

NASD Notice to Members—Request For Comment 99-79

ATTACHMENT B

Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal to modernize the advertising rules. This list of questions does not cover all of the changes contained in the proposal, including proposed changes regarding the standards applicable to member communications, other filing and pre-use approval exemptions, limitations on the use of the NASD's name, and fund rankings. Accordingly, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

Instructions

Comments must be received by **October 29, 1999**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- mailing in written comments
- e-mailing written comments to *pubcom@nasd.com*
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments and should be mailed to:

Joan C. Conley, Office of the Corporate Secretary, NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

Institutional Sales Material

1. Should the NASD exempt from the Advertising Rule's internal pre-use approval and filing requirements sales material that is distributed only to institutional investors?

Yes No See my attached written comments

Article Reprints and Press Releases

2. Should the NASD exempt from the Advertising Rule's filing requirements reprints of articles that the member has not materially altered?

Yes No See my attached written comments

3. Should the NASD exempt from the Advertising Rule's filing requirements press releases concerning investment companies that are only made available to members of the media?

Yes No See my attached written comments

Use and Disclosure of a Member's Name

4. Do you favor the proposed changes that would simplify the provisions governing disclosure of member names?

Yes No See my attached written comments

Communications About Collateralized Mortgage Obligations

5. Do you favor the proposed changes to the provisions governing communications about collateralized mortgage obligations?

Yes No See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____

ACTION REQUIRED

SOES Order Sizes

Maximum SOES Order Sizes Set To Change October 1, 1999

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Operations
- Systems
- Trading

KEY TOPICS

- SOES Maximum Order Sizes

Executive Summary

Effective October 1, 1999, the maximum Small Order Execution SystemSM (SOESSM) order sizes for 420 Nasdaq National Market[®] (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD[®]) Rule 4710(g).

For more information, please contact Nasdaq[®] Market Operations at (203) 378-0284.

Description

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II[®] (NWII) indicates the maximum SOES order size for each NNM security. The indicator "NM10," "NM5," or "NM2" displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.¹

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;
- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-

block volume of less than 1,000 shares a day, a bid price of less than or equal to \$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of June 30, 1999, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

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Thus, IPOs listed on Nasdaq within the 45 days prior to June 30, 1999, were not subject to SOES order-size reranking procedures.

Following is a listing of the 420 NNM issues that will have the maximum SOES order size changed on October 1, 1999.

Endnote

¹Previously, Nasdaq Market Makers were required to maintain a minimum quotation size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a)(1) - (2). On July 15, 1998, the Securities and Exchange Commission approved an amendment to NASD Rule 4613(a)(1)(C),

which reduced the minimum quotation size for all Nasdaq securities to one normal trading unit when a Market Maker is not displaying a limit order, and which thus eliminated the requirement that Market Makers quote a size equal to the maximum SOES order size.

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Maximum SOES Order Size Changes In NNM Securities

All Issues In Alphabetical Order By Security Name
(Effective October 1, 1999)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
FSBC	1ST STATE BNCP INC	200	500	B			
A				BFEN	B F ENTERPRISES INC	200	500
ABANP	ABI CAP TRUST PFD	1000	500	BTEK	BALTEK CP	500	1000
BOUT	ABOUT.COM INC	200	500	BKCT	BANCORP CONN INC	500	1000
ABOV	ABOVENET COMMUNICTNS	500	1000	BNSC	BANK OF SANTA CLAR	200	500
ABRI	ABRAMS INDS INC	200	500	BANCP	BBC CAPITAL TR I P	1000	500
ACLE	ACCEL INTL CP	500	1000	BNHNA	BENIHANA INC	1000	500
ACDO	ACCREDITO HEALTH INC	200	500	BIDS	BID.COM INTL INC	200	500
ADFC	ADFORCE INC	200	500	BIZZ	BIZNESSONLINE.COM	200	500
DINew	ADVANTICA WTS	500	1000	EPAY	BOTTOMLINE TECH INC	500	1000
AMRI	ALBANY MOLECULAR RES	500	1000	BRAD	BRADLEES INC	500	1000
ALCI	ALLCITY INSURANCE	200	500	BRCM	BROADCOM CORP CL A	1000	500
ALLN	ALLIN CORP	200	500	BUCA	BUCA INC	200	500
ALOY	ALLOY ONLINE INC	200	500	C			
AMNB	AMER NATL BANKSHS	200	500	CBBI	C B BANCSHARES	1000	500
ANFI	AMERICAN NATL FINL	500	1000	CDWI	C D WAREHOUSE INC	500	1000
ASCA	AMERISTAR CASINO	500	1000	CEMX	C E M CP	500	1000
AMTD	AMERITRADE HLDG A	1000	500	CERB	C E R B C O INC	200	500
AMPI	AMPLICON INC	500	1000	CFCI	C F C INTL INC	1000	500
AFSC	ANCHOR FIN CORP	500	1000	CNBF	C N B FINANCIAL CP	500	1000
ANCR	ANCOR COMMUN INC	500	1000	CFFI	C&F FINANCIAL CP	500	200
ANDR	ANDERSEN GROUP INC	500	1000	CTOO	C2 INC	200	500
ANTV	ANTENNA TV SA ADR	200	500	CIBN	CALIFORNIA IND BNC	500	200
ATHY	APPLIEDTHEORY CP SR	200	500	CNTBY	CANTAB PHARM	500	200
ARCAF	ARCADIS N.V.	1000	500	CAII	CAPITAL ASSOC	1000	500
AREM	AREMISSOFT CORP	200	500	CSWC	CAPITAL SOUTHWEST	500	1000
ARGY	ARGOSY ED GRP CL A	200	500	CBCL	CAPITOL BANCORP LT	500	1000
ARIS	ARI NETWORK	500	1000	CFFN	CAPITOL FEDERAL FINL	200	500
ABFSP	ARKANSAS BEST CV P	500	1000	CBCLP	CAPITOL TRUST I PF	1000	500
ARMHY	ARM HLDGS ADS	500	1000	CBDR	CAREERBUILDER INC	200	500
ARTNA	ARTESIAN RES CP A	500	1000	CMDC	CAREMATRIX CP	200	500
ATYT	ATI TECHNOLOGIES	500	1000	CFBI	CAROLINA FIRST BNCSH	200	500
ATLPP	ATLANTIC PFD CAP CP	500	1000	CATT	CATAPULT COMM CP	500	1000
ABTL	AUTOBYTEL.COM INC	200	500	CEBK	CENTRAL BANCORP INC	1000	500
AWEB	AUTOWEB.COM INC	200	500	CNBKP	CENTURY BCP CAP TR	500	1000
AXHM	AXIOHM TRANS SOL	200	500				

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
CHANF	CHANDLER INS CO LTD	1000	500	E			
CTIX	CHEAP TICKETS INC	200	500	ETEK	E-TEK DYNAMICS INC	500	1000
CHDN	CHURCHILL DOWNS IN	500	1000	ELXS	E L X S I CP	500	1000
CCHE	CLINICHEM DEV CL A	1000	500	EWBC	EAST WEST BANCORP	500	1000
CNBB	CNB FLORIDA BCSHS INC	500	1000	EDEL	EDELBROCK CP	500	1000
CBSAO	COASTAL BCP PFD A	200	500	EDCO	EDISON CONTROL CP	500	200
COHB	COHOES BANCORP	500	1000	ELBI	ELDORADO BANCSHARES	200	500
CBAN	COLONY BANCORP	500	200	ELET	ELLETT BROTHERS IN	500	1000
CFKY	COLUMBIA FIN KY	500	1000	EMLX	EMULEX CP	1000	500
CCBP	COMM BANCORP INC	200	500	ENGSY	ENERGIS ADS	500	200
CBNY	COMMERCIAL BK OF N	500	1000	ENSI	ENERGYSOUTH INC	500	1000
CNAF	COMMERCIAL NATL FI	500	200	EMCO	ENGINEERING MEASUR	500	1000
CFIC	COMMUNITY FIN CP	500	1000	EQSB	EQUITABLE FED SAV	500	1000
CFBC	COMMUNITY FIRST BN	500	1000	EMCC	EUROPEAN MICRO HLD	1000	500
CMSV	COMMUNITY SVGS	500	1000	EXAP	EXCHANGE APPLICATNS	500	1000
CDOT	COMPS.COM INC	200	500	EXCO	EXCO RESOURCES INC	500	1000
CCRT	COMPUCREDIT CORP	200	500	EXTR	EXTREME NETWORKS	200	500
CNQR	CONCUR TECHNOLOGIES	500	1000	F			
CNXT	CONEXANT SYSTMS	500	1000	FMCO	F M S FINANCIAL CP	500	1000
CMETS	CONTL MORTGAGE EQUIT	1000	500	FRPP	F R P PROPERTIES I	500	1000
CMTN	COPPER MOUNTN NTKS	200	500	FTUS	FACTORY 2-U STR	500	1000
COCO	CORINTHIAN COLLEG SE	500	1000	FCPYQ	FACTORY CARD OUTLE	1000	500
EXBD	CORP EXEC BOARD CO	200	500	FDCC	FACTUAL DATA CORP	500	1000
CRTQ	CORTECH INC	500	1000	FDCCW	FACTUAL DATA WTS	500	1000
DLVRY	CORTECS INTL SPO ADR	1000	500	FATB	FATBRAIN.COM INC	500	1000
CRRC	COURIER CP	500	1000	FFLC	FFLC BNCP INC	500	1000
COVD	COVAD COMMUN GROUP	500	1000	FSBI	FIDELITY BANCORP I	200	500
CMST	CREATIVE MASTER INTL	500	1000	FFFLP	FIDELITY CAP TR I	500	1000
CPTH	CRITICAL PATH INC	200	500	FFED	FIDELITY FED BNCP	1000	500
AMEN	CROSSWALK.COM INC	500	1000	FDHG	FIDELITY HLDGS INC	500	1000
CTCI	CT COMMUNICATIONS	500	1000	FBEI	FIRST BNCP OF IND	200	500
D				BUSE	FIRST BUSEY CL A	500	1000
DEAR	DEARBORN BANCORP	200	500	FTCG	FIRST COLONIAL GP	200	500
HYTDL	DECS TRUST IV	500	1000	FFSX	FIRST FED BKSHS	200	500
DLTDF	DELPHI INTL LTD	500	200	FFKY	FIRST FED FIN KENT	200	500
DELT	DELTA GALIL INDS ADS	200	500	FFHS	FIRST FRANKLIN CP	200	500
DSGX	DESCARTES SYS GRP	500	1000	FGHC	FIRST GEORG HLDGS	500	1000
DEST	DESTIA COMMUNICATNS	200	500	FIFS	FIRST INV FIN SVC	1000	500
DGJL	DG JEWELLERY CDA	500	1000	FPFC	FIRST PLACE FINL	500	1000
DFXI	DIRECT FOCUS INC	200	500	FSTH	FIRST SO BCSHS INC	500	200
DOCD	DOCDATA NV	500	1000	FLGSO	FLAGSTAR TR PFD	200	500
DOMZ	DOMINGUEZ SVCS CP	500	1000	FLAS	FLASHNET COMMUNICATN	200	500
DHOM	DOMINION HOMES INC	500	1000	FFBK	FLORIDAFIRST BNCP	200	500
DORLP	DORAL FINL CP PFD	200	500	FCST	FLYCAST COMMUN CP	200	500
DIIBF	DOREL INDS CL B	1000	500	FNBP	FNB CORP	200	500
DCLK	DOUBLECLICK INC	500	1000	FELE	FRANKLIN ELEC INC	500	1000
DRRAP	DURA AUTO CAP TR	500	1000	FRNT	FRONTIER AIRLINES	500	1000
DXPE	DXP ENTERPRISE	500	200	FTNB	FULTON BANCORP INC	500	1000

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
G				JXVL	JACKSONVILLE BANCO	1000	500
GBNK	GASTON FED BANCP	500	1000	JCORM	JACOR COMM WTS	500	1000
GBBKP	GBB CAP I CUM TR PFD	500	200	JAMSO	JAMESON PFD S	200	500
GLDBO	GBCI CAP TR II	200	500	K			
GIFT	GERALD STEVENS INC	500	1000	KTII	K TRON INTL INC	500	1000
GNET	GO2NET INC	500	1000	KTCO	KENAN TRANSPORT CO	200	500
GNCNF	GORAN CAPITAL INC	1000	500	KEQU	KEWAUNEE SCIENTIFI	500	1000
GFLS	GREATER COMMUNITY	1000	500	L			
GSLI	GSI LUMONICS INC	500	1000	LABN	LAKE ARIEL BNCP IN	1000	500
H				LACO	LAKES GAMING INC	500	1000
HDVS	H. D. VEST INC	500	1000	LCCO	LAMAR CAP CORP	500	1000
HAMP	HAMPSHIRE GROUP LT	200	500	LATD	LATITUDE COMMUNICTNS	200	500
HRBF	HARBOR FED BNCP IN	1000	500	LAUN	LAUNCH MEDIA INC	200	500
HLTH	HEALTHON CORP	500	1000	LCAV	LCA-VISION INC	500	1000
HSII	HEIDRICK & STRUGGLES	200	500	LIBHB	LIBERTY HOMES INC B	200	500
HIFN	HI/FN INC	500	1000	LPNT	LIFEPOINT HOSP	200	500
HBNK	HIGHLAND FEDERAL B	500	1000	LIHRY	LIHIR GOLD LTD ADR	500	200
HBFW	HOME BANCORP	500	1000	LNCB	LINCOLN BANCORP	500	1000
HOMEF	HOME CTRS (DIY) LTD	500	1000	LOAX	LOG ON AMERICA INC	200	500
HLFC	HOME LOAN FINL CP	500	1000	LONDY	LONDON INTL PLC ADR	500	200
I				M			
IMAL	IMALL INC	500	1000	MLCH	M L C HOLDINGS INC	500	1000
INDBP	INDEP CAP TR I PFD	200	500	MACC	MACC PRIVATE EQU I	200	500
INHO	INDEPENDENCE HLDG	500	1000	MKFCF	MACKENZIE FIN CP	500	200
INFA	INFORMATICA CORP SR	200	500	OSKY	MAHASKA INV CO	500	1000
INSP	INFOSPACE.COM INC	500	1000	MAKR	MAKER COMMUNICATIONS	200	500
INFY	INFOSYS TECHN ADS	200	500	MTEX	MANNATECH INC	200	500
INKT	INKTOMI CORP	1000	500	MQST	MAPQUEST.COM INC	200	500
INMG	INSURANCE MGMT SOLUT	500	1000	MRBA	MARIMBA INC	200	500
ILIF	INTELLIGENT LIFE	200	500	MVII	MARK VII INC	500	1000
ICPT	INTERCEPT GRP INC	200	500	MERK	MARKETING SPECIALISTS		
DENT	INTERDENT INC	500	1000		CORP	500	1000
GEEK	INTERNET AMERICA INC	500	1000	MSGI	MARKETING SVCS GRO	500	1000
INTT	INTEST CORPORATION	500	1000	MKTW	MARKETWATCH.COM INC	500	1000
INRS	INTRANET SOLUTIONS	500	1000	MSDXP	MASON-DIX CAP TR P	500	200
ITRA	INTRAWARE INC	200	500	MSDXO	MASON-DIXON TR II	500	200
IVGN	INVITROGEN CORP	200	500	MFLR	MAYFLOWER CO OP BK	500	200
IROQ	IROQUOIS BNCP	1000	500	MKTY	MECHANICAL		
TURF	ITURF INC	200	500		TECHNOLOGY	200	500
IVIL	IVILLAGE INC	200	500	MEDE	MEDE AMERICA CORP	500	1000
XOSY	IXOS SOFTWARE ADS	500	1000	MMXI	MEDIA METRIX INC	200	500
J				MCNS	MEDICONSULT.COM INC	200	500
JEFFP	J B I CAPITAL TR PFD	200	500	MBFC	MEGABANK FIN CORP	500	1000
MAYS	J W MAYS INC	200	500	MBIA	MERCHANTS BNCP IL	500	1000
				MCB I	METROCORP BANCSHARES	500	1000

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
MTLG	METROLOGIC INSTR I	500	1000	OGNB	ORANGE NATL BNCP	500	1000
METFP	METROPOLITAN CAP	1000	500	OWOS	OWOSSO CP	500	1000
METFO	METROPOLITAN CAP TR2	200	500	OXGNW	OXIGENE INC WTS	1000	500
CASA	MEXICAN RESTAURANTS INC	500	1000	P			
MFCB	MICHIGAN FINL CP	500	1000	PFINA	P F INDS INC A	1000	500
MIHL	MIH LIMITED CL A	200	500	PFCB	P.F. CHANG'S CHINA	500	1000
MBSI	MILLER BUILDING SY	500	1000	PCNTF	PACIFIC INTERNET	500	1000
MNES	MINE SAFETY APPLS	500	1000	ICED	PACKAGED ICE INC	500	1000
MNMD	MINIMED INC	500	1000	PBCI	PAMRAPO BNCP INC	500	1000
MSIX	MINING SVC INTL CP	500	1000	PCOR	PCORDER.COM INC	200	500
MMAN	MINUTEMAN INTL INC	200	500	PEEK	PEEKSKILL FIN CP	1000	500
MKSI	MKS INSTRUMENTS INC	200	500	PMFG	PEERLESS MFG CO	500	1000
MMPT	MODEM MED POPPE	500	1000	PSFC	PEOPLES-SIDNEY FIN	500	1000
MMTM	MOMENTUM BUS APPLICA	500	1000	PERM	PERMANENT BNCP INC	500	1000
MBBC	MONTEREY BAY BANCO	500	1000	PFBIP	PFBI CAP TR PFD	500	200
MORP	MOORE PRODUCTS CO	500	1000	PMORW	PHAR-MOR INC WTS	500	1000
CRGO	MOTOR CARGO INDS	500	1000	PHLYL	PHIL CONS GR PRIDE	500	200
MOTR	MOTOR CLUB OF AMER	1000	500	PHXI	PHOENIX INTL LIFE	200	500
MPTH	MPATH INTERACTIVE SE	200	500	PING	PINNACLE GLOBAL GRP	500	1000
MUEL	MUELLER PAUL CO	200	500	BIGT	PINNACLE HLDGS INC	200	500
MLTX	MULTEX.COM INC	200	500	PLXT	PLX TECHNOLOGY INC	200	500
N				POPEZ	POPE RESOURCE UTS LP	500	200
NSSC	NAPCO SEC SYS INC	500	1000	PRSF	PORTAL SOFTWARE INC	200	500
NSEC	NATL SECURITY GP I	200	500	PEGI	PREFERRED EMPLOYERS	500	1000
NWLIA	NATL WESTERN LIFE	500	1000	PCLN	PRICELINE.COM INC	200	500
NCBEP	NCBE CAP TR I PFD	500	200	PCAG	PRIMACOM AG ADS	200	500
NESY	NEON SYSTEMS INC	200	500	PNBC	PRINCETON NATL BNC	500	1000
NETP	NET PERCEPTIONS INC	200	500	PRVT	PRIVATE MEDIA GROUP	500	1000
NETO	NETOBJECTS INC	200	500	PRGY	PRODIGY COMM CORP	500	1000
NETS	NETWORK EVENT THEA	500	1000	PBCP	PROVIDENT BANCORP	500	1000
NSOL	NETWORK SOLUTIONS	500	1000	PXCM	PROXICOM INC	200	500
NTRL	NEUTRAL POSTURE SA	500	1000	PSIXP	PSINET CV PFD C	200	500
NXCD	NEXTCARD INC	200	500	CARD	PUBLICCARD INC	500	1000
NCBH	NORTH COUNTY BANCO	500	1000	Q			
NOVB	NORTH VALLEY BNCP	1000	500	XING	QIAO XING UNIV TEL	200	500
NPNT	NORTHPOINT COMM GRP	200	500	QLGC	QLOGIC CP	1000	500
NWFI	NORTHWAY FINL INC SR	500	200	R			
TONS	NOVAMERICAN STEEL	500	1000	RGFCP	R&G FIN CP PFD A	500	200
NMTXZ	NOVAMATRIX WTS B	500	200	ROIA	RADIO ONE INC	200	500
NPBCP	NPB CAPITAL TR PFD	500	200	RAGS	RAG SHOPS INC	500	1000
NVDA	NVIDIA CORP	500	1000	RVWD	RAVENSWOOD WINERY	200	500
O				RAZF	RAZORFISH INC	200	500
OVBC	OHIO VALLEY BANC C	200	500	RLCO	REALCO INC	500	1000
ONEM	ONEMAIN.COM INC SE	200	500	RNWK	REALNETWORKS INC	500	1000
PLAN	OPEN PLAN SYS INC	1000	500	REFN	REGENCY BANCORP	500	1000
OBAS	OPTIBASE LTD	200	500				

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Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
RGNT	REGENT ASSISTED LI	1000	500	TMCS	TICKETMASTER ONLINE	500	1000
RIMM	RESEARCH IN MOTION	500	1000	TWTC	TIME WARNER TELECOM	200	500
RTHM	RHYTHMS NETCONNECT	200	500	TLXAF	TOOLEX-ALPHA N V ORD	1000	500
RSBI	RIDGEWOOD FINL INC	500	1000	TJOB	TOPJOBS.NET PLC	200	500
RNIC	ROBINSON NUGENT IN	500	1000	TREVP	TREEV PFD A	1000	500
ROWE	ROWECOM INC	200	500	TRIH	TRIAD HOSPITALS	200	500
S				TSSS	TRIPLE S PLASTICS	500	1000
SFED	S F S BANCORP INC	500	1000	TRYF	TROY FINCL CORP	200	500
SGVB	S G V BANCORP INC	500	1000	TUES	TUESDAY MORNING	200	500
SJNB	S J N B FINANCIAL	1000	500	TWED	TUMBLEWEED INC	200	500
SKFB	S K FAMOUS BRANDS	1000	500	TRBO	TURBOCHEF INC	500	1000
STVI	S T V GROUP INC	500	1000	TUTS	TUT SYSTEMS INC	500	1000
SAESY	SAES GETTERS ADR	500	200	U			
SGNT	SAGENT TECHNOLOGY	200	500	USPH	U S PHYSICAL THERA	500	1000
SAVB	SAVANNAH BNCP INC	200	500	UBID	UBID INC	500	1000
OKSBO	SBI CAP TR PFD	200	500	UBSH	UNION BANKSHARES C	1000	500
SVECF	SCANVEC CO 1990 LTD	1000	500	UBMT	UNITED FINANCIAL C	500	200
SCHR	SCHERER HEALTHCARE	1000	500	UPCOY	UNITED PAN-EUR ADS	500	1000
SCNT	SCIENT CORP	200	500	USPL	US PLASTIC LUMBER	200	500
SCOP	SCOOT.COM ADR	1000	500	UBANP	USBANCORP CAP TR	500	200
SCOT	SCOTTISH ANN &LIF	500	1000	USIX	USINTERNETWORKING	200	500
SCFS	SEACOAST FIN SVC	500	1000	V			
AIRB	SELECT COMFORT CP	500	1000	VAIL	VAIL BANKS INC	500	1000
SENEB	SENECA FOODS CP B	500	1000	VMIX	VALLEY MEDIA INC	200	500
SEPR	SEPRACOR INC	500	1000	VADO	VALLEY NATL CP	200	500
SRNA	SERENA SOFTWARE INC	500	1000	VUSA	VALUE AMERICA INC	200	500
STCL	SHARED TECH CELLULAR	200	500	VARI	VARIAN INC	200	500
SILK	SILKNET SOFTWARE INC	200	500	VSEA	VARIAN SEMICOND	200	500
SIXR	SIX RIVERS NAT BK	500	1000	VFLX	VARIFLEX INC	1000	500
NZSKY	SKY NETWORK TV ADS	500	200	VRSN	VERISIGN INC	500	1000
SGAI	SMITH-GARDNER&ASSOC	500	1000	VLOG	VIALOG CORP	500	1000
SECAY	SOCIETE EUR ADS A	500	200	VIGN	VIGNETTE CORP	200	500
SOFN	SOFTNET SYSTEMS INC	200	500	VCAP	VIRGINIA CAP BANCSHS	500	1000
SNSTA	SONESTA INTL A	200	500	VBNJ	VISTA BANCORP INC	1000	500
SJFC	SOUTH JERSEY FINL CP	500	1000	VDAT	VISUAL DATA CP	500	1000
SBSIP	SOUTHSIDE CAP TR	500	200	VDATW	VISUAL DATA CP WTS	500	1000
CTLG	SPECIALTY CATALOG	500	1000	VISX	VISX INC	500	1000
SPCH	SPORT CHALET INC	500	1000	VTNA	VITRAN CP INC	200	500
STNV	STATIA TERMINALS GRP	200	500	VSTR	VOICESTREAM WIRELESS	200	500
SUBI	SUN BANCORP INC	500	1000	W			
SNBCP	SUN CAPITAL TR PFD	200	500	WAIN	WAINWRIGHT BK TR C	500	1000
SYPR	SYPRIS SOLU	500	1000	WATFZ	WATERFORD PLC ADR UT	200	500
T				WAVX	WAVE SYSTEMS D9	200	500
TARR	TARRAGON REALTY	500	1000	WEBT	WEBTRENDS CORP	200	500
TSCN	TELESCAN INC	200	500	WCSTF	WESCAST INDS INC A	500	200
TBNC	THE BANC CORPORATION	500	1000				
TSCM	THESTREET.COM	200	500				

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<u>Symbol</u>	<u>Security Name</u>	<u>Old Level</u>	<u>New Level</u>
BEEF	WESTERN BEEF INC	500	1000
WGBC	WILLOW GROVE BANCORP	500	1000
WGAT	WORLDGATE COMMUNICAT	200	500
X			
XNVA	XENOVA GR PLC ADS	1000	500
XMCM	XOOM.COM INC	500	1000
Y			
YAVY	YADKIN VALLEY BK&TR	200	500

**ACTION REQUESTED BY
OCTOBER 29, 1999**

Salesperson Compensation Practices

NASD Regulation
Requests Comment on
Proposed Salesperson
Compensation Rules;
**Comment Period
Expires October 29,
1999**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Mutual Funds
- Registered Representatives
- Senior Management

KEY TOPICS

- Associated Persons of Members
- Compensation
- Investment Company Securities

Executive Summary

NASD Regulation, Inc. (NASD Regulation[®]) requests comment from National Association of Securities Dealers, Inc. (NASD[®]) members, investors, and other interested parties on the following three rule proposals which relate to salesperson compensation: (1) a rule prohibiting the payment of higher payout ratios to salespersons for the sale of proprietary investment company products; (2) a rule prohibiting single security sales contests; and (3) a rule requiring disclosure of accelerated payout arrangements for salespersons who change firms.

Included with this *Notice* are Attachment A (the text of the proposed amendments) and Attachment B (general questions that NASD Regulation requests comments on from members and interested parties).

Request For Comment

NASD Regulation encourages all members, investors, and interested parties to comment on the proposed rules. Comments must be received by **October 29, 1999**. For each proposal, we have included questions for you to consider in drafting your response. In addition, for your convenience, we have provided a checklist (see Attachment B) so that in a minimum amount of time you can provide NASD Regulation with your general comments.

Note: Each *Notice to Members* may contain different and more specific questions we encourage you to consider. While information concerning how many members are generally for or against a proposal is important to the Board, because this is not a vote in considering whether to proceed with or modify a proposal, the Board will also heavily rely upon information and data concerning the substantive merits

of a proposal. Therefore, even when using the checklist, we encourage you to provide any specific comments you can.

Members and interested parties can submit their comments using the following methods:

- 1) mailing in the checklist (Attachment B)
- 2) mailing in written comments
- 3) e-mailing written comments
- 4) submitting comments online at the NASDR Web Site (www.nasdr.com)

If you decide to send comments using both the checklist and one of the other methods listed above, please let us know. The checklist and/or written comments should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

You may also e-mail comments to:
pubcom@nasd.com

The only comments that *will be* considered are those submitted via e-mail or in writing.

Before becoming effective, the NASD Regulation Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change. The NASD Board of Governors also may review the rule change.

Questions/Further Information

As noted, written comments should be submitted to Joan C. Conley. Questions concerning this *Notice to Members—Request for Comments* may be directed to Louise Corso,

NASD Notice to Members—Request For Comment 99-81

Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-6939; or Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

Background

Historically, NASD Regulation has not attempted to regulate the internal compensation arrangements of member firms and their representatives. In general, examination of compensation practices at firms has been done on a case-by-case basis and has taken into account the nature of the firm's business and structure. In the early 1990s, SEC Chairman Arthur Levitt sought broader information about compensation practices throughout the securities industry. Chairman Levitt formed an industry committee that issued a report on compensation practices in 1995, known as the Tully Report. This report described a number of compensation practices that exist in the securities industry that may create conflicts of interest for member firms and their representatives. The Tully Report also identified best practices to address these actual or perceived conflicts of interest.

In *Notice to Members 97-50*, NASD Regulation sought member comment on cash compensation issues relating to the sale and distribution of investment company and variable contract securities. The cash compensation arrangements included, for example, the offering of higher commissions for sale of proprietary products (those sponsored by the member or an affiliated company) as compared to non-proprietary products, and the offering of cash awards for sales contests. The *Notice* asked generally whether certain forms of incentive-based cash compensation were harmful or

beneficial to investors. We also asked for comment on possible regulatory responses, such as requiring disclosure or prohibiting certain compensation practices. We did not propose any specific rules at that time, but rather solicited comments on a broad range of issues relating to compensation.

In response, we received 20 comment letters from member firms, individual representatives, and other interested parties. Most commenters generally favored the continued application of current sales practice and suitability rules or, alternatively, some form of generic disclosure for cash compensation practices. Some commenters, however, recognized that certain practices create particularly strong point-of-sale incentives or "product favoritism" and felt that it was important to distinguish those practices from other cash compensation arrangements between offerors and broker/dealers that are not passed on to salespersons and do not create such incentives.

In 1998, the SEC approved amendments to Rules 2820 and 2830 regulating non-cash compensation arrangements in the sale of variable contracts and investment company securities, respectively ("Non-Cash Compensation Rules"). As described in *Notice to Members 98-75*, the Non-Cash Compensation Rules limit the manner in which members can pay or accept non-cash compensation and impose certain recordkeeping requirements. "Non-cash" compensation includes, for example, merchandise offered to brokers, gifts and prizes, or reimbursement of travel expenses. These rules are based on the belief that the increased use of non-cash compensation creates significant point-of-sale incentives that may compromise the requirement to match the investment needs of the

customer with the most appropriate investment product. The Non-Cash Compensation Rules do permit certain non-cash compensation arrangements that are based on total production and equal weighting of sales of a variety of products and are organized and run by the member or certain affiliates. In addition, with limited exceptions, the Non-Cash Compensation Rules prohibit a person associated with a member from accepting any compensation, cash or non-cash, from any person other than the member with which the person is associated.

Discussion

We are soliciting comment on certain compensation practices described as problematic in the Tully Report, as well as three rule proposals addressing such practices. A number of NASD Regulation committees, including the District Committees, the Small Firm Advisory Board, the Membership Committee, the Investment Companies Committee, and the Bank Broker/Dealer Committee, had the opportunity to review and comment on some or all of the three potential regulatory responses proposed in this *Notice*. Committee members expressed a wide range of opinions in discussing these topics. We have incorporated many of the committees' suggestions in the proposals and questions presented in this solicitation of comment. We are publishing these rule proposals for comment to the full membership to give all members and other interested parties an opportunity to express their views as well.

Specifically, we are requesting comment on rule proposals to address the following compensation practices:

- Payment of higher payout ratios to representatives for the sale

NASD Notice to Members—Request For Comment 99-81

of proprietary investment company products;

- Single security sales contests; and
- “Accelerated payouts,” which are higher commission payouts offered to representatives who move from one broker/dealer to another.

We are also requesting comment on additional issues regarding current salesperson compensation practices. Commenters should consider the need to provide members and associated persons the flexibility to structure compensation arrangements in the most effective manner possible in accordance with their business requirements, while addressing any investor protection concerns that may result.

Payment Of Differential Cash Compensation

Compensation Practice: The Tully Report concluded that the payment of higher compensation to registered representatives for the sale of proprietary products can create incentives to inappropriately favor such products over non-proprietary products. Such compensation arrangements can create conflicts of interest by encouraging representatives to recommend proprietary products to maximize their commissions, rather than to best meet their customers’ needs. Such arrangements may provide point-of-sale incentives that could compromise proper customer suitability determinations and may present a situation where the salesperson’s interests are not, in some circumstances, fully aligned with the interests of customers. In this regard, the Tully Report cited as a “best practice” the use of identical payout ratios for representatives that offer both proprietary and non-proprietary

products, noting that most firms interviewed had already adopted this practice.

The Proposal: NASD Regulation is proposing for comment the attached amendment to NASD Rule 2830, which applies to the sale and distribution of investment company securities. The proposed amendment prohibits the payment of a higher percentage of gross dealer concessions to representatives for the sale of proprietary investment company securities than the percentage provided on the same dollar amount of non-proprietary investment company securities with similar investment objectives.

Although firms use differential compensation arrangements for a variety of products, the importance of mutual funds to retail investors may make differential payouts involving investment company products of particular concern, and we have therefore limited our current proposal to those types of products. However, NASD Regulation is soliciting comments on the extent to which these restrictions should extend to other kinds of products as well.

Commenters are asked to consider the proposed rule as well as any alternative regulatory approaches to such compensation arrangements. One option would permit such differential compensation arrangements to continue, but require oral or written disclosure to customers at or before the point of sale. A disclosure approach would be consistent with the NASD’s long-standing practice of not substantively regulating internal compensation arrangements of member firms and their registered representatives and instead permitting investors to evaluate whether a registered representative’s particular product recommendation was influenced by such arrangements.

However, as noted by the NASD Regulation committees, questions arise as to the form and timing of such disclosures, as well as the message that such a disclosure may send to customers, implying, for example, that representatives may not have their customers’ best interests in mind. Further, customers are rarely in a position to evaluate the impact of a compensation arrangement on the ultimate recommendation. Commenters in favor of a disclosure approach are asked to provide input on the type of information that would be useful to investors and the format and timing of such a disclosure. In addition, commenters are asked to discuss the firm’s ability to monitor and enforce a disclosure requirement in this area.

NASD Regulation also recognizes that existing commission-based compensation systems reflect legitimate business considerations that derive from a competitive market. For example, certain fund issuers may provide additional compensation to members in order to encourage their representatives to learn more about their products and how those products can help customers meet their investment objectives. NASD Regulation would appreciate any comments on the effect this proposal may have on such strategic business considerations or initiatives.

Finally, NASD Regulation is soliciting views on whether these types of compensation arrangements and the resulting potential conflicts of interest are adequately addressed under existing NASD rules. For example, when recommending to a customer the purchase, sale, or exchange of any security, NASD Rule 2310 requires that the member have reasonable grounds for believing that the recommendation is suitable for the customer. Would these potential conflicts of interest be

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adequately addressed through the provision of more detailed guidance concerning the applicability of the suitability requirements?

Attachment A includes the draft rule language for this proposal.

Questions For Members And Other Interested Parties

- A-1. To what extent do member firms pay representatives higher compensation for selling proprietary products compared to non-proprietary products?
- A-2. If a disclosure approach were taken, should the disclosure be oral or provided in a written document? What would be the appropriate content of such disclosure?
- A-3. How would firms ensure compliance with a requirement to disclose these arrangements?
- A-4. Should the NASD's rules regarding variable products restrict similar compensation arrangements involving those products? Should restrictions extend to other kinds of products as well?
- A-5. What business reasons or considerations exist for providing differential compensation to representatives?
- A-6. Rather than substantive regulation or disclosure, is it more appropriate to address concerns regarding compensation arrangements under existing NASD sales practice rules, such as rules regarding suitability requirements? Are there additional supervisory procedures that could be put in place to deal with potential

conflicts of interest related to salesperson compensation?

Single Security Sales Contests

Compensation Practice: Some firms have used single security sales contests to stimulate the sales of particular securities, including equities and proprietary mutual funds. A "sales contest" is an arrangement that promotes the sale of a security by offering an incentive payment to a salesperson who achieves a specified level of sales of the security over a specified period of time. The argument against this practice is that a representative may recommend a security to increase his or her chances of earning a cash award, without proper consideration as to whether it is a suitable security for the customer. Arguably, an incentive like this, offered at the point of sale, may be more likely to influence (or at the least, gives the appearance of influencing) the sale of a security than an incentive which is earned on a delayed basis and takes into account total production.

The Non-Cash Compensation Rules governing variable products and investment company products prohibit the payment of non-cash compensation through sales contests, except under certain specified conditions.¹ However, the Non-Cash Compensation Rules do not regulate contests that result in cash awards,² nor do they prohibit contests involving products other than mutual funds and variable contracts.

The Proposal: We are proposing a new rule that would prohibit *all* single security sales contests, not just those involving investment company shares and variable products. The proposed rule is intended to prohibit all single security sales contests that could

improperly influence the advice of a representative. The proposed rule does not prohibit a sales contest involving a type or family of securities, such as mutual funds, or a group of equities.

In reviewing drafts of the rule proposal, NASD Regulation committees, including the Membership Committee and the Investment Companies Committee, expressed a number of concerns, many of which are reflected in the questions below. For example, committee members discussed whether prohibition or disclosure would be the appropriate solution. They also questioned whether existing NASD rules, such as those relating to suitability, may already address the issue adequately.

Attachment A includes the draft rule language for this proposal.

Questions For Members And Other Interested Parties

- B-1. To what extent do member firms conduct single security sales contests?
- B-2. What types of securities are sold through sales contests today?
- B-3. Are sales contests necessary to encourage new product innovation? Please explain.
- B-4. The proposed rule addresses contests involving one security only, which may limit its impact. Is there a significant benefit to investors to this type of prohibition? Should the prohibition extend to contests involving more than one security or a group of securities? What are the advantages or disadvantages of such an approach?
- B-5. The proposed rule applies to all types of securities. Should

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we limit the rule to only certain types of securities? If so, identify the types of securities and explain why.

B-6. As an alternative approach, we could require disclosure of sales contests to investors.

a. Would disclosure of the fact that the representative is participating in a sales contest be an effective alternative to prohibiting sales contests?

b. How, when, and in what manner would the disclosure be made?

c. Describe the burden on firms to supervise for compliance with a disclosure rule.

B-7. NASD Rule 2310 requires that representatives must have reasonable grounds for believing that a recommendation is suitable for a customer. Does this rule (or other rules) adequately cover the type of potential misconduct that the proposed rule addresses? Are they more or less easily enforced than a disclosure rule would be?

Accelerated Payouts

Compensation Practice: As part of an incentive package, representatives who move from one member firm to another may receive higher commission payouts for a short, specified period of time, sometimes three to six months or a year. These temporarily increased commission payouts, known as “accelerated payouts,” are often offered to attract a representative to a new firm.

The perceived problem with this practice is that it could act as an

incentive for the representative to trade customer accounts inappropriately by, for example, “churning” or trading the accounts excessively, in order to generate as much revenue as possible during the time that higher commission payouts are being paid.

An argument in favor of accelerated payouts is that they make up for the potential financial losses associated with moving to a new firm. For example, it takes time for the representative to complete the administrative tasks associated with transferring customer accounts from the former firm to a new firm. Also, it is likely that not all of the representative’s customers will transfer to the new firm so the accelerated payouts can make up for some lost income.

The Proposal: Our proposal would require that, when a representative transfers to a new firm, the firm must disclose, in writing, the existence and general nature of the compensation arrangements to customers whose accounts are being transferred. The firm would also provide this written disclosure to new customers as long as the higher payout arrangement is in effect. The specific compensation formula or amount paid to the representative would not need to be disclosed.

NASD Committees, including the Membership Committee and a number of the District Committees, reviewed earlier drafts of the rule and expressed their views as to whether we need to propose such a rule. A number of committee members observed that the accelerated payouts serve legitimate business purposes and questioned why their use should be limited, especially in the absence of documented evidence of abuse. Moreover, many committee members noted that there are rules already in place to address suitability and churning, and

therefore, questioned the need for more regulation in this area.

Attachment A includes the draft rule language for this proposal.

Questions For Members And Other Interested Parties

C-1. To what extent do member firms offer accelerated payouts to representatives who transfer from one broker/dealer to another?

C-2. The proposed rule is based on the assumption that accelerated payouts act as an incentive for a representative to act improperly, for example, to trade excessively in customer accounts. Is this assumption correct?

C-3. The proposed rule does not prohibit the payment of accelerated payouts offered by a firm to *keep* a representative at a firm, which raises the same point-of-sale concerns. First, to what extent do member firms offer accelerated payouts to retain representatives who are considering transferring to another firm? Second, should the proposed rule be expanded to include this type of compensation practice?

C-4. The proposed rule does not dictate the specific language of the required disclosure. Should we mandate the specific form that a disclosure statement should take?

C-5. The proposed rule does not specify how the written disclosure should be made. For example, it could be provided on account opening forms or on a separate disclosure sheet. Should we specify how the disclosure should be made?

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C-6. Does the proposed rule affect the ability of smaller firms to attract experienced representatives? Please explain.

C-7. Rather than requiring written disclosure, should we propose a rule that would require firms to provide more supervision during the time that a newly transferred representative is receiving accelerated payouts?

C-8. Do existing rules that cover sales practice abuses, such as those prohibiting unsuitable recommendations and churning, adequately address the type of potential misconduct that the proposed rule is intended to address?

Other Questions

We have additional questions for members, investors, and interested parties to address regarding the regulation of compensation practices:

D-1. The proposed rules will increase the burden on firms to ensure compliance with the proposed requirements. Will the cost of compliance with each of the proposed rules be significant? Will the cost to firms for increased compliance activities be greater than the benefit to the investor?

D-2. As an alternative to imposing the specific requirements above, should we instead

require that customers receive a general disclosure statement that explains how representatives are compensated, including both cash and non-cash compensation arrangements?

D-3. Are there other compensation practices that NASD Regulation should address in addition to, or instead of, the three practices above?

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ATTACHMENT A

Text Of Proposed Amendments

Proposed additions are underlined; proposed deletions are bracketed.

Payment Of Differential Cash Compensation

Rule 2830. Investment Company Securities

(a) No change

(b) Definitions

(1) The terms “affiliated member,” “compensation,” “cash compensation,” “non-cash compensation,” [and] “offeror,” “differential cash compensation,” “gross dealer concessions,” “non-proprietary investment company” and “proprietary investment company” as used in paragraph (l) of this Rule shall have the following meanings:

(A) - (E) No change

(F) “Differential cash compensation” shall exist if a member pays to its associated persons a higher percentage of its gross dealer concessions for the sale of a stated dollar amount of proprietary investment company securities than the percentage of its gross dealer concessions for the sale of the same dollar amount of securities of a non-proprietary investment company with similar investment objectives.

(G) “Gross dealer concessions” shall mean the total amount of any discounts, concessions, fees or commissions provided by the offeror to the member in

connection with the sale and distribution of investment company securities.

(H) “Non-proprietary investment company” shall mean any investment company other than a proprietary investment company.

(I) “Proprietary investment company” shall mean an investment company for which the member, or an affiliate of the member, is the investment adviser or principal underwriter.

(l) Member Compensation

In connection with the sale and distribution of investment company securities:

(1) - (5) No change

(6) No member shall pay or offer to pay, and no associated person shall accept payment of, differential cash compensation.

Single Security Sales Contest

Proposed New Rule XXXX

(a) No member or person associated with a member shall accept or make payments or offers of payments of any cash compensation that is related to a single security sales contest.

(b) The terms “cash compensation,” and “sales contest” as used in this Rule shall have the following meanings:

(1) “Cash compensation” shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override, or cash employee benefit received in connection with the sale or distribution of

securities.

(2) “Single security sales contest” shall mean any arrangement that promotes the sale of a single security whereby a member offers to an associated person an incentive payment or payments of cash compensation based on the achievement of a specified level of sales of such security over a pre-determined period of time.

Accelerated Payouts

11870. Customer Account Transfer Contracts

(a) Responsibility to Expedite Customer’s Request

(1) When a customer whose securities account(s) is carried by a member (the “carrying member”) wishes to transfer the entire account(s) to another member (the “receiving member”) and gives written notice of that fact to the receiving member, both members must expedite and coordinate activities with respect to the transfer. If a customer desires to transfer a portion of an account, a letter of authorization should be transmitted to the carrying member indicating such intent and specifying the portion of the account to be transferred. Although such transfers are not subject to the provisions of this rule, members must expedite authorized partial transfers of customer securities accounts and coordinate their activities with respect thereto. The automated customer account transfer capabilities referred to in paragraph (m)(1) of this Rule shall be utilized for partial transfers.

(2) When a customer transfers an account from the carrying member to the receiving

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member in connection with the transfer of employment of a registered representative from the carrying member to the receiving member, and where the receiving member provides the registered representative with increased transaction-based compensation for a specific period of time in connection with the transfer of employment or the transfer of the customer's account, the receiving member shall provide to the customer written notice describing the existence and the general nature of the compensation arrangements. For the period of time that such compensation arrangements are in effect, such written notice shall also be provided to new

customers of the registered representative at the receiving member at or prior to opening an account.

(b) No change

Endnotes

¹A non-cash contest can be held only if it meets the following requirements: (1) the non-cash compensation arrangement must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member; (2) the credit received for each investment company or variable contract security must be equally weighted; (3) no unaffiliated non-member company or other unaffiliated member may

directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) recordkeeping requirements must be satisfied. See Rule 2820(h)(4)(D) and Rule 2830(l)(5)(D).

²In response to comments received on an earlier version of the Non-Cash Compensation Rules that would have imposed substantive prohibitions on cash compensation, NASD Regulation decided to delete those provisions pertaining to cash compensation, and instead, solicit specific comments on cash compensation arrangements in *Notice to Members 97-50*.

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ATTACHMENT B

Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal regarding salesperson compensation. This list of questions does not cover all of the changes contained in the proposal; therefore, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

Instructions

Comments must be received by **October 29, 1999**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- e-mailing written comments to *pubcom@nasd.com*
- mailing in written comments
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments and should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

Differential Compensation

1. Should the NASD adopt a rule addressing the practice of paying registered representatives higher compensation for selling proprietary mutual funds than non-proprietary mutual funds?

Yes No See my attached written comments

2. If your response to question #1 is yes, what type of rule should be adopted:

- a. A rule requiring a firm to orally disclose to customers the difference in compensation.
- b. A rule requiring a firm to disclose in writing the difference in compensation.
- c. A rule prohibiting this practice altogether.
- d. Other (See my attached written comments)

3. Should the NASD adopt rules addressing differential compensation practices with respect to other types of products?

Yes No

4. If your response to question #3 is yes, please provide written comments regarding the other types of products.

Single Security Sales Contest

5. Should the NASD ban sales contests that promote the sale of a single security by offering cash compensation as a prize if a representative reaches a certain level of sales?

Yes No See my attached written comments

6. If your response to question #5 is no, should the NASD instead require firms to disclose to investors the existence of sales contests that offer representatives cash compensation?

Yes No See my attached written comments

Attachment B continued on next page

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ATTACHMENT B (continued)

Request For Comment Checklist—Questions For Members And Other Interested Parties

Accelerated Payouts

7. Should the NASD adopt a disclosure rule addressing the payment of increased payouts for a period of time to representatives who transfer from one firm to another?

Yes No

8. If your response to question #7 is no, should the NASD instead require firms to more strictly supervise representatives who are receiving accelerated payouts?

Yes No See my attached written comments

9. Should the NASD prohibit firms from offering such payouts to representatives in these circumstances?

Yes No See my attached written comments

Other

10. Please discuss any other practices relating to compensation of representatives that the NASD should address.

See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____

NASD Notice to Members 99-82

INFORMATIONAL

FIPS Changes

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of July 22, 1999

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

KEY TOPIC

- FIPS

As of July 22, 1999, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
BFI.GA	Browning-Ferris Inds Inc.	9.250	05/01/21
BFI.GB	Browning-Ferris Inds Inc.	7.875	03/15/05
BFI.GC	Browning-Ferris Inds Inc.	6.100	01/15/03
BFI.GD	Browning-Ferris Inds Inc.	6.375	01/15/08
BFI.GE	Browning-Ferris Inds Inc.	7.400	09/15/35
BGFI.GA	BGF Industries Inc.	10.250	01/15/09
BLUI.GA	Blount Inc.	7.000	06/15/05
CDIU.GB	Canandaigua Brands Inc.	8.625	08/01/06
CLHS.GB	Coast Hotels & Casinos Inc.	9.500	04/01/09
CPE.GC	Callon Petroleum Co.	10.250	09/15/04
EMMS.GA	Emmis Communications Corp. Ser B	8.125	03/15/09
EVFI.GA	Evenflo Co. Inc. Series B	11.750	08/15/06
GSTU.GA	GST USA Inc.	13.875	12/15/05
HAZ.GA	Hayes Lemmerz Intl Inc. Series B	8.250	12/15/08
HEFR.GB	Heafner (J.H.) Co. Series D	10.000	05/15/08
KEG.GA	Key Energy Svs Inc. Series B	14.000	01/15/09
LMRM.GA	Lamar Media Corp.	9.625	12/01/06
MCLD.GE	McLeod USA Inc.	8.125	02/15/09
NCIB.GA	NCI Building Systems Inc. Series B	9.250	05/01/09
NENA.GC	Neenah Corp. Series F	11.125	05/01/07
RBFF.GA	RBF Finance Co.	11.375	03/15/09
RBFF.GB	RBF Finance Co.	11.000	03/15/06
RMKS.GA	Richmont Marketing Special	10.125	12/15/07
SDVS.GA	Special Devices Inc. Series B	11.375	12/15/08
SFY.GA	Swift Energy Co.	10.250	08/01/09
SKS.GD	Saks Inc.	7.000	07/15/04
SQA.GF	Sequa Corp.	0.000	08/01/09
TRK.GB	Speedway Motor Sports Inc. Series D	8.500	08/15/07
TSFL.GA	Transamerica Finl Corp.	0.000	03/01/10
TSFL.GB	Transamerica Finl Corp.	0.000	09/01/12

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As of July 22, 1999, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
BARC.GA	Bar Technologies Inc.	13.500	04/01/01
CNLP.GE	Conn Light & Power Co.	7.500	07/01/23
CNLP.GH	Conn Light & Power Co.	8.500	06/01/24
CNLP.GI	Conn Light & Power Co.	7.875	06/01/01
CUI.GA	Coach USA Inc.	9.378	07/01/07
FFDM.GA	Fairfield Mfg Inc.	11.375	07/01/01
FXLN.GB	Fox Liberty Networks LLC	9.750	08/15/07
IN.GA	Integon Corp. Del	8.000	08/15/99
IRDM.GB	Iridium LLC/Capital Corp.	14.000	07/15/05
MARI.GA	Marriott Intl Inc.	6.750	12/01/09
PNFT.GB	Penn Traffic Co. New	10.375	10/01/04
PNFT.GC	Penn Traffic Co. New	9.625	04/15/05
PNFT.GD	Penn Traffic Co. New	8.625	12/15/03
PNFT.GF	Penn Traffic Co. New	10.250	02/15/02
PNFT.GG	Penn Traffic Co. New	11.500	04/15/06
PNFT.GH	Penn Traffic Co. New	10.650	11/01/04
REGL.GC	Regal Cinemas Inc.	9.500	06/01/08
SCTT.GA	Scotts Co.	9.875	08/01/04
SXFE.GA	Six Flags Theme Parks Inc.	12.250	06/15/05
TSFL.GB	Transamerica Finl Corp.	0.000	09/01/12
UIHI.GA	United Intl Hldgs Inc.	0.000	11/15/99
UIHI.GB	United Intl Hldgs Inc.	0.000	11/15/99

As of July 22, 1999, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
CPE.GA	CLNP.GA	Callon Petroleum Co.	10.000	12/15/01
CPE.GB	CNLP.GB	Callon Petroleum Co.	10.125	09/15/02

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation®, at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq® Market Operations, at (203) 385-6310.

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NASD Notice to Members 99-83

INFORMATIONAL

Trade Date— Settlement Date

Columbus Day: Trade Date—Settlement Date Schedule

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

Columbus Day: Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 11, 1999. On this day, The Nasdaq Stock Market® and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Oct. 5	Oct. 8	Oct. 12
6	12	13
7	13	14
8	14	15
11	14	18
12	15	19

Note: October 11, 1999, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 11, will be combined with transactions made on the previous business day, October 8, for settlement on October 14. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 11.

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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Disciplinary Actions

Disciplinary Actions Reported For September

NASD Regulation, Inc. (NASD Regulation[®]) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, September 20, 1999. The information relating to matters contained in this *Notice* is current as of the end of August 21, 1999.

Firm Expelled, Individual Sanctioned

Global Strategies Group, Inc. (CRD #27414, New York, New York) and Kurt Douglas Fethke (CRD #2565653, Registered Representative, Los Angeles, California). The firm was fined \$25,000 and expelled from NASD membership, and Fethke was fined \$45,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fethke executed unauthorized transactions in the accounts of public customers and failed to respond to NASD requests to provide information and testimony. In addition, the firm failed to properly supervise its Beverly Hills branch office in that its supervisory system was not reasonably designed to achieve compliance with federal securities laws and NASD rules. **(NASD Case #C02980018)**

Firm Expelled

The Harriman Group, Inc. a.k.a, HGI, Inc. (CRD #14079, Jericho, New York) was fined \$12,300,000, and expelled from membership in the NASD. The sanctions were

based on findings that the firm failed to disclose to its customers, by prospectus delivery or otherwise, certain material information relating to secondary public offerings and distributions of common stock. In addition, the firm failed to file certain documents and information pertaining to the terms, conditions, and arrangements of the firm's participation as an underwriter and received undisclosed and excessive underwriting compensation in connection with the firm's participation as an underwriter in secondary public offerings and distributions of common stock. Furthermore, the firm failed to deliver to investors prospectuses that contained all of the information set forth in the registration agreement, and delivered to investors stock offered in public offerings without the accompaniment of post-effective amended or supplemented prospectuses. Also, the firm failed to establish, maintain, and enforce written procedures to supervise the firm's corporate financing and underwriting activities that were reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. **(NASD Case #C10970189)**

Firm And Individual Suspended

Kunz & Cline Investment Management, Inc. (CRD #37196, Salt Lake City, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Principal, Fruit Heights, Utah) were censured and fined \$20,000, jointly and severally, and Kunz was fined \$5,000, individually. In addition, Kunz was suspended from association with any NASD member in any capacity for 30 days and in a principal capacity for one year, such suspensions to run concurrently.

Moreover, Kunz must requalify in a representative capacity within 90 days of the conclusion of his suspension as a representative or cease to function in such capacity until he requalifies, and to requalify in a principal capacity before functioning in such capacity after the conclusion of his principal suspension. Furthermore, the firm was suspended from participation in any public or private offering of a security in the capacities of lead underwriter, primary placement, or sales agent until such time as it retains an independent consultant to review the adequacy and completeness of the firm's operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities and the firm demonstrates to the NASD that it has implemented any recommendations of the consultant. The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda containing material misrepresentations and omissions, and sold securities that were neither registered with the Securities and Exchange Commission (SEC) nor exempt from registration, and Kunz compensated an unregistered person in connection with the sale of securities.

The firm and Kunz appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A960029)

Firms And Individuals Fined

Quaker Securities, Inc. (CRD #27263, Valley Forge, Pennsylvania) and **Jeffrey Howard King, Sr. (CRD #1570133, Registered Principal, New Hope, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they

were censured and fined \$15,000, jointly and severally. The firm was also fined an additional \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through King, failed to establish, maintain, and enforce adequate supervisory procedures involving the activities of registered representatives; failed to supervise these individuals adequately by allowing them to participate in private securities transactions; and failed to record all the details of such transactions on its books and records. The findings also stated that the firm failed to accept or decline securities transactions within 20 minutes of execution, and effected transactions of Nasdaq National Market[®] securities while failing to report the transactions timely and accurately. In addition, the NASD determined that the firm, acting through King, failed to obtain the complete participation of all eligible personnel in its Firm Element training program. (NASD Case #C9A990037)

Tullett & Tokyo Securities, Inc. (CRD #19595, New York, New York) and **James Michael Avena (CRD #1073158, Registered Principal, Manhasset, New York)** 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 required to undertake to pay the NASD \$130,000 which represents a portion of the financial benefit the firm derived by allowing registered representatives to conduct a securities business while their registrations were inactive. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Avena, permitted registered representatives to conduct a

securities business while their registrations were inactive due to failure to satisfy the Regulatory Element of the Continuing Education requirements. (NASD Case #C04990030)

Firms Fined

Credit Suisse First Boston Corporation (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute SelectNetSM orders and thereby failed to honor its published quotation. (NASD Case #CMS990070)

Ladenburg, Thalmann & Co., Inc. (CRD #505, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it improperly permitted a statutorily disqualified individual to become and remain an assistant trader prior to receiving NASD and SEC approval for such employment. (NASD Case #C10990136)

Morgan Stanley & Co., Inc. (CRD #8209, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable laws and regulations regarding trade reporting. The findings also stated

that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for securities and to buy or sell in such market so that the resultant price to each customer was as favorable as possible under prevailing market conditions. In addition, the NASD found that the firm failed to report transactions in high yield bonds not quoted in the Fixed Income Pricing SystemSM (FIPS[®]) on the dates of each such transaction any time during the operating hours of FIPS. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to ACT compliance, trade reporting, recordkeeping, SEC Rule 10b-10, the SEC's Order Handling Rules, the Limit Order Protection Interpretation, best execution, anti-competitive practices, the use of the Small Order Execution SystemSM (SOESSM), and the conducting of an annual review of its OTC Trading Department. **(NASD Case #CMS990084)**

Neuberger Berman, LLC (CRD #2908, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report accurately to the NASD the total of "short" positions in all customer and proprietary firm accounts in securities included in The Nasdaq Stock Market, Inc.; inaccurately reported short sales as long sales; and failed to have adequate written procedures in place to identify the nature and frequency of the reviews that were to occur to ensure accurate reporting of short positions. **(NASD Case #C06990012)**

Warburg Dillon Read, L.L.C. (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$9,500, and required to pay \$3,968.75, plus interest, in restitution to public customers. 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 or sell securities and failed to contemporaneously execute shares of the customer limit orders after it bought or sold shares for its market-making account. The findings also stated that firm failed to immediately display customer limit orders when the orders were at a price that would have improved its bid or offer in each security related to those orders or when the orders were priced equal to its bid or offer and the national best bid or offer and the size of the orders represented more than a de minimis amount in relation to the size associated with its bid or offer in each security. Furthermore, the NASD determined that the firm failed to provide, in connection with transactions where it acted as principal, written notification to its customers of the reported trade price of the transaction, and failed to maintain memoranda on broker orders in compliance with SEC and NASD rules. The NASD also found that the firm sold shares of securities to public customers and failed to use reasonable diligence to ascertain the best inter-dealer markets for the securities so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. **(NASD Case #CMS990069)**

Individuals Barred Or Suspended

Paul Michael Acosta (CRD #1455279, Registered Representative, Naples, Florida) was fined \$3,655,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Acosta received \$904,000 from public customers to invest on their behalf, failed to invest the funds as directed, provided one customer with periodic false account statements purporting to show activity in her account, and consistently represented to other customers that their funds had been invested in mutual funds and other products. Instead, Acosta used the funds in connection with his own business activities. In addition, Acosta failed to disclose to his member firms that he was engaged in outside activities and failed to respond to NASD requests for information and documentation. **(NASD Case #C07980076)**

James Michael Amira (CRD #2777512, Registered Representative, Melville, New York) 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, Amira consented to the described sanctions and to the entry of findings that he submitted a falsified Form U-4 to his member firm that failed to indicate that he had been charged with a felony and that he was the subject of a complaint, investigation, or proceeding. **(NASD Case #C10990127)**

Richard John Berg (CRD #1830892, Registered Principal, White Plains, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$75,000 and

barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berg consented to the described sanctions and the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of public customers and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. The findings also stated that Berg, by use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud the customers by making untrue statements of material facts or omitted to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. In addition, Berg repeatedly caused false information regarding customers' investment objectives to be entered on new account forms and collected and destroyed or hid documents from regulators to impede their examinations. **(NASD Case #C9B990014)**

Jon Thomas Brainard (CRD #1973269, Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brainard consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. **(NASD Case #C10990036)**

Cary Francis Butterfield (CRD #1291148, Registered Representative, Augusta, Maine) 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 30 days, and required to pay \$32,847.34 in restitution to public customers. Without admitting or denying the allegations, Butterfield consented to the described sanctions and to the entry of findings that he engaged in private securities transactions in that he participated in the sale of promissory notes to customers without written notice to, and approval from, his member firm. **(NASD Case #C11990032)**

Joseph Capolino, Jr. (CRD #1963136, Registered Representative, Elmhurst, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Capolino failed to respond to NASD requests for information concerning a customer complaint. **(NASD Case #C10990047)**

David Raymond Carroll (CRD #2689306, Registered Representative, Washington, D.C.) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carroll failed to respond to NASD requests for information. **(NASD Case #C9A990002)**

James Emil Cioffi (CRD #2514915, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cioffi consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 Qualification Exam on his behalf. The findings also stated that Cioffi failed to provide the NASD with documents and to appear for an on-the-record interview. **(NASD Case #C10990042)**

Reginald Bernard Cunningham (CRD #1236085, Registered Representative, Chicago, Illinois) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham received \$154.20 from public customers to reinstate their life insurance policies, issued a receipt for the funds, and failed to apply the funds to the policies because he had "lost" the money. The findings also stated that Cunningham failed to respond to NASD requests for information. **(NASD Case #C8A990030)**

Joann Camille Dodd (CRD #2073552, Registered Representative, Tampa, Florida) was fined \$34,500, suspended from association with any NASD member in any capacity for three months, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dodd received checks totaling \$9,459.67 from a public customer to set up a 401(k) plan for himself and his employees, failed to cash the checks and to set up the plan, resulting in potential tax penalties and taxes of as much as \$20,000 for the customer. Dodd also failed to respond to NASD requests for information. **(NASD Case #C07980062)**

Gary Anthony Familathe, Jr. (CRD #2665609, Registered Representative, San Francisco, California) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Familathe failed to respond to NASD requests for information. **(NASD Case #C01990003)**

Charles M. Funk, Jr. (CRD #1392152, Registered Representative, Ardmore, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Funk failed to respond

to NASD requests for information. **(NASD Case #C9A990003)**

Kodjo Gumekepe Gassou (CRD #2254196, Registered Representative, Hillsboro, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gassou failed to respond to NASD requests for information. **(NASD Case #C07980075)**

Robert Louis Giardina (CRD #2554997, Registered Representative, Staten Island, 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 60 days, and ordered to pay restitution of \$15,000 to a public customer. Without admitting or denying the allegations, Giardina consented to the described sanctions and to the entry of findings that he defrauded a public customer by misrepresenting to the customer that several companies would be signing an agreement to purchase shares of stock and that the customer should "get in" on the deal before the stock price went up, when, in actuality, there was no agreement. When the customer instructed Giardina to sell his holdings due to declining stock prices, Giardina persuaded the customer not to sell because of the "deal." The findings also stated that Giardina failed to timely respond to NASD requests to provide a written statement concerning allegations contained in customer complaints and to appear for an on-the-record interview. **(NASD Case #C10990012)**

Alberto Gonzalez (CRD #2770755, Registered Representative, South San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$12,684.85 and barred from association with any

NASD member in any capacity. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that he received a total of \$536.97 from a public customer and a fellow registered representative and misappropriated the funds to his own use and benefit. **(NASD Case #C01990011)**

Paul Gorr (CRD #2613773, Registered Representative, Brooklyn, New York) was fined \$25,000 and barred from association with any NASD member. The sanctions were based on findings that Gorr failed to respond to NASD requests for information concerning an amended Form U-5 filed by his former member firm and an arbitration proceeding instituted by a public customer disclosed therein. **(NASD Case #C10980096)**

Gregory Alan Hartnett (CRD #2368837, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hartnett consented to the described sanctions and to the entry of findings that he executed a note in the amount of \$21,500 in favor of a public customer to settle a complaint from the customer without disclosing the settlement to his member firm. The findings also stated that Hartnett provided false and misleading information in response to an NASD request for information. **(NASD Case #C01980020)**

Delmer D. Harvey (CRD #1284998, Registered Principal, Mitchell, South Dakota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from registration with any NASD member in any capacity

for 30 business days. Without admitting or denying the allegations, Harvey consented to the described sanctions and to the entry of findings that he engaged in an outside business activity and received compensation for such activity without providing prompt written notification to his member firm. **(NASD Case #C04990033)**

Peter Steven Haynes (CRD #1312640, Registered Representative, Boonton, New Jersey) was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$28,617. The sanctions were based on findings that Haynes conducted a securities business while employed at a member firm without being registered with the NASD. **(NASD Case #C10970176)**

Daniel Sebastian Hellen (CRD #2339553, Registered Representative, Centereach, New York) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam in all capacities prior to associating with any member firm. In addition, Hellen was required to pay \$18,000 in restitution. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a New York District Business Conduct Committee (DBCC) decision and a call for review by the NAC. The sanctions were based on findings that Hellen effected unauthorized transactions in the accounts of public customers.

Hellen's suspension commenced with the opening of business on July 15, 1999, and will conclude at the close of business on July 13, 2001. **(NASD Case #C3A970031)**

Ronald Kerr Helton (CRD #1822240, Registered Representative, Nashville, Tennessee) submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was fined \$6,878.17 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Helton consented to the described sanctions and to the entry of findings that he effected securities purchase transactions, on margin, for the account of a public customer that resulted in monthly margin balances ranging up to \$13,701.04. These transactions and resulting margin balances were unsuitable for the customer on the basis of her financial situation, investment objectives, and needs. The findings also stated that Helton shared in a loss in the customer's account by paying her \$3,000 without obtaining prior written authorization from his member firm. **(NASD Case #C05990032)**

Glen William Hilker (CRD #245646, Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was censured, fined \$17,500, and suspended from association with any NASD member in any capacity for seven months. Without admitting or denying the allegations, Hilker 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. The findings also stated that Hilker failed to respond to NASD requests for information in a timely manner. **(NASD Cases #C3A970034 and C3A970053)**

Ezzat Tom Ishak (CRD #2160770, Registered Representative, Brooklyn, 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 with the right to reapply after two years.

Without admitting or denying the allegations, Ishak consented to the described sanctions and to the entry of findings that he executed the purchase and sale of warrants in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The findings also stated that Ishak failed to execute the sale of warrants in the account of a public customer despite receiving an order from the customer. **(NASD Case #C10990112)**

Jerry S. Kim (CRD #2316516, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Kim consented to the described sanctions and to the entry of findings that he accepted \$20,000 in cash from public customers for investment, invested \$5,000 at the customers' wishes, personally held on to the remaining funds, and then returned \$15,000 to the customers at a later date. The findings also stated that Kim never notified his member firm of the receipt of the cash, disregarded the firm's internal policy prohibiting representatives from accepting cash from a customer, and failed to follow his firm's procedures for recording and processing customer transactions. By failing to record the receipt of the cash on the branch office trade blotter, Kim caused his firm to fail to maintain accurate books and records as required by the SEC. **(NASD Case #C9B990020)**

Donald Kenneth Kozlowski (CRD #1002822, Registered Principal, Ft. Myers, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$3,500, suspended from association with any NASD member in any capacity for five

business days, and required to disgorge \$3,945.15 as restitution to public customers. Without admitting or denying the allegations, Kozlowski consented to the described sanctions and to the entry of findings that he sent a written communication via facsimile to a public customer regarding the future prospects of a security after the customer and his wife had purchased shares at Kozlowski's recommendation, made a misleading statement in the facsimile, and failed to have it approved prior to use by a registered principal of his member firm. **(NASD Case #C07990048)**

Todd Joseph LaScola (CRD #1968448, Registered Principal, Warwick, Rhode Island) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LaScola consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning alleged unauthorized trading and misappropriation of funds. **(NASD Case #C11990021)**

Damon Todd Lazar (CRD #2295614, Registered Representative, Plainview, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,000, suspended from association with any NASD member in any capacity for 10 weeks, and suspended thereafter until he requalifies by exam for any capacity in which he seeks to become registered with the NASD. Without admitting or denying the allegations, Lazar consented to the described sanctions and to the entry of findings that he knowingly or recklessly made numerous material misrepresentations of fact to a public customer concerning, and in connection with, his

recommendations to purchase common stock. **(NASD Case #C07980087)**

John Joseph Lee (CRD #1264054, Registered Principal, West Babylon, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in all capacities. The sanctions were based on findings that Lee failed to respond to NASD requests for information. **(NASD Case #C10980070)**

John Louis Lembo, III (CRD #1920358, Registered Representative, Ft. Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lembo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C07990015)**

Anthony Joseph Maglietta (CRD #2919710, Registered Representative, Parlin, 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, Maglietta consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on annuity applications, annuity disclosure statements, and a "Confidential Investor Profile," enabling him to purchase an annuity on behalf of the customer without her consent and authority. **(NASD Case #C9B990021)**

Marlene Marcello McKenna (CRD #832452, Registered Principal, Providence, Rhode Island) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$450,000, barred from association with any NASD member in any capacity, and ordered to pay \$86,710, plus interest, in restitution to public customers. Without admitting or denying the allegations, McKenna consented to the described sanctions and to the entry of findings that she converted and misappropriated at least \$86,710 in cash proceeds from variable life insurance policies of public customers for her own use and benefit. **(NASD Case #C11990029)**

David Len Mitchell (CRD #2508455, Registered Representative, Orrville, Ohio) was fined \$25,000 and barred from association with the NASD in any capacity. The sanctions were based on findings that Mitchell failed to respond to NASD requests for information relating to his termination. **(NASD Case #C8B990006)**

Michael Kemp Murphy (CRD #603386, Registered Principal, Spring, Texas) 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 30 days. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he engaged in an outside business activity in that he solicited individuals to invest funds with a non-registered entity and failed to provide written notice of these business activities to his member firm. **(NASD Case #C06990010)**

Alex Ezell Neely (CRD #1240671, Registered Principal, Casper, Wyoming) submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was fined \$676,930 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neely consented to the described sanctions and to the entry of findings that he received checks from a public customer totaling \$115,386 to be used for the purchase of securities. The findings also stated that Neely deposited the checks into his personal bank account, converted the funds to his own use, and failed to invest the proceeds as directed by the customer. **(NASD Case #C3A990047)**

John Patrick Nichols (CRD #2188710, Registered Representative, Fort Lauderdale, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Nichols consented to the described sanctions and to the entry of findings that he effected transactions in the securities account of a public customer, without the customer's prior knowledge or authorization. **(NASD Case #C07990025)**

AnnMarie Noel (CRD #2416716, Registered Representative, Astoria, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Noel consented to the described sanctions and to the entry of findings that she fraudulently accepted compensation in the form of cash or free or deeply discounted stock or stock warrants from or on behalf of various companies in return for recommending stocks to her brokerage firm customers without

informing the customers of such compensation. The findings also stated that her knowing failure to disclose the compensation was a material omission made with the intent to deceive her customers. In addition, on several occasions, Noel misrepresented who she was when she spoke to customers over the telephone. **(NASD Case #C10990118)**

Domingos Alexander Noya (CRD #1398190, Registered Representative, Islip Terrace, New York) 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 10 business days, and ordered to requalify by exam as an investment representative. If Noya fails to requalify within 90 days, he will be suspended from association with any member firm in that capacity until the exam is successfully completed. Without admitting or denying the allegations, Noya consented to the described sanctions and to the entry of findings that he guaranteed public customers against loss in a variable annuity account although no payment or transactions resulted. **(NASD Case #C10990105)**

Angel L. Ocasio-Velez (CRD #2455345, Registered Principal, San Juan, Puerto Rico) submitted an Offer of Settlement 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, Ocasio-Velez consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on "Policy Change Applications," without their authorization and consent. **(NASD Case #C07980061)**

Glenn Gerald Opfer (CRD #1049487, Registered Representative, Littleton, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Opfer consented to the described sanctions and to the entry of findings that he opened a securities account in his name at a member firm and failed to notify the firm, in writing, that he was employed with another member firm. The findings also stated that Opfer failed to notify his employing firm that he had opened the account. In addition, Opfer failed to respond to NASD requests for information and documentation. **(NASD Case #C3A990037)**

Kevin Lee Otto (CRD #1929973, Registered Representative, Milwaukee, Wisconsin) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Otto received \$22,000 from a public customer and used the funds for some purpose other than for the benefit of the customer, without the customer's knowledge or authorization, until he returned the funds to the customer at a later date.

Otto has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C8A970015)**

Edward Andrew Perez (CRD #1690751, Registered Representative, Boynton Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he knowingly sold stolen laptop computers to co-workers while on the premises of his member firm. **(NASD Case #C9B990016)**

Erwin Allen Porges (CRD #1222183, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Porges consented to the described sanctions and to the entry of findings that he caused securities to be purchased in a joint account of public customers even though such purchase had not been authorized by the customers and he failed to respond to NASD requests to provide testimony. **(NASD Case #C8A990056)**

Brian Prendergast (CRD #825814, Registered Principal, Englewood, Colorado) was censured and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Prendergast invested funds from the sale of securities offered pursuant to a private placement memorandum in a manner that was inconsistent with representations in the memorandum and solicited certain securities transactions using a private placement memorandum that contained material misrepresentations and omissions, and distributed communications to purchasers that failed to conform to NASD general and specific standards for sales literature. In addition, Prendergast caused an advertisement to be placed in a newspaper that constituted a general solicitation prohibited by

the SEC and the NASD. Prendergast also failed to provide proper notice to his member firm that he had opened an account with another firm and failed to inform the executing member firm that he was associated with another firm. Moreover, Prendergast failed to respond to NASD requests for information and to provide on-the-record testimony.

Prendergast has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C3A960033)**

John David Roman (CRD #2251851, Registered Principal, Bridgeport, Connecticut) was ordered to disgorge \$8,500, plus interest, and barred from association with any NASD member capacity with the right to re-apply after one year provided that any such application be accompanied by credible evidence that he has satisfied certain conditions. The sanctions were based on findings that Roman "parked" his registrations as a general securities principal and general securities representative at a member firm. **(NASD Case #C10980128)**

Steven Richard Rosenblueth a.k.a Steven Rosen (CRD #2418678, Registered Representative, Manhasset Hills, New York) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 business days. Without admitting or denying the allegations, Rosenblueth consented to the described sanctions and to the entry of findings that he executed the purchase of warrants in a public customer's account without the customer's knowledge, authorization, or consent and failed to respond timely to NASD requests

for information. **(NASD Case #C10990083)**

Darrell Scott Rosenthal (CRD #1702839, Registered Representative, Bellaire, Texas) 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 seven business days. Without admitting or denying the allegations, Rosenthal consented to the described sanctions and to the entry of findings that he, acting in his capacity as a registered representative for his member firm, intentionally caused transactions to The Nasdaq Stock Market® to be executed and reported in his own account, affecting the reported last sale prices in the securities. The findings also stated that Rosenthal marked opening order tickets in his own account "sell close" when such orders established opening short positions and subsequently, on the same days, marked corresponding order tickets in his own account "buy open" when such orders closed out the previously established short positions. **(NASD Case #CMS990092)**

James Sylvester Ruscoe (CRD #2091493, Registered Representative, Peru, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$1,260,000, barred from association with any NASD member in any capacity, and ordered to pay \$249,874.18, plus interest, in restitution. Without admitting or denying the allegations, Ruscoe consented to the described sanctions and to the entry of findings that he improperly converted \$249,874.18 belonging to public customers for his own use and benefit. **(NASD Case #C11990030)**

David Leland Sagers (CRD #1013621, Registered Principal,

Sandy, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$7,500, jointly and severally, with a member firm, and suspended from association with any NASD member in the capacity of financial and operations principal for three business days. Without admitting or denying the allegations, Sagers consented to the described sanctions and to the entry of findings that a member firm, acting through Sagers, conducted a securities business while failing to maintain the minimum required net capital. The findings also stated that the firm, acting through Sagers, filed NASD FOCUS Part II Reports that materially misstated the firm's net capital. **(NASD Case #C3A990045)**

Douglas Frank Schwartz (CRD #2059820, Registered Representative, Fort Meyers, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$150,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he improperly misused and borrowed public customer funds totaling \$150,000. **(NASD Case #C11990031)**

Gregory John Shultis (CRD #1934789, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$11,340, barred from association with any NASD member in any capacity, and required to pay \$268 in restitution to his former member firm. Without admitting or denying the allegations, Shultis consented to the described sanctions and to the entry of findings that he received a

\$400 check from a public customer for financial planning services, failed to give the check to his member firm, and, instead, deposited the check in his personal bank account, using the full amount for his own benefit. (NASD Case #C8B990024)

Stephen Kevin Sides (CRD #2376287, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and barred from association with any NASD member in a principal capacity. Without admitting or denying the allegations, Sides consented to the described sanctions and to the entry of findings that he acted in the capacity of a general securities principal while unregistered with the NASD. (NASD Case #C10990116)

Dila D. Skrelja, Jr. (CRD #1819198, Registered Principal, Glen Oaks, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$5,000, and suspended from association with any NASD member in any supervisory capacity for 10 business days. Without admitting or denying the allegations, Skrelja consented to the described sanctions and the entry of findings that she failed to properly enforce her supervisory responsibilities concerning her member firm's registered representatives. (NASD Case #C10990109)

Robert Albert Skulman (CRD #1670270, Registered Representative, Ft. Smith, Arkansas) was censured, fined \$114,131.62, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Skulman effected unauthorized transactions in the accounts of

public customers, made unsuitable recommendations to the customers, and submitted false new account forms for the customers, without their knowledge or consent. (NASD Case #C05980048)

Cary Steven Sprung (CRD #1526858, Registered Representative, New York, 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, Sprung consented to the described sanctions and to the entry of findings that, without the consent of his member firm and his member firm's clearing firm, he utilized the clearing firm's stationery and an account statement to fraudulently depict assets in an account bearing Sprung's name in order to collateralize a loan. (NASD Case #C10990122)

James Mitchell Vaughn (CRD #2680249, Registered Representative, Bellport, New York) submitted an Offer of Settlement pursuant to which he was fined \$40,000, suspended from association with any NASD member in any capacity for 21 months, and required to pay \$121,202 in restitution to public customers. Without admitting or denying the allegations, Vaughn consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, predicted the future prices of speculative securities in connection with the offer and sale of securities, effected a transaction in a customer account without having obtained the customer's prior authorization, and failed to follow customer instructions to sell securities. (NASD Case #C3A990004)

Dennis Anthony Wallot (CRD

#1592875, Registered Representative, Westland, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,960, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wallot consented to the described sanctions and to the entry of findings that he engaged in private securities transactions for compensation and failed and neglected to give prior written notice to, or receive prior written approval from, his member firm. (NASD Case #C8A990062)

Individual Fined

Harpel Wood Keller (CRD #2047489, Registered Representative, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$12,000. Without admitting or denying the allegations, Keller consented to the described sanctions and to the entry of findings that, while registered with a member firm, he accepted powers of attorney from clients and prospective clients of his member firm, in connection with accounts these individuals had opened with another member firm. The NASD determined that, pursuant to these powers of attorney, Keller recommended and gave orders for trades in these accounts, and engaged in this activity without providing oral or written notice to his member firm. (NASD Case #C3B990027)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of August 13, 1999. The findings and sanctions imposed in the decisions may be

increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Bradford Lee Brinton (CRD #2572055, Registered Representative, St. Joseph, Missouri) was fined \$118,476.15 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brinton forged the signature of a public customer on a dividend check for \$1,695.23 payable to the customer and deposited the funds into his personal bank account, converting the funds to his own use and benefit.

Brinton has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C04990005)**

Gordon Kerr (CRD #268444, Registered Representative, Walnut, California) was fined \$10,000, suspended from association with any NASD member in any capacity for 45 days, and barred from the NASD in a principal capacity. The sanctions were based on findings that Kerr functioned as a securities principal while he was ineligible to act in that capacity.

Kerr has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02980051)**

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not

represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Charles Douglas Gulley, Jr. (CRD #1320916, Registered Representative, Ocean Springs, Mississippi) was named as a respondent in an NASD complaint alleging that he received checks from public customers totaling \$1,465,138.62 for the purpose of investing in securities, failed and neglected to execute the purchases of securities on the customers' behalf, and instead, deposited the funds in an account that he controlled, ultimately retaining the sum of \$1,294,189.92 which he converted to his own use and benefit, without the customers' knowledge and consent. The complaint also alleges that Gulley received a check in the amount of \$5,000 from a public customer for the purpose of paying a premium on a life insurance policy, failed and neglected to pay the insurance premium, and instead, deposited the check in an account that he controlled, converting the \$5,000 to his own use and benefit, without the customer's knowledge or consent. The complaint also alleges that Gulley failed to respond completely to NASD requests for information. **(NASD Case #C05990034)**

John Joseph Kenny (CRD #1001752, Registered Principal, St. Louis, Missouri) was named as a respondent in an NASD complaint alleging that he intentionally or recklessly employed devices to defraud public customers and engaged in a course of business that operated as a fraud or deceit upon the customers by initiating, or allowing an unregistered individual and/or his associates to initiate, unsuitable margin transactions in public

customers' securities accounts. The complaint also alleges that Kenny recklessly engaged in a course of conduct to allay any concerns on the part of the customers as to impropriety in the trading of the customers' accounts by the use of material omissions and written communications which misstated and/or omitted material facts. The complaint also alleges that Kenny, without written instructions and/or the knowledge or consent of the customer, caused \$1.1 million to be wired from a public customer's account to an account at another member firm, thus facilitating an unauthorized transfer of funds. **(NASD Case #C04990035)**

Peter S. Lau (CRD #866720, Registered Representative, Edison, New Jersey) was named as a respondent in an NASD complaint alleging that he induced a public customer to effect transfers of funds totaling \$75,114 from her bank account to his personal bank account by falsely representing to her that such funds would be used to purchase an investment, then converted the funds to his own use and benefit by using them to pay off gambling debts. The complaint also alleges that Lau failed to respond to NASD requests for information. **(NASD Case #C10990119)**

Joseph John Mandaro (CRD #2559154, Registered Representative, Coral Springs, Florida) was named as a respondent in an NASD complaint alleging that he knowingly, willfully, or recklessly engaged in a device, scheme, or artifice to defraud and mislead public customers into investing in securities by participating in a "boiler room" operation which included the use of high pressure sales tactics and misleading statements and omissions. The complaint also alleges that Mandaro made specific price predictions about speculative securities being sold, made predictions without having an

adequate, accurate, or reasonable basis in fact, and failed to disclose any risk or negative information in security recommendations. The complaint also alleges that Mandaro engaged in unauthorized trading in customer accounts, without having discretionary trading authority for the accounts, and refused or failed to execute customer sell orders. **(NASD Case #CAF990011)**

John William McCall, Jr. (CRD #824736, Registered Representative, Walnut Creek, California) was named as a respondent in an NASD complaint alleging that he recommended to a public customer purchases and redemptions of mutual funds without having reasonable grounds for believing that such transactions were suitable for the customer in view of the frequency of the transactions, the type of investment being recommended to be redeemed or purchased, and the customer's financial situation and needs. **(NASD Case #C01990013)**

Michael William O'Donnell (CRD #1254156, Registered Principal, Northridge, California) was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions without providing prior written notice to his member firms describing the proposed transactions and his proposed role therein. The complaint also alleges that O'Donnell, in connection with the sale of interests to public customers, made material misrepresentations and omissions in order to induce the customers to invest. **(NASD Case #C02990047)**

Jamie Patrash (CRD #2744189, Registered Representative, Jacksonville, Florida) was named as a respondent in an NASD

complaint alleging that he received a total of \$851 in the form of personal checks from public customers for investment purposes, and checks and cash from individuals seeking to become associated with his member firm. The complaint alleges that Patrash altered the checks by writing his name over the member firm's name, presented the altered checks for payment, endorsed the checks, and converted the proceeds from the checks and the cash for his own use and benefit. **(NASD Case #C07990052)**

Merlin Blaine Riley III (CRD #1318026, Registered Principal, Dana Point, California) was named in an NASD complaint alleging that he executed purchase and/or sale transactions in various securities in the accounts of public customers without their authorization. The complaint also alleges that Riley executed purchase and sale transactions for the account of a public customer pursuant to oral discretionary authority but without the requisite written authorization from the customer or the requisite permission of his member firm. **(NASD Case #C02990050)**

Jay Steven Robinson (CRD #833292, Registered Principal, Wichita, Kansas) was named as a respondent in an NASD complaint alleging that he received checks totaling \$20,000 from a public customer for investment purposes. The complaint alleges that Robinson did not invest the monies as instructed by the customer, and instead, without the knowledge or consent of the customer, converted the proceeds of the checks to his own use and benefit and returned only \$1,473.45 to the customer. **(NASD Case #C04990036)**

Michael Sean Stone (CRD #2370650, Registered Representative, St. Paul, Minnesota) was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer to a margin agreement without the customer's knowledge or consent. The complaint also alleges that Stone placed a good-till-canceled limit order to purchase shares of a stock in a customer's account without the customer's knowledge or consent. **(NASD Case #C04990037)**

Walter Mark Wolff (CRD #1579100, Registered Representative, Wilmington, Delaware) was named as a respondent in an NASD complaint alleging that he effected transactions in the securities account of a public customer, without having prior authorization to effect such transactions for the account. **(NASD Case #C9A990038)**

Suspensions Lifted

The NASD has lifted the suspension from membership on the dates shown for the following firm because it has complied with formal written requests to submit financial information.

CDH Capital Corporation, Irving, Texas (July 21, 1999)

RFCA Financial Services, Torrance, California (July 16, 1999)

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For Your Information

Y2K Testing Not Required For Legacy CRD And PC FOCUS

Due to the availability of the new Web Central Registration Depository (CRDSM) system and Web-Based FOCUS filing system, the National Association of Securities Dealers, Inc. (NASD[®]) does **not** require Year 2000 testing of their predecessor systems – Legacy CRD and PC FOCUSSM. The new systems – Web CRD and Web-Based FOCUS – have successfully completed Year 2000 testing.

If your firm uses the EFT functions of Legacy CRD and wishes to voluntarily conduct Year 2000 date

testing, the NASD will accommodate your request. Contact the Year 2000 Program Office at (888) 227-1330 to arrange testing.

Details about these applications can be found on the NASD Year 2000 Web Page on the following Web Sites: www.nasd.com and www.nasdr.com. If you have any questions, or require additional information, please contact the NASD Year 2000 Program Office at (888) 227-1330.

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