions and

to the entry of findings that he purchased shares of stocks for the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the account.

Philip J. Schiller (Registered Principal, Highland Park, Illinois) was censured and fined $57,747.30. The sanctions were based on findings that Schiller purchased securities in IPOs that traded at a premium in the immediate aftermarket in violation of the NASD's Free-Riding and Withholding Interpretation.

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

Jeffrey Mark Vassallo (Registered Representative, Munster, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vassallo consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he submitted disbursement request forms to his member firm for the purpose of causing policy loans and/or the surrender of paid-up additional insurance to be made against insurance policies owned by the customer with the proceeds to be used in payment of the premiums for the second insurance policy owned by the customer.

Jere Thomas Wickert (Registered Principal, Chicago, Illinois) was censured, fined $9,000, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Wickert recommended and effected index options transactions in customers' accounts without the knowledge, consent, or authorization of the customers and in the absence of a reasonable basis for believing that the recommendations were suitable for the customers in light of their investment objectives, experience, financial situations, or needs.

November Actions

Kenneth Michael Kinzler (Registered Representative, Chicago, Illinois) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kinzler failed to respond to NASD requests for information.

Scott Thomas McMahon (Registered Representative, South Bend, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McMahon consented to the described sanctions and to the entry of findings that he received checks totaling $8,500 from a public customer made payable to McMahon for deposit in a non-qualified tax deferred annuity account, negotiated and cashed the checks, and used the funds for some purpose other than for the benefit of the customer.

December Actions

Michael Edward Anniuk (Registered Representative, Racine, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $335,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Anniuk consented to the described sanctions and to the entry of findings that he accepted personal checks for the purchase of annuity contracts from public customers that he deposited in his personal account and converted to his own use. Anniuk also failed to respond to NASD requests for information.

Robert Eric Dunlap (Registered Representative, Columbus, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $1,000,000, barred from association with any NASD member in any capacity, and required to provide proof of restitution to customers with any future application for association with a member firm. Without admitting or denying the allegations, Dunlap consented to the described sanctions and to the entry of findings that he received funds totaling $79,788.93 from insurance customers with instructions to use the funds as payment on an insurance policy or to purchase insurance polices or certificates of deposit. The findings stated that Dunlap failed to follow the customers' instructions, used only $400 to pay a customer's insurance policy, and used the remainder of the funds for some purpose other than the benefit of the customers. Dunlap also obtained a total of $354,000 in loans or withdrawals from insurance polices of a public customer, without the approval of the customer, and used the funds for some purpose other than the benefit of the customer. In addition, Dunlap participated in private securities transactions and failed and neglected to give written notice of his intention to engage in such activities to his member firms and to receive their written approval. Dunlap also failed to respond to NASD requests for information.

Dean Joseph LoBrutto (Registered Representative, East Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, LoBrutto consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing the transactions and his role therein.

Richard Gabriel Murphy (Registered Representative, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $18,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he obtained a total of $1,500 in cash withdrawn from the bank account of a public customer without the knowledge or consent of the customer and used the funds for some purpose other than for the benefit of the customer.

Roderick James Rieman (Registered Representative, Naperville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $8,900, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Rieman consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm, and to receive written approval from the firm prior to engaging in such activities.

Marc Walter Schulz (Registered Principal, Rockford, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined $5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Schulz consented to the described sanctions and to the entry of findings that he engaged in the purchases and sales of securities for the account of a public customer without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer based upon the facts known to him concerning the nature of the securities, the concentration of similar securities purchased by the customer, the customer's age, investment history, education, need for liquidity, investment objectives, and financial situation and needs.

Russell Thomas Tansey (Registered Representative, Amherst, Ohio) submitted an Offer of Settlement pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Tansey consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Peter Robert Trapani (Registered Representative, Oakbrook Terrace, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined $7,500, suspended from association with any NASD member in any capacity for five business days, and required to take and pass all examinations for the capacities in which he wishes to function with an NASD member. Without admitting or denying the allegations, Trapani consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm and receive written acknowledgment or approval from his firm prior to engaging in such activities. The findings also stated that Trapani opened several brokerage accounts in which he had a financial interest and/or discretionary trading authority at other firms, and failed to give written notice to his member firm of the accounts, and failed to give written notice to the other member firms of his association with a member firm. Furthermore, the NASD determined that Trapani purchased shares of common stock the first day of trading in the secondary market that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Charles Edward Waterfall (Registered Principal, Royal Oak, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $7,500, and suspended from association with any NASD member in any capacity for 40 business days (28 business days of which shall be deemed served by virtue of the 28-business day suspension imposed against him by his member firm). Without admitting or denying the allegations, Waterfall consented to the described sanctions and to the entry of findings that he entered into a settlement agreement with a public customer without informing his member firms of his actions or the customer's complaint and its resolution. The findings also stated that Waterfall failed to amend his Form U-4 to disclose the settlement agreement.

Waterfall's suspension began January 31, 1997 and concluded March 12, 1997.

Todd Alan Zonca (Registered Principal, Howell, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $66,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zonca consented to the described sanctions and to the entry of findings that he withdrew a total of $11,200 from the money market mutual fund of a public customer and used the funds for some purpose other than the benefit of the customer, without the knowledge or consent of the customer.

District 9 - Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and New Jersey

October Actions

Arthur Emil Cohen (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined $100,000, barred from association with any NASD member in any capacity, and ordered to pay $15,000 plus interest in restitution. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he requested that a check in the amount of $15,000 be issued against the securities account of a public customer, obtained the check, endorsed it with the purported endorsement of the customer and his own endorsement, and deposited the check into his bank account, without the customer's prior authorization. The findings also stated that Cohen caused $14,000 to be transferred from the securities account of one customer to the bank account of another customer without the prior authorization of the first customer.

Peter F. Drewek (Registered Representative, Baltimore, Maryland) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Drewek failed to respond to NASD requests for information.

Edward Golick (Registered Principal, Del Mar, California) was censured, fined $20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Golick failed to respond to NASD requests to appear for an on-the-record interview.

Christiaan P. Van Der Put (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined $2,500, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Van Der Put consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

November Actions

Henry C. Glogowski (Registered Representative, Butler, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Glogowski consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Steven Douglas Goodman (Registered Principal, Allison Park, Pennsylvania), Albert Joseph Ford (Registered Representative, Oakton, Virginia), and Douglas Francis Andrews (Registered Principal, Ashburn, Virginia). Goodman was censured, fined $75,000, and barred from association with any NASD member in any capacity. Ford was censured, fined $95,000, and barred from association with any NASD member in any capacity, and Andrews was censured, fined $75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that the respondents, in their capacities as branch managers, through their supervisions of the activities of the registered representatives assigned to them, encouraged, directed, participated in and/or facilitated a "boiler room" operation featuring high pressure sales tactics, material misrepresentations and omissions, unfounded price predictions, the use of false and misleading scripts and research summaries, and unauthorized transactions, among other things, and, in their individual capacities as registered representatives, engaged in the same violative activities in their dealings with their own customers. In addition, Ford effected unauthorized securities transactions in customer accounts.

Goodman, Ford, and Andrews have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Timothy Francis Manning, Jr. (Registered Representative, Spring Lake Heights, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Manning consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Mark Eugene Rowe (Registered Representative, Wexford, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $5,800, suspended from association with any NASD member in any capacity for 15 business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Rowe consented to the described sanctions and to the entry of findings that he recommended to a public customer and effected in the customer's securities accounts, the purchase of securities without having reasonable grounds for believing the respective securities were suitable for the customer.

December Actions

Dale Richard Altman (Registered Representative, Pittsburgh, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Altman signed the name of a public customer to an Authorization to Liquidate, Exchange and/or Change Broker/Dealer Form, without her knowledge or consent, causing the transfer of her IRA account to his member firm.

Jere Mease Bender (Registered Representative, Elizabethtown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bender consented to the described sanctions and to the entry of findings that he collected funds from a public customer to be remitted in the payment of premiums on the customer's life insurance policy, but failed to remit the full amount received from the customer. The findings also stated that Bender made material misstatements and omitted material facts concerning his dealings with the customer during an internal inquiry conducted by his member firms.

Barry Alan Druschel (Registered Representative, Ellicott City, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Druschel consented to the described sanctions and to the entry of findings that he sold an annuity issued by his member firm to insurance customers which was to replace and be funded with the proceeds from two annuities the customers owned that were issued by another company. The NASD found that thereafter, acting under a mistaken belief of implied authority, but without express authorization from the customers and without their knowledge, Druschel signed their names to a document and "submitted it to the other insurance company, directing it to transfer the funds from the existing annuities to his member firm.

District 10 - The five boroughs of New York City

October Actions

Vincent Au (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify as a general securities representative by taking the Series 7 exam prior to again acting in any registered capacity with the NASD. Without admitting or denying the allegations, Au consented to the described sanctions and to the entry of findings that he wired funds to a public customer in an attempt to settle a customer complaint away from the firm, without the knowledge and consent of his member firm.

Vincent Alan Beck (Registered Representative, Wayne, New Jersey) was censured, fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Beck received a $118 check from a public customer for insurance premium payments, failed to apply the funds toward the insurance premiums, endorsed the check, and converted the monies to his own personal use. Beck also failed to respond to NASD requests for information.

Maurice Henry Jedda (Registered Representative, Great Neck, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $40,000, barred from association with any NASD member in any capacity, and required to offer proof to the NASD that recession totaling $345,000 was made to public customers. Without admitting or denying the allegations, Jedda consented to the described sanctions and to the entry of findings that he effected private securities transactions for public customers without prior written notification to his member firm. The findings also stated that not only did Jedda fail to notify his member firm of his own personal investment of $75,000 in a private securities transaction, but he also actively attempted to conceal this information from the firm.

Gloria Anita Jordan (Registered Representative, Brooklyn, New York) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jordan failed to respond to NASD requests for information.

Douglas John Mangan (Registered Representative, Massapequa, New York) was censured, fined $120,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Mangan created a false and inaccurate customer securities account statement and caused his member firms' records to indicate falsely the customer's address as his own without the knowledge, consent, or authorization of the customer. Mangan also failed to respond to NASD requests to appear for an on-the-record interview.

Anthony Eugene Priolo (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $5,000, suspended from association with any NASD member in any capacity for 10 business days and required to requalify as a general securities representative by taking the Series 7 exam before ever functioning again in that capacity. Without admitting or denying the allegations, Priolo consented to the described sanctions and to the entry of findings that he prepared documentation for the accounts of public customers containing information which he knew or should have known to be inaccurate.

Ivan A. Radowitz (Registered Representative, Jamesburg, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was censured, fined $20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Radowitz consented to the described sanctions and to the entry of findings that he endorsed and deposited a public customer's rollover check in the amount of $7,780.05 into his personal bank account, without the consent or knowledge of the customer. The findings also stated that Radowitz misappropriated $200 in cash from another public customer, which represented a partial premium payment from the customer for a new policy.

John J. Squeri, Jr. (Registered Representative, Atlantic Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $10,000, suspended from association with any NASD member in

any capacity for 18 months, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Squeri consented to the described sanctions and to the entry of findings that he executed the sale of shares of securities in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Squeri contacted another customer, a resident of the state of Georgia, and identified himself as another registered representative in an attempt to obtain information from the customer for his new account form. The NASD determined that Squeri contacted this person when his registration to conduct business within and from the state of Georgia was suspended.

Ada Lai Yin Tam (Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was censured, fined $15,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tam consented to the described sanctions and to the entry of findings that she falsified her Form U-4 applications by failing to include her prior association with a member firm and by stating that she was employed for over two years at a member firm where she had never been employed. The findings also stated that Tam impersonated another representative in order to obtain privileged and confidential information about an investigation and, provided false information to the NASD concerning her prior employment and securities industry compensation in response to a written request for information.

November Actions

Thomas J. Brown (Registered Representative, Nanuet, New York) was censured, fined $160,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown misappropriated funds in the amount of $24,000 that he received from a public customer as a premium payment on the customer's life insurance policy. Brown also failed to respond to NASD requests to appear for an on-the-record interview and to respond to NASD requests for information.

Ming Cheng (Registered Representative, Ridgewood, New York) was censured, fined $78,745, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cheng caused his member firm to issue a check for $749 to him on behalf of an insurance customer, forged the customer's signature on the check, and converted the funds to his own use and benefit. Cheng also failed to respond to NASD requests for information.

Ernesto Diaz (Associated Person, Corona, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Diaz consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

John Edward Guerriero, Jr. (Registered Representative, Rockville Centre, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Guerriero consented to the described sanctions and to the entry of findings that he failed to appear to testify on the record before the NASD. The findings also stated that without his member firm's knowledge or authorization, Guerriero entered into a separate agreement with public customers under which he agreed to make monetary payments to the respective customers and thereafter paid money to them in settlement of a claim or complaint against him by the customers.

Hampton Capital Management Corp., (Stamford, Connecticut), Marquis Barnes Quetant (Registered Principal, Rosedale, New York), and Rhett McIntosh (Associated Person, Brooklyn, New York). The firm was censured, fined $40,000, and expelled from NASD membership. Quetant was censured, fined $75,000, and barred from association with any NASD member in any capacity, and McIntosh was censured, fined $65,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Quetant and McIntosh refused to allow the NASD staff to enter the firm's branch office to examine the firm's books and records and to otherwise conduct an on-site examination. Furthermore, Quetant and McIntosh falsely advised the staff that there was no one present at the branch office at the time of the NASD's visit and McIntosh also falsely advised the NASD that he was not employed by the firm. The firm, Quetant, and McIntosh also failed to appear at NASD pre-hearing conferences.

Lexington Capital Corporation (New York, New York), Alan Michael Berkun (Registered Principal, East Rockaway, New York), and Joseph Marc Blumenthal (Registered Representative, North Woodmere, New York) submitted an Offer of Settlement pursuant to which the firm was censured, fined $100,000, required to disgorge $236,247.89, jointly and severally, with Berkun. In addition, the firm and Berkun are ordered to undertake to ensure that Berkun is not employed, affiliated, or otherwise associated with the firm and does not participate, directly or indirectly, in the management and/or operation of the firm after December 31, 1998. However, Berkun shall be permitted to retain a passive ownership interest in the firm until April 1, 1999, and shall have no direct or indirect ownership interest in the firm after April 1, 1999. The firm is also ordered to undertake to ensure that between September 16, 1998, and January 1, 1999, Berkun does not function in any supervisory or managerial capacity, and further, will ensure that he is only permitted to perform those duties specifically stated in the firm's Letter of Mitigation. Furthermore, the firm was ordered to undertake to review, modify, and improve its compliance and supervisory procedures so as to address the allegations (particularly those relating to penny stocks and markups) and to be immediately and permanently expelled from NASD membership if it fails to comply with any of the terms set forth in its Offer of Settlement. Berkun was censured, fined $150,000, required to disgorge $236,247.89, jointly and severally, with the firm, barred from association with any NASD member in the capacity of a general securities principal effective January 1, 1999, and barred from association with any NASD member as a general securities representative, with a right to reapply in two years, effective January 1, 1999. Berkun will be eligible to reapply as a general securities representative on January 1, 2001. Berkun will be immediately and permanently barred from association with any NASD member in any capacity if he fails to comply with any of the terms set forth in his Offer of Settlement (including, but not limited to, that he only engage in those activities set forth in the firm's Letter of Mitigation). Blumenthal was censured, fined $100,000, 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 the firm, acting through Berkun and others, allowed a statutorily disqualified individual to be associated with and conduct activities on behalf of the firm without first receiving the proper regulatory approvals. The firm failed to disclose on said individual's application for employment with the firm that he was the present and sole owner of a non-member firm and paid a commission to the non-member firm owned by the aforementioned statutorily disqualified person. The firm also failed to report to the NASD that it had conducted business with a firm owned by a person subject to a statutory disqualification. The findings

also stated that the firm, acting through Berkun and others, executed sales of penny stocks to public customers while failing to make both the appropriate suitability determinations and disclosures required by the penny stock rules, and violated the firm's restriction agreement with the NASD by effecting penny stock transactions. Berkun failed to adequately supervise the firm's sales staff to ensure adherence to the aforesaid suitability and disclosure requirements. Furthermore, the NASD determined that the firm, acting through Berkun, sold unregistered securities to the investing public improperly, and in connection with such sales, charged its customers fraudulently excessive markups, failed to disclose that the firm was acting as principal, and failed to disclose the amount of remuneration received by the firm. Additionally, the NASD found that the firm, acting through Berkun, allowed Blumenthal to conduct a securities business at the firm while his registration was inactive; falsified firm records, confirmations, orders tickets, and customer account statements; and engaged in a scheme to circumvent the NASD and various state registration requirements by deliberately processing transactions effected by Blumenthal under Berkun's registered representative number. The firm failed to adopt, maintain, and enforce a system to supervise the activities of the firm's registered representatives and associated persons that was reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules.

December Actions

Derick Raymond Adamson (Registered Representative, Glassboro, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined $50,000, barred from association with any NASD member in any capacity, and required to make restitution in the amount of $14,576.46 to a public customer. Without admitting or denying the allegations, Adamson consented to the described sanctions and to the entry of findings that, without the prior knowledge, authorization, or consent of a public customer, he signed the customer's name on insurance application forms which permitted the issuance of $93,451 in the name of the customer's son and electronic fund transfers from the customer's personal bank account. Adamson also caused the customer's address to be changed to his address. Moreover, the findings stated that Adamson signed the customer's signature on a Policy Record Audit Letter, without the customer's knowledge or consent, caused a $1,600 loan to taken against the policy and mailed to his home address, and converted the check to his personal use and benefit. In addition, Adamson caused another customer's address to be changed, wrote checks totaling $25,700 against the customer's account and converted the checks to his own use by depositing the checks into his personal bank account. Adamson also signed the customer's name to a Flexible Premium Annuity application without the customer's knowledge, authorization, or consent. Adamson also failed to respond to NASD requests for information.

Jack Charles Biondolillo (Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $142,686.94, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Biondolillo consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf.

Robert Francis Carlton (Registered Representative, Aberdeen, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $39,575, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carlton consented to the described sanctions and to the entry of findings that he converted dividend withdrawal and refund checks totaling $7,915 received from insurance customers for his own use by endorsing checks given to him for reinvestment or by forging customers' signatures on checks never delivered to the customers and depositing them into his personal bank account.

John Michael Columbia (Registered Principal, Staten Island, New York) was censured, fined $5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam in any capacity in which he seeks to participate in the securities industry. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Columbia executed an unauthorized transaction in the account of a public customer.

John Corona (Registered Representative, Howard Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after March 3, 1995, in the amount of at least $5,000. Without admitting or denying the allegations, Corona consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf. Corona also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Gary Michael Ferone (Registered Representative, Tuckahoe, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $250,000, barred from association with any NASD member in any capacity, ordered to disgorge $14,070 in commissions, and make restitution in the amount of $469,000. Without admitting or denying the allegations, Ferone consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior notice to and receive consent from his member firm to engage in such activities. The findings also stated that Ferone engaged in the sale of unregistered securities. Furthermore, the NASD determined that Ferone recommended the purchase of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers based upon the customers' financial situations, needs, and stated investment objectives, and induced public customers to purchase securities by means of misrepresentations and omissions of material facts. Also, the NASD found that Ferone failed to register as a broker or dealer with the SEC and functioned in the capacity of a general securities representative without the benefit of proper registration with the NASD.

Robert Fitzpatrick (Registered Principal, Clifton Park, New York) was fined $2,500, and suspended from association with any NASD member in any capacity for 15 business days. The sanctions were based on findings that Fitzpatrick failed to respond to NASD requests for information in a timely manner.

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

Robert Gerard McAllister (Registered Principal, Sea Girt, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined $5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, McAllister consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Joseph J. Miniaci (Registered Representative, Brooklyn, New York) was censured, fined $35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miniaci failed to respond to NASD requests for information.

Randy Harris Narod (Registered Representative, Oceanside, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after September 11, 1995, in the amount of at least $1,000. Without admitting or denying the allegations, Narod consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf. Narod also failed to respond to NASD requests to appear for an on-the-record interview.

Michael Anthony Pellegrino (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after October 26, 1995. Without admitting or denying the allegations, Pellegrino consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 exam on his behalf. Pellegrino also failed to respond to NASD requests to appear for an on-the-record interview.

George Perez, Jr. (Associated Person, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $7,500, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he submitted a Form U-4 that failed to disclose a felony conviction.

Securities & Investment Planning Company (Chatham, New Jersey) and Daryl Scott Hersch (Registered Principal, Chatham, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined $10,000, jointly and severally, and the firm was fined an additional $17,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hersch, failed to file reports in a timely manner pursuant to the NASD reporting rule. The findings also stated that the firm, acting through Hersch, reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and failed to develop written supervisory procedures to address the NASD reporting requirements and trade reporting/ACT submissions. The NASD also determined that the firm, acting through Hersch, failed to enforce the written procedures it had established to better ensure compliance with applicable rules and regulations.

Thomas Charles Winn (Registered Principal, Haverstraw, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Winn consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notice to his member firm describing the proposed transactions. The findings also stated that Winn failed to respond to NASD requests for an on-the-record interview.

John Nicholas Withum (Registered Representative, Milltown, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Withum consented to the described sanctions and to the entry of findings that, without the customer's knowledge or authorization, he forged a public customer's signature on Disbursement Request forms pursuant to which money was borrowed from one of the customer's insurance policy to pay premiums on a subsequent insurance policy.

District 11 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Monroe, Livingston, and Steuben; and the five boroughs of New York City)

October Actions

None

November Actions

John Hancock Distributors, Inc. (Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined $100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with the offer and sale of interests in various limited partnerships, the firm distributed certain "internal use only" sales communications to its registered representatives and also provided certain sales communications to the public that omitted material information and included exaggerated, unwarranted, or misleading statements or claims regarding investments in certain limited partnerships.

Michael Joseph Minnehan (Registered Representative, Milford, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $40,930.80, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Minnehan consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, he endorsed and cashed policyholder cash surrender checks totaling $6,186.16, which were payable to the customers and converted the funds to his own use and benefit.

Bernice Anne Sanders (Registered Principal, Clinton, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanders consented to the described sanctions and to the entry of findings that she engaged in private securities transactions by selling $184,000 in promissory notes to public customers without prior written notice to and approval from her member firm.

December Actions

Denis C. J. Dancoes (Registered Principal, South Portland, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dancoes consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents.

Paul Alderic Dufresne (Registered Representative, West Buxton, Maine) submitted an Offer of Settlement pursuant to which he was censured, fined $25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dufresne consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information.

Mark Thomas Ennis (Registered Representative, Littleton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ennis consented to the described sanctions and to the entry of findings that he signed a public customer's name to a Request for Partial Withdrawal of $16,000 from the customer's fixed annuity contract,

arranged for the negotiation of the withdrawal check, and converted the proceeds to his own use and benefit, without the knowledge or consent of the customer.

Richard Raymond Langevin (Registered Principal, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Langevin consented to the described sanctions and to the entry of findings that he signed a public customer's name to an insurance policy rider without the knowledge or consent of the customer.

Peter David Ottaviano (Registered Representative, Colchester, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $402,000, barred from association with any NASD member in any capacity, and required to make restitution in the amount of $46,355 to his member firm. Without admitting or denying the allegations, Ottaviano consented to the described sanctions and to the entry of findings that he received funds totaling $78,355 from public customers intended for the purchase of non-securities products. The NASD found that Ottaviano failed to use the funds as intended or in any other manner for the benefit of the customers, and instead used them for his own benefit.

Vincent Natale Scalese (Registered Representative, Groton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $360,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scalese consented to the described sanctions and to the entry of findings that, without the knowledge or consent of the beneficiaries of the estate of a public customer, he misused funds totaling $69,404.25 by signing the decedent's name to a check, removing cash from the decedent's safe deposit box, and changing the address of record for the estate of the decedent's trust fund to an address under his control.

Enforcement Department

October Actions

Paul Francis Byrne (Registered Principal, Red Bank, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for five months, and required to comply with the regulatory computer-based training of the Regulatory Element of the Continuing Education Requirements beginning within two months of his reentry into the securities industry. Without admitting or denying the allegations, Byrne consented to the described sanctions and to the entry of findings that he failed to exercise his supervisory obligations adequately. According to the findings, Byrne allowed the use of scripts or sales presentations by registered representatives at his member firm that were materially false and misleading in that, among other things, they did not contain disclosure of risk factors or negative factor information, and created a wholly optimistic picture as to the likely success of an investment. In addition, the NASD found that some of the scripts included inaccurate or materially incomplete information about the issuers of the securities being sold, and some provided for improper price predictions or comparisons among unrelated securities.

Michael Taliercio (Registered Representative, Brooklyn, New York), James Garofalo, Jr. (Registered Representative, Flushing, New York), Robert Francis Smith (Registered Representative, Gaithersburg, Maryland), April Wiener (Registered Representative, Plainview, New York), and Edward Sparacio (Registered Representative, Brooklyn, New York) submitted Offers of Settlement pursuant to which Taliercio was censured, fined $50,000, and barred from association with any NASD member in any capacity. Garofalo was censured, fined $20,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam prior to becoming associated with any NASD member, and Smith was censured, fined $10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam prior to becoming associated with any NASD member. Wiener was censured, fined $10,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam prior to becoming associated with any NASD member firm, and Sparacio was censured, suspended from association with any NASD member in any capacity for three years, and required to requalify by exam prior to becoming associated with any NASD member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Taliercio, Garofalo, Smith, Wiener, and Sparacio made baseless and improper price predictions to public customers regarding speculative securities, and Taliercio, Garofalo, and Smith made materially false and misleading statements. The findings also stated that Taliercio, Garofalo, Smith, and Sparacio made misrepresentations as to specific issuers, and Taliercio and Garofalo claimed to have access to inside information. Moreover, the NASD found that Taliercio, Wiener, and Sparacio engaged in unauthorized trading, Taliercio and Sparacio made unfounded comparisons between unrelated securities, and Taliercio improperly failed to execute or discouraged sell orders, made false and misleading representations as to the risk of investing in a speculative security, and engaged in unsuitable trading in a customer's account. Furthermore, the NASD determined that Garofalo and Wiener made false promises to limit losses to customers, and Wiener and Sparacio promised to make up losses with new trading. Garofalo and Smith failed to execute a sell order. Garofalo, Smith, and Sparacio provided false testimony to the NASD. Sparacio told a public customer to disregard information in prospectuses and falsified records as to customers' financial conditions.

Spiro George Tsotsos (Registered Principal, Upper Brookville, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Tsotsos consented to the described sanctions and to the entry of findings that he failed to appear for testimony before the NASD.

November Actions

Mark Scott Blonder (Registered Principal, *Plainview*, New York) was censured, fined $25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blonder failed to respond to NASD requests for information.

Dean Scott Friedman (Registered Principal, Glen Head, New York), Kenneth James Fuina (Registered Principal, White Plains, New York), George Patsis (Registered Representative, Brooklyn, New York), Joseph Teseo (Registered Representative, Atlantic Beach, New York), and Peter T. Tsadilas (Registered Representative, North Hills, New York) submitted Offers of Settlement pursuant to which Friedman was censured, fined $15,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by taking the Series 7 exam prior to acting in that capacity. Fuina was censured, fined $10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam for the Series 7 or Series 62 prior to becoming associated with any NASD member firm. Patsis was censured, fined $50,000, and barred from association with any NASD member in any capacity. Teseo was censured, fined $20,000, suspended from association with any NASD member in any capacity for two years, and required to

requalify by exam prior to becoming associated with any NASD member firm, and Tsadilas was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any NASD member firm.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Friedman, Fuina, Patsis, Teseo, and Tsadilas made baseless and improper price predictions pertaining to highly speculative securities and engaged in unauthorized trading in the accounts of public customers. The findings also stated that Friedman, Fuina, Teseo, and Tsadilas discouraged or failed to execute customer sell orders, and Patsis discouraged or failed to execute sell orders on a timely basis. Furthermore, the NASD determined that Friedman, Patsis, and Teseo made false promises to customers to limit their losses, Friedman made improper comparisons between unrelated securities, and Patsis misled a customer as to risk and falsely led a customer to believe he had access to inside information as to an issuer whose securities he was selling. The NASD also determined that Teseo and Tsadilas provided false testimony during an NASD investigation and Tsadilas improperly promised to make up losses with new trading, and falsified a customer's account records as to the customer's state of residence and financial condition.

December Actions

Bear, Stearns & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined $15,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by various public customers who included demands for punitive damages, attorneys' fees, as well as other relief. According to the findings, each of the customers signed an agreement with the firm stating that the terms of the agreement would be governed by the laws of the state of New York. The NASD determined that in some of these proceedings, Bear Stearns asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and that New York law precluded an award of punitive damages or attorneys' fees.

Biltmore Securities, Inc. (Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined $20,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by public customers who sought punitive damages or attorneys' fees. According to the findings, each of the customers signed an agreement with the firm stating that the proceeding would be governed by the laws of the state of New York. The NASD determined that in a number of these arbitration proceedings, Biltmore Securities asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and that New York law precluded an award of punitive damages or attorneys' fees.

James Maurice Cassidy (Registered Representative, East Hampton, New York) was censured, fined $35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cassidy failed to respond to NASD requests for information.

Daniel James Gallagher (Registered Representative, Roslyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined $15,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by Series 7 exam prior to acting in that capacity. Without admitting or denying the allegations, Gallagher consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions as to a speculative security to a public customer and made unauthorized trades in the accounts of public customers. The findings also stated that Gallagher made a false statement to a customer about an issuer's securities and improperly discouraged or failed to execute sell orders.

Bryan Jay Herman (Registered Principal, Kings Point, New York) was censured, fined $50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Herman failed to respond to NASD requests for information and to appear for an on-the-record interview.

Alan Scott Lipsky (Registered Principal, Kings Point, New York) was censured, fined $50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lipsky failed to respond to NASD requests for information and to appear for an on-the-record interview.

David William Noble (Registered Principal, Flemington, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined $10,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Noble consented to the described sanctions and to the entry of findings that he aided and abetted his member firm and its president in an unlawful, unregistered distribution of common stock by executing "wash" and "matched" trades with two other broker/dealers. These transactions artificially inflated the reported trading volume in the stock and aided and abetted his member firm and its president in violating a provision in the firm's restriction agreement that prohibited principal retail trading. The NASD also found that Noble failed to reflect the circular nature of the trades in his firm's books and records, thereby causing them to be inaccurate and incomplete.

Market Regulation Department

October Actions

Needham & Company, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured and fined $12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received customer limit orders to buy and to sell stock, and failed to execute contemporaneously the customer orders after it bought or sold shares for its own market-making account. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. Furthermore, the NASD determined that when the firm acted as principal for its own account, it failed to provide written notification to a customer that the price to the customer was an average of the trade prices reported by the firm to ACT. In addition, the NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD rules regarding trade reporting, SEC Order Execution Rules, Best Execution, Anti-Competitive Practices, and SOES.

Normandy Securities, Inc. (Scarsdale, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined $10,000,

and required to undertake revision of the firm's written supervisory procedures relating to firm quote compliance in a manner not unacceptable to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered Market Maker, the firm was presented an order at the firm's published bid or published offer in an amount up to its published quotation size and failed to execute the orders thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations concerning the SEC and NASD firm quote rules.

November Actions

Sidney C. Eng (Registered Principal, Mill Valley, California) was censured, fined $75,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an April 1997 NBCC decision. The sanctions were based on findings that Eng engaged in insider trading by purchasing shares of stock while in possession of material, non-public information.

GFI Group Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The findings also stated that the firm failed to accept or decline a transaction in an eligible security within 20 minutes after execution, and failed to show on the memoranda of brokerage orders the time of execution or the correct time of execution. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding trade reporting and registration of persons with the NASD.

International Securities Corporation (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined $10,000, and ordered to undertake to revise its written supervisory procedures relating to firm quote compliance in a manner not unacceptable to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to execute orders presented to it and thereby failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and NASD firm quote rules.

Paragon Capital Corporation (New York, New York) and Danny Jay Levine (Registered Principal, West Caldwell, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined $40,000, jointly and severally. The firm was also fined $95,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Levine reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting and recordkeeping. The firm also permitted an individual to engage in the investment banking or securities business of the firm when he was not registered with NASD. The findings also stated that the firm and Levine failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding trade reporting, the limit order protection interpretation, SOES, best execution, the registration of persons with the NASD, and recordkeeping.

Kevin Eric Shaughnessy (Registered Principal, Pittsburgh, Pennsylvania) was censured, fined $11,675, barred from association with any NASD member in any capacity, required to pay $390 in losses to customers, and required to pay $1,526.37 in commissions to customers. The SEC affirmed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Shaughnessy entered into an arrangement with a non-registered individual whereby he agreed to sell shares of stock to his retail customers in exchange for compensation, without disclosing the arrangement with the customers or his member firm.

December Actions

Christopher John Benz (Registered Principal, Santa Monica, California) was censured, fined $7,500, and required to requalify by exam as a general securities principal before acting in a principal capacity. The U.S. Court of Appeals for the Third Circuit affirmed the sanctions following appeal of a March 1997 SEC decision. The sanctions were based on findings that Benz failed to supervise a registered representative adequately and failed to enforce his member firm's supervisory procedures.

John Roger Faherty (Registered Principal, Spring Lake, New Jersey) was censured, fined $150,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Faherty aided and abetted his member firm's manipulation of securities.

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

Gaines, Berland Inc. (Bethpage, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined $31,000, and required to pay $9,617.62 in restitution and interest to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, and failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with ACT rules, the SEC Order Execution Rules, the SOES rules, and the trade reporting rules.

H. J. Meyers & Co., Inc. (Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined $12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to display immediately customer limit orders to ACT when orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimis charge in relation to the size associated with the firm's bid or offer in each security. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules regarding trade reporting, anti-competitive practices, and order handling.

Vladislav Steven Zubkis (Registered Representative, Bonita, California) was censured, fined $20,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an August 1997 NBCC decision. The sanctions were based on findings that Zubkis failed to respond to NASD requests for information and to provide testimony.

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If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Rosa A. Maymi, Editor, *Regulatory & Compliance Alert (RCA)*, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8981.

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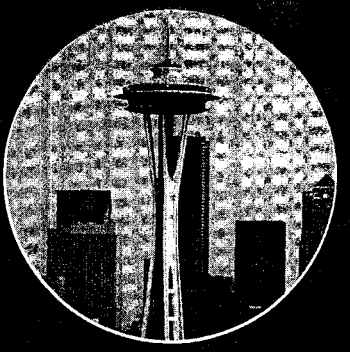

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