

Regulatory & Compliance Alert

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OATS Phase 2 Registration And OATS Testing

All National Association of Securities Dealers, Inc. (NASD®) member firms that receive or handle orders in Nasdaq® securities and are required to report to the Order Audit Trail SystemSM (OATSSM) by August 1, 1999 (Phase 2) should be registered for OATS. Under NASD Rules 6950-6957, all orders for Nasdaq securities that are entered into an electronic order handling or execution system must be reported to OATS in Phase 2. (See *Notice to Members 98-33* for a complete description of the OATS Rules.) This requirement covers all members of the NASD, including order entry firms or retail firms, market makers, Alternative Trading Systems (ATs), Electronic Communication Networks (ECNs), independent contractors, or other registered individuals that may receive or handle orders in Nasdaq securities.

The OATS Rules require that:

- ❖ All electronic orders for Nasdaq securities, including SmallCapSM and Nasdaq National Market® securities, and convertible bonds, received at the trading desk by market makers and ECNs be reported to OATS by March 1, 1999 (**Phase 1**).
- ❖ All electronic orders for Nasdaq securities received by member firms be reported to OATS by August 1, 1999 (**Phase 2**).
- ❖ All non-electronic, or manual, orders for Nasdaq securities received by member firms be reported to OATS by July 31, 2000 (**Phase 3**).

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OATS Phase 2 Registration And OATS Testing, from page 1

Only firms that are registered with the NASD for OATS can obtain a UserID and Password for the OATS Web interface to allow submissions to the OATS testing and production environments. It is vital that transmitting entities begin testing as soon as possible before the August 1 deadline to ensure that they are prepared to report to the OATS production environment.

Member firms that will be using one or more third parties to report OATS data should ensure that all third parties register with OATS by the appropriate phase. Member firms must also work with each of their third-party transmitting entities during testing to ensure that the proper data is being submitted to OATS. Firms are responsible to ensure that each of their transmitting entities is in possession of the data required to be reported by the OATS Rules and that the data itself is accurate. In addition, if different third parties transmit duplicate data to OATS, the duplicate records will be rejected and reflected in both the firm's and the third parties' reporting statistics.

All firms that are required to report to OATS, even those that are not transmitting on their own behalf, must register and use the OATS testing environment to become familiar with OATS and the procedures for checking file status and reporting statistics, viewing and repairing record rejections, and submitting corrections via the OATS Web interface.

Firms that are required to report to OATS beginning in Phase 2, and that have not

already registered with OATS, should obtain the OATS Phase 2 and 3 Subscriber Initiation and Registration Form via the NASD Regulation Web Site at www.nasdr.com/3370.htm or via NASD Business and Technology Support Services at (800) 321-NASD. Firms that are already registered with OATS are not required to register again using the Phase 2 and 3 Form. However, any firm that is registered with OATS and changes its business practices in such a way that it is required to report to OATS in a different phase than previously noted must submit a revised Registration Form to ensure compliance with the OATS Rules.

The Form requires member firms and third parties to identify the Phase when they will begin reporting to the OATS production environment, the organizations reporting on their behalf, and the transport method that they will use for reporting, including File Transfer Protocol (FTP), CONNECT:Direct™ (formerly known as Network Data Mover or NDM), e-mail, or the OATS Web interface. As part of the registration process, firms must submit a request for a UserID and Password. The request for a UserID and Password must be on member firm letterhead and include the following information:

- ❖ Organization name
- ❖ Organization address
- ❖ Broker Dealer Number (if appropriate)
- ❖ User name
- ❖ User telephone number
- ❖ User fax number

Both the completed OATS Subscriber Initiation and Registration Form and the UserID and Password request should be faxed to (888) 345-6275 or mailed to Business and Technology Support Services, 9513 Key West Avenue, Rockville, MD 20854.

For additional information, contact NASD Business and Technology Support Services via phone at (800) 321-NASD or via e-mail at supportservices@nasd.com. The OATS Web Pages on the NASD Regulation Web Site (www.nasdr.com) are another source of current information about OATS.

Supervisory Procedures For Compliance With The Clock Synchronization Rule

Pursuant to NASD OATS Rule 6953, a member firm must synchronize all business clocks (computer system and mechanical clocks) that are used to record the date and time of any event that must be recorded pursuant to any NASD By-Laws and rules to a time source designated by the NASD and must maintain the synchronization of such business clocks in conformity with procedures prescribed by the NASD. The purpose of this article is to provide guidance on the obligation of member firms to establish, maintain, and enforce written supervisory procedures to ensure that the member is complying with the Rule.

Member firms may synchronize business clocks to any source that is accurate to within three seconds of the National Institute of Standards and Technology (NIST) system clock. Under NASD Rule 6957, all computer clocks used to record time were required to have been synchronized by August 7, 1998. Accordingly, firms that use their electronic order routing, handling, or execution systems to record times must ensure that these systems are linked with a computer system clock that is synchronized. All mechanical clocks, including

manual time-stamp devices used to record time, must be synchronized by July 1, 1999. The *OATS Reporting Technical Specifications* provide that clocks should be synchronized every business day prior to the market open, and that the member should check the clocks during the business day to ensure that they maintain synchronization.

In order to comply with the requirements of NASD Rule 6953, member firms must establish, maintain, and enforce written supervisory procedures to review for compliance with the Clock Synchronization Rule. The procedures should describe how and when clocks are synchronized, identify the person that has supervisory responsibility for compliance with the Rule, describe the supervisory review to be conducted, describe the frequency that such review should occur, and describe how the review should be documented.

Firms must be able to demonstrate their supervision of the clock synchronization process. Member firms that synchronize manually may keep a log that reflects each time during the day that it synchronizes its clocks and the results of that review. This review will ensure

that the firm's clocks maintain synchronization and also identify clocks that are having synchronization problems. A member firm that relies on automated procedures to ensure and review for clock synchronization should describe this automated process in its written supervisory procedures and describe, as with any automated supervisory system, how and when that system will be monitored and tested to ensure that it is working as intended.

For more information or to obtain a copy of the OATS Reporting Technical Specifications, contact NASD Business and Technology Support Services via phone at (800) 321-NASD or by e-mail at supportservices@nasd.com. The OATS Web Pages on the NASD Regulation Web Site at www.nasdr.com are another source of current information about OATS.

Web CRD Implementation In August

The Web Central Registration Depository (CRDSM) system will be launched on August 16, 1999. This Web-based system will revolutionize the way in which uniform registration forms for the securities industry are submitted to NASD Regulation. Forms will be filed electronically into Web CRD via an Internet browser; there will be no client software, no software distribution, and no access usage fees, except the firm's customary Internet provider fees. Completeness checks built into the new system will reduce filing errors and expedite the registration process.

In order to become familiar with the Web CRD system in preparation for deployment, the entire user community will have an opportunity to use the Web CRD system end-to-end in a simulated environment Tuesdays through Thursdays during the month of July 1999. During this Production Preparedness Period, firms and regulators can entitle their users, submit "practice" filings, review various work

and other Queues for processing-related information, and generally become familiar with the new application and processes.

There will be a System Transition Period two weeks prior to the implementation of Web CRD in order to fully load the new system with data and perform all data conversions, both manual and automated. During this time, both the Legacy CRD system and the new Web CRD system will not be available.

However, firms should still submit hard-copy Forms U-5 reporting full terminations for terminated individuals and Forms BDW for full firm terminations. These hard-copy filings should all be on the new uniform forms (version 8/1999). In order to reduce the overall outage time for the industry, the CRD/Public Disclosure Department will work seven days a week during this two-week period. The timeline for the System Transition Period follows.

System Transition Period Timeline

Last forms filed overnight to the NASD	7/28/99
Final forms received by the NASD	7/29/99
Data capture of last forms performed	7/30/99
Last Electronic Filing Transfer (EFT) and Firm Access Query System (FAQS) filings received	7/30/99
Final disclosure reviews performed by CRD/PD	7/31/99-8/1/99
Final state and SRO Acceptance/approvals	8/2/99
Data conversions-manual and automated	8/3/99-8/15/99
Web CRD "live"	8/16/99

During the System Transition Period, firms will be able to request TATs (Temporary Agent Transfers), file hard-copy (new form) Forms U-5 to report full terminations, and have individuals take scheduled exams and scheduled Continuing Education sessions. It is important that firms and regulators become familiar with and plan accordingly for the System Transition Period so that the two-week shut down of both systems causes the least amount of disruption to routine business activities.

Visit the NASDR Web Site for the most up-to-date information regarding the

implementation of Web CRD and what CRD users need to know in order to prepare for it at www.nasdr.com, under "Member Check Here", then "Central Registration Depository" and click on the "Web CRD" hyperlink, for the latest news and information on Web CRD, including the new tutorial, functional Navigation Guides, proposed electronic forms, and other up-to-the-minute information regarding Web CRD and its August 16th implementation.

Questions about this article may be directed to Janis Paulikas, CRD/Public Disclosure Department, NASD Regulation, Inc., at (301) 590-6184.

YEAR 2000

Year 2000 Preparedness: Utilities And Critical Services

Utilities and critical services, such as electricity, communications, oil and gas, and water, form the backbone for the U.S. infrastructure. As evidenced by recent natural disasters in

the Midwest and other regions of the United States, the failure of key utilities or other critical services can virtually cripple a region unprepared for disruptions. This underscores

the importance of preparing for potential complications related to the Year 2000 challenge.

Two utilities industries—telecommunications and electric power—are particularly important to the brokerage industry. Telecommunications provide the vital link for the broker/dealer to the exchanges, clearing firms, and other “mission critical” third parties. Electric power companies supply the energy necessary to support many aspects of a broker/dealer’s business. For each of these industries, problems in embedded chips can potentially lead to disruptions to millions of customers on and after January 1, 2000. Due to this dependency, companies and oversight agencies in each industry are working at a feverish pace to ensure that there are no disruptions.

Electric Power¹

How is the industry organized?

The electric industry is composed of a network of about 200 power-generating entities that produce electric power and approximately 3,000 entities that distribute this energy. Of these 3,200 entities, the largest 250 companies distribute power to approximately 75 percent of the U.S. population. Fortunately, these companies are best prepared to address the Year 2000 and have generally devoted substantial resources to address the problem. The remaining 2,950 small- to medium-sized companies provide power to only 25 percent of U.S. customers.

Who’s responsible for overseeing Year 2000 efforts?

The North American Electric Reliability Council (NERC) is spearheading the Year 2000 effort and has specifically been asked by the Department of Energy to oversee industry efforts. NERC has established guidelines for utility companies and is monitoring their collective progress in addressing the issue.

Is the industry prepared?

Clearly, there are no certainties when it comes to Year 2000 compliance—only degrees of readiness. Generally speaking, the utilities industry appears to be well-prepared to address the problem. According to the most recent NERC progress report submitted to the Department of Energy, 75 percent of all companies are ahead of industry guidelines in preparing for the issue. Many industry experts predict that “for the typical person or business in North America, the supply of electricity will be like that on any other New Year’s Day.” To learn more about the status of the electric power utility industry, visit the NERC Web Site at www.nerc.com.

Telecommunications²

How is the industry organized?

The telecommunications industry is composed of five primary sectors: telephone, wireless, cable television, broadcast television and radio, and satellite communications. For the typical

1 Information from the North American Reliability Council for the United States Department of Energy.

Additional information is available at www.nerc.com.

2 Information from the Federal Communications Commission. Additional information is available at www.fcc.gov/year2000.

broker/dealer, telephone, wireless, and satellite communications preparedness are perhaps more important than other sectors in ensuring business continuity in the Year 2000. Similar to the electric power industry, the seven largest telephone service providers in the telecommunications industry control approximately 92 percent of all access lines. This trend is also evident in the wireless and satellite communications sectors.

Who is responsible for overseeing Year 2000 efforts?

The Federal Communications Commission has enlisted the assistance of an industry advisory group, the Network Reliability and Interoperability Council (NRIC), to promote Year 2000 readiness within the telecommunications industry. The NRIC has been active in assessing, monitoring, and encouraging industry efforts in addressing the Year 2000 problem.

Is the industry prepared?

According to a March 1999 industry report, approximately 90 percent of local and 99 percent of long distance networks are expected to be Year 2000 ready. This is largely due to the collective efforts of the larger companies. Satellite communications are similarly at a low risk of disruptions due to Year 2000 complications. There is, however, some concern in wireless and international networks. Brokers should especially gauge the preparedness of their individual service providers in these areas. More information about the telecommunications industry's Year 2000 readiness can be found

on the Federal Communications Commission Web Site at www.fcc.gov.

Five Steps Your Firm Can Take

1. **Contact your local service provider.** *This can be done through the company's Internet Web Site for larger companies or by calling the available customer service line. Request information on the company's Year 2000 progress, including applicable disclosures and progress reports.*
2. **Review and assess the service provider's progress.** *Review the level of financial and personnel resource commitment, as well as the anticipated completion date for Year 2000 readiness.*
3. **Monitor your provider's progress.** *As the Year 2000 approaches, regularly monitor your provider's activities and its participation in industry-wide tests, as applicable.*
4. **Establish target compliance dates.** *If you feel the service provider is not properly addressing Year 2000 issues, set a date after which you will change to another provider if you are not satisfied with its progress. Make sure that you allow sufficient time for the transition in advance of January 1.*
5. **Include utilities considerations in your contingency plans.** *As appropriate, establish back-up plans and resources such as electric generators and alternative communications resources such as ISDN or satellite in the event your primary service provider fails. Be sure to test these resources.*

Year 2000 Web Site Resources: Utilities and Critical Services

North American Electric Reliability Council (Electric Power)	www.nerc.com
Edison Electric Institute (Electric Power)	www.eei.org
Federal Communications Commission	www.fcc.gov
Network Reliability and Interoperability Council (Telecommunications)	www.nric.org
Federal Energy Regulatory Commission (Oil and gas)	www.ferc.fed.us
President's Council on Year 2000 Conversion	www.y2k.gov
International Y2K Issues	www.globaly2k.org
National Association of Securities Dealers; NASD Regulation	www.nasd.com ; www.nasdr.com

Questions about this article and/or the Year 2000 in general may be directed to the NASD Year 2000 Program Office at (888) 227-1330.

Year 2000 Voluntary Testing

NASD Regulation and the Year 2000 Program Office continue to encourage that NASD member firms voluntarily test with the NASD

External Test Center. This dedicated Year 2000 test environment was created to provide NASD members with the capability to conduct point-to-point testing of NASD Regulation applications. To schedule a test, obtain test procedures, or to learn more about our voluntary testing program, call the NASD Year 2000 Program Office at (888) 227-1330.

REGULATORY SYSTEMS

PC FOCUS Installation Issues

It has come to the attention of NASD Regulation staff that member firms are having increased difficulty in successfully installing the PC FOCUS/NASDnet application, particularly when used with new personal computers (PCs) that are running Windows98 and have internal modems, and thus in completing their FOCUS filings.

As reported on page 11 in this publication, NASD Regulation is upgrading PC FOCUS to a Web-based application. In the meantime, the current PC FOCUS/NASDnet applications date back to 1990, designed for computers running the MS-DOS operating system. Many member firms have upgraded their PCs over the past year and continue to do so for the purposes of

being Year 2000 compliant and to accommodate other regulatory systems. Furthermore, PC FOCUS/NASDnet have exceeded their original life span by three generations of operating systems past their original target. This has resulted in a high number of support calls coming in to the Technology Services Support Center (TSSC) directly related to these hardware upgrades.

Guidelines For Installing PC FOCUS/NASDnet; How To Get Support

In order to help member firms with this issue, following is a set of guidelines for installing PC FOCUS/NASDnet using Windows98 as an operating system with a 56K internal modem. These guidelines are based on TSSC statistics on the most common scenarios reported on support calls for this software:

- ❖ Many member firms no longer have the original installation documentation that was sent to them when they first installed this software. The documentation needed is: *PC FOCUS User Guide, Version 2.01*. Internal and external users of PC FOCUS/NASDnet can request a copy of this documentation at no cost by calling (800) 321-NASD.

- ❖ Install PC FOCUS/NASDnet on the new computer according to the *PC FOCUS User Guide, Version 2.01*.
- ❖ Do not "copy" PC FOCUS/NASDnet from the previously used computer to the new computer.
- ❖ Do not try to access this software from a network. The software was designed for use on individual PCs.
- ❖ Both NASDnet and PC FOCUS must be installed on the C: drive of the PC.
- ❖ The internal 56K modem should be connected to either COM1 or COM2 only.
- ❖ The internal 56K modem baud rate (modem speed) should be set to 9600. NASDnet's maximum baud rate is 9600. Because of this, if you are using a modem capable of a baud rate greater than 9600 (like the 56K modems), you must still select and set 9600 as the baud rate while setting up NASDnet.

If NASD members continue to encounter problems while configuring PCs for use with PC FOCUS/NASDnet, technical support is available by calling (800) 321-NASD.

Regulatory Form Filing—Web-Based PC FOCUS

NASD Regulation is upgrading the current version of PC FOCUS to a Web-based, Internet application. Current plans are to roll out the Web-based version of PC FOCUS to the full NASD and American Stock Exchange® (Amex®) membership in a phased approach by no later than next year. Prior to this time in July 1999, the new application will be made available to a small number of member firms to pilot the system and obtain initial feedback.

System Highlights

With Web-based FOCUS, NASD and Amex members will be able to:

- ❖ *Create and submit FOCUS forms—Schedule I, Part II, and Part IIA.*
- ❖ *View a list of upcoming filing requirements.*
- ❖ *Print FOCUS filings.*
- ❖ *Upload a FOCUS filing.*
- ❖ *Access the system from any workstation running either Microsoft Internet Explorer 4.01 SP2 or Netscape browser version 4.05 or higher. There will be no need to install anything on the local workstation.*
- ❖ *Use the Secure Socket Layer (SSL) security built into the browser to protect data.*

- ❖ *Access historical filings online.*
- ❖ *Download filings in existing PC FOCUS format over the Internet to meet record-retention needs and submit filings to other agencies.*
- ❖ *Use the online tutorial and help functions.*

Note that with the new FOCUS system, PIN numbers will no longer be required. However, users will have to be 'entitled' to access the application and will be assigned a UserID and Password. The Web-based FOCUS will use the same security mechanisms as the Web CRD system. A single individual may have his/her UserID authorized to access both the CRD and FOCUS systems.

Plans also are underway to upgrade the following applications: Customer Complaints, Blue Sheets, Reg-T, and Shorts to Web-based versions. This package is targeted to rollout to the full membership in 2000.

Questions about this article may be directed to Daniel M. Sibears or Elizabeth Wollin, Member Regulation, NASD Regulation, Inc., at (202) 728-8221.

Questions

SECURITIES CONFERENCE

District Directors Securities Conference Open Forum

At the May 19-21, 1999, NASD Regulation Spring Securities Conference, an open forum was conducted with NASD Regulation District Office Directors and home office executives. Conference attendees, primarily representatives of NASD members, asked a number of questions encompassing a variety of subjects. This article is the first in a two-part series to capture many of the questions and the answers provided during this session. Part 2 will appear in the fall 1999 issue of the *Regulatory & Compliance Alert*. Participating in the forum were: Mary Alice Brophy, Executive Vice President, Member Regulation; Daniel M. Sibears, Senior Vice President and Deputy, Member Regulation; Bill Jackson, District Director, Cleveland District Office; David Leibowitz, Senior Vice President and District Director, New York District Office; John Nocella, Senior Vice President and District Director, Philadelphia District Office; Willis Riccio, Vice President and District Director, Boston District Office; Carla Romano, Vice President and District Director, Chicago District Office; Alan Wolper, District Director, Atlanta District Office; and Bernerd Young, Associate District Director, Dallas District Office. Note that questions and answers have been edited for clarity and length. Considering the forum in which the answers were provided, readers should not rely on this article as definitive guidance or formal interpretive advice. Written requests for interpretive advice may be directed to the NASD Regulation Office of General Counsel at (202) 728-8071.

Questions about this article may be directed to Daniel M. Sibears, Member Regulation, NASD Regulation, Inc., at (202) 728-8221.

Note: The NASDR annual Fall Securities Conference will be held October 20-22, 1999, in Seattle at the Sheraton Seattle.

Variable Annuities

Q: Is the NASD conducting a sweep program directed at variable annuity/mutual funds? If so, what are the most prevalent problems coming out of those exams?

A: One of the areas in which we have had a special effort is reviewing variable products. We did conduct a number of examinations focusing on sales practice issues with respect to variable products. We are finding a lack of documentation on suitability information and are also seeing a lack of supervision. In one instance, a firm was not reviewing the applications.

Q: With asset allocation programs, where a portion is an investment in an annuity, what would a firm look at to determine suitability of an annuity?

A: Every situation is different, nevertheless, as a general matter, NASD Regulation is looking at the specific annuity that is sold to determine whether it fits the investment objectives of the individual. To construct an

asset allocation program, individuals typically provide detailed information about their needs, wants, desires, and timing of when they need their money; really more information than you get on a standard new account form. Firms would look at these particular annuities and how they fit into that overall plan.

Q: What are the respective responsibilities of a retail broker selling a variable annuity versus the responsibilities of a wholesaler dealing with the variable annuity?

A: It is not very different than many other products within a firm. Firms have an obligation for a product originator or a product marketer to provide full and fair information to the universe of people who are going to be selling that product and to customers buying that product. The ultimate suitability responsibility on any solicited sale is with the person who is dealing with the customer. Clearly firms share responsibility for implementing supervisory procedures focused on suitability.

Web-Based Filings

Q: Are Web-based FOCUS filings coming in the near future?

A: Yes. NASD Regulation has a pilot program starting in June with a small number of firms, including Amex members. Preliminary tests have gone very well, and NASD Regulation anticipates that every firm that files FOCUS will be using the Web-based

system by mid-year 2000. We are also going to leverage this Web technology to use with other filings, such as short sales, 3070 reports, blue sheets, and Reg T. (See related article on page 11.)

Qualifications Exams

Q: With respect to qualifications exams, is there a trend to have the exams be more challenging and more difficult or to raise the bar on the passing level?

A: Yes, on both counts. The exams are far more challenging. Clearly there has been a trend towards more specialization. We have more exams on more specific areas within the business. And, hopefully, they are challenging enough to be a learning experience for people who are preparing for them and to set a pretty good standard for people who are in a highly regulated professional industry. There are also industry groups established for each of the exams that continuously review the new rules and changes to the rules and add new questions as the universe increases. So, yes they are getting more complex and they are getting broader as there is additional regulation applied.

Supervision Of Branches, Remote Locations

Q: What are firms doing or what may the panelists suggest in supervising one-person branches, specifically regarding NASD Rule 3010 in monitoring incoming written customer correspondence? What procedures are being taken to ensure that

the complaints, checks, and direct business is forwarded appropriately?

A: It is a challenge to conduct any kind of supervision when you don't have a supervisor onsite who can see and hear things. Technology can be our friend in doing that. As firms become more sophisticated, it will become less burdensome to have technological assistance in supervising certain aspects of the business. But what most firms need, whether it is a one-person branch or a 10-person branch or more, are good practical policies and procedures that can be followed and that can be spot checked by appropriate personnel.

Examinations

Q: In the past NASD examiners seemed very cooperative in spirit. Examiners seemed genuinely interested in correcting problems and deficiencies. More recently, examiners don't seem to stop until they find something. Is the NASD still interested in the idea of self-regulation or not?

A: Certainly the NASD is interested in self-regulation. If firms encounter a discourteous staff member or have questions about the exam that the examiner does not clearly respond to, the firms should contact the District Director. If an examiner appears overly aggressive, the firm should point that out. NASD Regulation strives to do its best, and we want our relationship with the firms to be one of mutual respect. To whatever extent there are problems, we'd like to hear about them and we'd like to fix them.

Also, more and more of the process is evolving so that exams are more focused. Examiners now have a better idea going into the examination where they want to concentrate their efforts, as opposed to maybe 10 or 15 years ago when there was a broader scope. Given that, our goal is to put our people where we think the issues are, and to get out of there once we see there are no issues. Of course, a high-quality examination entails a rigorous review and if serious problems are uncovered, they will be vigorously pursued.

Q: My firm was the subject of a routine examination by the NASD one year ago. We still have not received a written response from the NASD on this exam. Does the NASD have guidelines in place to set a time limit on responses to the firm?

A: It is in the best interest of the firm and the NASD to close out an examination as expeditiously as possible. Clearly, the duration of an examination depends on the facts and circumstances. NASD Regulation has an obligation, particularly with exams that do not disclose egregious violations, to get the open issues framed and addressed as promptly as possible. The vast majority of the routine examinations conducted are, in fact, fully completed in a six-month to a 12-month time frame. So, when something stays open more than a year, it is generally because there is a sales practice or some other serious issue that has resulted in an expansion of the examination.

Day-Trading Activities

Q: What is happening with day-trading firms?

A: Day trading is a phenomenon that has become extremely popular in a very short period of time. Note also that we make a very clear distinction between online trading and day trading, which a lot of people and the media tend to get mixed up because they are both electronic and are both fast. These are really different formats and forums from the way people have traditionally done business.

With the rapid increase in volume and interest in those aspects of the business, NASDR, as a responsible regulator, felt that we needed to take a very careful fact-finding approach to our examinations. We too are learning how things are happening, and where customers and firms are encountering problems. System-wide, at this point, out of the volume of complaints that NASD Regulation has received in 1999, probably 90 percent of them have related in one way or another to electronic accounts and trading. So, we have made an effort to get out very specifically to a number of day-trading firms across the country in order to accelerate our knowledge, be more responsive, and better deal with the issues that arise.

Interpretations Of Rules And Regulations

Q: When the NASD makes a pronouncement that allows for multiple interpretations as to how to comply with that pronouncement, will the NASD penalize a registrant who

does not follow an interpretation that the NASD considers reasonable after the fact?

A: First, we don't really penalize anybody. The enforcement program is designed as a remedial, not a punitive step. Second, NASD Regulation stresses proactive compliance. If there is an interpretation that is hazy or that you disagree with, we urge you to contact our staff and see if we can reach an accommodation. Take advantage of the District staff's expertise. Every single District Office, all 14 offices, has an examiner of the day on duty every day to try to deal with your questions. NASD Regulation gets literally dozens of questions a day in Washington, plus our Office of General Counsel takes questions every day. If it is an unusual situation, we will ask you to put the request in writing and send it in, and usually, within about 30 days, you will receive a written interpretation on your question. If you do operate in contradiction to an existing interpretation, you are at risk of regulatory action.

District Office Staff Retention

Q: What are you doing to address the high turnover in the District Offices? Have you considered raising compensation?

A: Retention of personnel is always less expensive than training new employees. Also, there is a significant burden on the firms that have to deal with inexperienced examiners. We do know the pain of turnover, as some of you do at your firms. For instance, in 1998 we had a turnover rate that was approaching 24 percent for the

year. That's extremely high. It is a challenge that NASD Regulation is working on. We look at compensation, we look at benefits, we look at how we train people, and we look at how we organize our examination program, all in an effort to maintain a high-quality work environment populated with highly skilled and motivated staff.

Rule 3070

Q: What would be helpful to the membership is feedback from the quarterly Rule 3070 customer complaint filings. When the Rule first went into effect there was talk of such feedback.

A: It is correct that we do not provide feedback to member firms on the Rule 3070 reports.

The information is used as a regulatory tool, at the moment, to help us focus our examination, and to determine whether there are any particular patterns or practices occurring at any particular firm. Once the new Web CRD system goes into effect and the new disclosures are in place, there will be an opportunity to extract regulatory information directly from the CRD database in a manner that we cannot do right now. In this regard, NASD Regulation is also looking at amending or repealing Rule 3070 incident reporting. So, before we provide 3070 feedback we may be to the point where you won't be making these filings at all. NASD Regulation will know more about this issue by the middle of next year.

ADVERTISING REGULATION

Sudden Performance Changes May Require More Information

Recently, NASD Regulation has commented when member firms have used communications that overstated a security's historical performance while obscuring its recent, less favorable track record. These situations have arisen when a security's performance has been negatively effected by sudden changes in market conditions. These changes could be a spike in interest rates, currency devaluations, or other similar factors that may effect a market

sector. Typically, the data used in these communications is factually accurate; however, the time period for which it is reported fails to reflect a more recent time frame during which market conditions may have hurt performance severely. When such a significant drop in performance occurs, communications must include further disclosure in order to comply with NASD Conduct Rules.

For example, pursuant to Securities and Exchange Commission (SEC) rules, mutual funds must advertise historical total return data current to the most recent calendar quarter ended prior to the submission of an advertisement for publication. Thus, prior to June 30, 1999, mutual fund advertisements will show returns current to March 31, 1999.

Nevertheless, the use of such March 31, 1999, data alone has the potential to mislead, if the fund's performance suffers materially prior to updating at the next calendar quarter end.

NASD Regulation advises that if a security experiences an abrupt negative change in performance, member firms should amend their historical performance communications to add either updated performance figures or clear

disclosure that current performance is less than the figures shown. This additional disclosure is necessary to ensure the communications are fair and not misleading. Conduct Rule 2210(d)(1)(A) specifically requires that members' communications provide a sound basis for evaluating the facts with respect to any product offered. The Rule also prohibits the omission of a material fact or qualification from a communication if such omission would cause the communication to be misleading.

Any questions regarding the presentation of historical performance in communications with the public may be directed to the Advertising/Investment Companies Regulation Department at (202) 728-8330.

Filing Cover Sheet

The Advertising/Investment Companies Regulation Department has recently updated the Filing Cover Sheet used by NASD member firms to facilitate submissions. The new Cover Sheet appears on the following page. You may also print a copy of the Cover Sheet on the NASD Regulation Web Site (www.nasdr.com) through the online version of the summer edition of the *Regulatory & Compliance Alert*.

FILING COVER SHEET

NASD REF. # _____

Advertising/Investment Companies Regulation

NASD Regulation, Inc.
 1800 K Street, N.W., Suite 800
 Washington, D.C. 20006
 Phone: (202) 728-8330
 Fax: (202) 728-6976 (Please limit faxes to 10 pages)

Expedited or Regular

Date: _____

Member Name: _____

CRD #: _____

Contact Person: _____

Phone: _____

Fax: _____

Title and/or Reference Number of Filings	Number of Pages	Used with Prospectus (Yes/No)	Date of First Use (mm/dd/yy)*	Registered Principal's Name**
1.				
2.				
3.				
4.				
5.				

* Pursuant to NASD Conduct Rule 2210(c), you must indicate the actual or anticipated date of first use. If the communication(s) include investment company ranking information, you must include a copy of the substantiation for the ranking with your submission as required by NASD Conduct Rule 2210(c)(1) and (c)(2).

** Please indicate the name of the registered principal who approved the communication as required by NASD Conduct Rule 2210(b)(1).

Please provide a signed cover letter that describes the proposed use of the communication(s) and the name(s) of the product(s) offered.

FOR EXPEDITED CONFIRMATIONS
(NASDR USE ONLY)

TOTAL PIECES: _____ TOTAL PRICE: \$ _____

PLEASE CHARGE: (select one)

- ADVERTISING ACCT.
 CREDIT CARD (Visa, MasterCard, American Express)

(If you do not have a credit card processing form on file please call our office to request one.)



NASD Moves To Decimals

The NASD is preparing to move from fractional to decimal pricing by June 30, 2000, to meet the timeline proposed by the SEC.

The move to decimal pricing (Decimalization) means the conversion of all securities industry systems from fractional to decimal pricing, or, in dollars and cents. Decimalization is a complex process, impacting every area of the securities industry. Each place that a system currently compiles, stores, or displays fractional pricing must be converted to accommodate decimal pricing. Written materials containing fractional pricing must be updated to reflect decimal pricing.

The industry-wide conversion from fractional to decimal pricing is scheduled for completion by June 30, 2000, a date that is being strongly proposed by the SEC. The NASD and other exchanges agree that the conversion to decimal trading must be carefully organized and occur industry-wide. In this regard, the NASD is working closely with the Securities Industry Association (SIA), the SEC, and the various markets and exchanges to ensure that all member firms are aware of the actions required to successfully trade in decimals.

To manage the internal conversion, and help support NASD member firms in becoming decimal-ready, the NASD formed a Decimalization Program Management Office which will be conducting an education and awareness

campaign. Currently, business and technical specifications for Decimalization are being developed for distribution to member firms. The NASD anticipates that Decimalization will change a number of business rules for member firms. The NASD is examining rules mentioning or pertaining to fractions, and will keep you informed of changes in future issues of the *Regulatory & Compliance Alert*. Members may also refer to the NASD Web Site, www.nasd.com, for more information.

The NASD is committed to the successful industry-wide conversion to decimal pricing and continues to move ahead to achieve the SEC-proposed conversion date of June 30, 2000. We will also continue to review systems and evaluate the impact of decimal pricing. We will study and evaluate the issues associated with conversion, implementation, testing, final cutover, and new trading strategies which may result from Decimalization. We also must remain focused on the NASD mission to protect market integrity, the interest of the investor, readiness of our member firms, and given the latest volume predictions for decimal trading, the technological aspects of this change.

Please direct questions about Decimalization to the NASD Decimalization Program Office via e-mail to decimals@nasd.com or via our toll-free phone number, (888) 227-1330.

Documenting Sales Of Hot Issues To Conduit Accounts And Investment Partnerships And Corporations

NASD Regulation reminds firms engaged in the distribution of public offerings to review their procedures and controls governing the allocation of hot issues. A hot issue is a public offering of securities that trade at a premium in the secondary market whenever such secondary market begins.

The NASD's Free-Riding and Withholding Interpretation (Interpretation), IM-2110-1, is detailed with respect to whom members may sell hot issues and the conditions under which such sales can be made. The overall purpose of the Interpretation is to assure public distribution of securities for which there is a public demand. It prohibits members from retaining the securities of hot issues in their own accounts and from allocating such securities to directors, officers, employees, and associated persons of broker/dealers. It also restricts member sales of hot issue securities to the accounts of specified categories of persons.

Recent NASD Regulation examinations have discovered instances of significant failures by members to obtain documentation required for the sale of hot issues to conduit accounts and investment partnerships and investment corporations. Compliance officers and other responsible principals should take steps to ensure that adequate procedures are in place for the collection of necessary documentation and the

compliance with required procedures. For a complete understanding of the requirements it will be necessary to review the language of the Interpretation, found in the *NASD Manual*. This article highlights certain provisions of the Interpretation that examinations have shown to cause common problems.

Conduit Accounts

A member that sells shares in a hot issue to any domestic bank, domestic branch of a foreign bank, trust company, or other conduit for an undisclosed principal must:

- ❖ Affirmatively inquire of the bank, trust company, or other conduit as to whether the ultimate purchasers are restricted under the Interpretation. A failure by the member to make such an affirmative inquiry represents a rebuttable presumption that the ultimate purchasers were restricted or that the sales were made in a manner inconsistent with the Interpretation.
- ❖ Record on the order ticket, or its equivalent, or on some other supporting document, the name of the person to whom the inquiry was made, as well as the substance of what was said by that person, and what was done as a result.

- ❖ Have a registered principal initial the order ticket or its equivalent.

The member has similar obligations if it sells shares in a hot issue to foreign broker/dealers or banks. These obligations can be fulfilled by having the foreign broker/dealer or bank execute Form FR-1.

Another Broker/Dealer

A member may sell hot issue securities to another broker/dealer that is not involved in the selling syndicate only upon receipt from the latter, in writing, of assurance that the purchase would be to fill orders for bona fide public customers that are not restricted persons under the Interpretation, at the public offering price, as an accommodation to the customers, and without compensation to the member for the sales.

Investment Partnerships And Investment Corporations

A member may not sell a hot issue to investment partnerships and investment corporations, including but not limited to hedge funds, investment clubs, and other like accounts, without either:

- ❖ Having received a current list of the names and business connections of all persons

having a beneficial interest in the account, and if any restricted person has a beneficial interest in the account, applying the provisions of the Interpretation to the account; or

- ❖ Having received a written representation, from legal counsel or the account's independent CPA, that meets the conditions specified in paragraph (f) of the Interpretation or the carve out provisions of paragraph (g).

Firms need adequate controls to assure that these documents have been received before an order is executed.

Supervision

Firms engaged in public offerings should establish, maintain, and enforce written procedures to supervise this type of business and to ensure compliance with the provisions of the Interpretation. Please review NASD Rule 3010 for more information on supervisory requirements.

Questions about this topic may be directed to Member Regulation at (202) 728-8221, the NASDR Office of General Counsel at (202) 728-8071, and/or Corporate Financing at (202) 974-2700.

Escrow Requirements In Best-Efforts Offerings

NASD Regulation continues to find violations of the escrow requirements of Rule 15c2-4 adopted under the Securities Exchange Act of 1934 (Exchange Act). Rule 15c2-4 applies to both public and private best-efforts offerings of securities. The Rule sets forth the requirements for the disposition and segregation of customer funds received during the offering. This Rule was written to ensure that issuers will receive full proceeds promptly when the offering is completed, or where the contingency is not met, that investors will get prompt refunds.

Members are directed to review *Notice to Members 98-4*. In that *Notice*, the NASD re-published earlier SEC staff interpretations of Rule 15c2-4 to provide firms with specific guidance in their review of their procedures. These interpretations are set out in question-and-answer format. *Notice to Members 98-4* provides a useful update and also references other *Notices* that address particular aspects of Rule 15c2-4. The *Notices* can be accessed through the NASD Regulation Web Site (www.nasdr.com).

Rule 15c2-4 applies to best-efforts distributions, "all-or-none", "minimum-maximum", and other contingency underwritings. Under the Rule, members must *promptly* deposit investors' funds either into a separate bank account as agent or trustee for the investors, or a bank escrow account, pending the occurrence of the contingency. No funds may be dispersed to the

issuer until the contingency has been fully satisfied.

Funds should be deposited as soon as practicable after receipt. Funds received in the contingency offering should be deposited either by noon of the next business day after receipt by the firm, or by noon of the second business day after receipt of the customer's subscription form by the issuer.

Rule 15c2-4 requires that a bank be the escrow agent for customer funds. A "bank" is defined in Section 3(a)(6) of the Exchange Act and the definition does not include, for example, a savings and loan institution. No person other than a bank may act as an escrow agent. For example, a broker/dealer's attorney *cannot* act as an escrow agent, nor can an attorney act as the agent or trustee for a separate bank account.

Firms should also be aware that holding customer funds may affect a firm's minimum net capital requirement. All firms, and especially smaller firms, should review the terms of their membership agreements when handling customer funds in contingency offerings.

We advise members to review their procedures to be sure that they are adequate to ensure compliance with Rule 15c2-4.

Questions about this topic may be directed to Member Regulation at (202) 728-8221.

Policy On Confidentiality Requests By Member Firms

NASD Regulation staff has noticed an increase in the number of letters from member firms requesting confidential treatment of information submitted to the staff in response to requests for information made pursuant to NASD Rule 8210. The purpose of this alert is to reiterate NASD Regulation policy which is consistent with applicable NASD and SEC case law which holds that a member firm and/or an associated person may not condition its response to requests made pursuant to an NASD Rule 8210 request.¹

Although the staff understands the reasons for such requests, the staff is unable to grant requests for confidential treatment. NASD Regulation, as a matter of policy, conducts its investigations in a confidential and non-public manner. Members should be aware, however, that, under certain circumstances, NASD Regulation provides access to its files. For instance, NASD Regulation is subject to oversight by the SEC and routinely provides the SEC with access to its files, if so requested. In addition, pursuant to the NASD Code of Procedure, NASD Regulation is required to produce documents to respondents during discovery. Furthermore, NASD Regulation may produce such documents to a litigant in response to a subpoena, to federal or state regulatory authorities, or law enforcement agencies in response to a subpoena or regulatory access request, or to other self-regulatory organizations in response to a regulatory access request. Similarly, because NASD

Regulation must maintain such documents to meet its regulatory and enforcement obligations pursuant to its statutory responsibilities and, pursuant to SEC Rule 17a-1(b), is required to retain such documents for a period of five years, NASD Regulation is unable to provide for the return of documents to a member firm after an examination, investigation, review, or proceeding.

Members and associated persons should be aware that NASD Regulation will not, as a matter of policy, agree to provide a member with notification of the service of a subpoena or access request that would require the production of such documents, nor will it agree to return the documents when its investigation or examination has concluded. The reason that NASD Regulation is unable to provide a member with any notification of the receipt of an access request that would require the production of such documents is that investigations and reviews that are conducted by other regulatory authorities are confidential. NASD Regulation will not respond to such confidentiality requests, whether made on the record in testimony or in writing, and its failure to respond to such requests cannot be interpreted under any circumstances as granting such requests.

Questions regarding this article may be directed to the Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

¹ See, e.g., Richard J. Rouse, 54 S.E.C. Docket 1259, 1262 (July 19, 1993).

Clarification Of Investor Education And Protection Rule

NASD Conduct Rule 2280, Investor Education and Protection, became effective January 1, 1998, and is designed to educate investors about and publicize the availability of information through NASD Regulation's Public Disclosure Program. A reminder notice about the Rule was published in the March 1999 *Regulatory & Compliance Alert*. NASD Regulation continues to receive questions concerning: the applicability of the Rule to certain members conducting a limited business; whether the required information must be provided to institutional and inactive customers; and whether members are required to distribute the investor brochure referenced in the Rule. This article clarifies these issues.

Applicability Of The Rule To Certain Members

The Rule requires all member firms, except those that do not carry customer accounts or hold customer funds or securities, to notify their customers in writing at least once every calendar year about the availability of information through the NASD Regulation Public Disclosure Program. Specifically, member firms must provide customers with the Public Disclosure Program's hotline phone number, (800) 289-9999; the NASD Regulation Web Site address, www.nasdr.com; and, a statement as to the availability of an investor brochure that includes information describing the Public Disclosure Program.

The Rule exempts introducing firms, *i.e.*, those that do not carry customer accounts or hold customer funds or securities. NASD Regulation created an exemption for this type of firm because the firm's clearing or carrying broker/dealer is required to furnish the information under the Rule, and it would be duplicative and unnecessary to impose these obligations on the introducing firm.

NASD Regulation has been approached by certain members that conduct a limited business, such as mutual fund distributors and firms that deal solely with direct participation programs, regarding the application of the Rule. These firms neither "carry" customer accounts, nor do they introduce their business to another NASD member. Typically, they introduce their customers to the mutual fund directly, the program sponsor, or a transfer agent. These members do not provide customer account statements or correspond directly with their customers after completing the initial transaction. Thus, compliance with the Rule by these firms would involve a special annual mailing with possible significant costs to the firm.

NASD Regulation does not believe that these firms should be required to bear the potentially significant costs of an annual mailing. However, NASD Regulation believes that customers who transact business with these members should be provided with the dislo-

tures under the Rule. Accordingly, NASD Regulation has determined that members that conduct a business in which they introduce their customers to an entity other than another NASD member and thereafter cease to carry customer funds or securities must furnish customers with the required information at the time of the customer's purchase, but are relieved of the obligation to provide the required information on an annual basis.

Providing Required Information To Institutional And Inactive Customers

The Rule states that members must provide the required information in writing to "each customer." NASD Regulation has interpreted the term "each customer" broadly and has not established any exemption based upon the type of customer. Members, therefore, must provide the required information to institutional customers,¹ and to customers who have inactive accounts, even if the balance in such customer accounts is \$0. Although a member does not hold any customer funds or securities in a \$0 account, the member is considered to be carrying the account and, thus, subject to the requirements of the Rule.

Investor Brochure

Some members have asked whether the Rule requires them to distribute to customers the actual NASD brochure describing the Public Disclosure Program. The answer is no. The Rule imposes on members only an obligation to disclose the availability of the brochure, rather than distribute the brochure. NASD Regulation will distribute its brochure titled "NASD Regulation's Public Disclosure Program: *An Information Service for Investors*" to investors who contact the NASD through the hotline number. The investor brochure also may be obtained via the NASDR Web Site (www.nasdr.com). Member firms that wish to distribute the brochure directly to their customers as a courtesy should contact NASD's MediaSourceSM at (301) 590-6142 about receiving the brochures in bulk.

Interpretive questions concerning the Rule should be directed to Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, Inc., at (202) 728-8104. Questions concerning compliance with the Rule should be directed to Susan Lang, Member Regulation, NASD Regulation, Inc., at (202) 728-6969, or your local NASD Regulation District Office.

¹ NASD Regulation staff, in response to comments received on *Notice to Members 98-81* (NASD Regulation Requests Comment On Whether Some Rules Should Be Repealed As Obsolete Or Amended To Provide Institutional Customer Exception), is considering proposing an exemption for institutional customers. If Rule 2280 is amended to exclude institutional customers, we will publish notice of the amendment in a future *Notice to Members*.

Reporting And Inquiring Requirements For Missing, Lost, Counterfeit, Or Stolen Securities

SEC Rule 17f-1 governs the Lost and Stolen Securities Program (Program), which was established by the SEC in 1977 to reduce trafficking in lost, counterfeit, and stolen securities. The Program requires certain broker/dealers to register with the SEC's designee and to file reports and make inquiries with respect to missing, lost, counterfeit, or stolen securities. The SEC's designee to receive all such reports and inquiries is the Securities Information Center (SIC). SIC has asked the NASD to publish this reminder about the Program.

SIC maintains a central database for receiving and processing reports and inquiries about missing and stolen securities. SIC is not, however, the organization appointed by an issuer to maintain the names of registered stockholders and the number of shares owned; a transfer agent performs this function. In this regard, the transfer agent is ultimately responsible for reissuing certificates and the transfer agent's name is generally included in the issuer's annual and interim reports.

When a SIC inquiry matches a lost, stolen, or counterfeit security, the data bank provides the inquiring financial institution with the name, address, and telephone number of the institution that originally reported the problem. The institution reporting the problem is also notified, as is the Federal Bureau of Investigation, if the report suggests criminal activity.

Before a security is reissued, the investor usually is required to purchase a surety or

indemnity bond. That "bond" essentially is an insurance policy to protect the issuer and potential buyers in case the "lost" security is redeemed or sold. Once reported and the necessary "bond" acquired, the investor will receive from the broker/dealer or insurance agent an affidavit of loss which must be filled out, notarized, and returned.

The cost of a surety bond is typically two to four percent of the market value of the stock or the bond, minus any bond coupon payments already made. Thus, a certificate with a market value of \$10,000 could cost about \$300 to replace. Replacement of a certificate takes about two weeks to four months, depending on verification and other requirements. During this time the security cannot be sold.

When investors holding their own securities discover they have been lost, stolen, or destroyed, they should immediately notify their broker/dealer in writing. The broker/dealer will complete an SEC form, known as X-17f-1A, for "Missing/Lost/Stolen/Counterfeit Securities," notifying SIC and the transfer agent that the securities are missing. The investor should receive a copy of the form from the broker/dealer and keep it in a safe place until the certificate is found or reissued. If an investor doesn't maintain an account with a broker/dealer, he/she can file a lost or stolen securities report directly with the transfer agent responsible for the certificate.

A firm is required to check the SIC database before completing a transaction unless the securities are received directly from the issuer, another reporting institution, an affiliated entity of a reporting institution, or a Federal Reserve Bank branch; the securities themselves are exempt from the inquiry requirements; or the market value of the transaction is \$10,000 or less. However, many broker/dealers contact

SIC in all instances to avoid incurring possible losses for themselves and their customers, and SIC encourages firms to make these routine contacts.

For more information relating to the SIC database for Lost & Stolen securities, please contact SIC at (617) 856-4900.

SEC Approves Interpretations And Allocation Chart For PAIB

On November 3, 1998, the SEC issued a No-Action Letter to clarify its position under SEC Rule 15c3-1 (Net Capital Rule) regarding the capital treatment of assets in the proprietary account of an introducing broker/dealer (PAIB) held by a clearing broker/dealer. *NASD Notice to Members 98-99* discusses PAIB in greater detail and also provides a copy of the SEC's No-Action Letter.

The letter allows introducing broker/dealers to include PAIB assets as allowable assets in their net capital computations, provided the clearing broker/dealer adheres to the provisions, procedures, and interpretations set forth in the letter including the establishment of a separate reserve account for PAIB assets in accordance with SEC Rule 15c3-3 (Customer Protection Rule). The effective date of the No-Action Letter is June 1, 1999.

The SEC has approved six interpretations and an allocation chart¹ relative to PAIB as follows:

- ❖ The PAIB letter applies to all broker/dealers with cash and/or securities on deposit in a proprietary account at another broker/dealer.
- ❖ Clearing deposits held by clearing brokers are to be included as credit items in the PAIB reserve formula computation.
- ❖ If an introducing firm does not have a proprietary trading account, it still must enter into a PAIB agreement with its clearing firm in order to treat its deposit at the clearing firm as a good asset for capital purposes.
- ❖ A U.S. broker/dealer's deposit held by a foreign entity is not affected by the PAIB letter. However, the deposit would be subject to the net capital treatment as is normally accorded to such deposits.

¹ *Notice to Members 99-44* contains an allocation chart to assist members in performing the PAIB reserve formula computation.

- ❖ A proprietary account of a foreign broker/dealer is not included in the PAIB calculation.
- ❖ If a clearing firm will not enter into a PAIB agreement, the introducing broker would need to take a non-allowable capital charge only on its net equity at the clearing firm.

Questions regarding PAIB may be directed to Susan DeMando, Member Regulation, NASD Regulation, Inc., at (202) 728-8411.

Change In Treatment Of Concessions Receivable From The Sale Of Certain Variable Annuities Under The Net Capital Rule

The SEC's Net Capital Rule 15c3-1(c)(2)(iv)(C) states, in part, that the following are allowable assets for 30 days from the date they arise:

Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits which shall be treated as required in paragraph (c)(2)(iv)(E) of this section), *mutual fund concessions receivable and management fees receivable from registered investment companies...*

Page 10 of the *NASD Guide to Rule Interpretations (GTRI)*, 1996 edition, contains the following interpretation relative to offset treatment of concessions receivables (the Interpretation):

Capital Treatment Of Concessions Receivable And Related Commissions Payable

Receivables and any related payables from concessions or commissions receivable by broker/dealers arising from selling interests or participations in real estate investment trusts, single premium life insurance policies, *and variable annuities*, may be treated in accordance with *Notices to Members 84-48 and 85-5*, which gave special treatment to similar DPP items.

Letter from SEC staff of Division of Market Regulation to Securities Consultants, Inc., March 22, 1989.

In the past, the NASD has taken the position that due to the language of the Net Capital Rule as well as the language contained in the SEC's 1989 letter to securities consultants, that concessions receivable from mutual fund sales were allowable assets for net capital purposes for 30 days, while concessions receivable from

variable annuity sales were allowable assets *only* if they were offset pursuant to the Interpretation.

Recently the staff of the SEC's Division of Market Regulation has had occasion to re-examine the current net capital treatment applied to concessions receivable from the sale of variable annuities. It has concluded that since *individual* variable annuity products are registered under the Investment Company Act of 1940 ('40 Act), any concessions receivable therefrom, comes within the "...mutual fund concessions receivable and management fees receivable from registered investment companies..." language of Rule 15c3-1(c)(2)(iv)(C). Therefore, effective immediately, a broker/dealer may give allowable asset treatment to

concessions receivable from the sale of individual variable annuities for 30 days from the date they arise.

Group variable annuities, however, are exempt from registration under the '40 Act. Therefore, concessions receivable from the sale of these products are not allowable assets under the Net Capital Rule. However, the SEC has no objection to member firms considering concessions receivable from the sale of group variable annuities as allowable assets *if* the member complies with the Interpretation.

Questions regarding this matter may be directed to Susan DeMando, Member Regulation, NASD Regulation, Inc., at (202) 728-8411.

TRADING & MARKET MAKING

Member Firm Obligations During Trading Halts

NASD Regulation staff has noticed that member firms have been transmitting orders to other market participants via the SelectNetSM system in Nasdaq securities while such securities are subject to a trading halt pursuant to NASD Marketplace Rule 4120. Although the act of entering a preferenced or broadcast SelectNet message in a Nasdaq security that is subject to a trading halt is not specifically proscribed by rule, please be advised that the execution of such order would constitute a violation of NASD Conduct Rule 3340 by both parties to the trade. NASD Conduct Rule 3340 provides that "no member...shall, directly or indirectly, effect any transaction in a security as to which a trading halt is currently in effect."

Additionally, this conduct has been deemed inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110. Please also note that the staff reviews SelectNet activity during the pendency of trading halts in Nasdaq securities to determine the extent to which such activity is consistent with Association rules. A pattern or practice of entering orders into SelectNet during the pendency of a trading halt that are not executed could be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

Member firms should consider this issue when developing a supervisory system and written supervisory procedures concerning the use of the SelectNet system and permissible conduct during the pendency of trading halts.

Questions regarding this article may be directed to the Legal Section of the Market Regulation Department, NASD Regulation, Inc., at (301) 590-6410.

Market Regulation Compliance Report Cards

On September 24, 1998, staff of the Market Regulation Department (Market Regulation) of NASD Regulation began making available quantitative reports for each NASD member firm concerning its compliance with trade reporting, firm quote, and best execution. The reports are being provided to firms as a compliance aid to assist them in ensuring that they are submitting transaction reports in a timely manner, handling SelectNet liability orders in compliance with the Firm Quote Rule, providing best execution to its customers, and, if necessary, taking appropriate measures to improve its performance in these areas. Each report contains information for the previous calendar month and is available on the 24th of each month or the first business day after the 24th if that day falls on a weekend or holiday.

The reports are available to view at www.nasdaqtrader.com; however, given the proprietary nature of the firm-specific reports, a firm must subscribe to the Proprietary Trading Data section of the Web Site to access any of the reports. For a detailed description of each of the reports and

subscription information, please call Nasdaq Subscriber Services at (800) 777-5606.

Although these reports are designed and intended to be a preventive compliance tool, the information contained in these reports may indicate the existence of rule violations that may be pursued by Market Regulation staff depending on the circumstances. Accordingly, NASD Regulation strongly recommends that members subscribe to the compliance report cards in order to enhance their supervisory procedures.

If you have any questions concerning the Trade Reporting report card, please do not hesitate to call Patricia Casimates, Market Regulation, NASD Regulation, Inc., at (301) 590-6447.

If you have any questions concerning the Firm Quote Compliance or Best Execution report cards, please do not hesitate to call Joe McDonald, Market Regulation, NASD Regulation, Inc., at (301) 212-3835.

Continuing Education Rule 1120—Some Reminders About The Firm Element

NASD Regulation reminds registered persons of their obligation to comply with the continuing education requirements set forth in NASD Membership and Registration Rule 1120. The continuing education requirements consist of both a Regulatory Element and a Firm Element. The Firm Element requires each member firm to annually develop and implement a Written Plan for training its registered persons based on an assessment of its own specific training needs. Registered persons are required to complete the Firm Element of their member firms' training plans as designed by the firms. Completing the Regulatory Element alone does not satisfy the provisions of the Rule.

Regardless of whether member firms take internal disciplinary action against registered persons who fail to complete the Firm Element, registered persons may be subject to discipline by NASD Regulation. Generally, first-time offenses will be addressed by a Letter of Caution (LOC). LOCs for violations of the Firm Element will require registered persons to notify subsequent employers of the LOC prior to being hired. Registered persons who fail repeatedly to comply with the Firm Element may be subject to formal disciplinary action.

NASD Regulation reminds member firms to inquire about registered persons' compliance with the Firm Element at their previous employers before making a hiring decision.

Needs Analyses And Training Plans For Small Firms

Every firm must conduct an Annual Needs Analysis and prepare a Written Training Plan. However, small firms without material changes in personnel, operations, or product lines from the previous year do not usually need to make substantial revisions to their Written Plans. *If there are no material changes in a firm's size, organizational structure, scope of business, or regulatory environment, a simple update from the previous year's Needs Analysis and Written Training Plan may be adequate.*

The Needs Analysis should contain a brief description of the firm's products and services and the background and industry experience of its covered persons. It should address any firm-specific issues relevant to the type of business the firm conducts or plans to conduct as well as pertinent recommendations from the *Firm Element Advisory*.¹ The Written Training Plan should briefly describe the training activities for the upcoming year which are reasonable in relation to the firm's size and resources. Documentation of the training, the

¹ The Firm Element Advisory was last published in March 1998 as *NASD Notice to Members 98-28* and will be updated in September 1999.

Needs Analysis, and Written Training Plan must be maintained for inspection as part of the firm's books and records.

For more information about the continuing education requirements of NASD Rule 1120,

please visit the NASD Regulation Web Site at www.nasdr.com. In addition, you may call John Linnehan, Continuing Education, NASD Regulation, Inc., at (301) 208-2932 or Jim McNamara, Member Regulation, NASD Regulation, Inc., at (202) 728-6962.

Continuing Education Open Forum

The Securities Industry/Regulatory Council on Continuing Education (Council) held an open meeting for industry firms at the Le Meridien Hotel in Boston on May 27. Thirty-one representatives from 28 New England broker/dealers met to share ideas and discuss issues relating to the Firm Element of the Securities Industry Continuing Education Program.

Each participant met at a roundtable for two 30-minute discussions on a Firm Element topic. Each table was devoted to one of the following topics for each discussion:

- ❖ *Preparing the Annual Needs Analysis and Written Training Plan.*
- ❖ *Creating a training program for supervisors.*
- ❖ *Tracking and documenting Firm Element compliance.*
- ❖ *Training ideas and resources.*

The experiences and ideas from each group were shared with everyone in a wrap-up session after the last roundtable discussion.

Members of the industry that attended the open meeting indicated that the format was helpful in that it facilitated discussion and exchange of

ideas and experiences. "It was a great way to 'compare notes' on Firm Element training practices with other firms," said Margaret M. Atkinson, Director, Continuing Education at Fidelity Investments Institutional Services Company. "It was good to learn that we can incorporate CFA and CFP designations into our continuing education programs, and I also heard great ideas on how to improve questions in my Needs Analysis survey for covered reps."

Although the Council does not endorse or recommend any single approach to comply with the Firm Element, it considers the following comments and ideas from the open meeting roundtable discussions worth sharing.

Preparing The Annual Needs Analysis And Written Training Plan

Needs Analysis

- ❖ When surveys are used during the Needs Analysis, consider whether better feedback can be obtained if a name is not required on the completed survey.
- ❖ Ask probing questions of the registered representatives (*i.e.*, What do you need to know? What two or three questions have

been asked of you by clients that you did not know the answers to?).

- ❖ Obtain input from sales management and key some of the Needs Analysis off of the sales plans of the firm's business units.
- ❖ Look for trends in any customer complaints, disciplinary actions, or arbitrations.
- ❖ Check the quarterly Regulatory Element performance reports to determine whether there are any subject areas that exhibit a firm-wide weakness. If so, review the Regulatory Element content outline (available from the SRO continuing education Web sites¹) for the specific issues covered under the subject area.
- ❖ Tailor the training to each registered representative's background and experience.
- ❖ Be flexible. Allow for changes that may crop up during the year, such as new rules and market events.
- ❖ Be sure to add a written addenda to your plan if it changes during the year.

Training Plan

- ❖ Consider a "college catalog" approach based on earning a certain number of "credits." A credit could equal 4 to 8 hours of effort.
- ❖ Use the registered representative's experience to determine how many required or elective courses are needed.

- ❖ Consider whether plans should vary for sales and home office covered persons.
- ❖ Specify that internal disciplinary action will be taken if a registered representative fails to comply with the firm's training plan.
- ❖ Obtain feedback from training to ensure that objectives are met and to assist with future Needs Analysis.

If there are no material changes in a firm's size, organizational structure, scope of business, or regulatory environment, a simple update from the previous year's Needs Analysis and Written Training Plan may be adequate, especially in the case of small firms and sole proprietorships. See the previous article, "Continuing Education Rule 1120—Some Reminders About The Firm Element", for more information.

Creating A Training Program For Supervisors

- ❖ Focus on education. For example, educate managers on how to make decisions that are not rules-based, as in interviewing and hiring.
- ❖ Consider ethics training.
- ❖ Include training on product knowledge and suitability.

Although it was not mentioned at the round-table discussions, the Council has in the past suggested that Firm Element training for supervisors focus on supervisory responsibilities imposed by industry laws and regulations.

¹ NASD Regulation Web Site at www.nasdr.com/2645.htm. New York Stock Exchange Web Site at www.nyse.com/public/invprot/5e/5eix.htm.

Firms should include a review of the firm's internal supervisory policies, the effective use of internal monitoring or supervisory systems, and the sources of information or assistance available to supervisors within the firm.

Tracking And Documenting Firm Element Compliance

- ❖ What a firm tracks and documents and how it maintains records is defined by each firm's business model, Needs Analysis, and Written Plan. Thus, the approach for a large, full-service firm may be quite different from that of a smaller, single-product firm.
- ❖ Conference calls require documentation such as attendance lists and verification of participation.

Training Ideas And Resources

The Council reminds firms that training materials and presentations available through outside sources or internally may be used if they meet the standards of the Firm Element as specified in the SRO rules, and are appropriate for the firm's needs as determined in the Needs Analysis process. Firms which elect to use materials or presentations developed or provided by others maintain the ultimate responsibility for the content and the adequacy of their overall programs. It is also important to remember that neither the Council nor the

SROs will pre-approve training materials or training programs.

- ❖ Utilize SRO materials, compliance update meetings, in-house written materials, and oral presentations by product specialists in the firm.
- ❖ Consider training available from trade associations (e.g., SIA, ICI, IAFP, the Bond Market Association, etc.), commercial vendors, Internet providers, satellite TV broadcasts, regulators, clearing firm, and product wholesalers.
- ❖ Seminars/conferences that have been reviewed for continuing education content and applicability. Perhaps review several and provide registered representatives a choice of which to attend.
- ❖ Utilize continuing education materials for insurance and professional designations (e.g., CFA, CFP, CLU) where the training addresses securities issues.
- ❖ Make the training fun and competitive. One firm uses a "Jeopardy" format.
- ❖ Develop your own training with an outside vendor or modify an off-the-shelf program.

The Council recommends that firms carefully review the next edition of the *Firm Element Advisory*, a compilation of training topics that the Council considers relevant to the industry. The *Firm Element Advisory* will be published as an *NASD Notice to Members* and an *NYSE Information Memorandum*. The *Firm Element*

Advisory will be helpful for preparing year 2000 Firm Element plans. The Council plans to hold open meetings later this year in Chicago (October 14) and Los Angeles (December 9).

Firms located in and around these cities will receive invitations, but any broker/dealer is welcome to attend.

Excellence In Service Award For Sylvan Centers

NASD Regulation has established a Sylvan Technology Center (STC) Excellence in Service Award Program in 1999 for those STCs that consistently achieve excellence in the areas of customer service and performance.

The awards are made in April, July, October, and January for the previous calendar quarter beginning in April 1999. When an STC achieves its first award, the center will receive a plaque, along with a quarterly bar to be placed on the plaque. Centers that qualify for awards in subsequent quarters will receive award bars to be placed on their plaques. We anticipate that the award winners will prominently display the plaques in their centers.

NASD Regulation tracks candidate satisfaction with STC performance through its Candidate Attitude Survey (CAS) that is presented electronically to candidates at the end of each testing and continuing education session. Approximately 65 percent of the candidates provide responses to the survey.

To achieve the Excellence in Service Award, a center must meet the following criteria:

- ❖ *A minimum of 50 candidate responses to the CAS, per quarter, must be recorded. Note, candidate responses to the following CAS categories are used to determine award achievement:*

- ❖ Staff courtesy
- ❖ Environment
- ❖ Timely seating of candidates
- ❖ Overall center performance

- ❖ *A center must significantly exceed the expectation rating in three of the above categories while at least meeting the expectation rating for the fourth category. The expectation rating is that 95 percent of the respondents rate the center satisfactory and/or outstanding in the category. Statistical significance measurement techniques are used to determine whether ratings above the 95 percent expectation qualify for the award.*

For more information, contact Linda Christensen, Member Regulation, at (610) 627-0377.

The Excellence In Service Award winners for the first quarter of 1999 are:		
Sacramento, CA San Antonio, TX Orlando, FL Pittsburgh (North Hills), PA Indianapolis, IN Pikesville, MD Ft. Smith, AR Helena, MT Gladstone, MO Concord, NH	Utica, MI Mishawaka, IN Miami Lakes, FL Northbrook, IL Melville, NY Hamden, CT Rancho Cucamonga, CA Phoenix, AZ Franklin, TN York, PA	Fox Point, WI Salem, OR Austin, TX Gastonia, NC Cincinnati, OH Brookfield, CT Memphis, TN Montreal, PQ, CN Dothan, AL

Appointment Scheduling At Local Sylvan Centers

At a recent meeting with members of the Sylvan Franchise Owners Association, the topic of scheduling appointments at **local** centers was discussed. Two important facts emerged from the discussion:

1. Scheduling appointments at the local center can provide for more flexibility in appointment times. Local center staff has closer control of the appointment scheduling software to better serve candidate needs. They also have the authority to extend a center's hours to accommodate more appointments.
2. Local center staff are able and willing to schedule **group** appointments. **In order to schedule a group appointment at a local level, two conditions must be met:**

- ❖ *The **group is limited to a maximum of 20** candidates.*
- ❖ *Candidate names and Social Security numbers must be provided at the time of scheduling. The center staff **cannot** block spaces without the candidate information.*

Note: Group scheduling services will, of course, also continue to be provided by NASDR's Field Support Services (FSS) team. FSS can be reached at (800) 999-6647.

The Sylvan franchise owners are committed to providing NASD members, and their candidates, with the best service possible. The franchise owners encourage us to make use of the local services available.

Certification Testing & Continuing Education Delivery Location List

Current as of June 1999

Alabama

Birmingham	205-871-7444
Decatur	205-350-8324
Dothan	334-677-6334
Mobile	334-344-6284
Montgomery	334-262-0043

Alaska

Anchorage	907-563-6601
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Arizona

Chandler	602-963-6260
Goodyear	602-932-7800
Phoenix (N. 35th Ave.)	602-548-8220
Tucson	520-531-0431

Arkansas

Fort Smith	501-484-0702
Little Rock	501-663-8280

California

Anaheim	714-637-7894
Atascadero	805-462-8308
Brea	714-255-1141
Culver City (5601 W. Slausen)	310-337-6696
Culver City (5731 W. Slausen)	310-337-6696
Diamond Bar	909-861-1146
Fremont	510-745-8192
Gardena	310-329-1844
Glendale	818-545-7383
Irvine	949-552-0563
LaJolla	619-454-4384
LaMesa	619-668-2121
Piedmont	510-428-4123
Rancho Cucamonga	909-944-9763
Redlands	909-792-2145
Riverside	909-353-8600
Sacramento (Fair Oaks)	916-961-7323
San Diego	619-481-3648
San Francisco (Market St.)	415-882-1212
San Francisco (W. Portal St.)	415-681-3769
San Jose	408-257-7699
Santa Rosa	707-528-6000

Walnut Creek	925-934-3099
Westlake/Ventura	818-342-9686

Canada

Calgary	403-777-1365
Etobicoke, ON	416-236-2629
Halifax	902-422-7323
Montreal	514-876-8818
Richmond BC	604-231-1966
Saskatoon, SK	306-978-7323
Whitby	905-404-1818
Windsor	519-974-8747
Winnipeg	204-988-5050

Colorado

Boulder	303-449-1700
Colorado Springs	719-593-1272
Denver	303-692-8745
Littleton	303-972-7276
Pueblo	719-545-0838

Connecticut

Brookfield	203-775-9611
Glastonbury	860-659-0400
Hamden	203-287-9677
Norwalk	203-847-0031

Delaware

Dover	302-741-0412
Wilmington	302-998-3817

District of Columbia

Washington	202-955-5887
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Florida

Davie	954-423-0782
Ft. Myers	941-275-1130
Gainesville	352-371-6891
Hollywood	954-967-0443
Jacksonville	904-739-3000
Maitland/Orlando	407-875-8118
Miami	305-825-2708
Sarasota	941-923-9399
Tallahassee	850-385-8696
Tampa	813-289-1246

Temple Terrace (Tampa)	813-989-9988	Louisiana	
Winter Park	407-671-2332	Baton Rouge	225-293-8489
Georgia		Bossier City	318-742-7349
Atlanta	404-255-9957	New Orleans	504-245-2600
Augusta	706-868-1888	Maine	
Jonesboro	770-478-5356	Orono	207-581-1708
Macon	912-474-5909	Portland	207-775-5812
Savannah	912-354-2660	Maryland	
Smyrna	770-801-0215	Baltimore	410-843-6401
Valdosta	912-245-1069	Bethesda	301-718-9893
Hawaii		Columbia	410-740-8137
Honolulu County	808-263-6656	Lanham	301-552-3400
Idaho		Pikesville	410-486-9045
Boise	208-322-3555	Salisbury	410-341-4100
Illinois		Massachusetts	
Carbondale	618-529-4664	Boston	617-345-8980
Carpentersville	847-836-2031	E. Longmeadow	413-525-4901
Chicago (LaSalle St.)	312-609-2525	Lexington	781-861-0723
Chicago (S. Wabash)	312-663-5632	Waltham	781-890-0466
Homewood	708-798-0238	Worcester	508-853-7250
Northbrook	847-559-2461	Michigan	
Peoria	309-682-0825	Ann Arbor	734-665-7323
Springfield	217-546-0381	Grand Rapids	616-957-0368
Westchester	708-947-2800	Lansing	517-372-7413
Indiana		Livonia	734-462-2750
Evansville	812-479-6855	Portage	616-321-8351
Ft. Wayne	219-436-2710	Troy	248-643-7323
Indianapolis (E. 86th St.)	317-257-7546	Utica	810-739-0270
Indianapolis (Girl's School Rd)	317-247-7664	Minnesota	
Lafayette	765-447-5996	Bloomington	612-831-7461
Merrillville	219-736-1113	Duluth	218-723-1494
Mishawaka	219-254-1055	Rochester	507-292-9270
Iowa		St. Cloud	320-529-4830
Bettendorf	319-359-1001	Woodbury	612-702-6791
Cedar Rapids	319-393-0555	Mississippi	
Des Moines	515-223-6650	Jackson	601-366-6400
Kansas		Missouri	
Topeka	785-272-7500	Ballwin	314-394-7742
Overland Park	913-338-1441	Jefferson City	573-761-7317
Wichita	316-651-5350	Springfield	417-882-0740
Kentucky		St. Joseph	816-671-9900
Lexington	606-269-3933	St. Louis	314-993-9092
Louisville	502-423-0340	Montana	
		Billings	406-656-4646
		Helena	406-443-9205

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Omaha 402-334-9449

Nevada

Las Vegas 702-876-4090
Reno 702-829-2700

New Hampshire

Portsmouth 603-433-5898

New Jersey

Deptford 609-384-4744
East Brunswick 732-390-4040
Fairlawn 201-475-1670
Hamilton Township 609-631-9794
Toms River 732-349-4609
Union 908-964-2862

New Mexico

Albuquerque 505-296-0609

New York

Albany 518-869-6119
Amherst/Buffalo 716-565-0570
Brooklyn Heights 781-222-1277
East Syracuse 315-433-9038
Garden City 516-746-7367
Ithaca 607-277-4821
Manhasset 516-869-1236
Melville 516-845-9063
NYC Manhattan Area 212-760-1137
NYC Midtown Area 212-809-5509
NYC Wall Street Area 212-809-5509
Rego Park 718-997-6356
Rochester 716-385-4810
Staten Island 718-980-3079
Vestal 607-798-1715
Wappingers Falls 914-298-8378
Watertown 315-788-2588
White Plains 914-289-0437

North Carolina

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Charlotte 704-364-7758
Gastonia 704-853-2038
Greensboro 336-288-1311
Greenville 252-756-0342
Raleigh 919-846-1933

North Dakota

Bismarck 701-224-1171
Fargo 701-293-1234

Ohio

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Columbus (Henderson Rd.) 614-451-4652
Cuyahoga Falls 330-929-6554
Dayton 937-435-8417
Hilliard 614-529-4232
Lima 419-331-7323
Mentor 440-255-0055
Niles 330-652-1886
Reynoldsburg 614-864-4090
Solon 440-349-4153
Strongsville 440-238-0530

Oklahoma

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Tulsa 918-249-0820

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Portland 503-254-2009
Salem 503-363-2996

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Clark Summit 717-586-4362
Erie 814-864-6100
Harrisburg 717-652-0646
Lancaster 717-391-6519
North Wales 215-412-7822
Philadelphia 215-238-8380
Pittsburgh (North Hills) 412-367-4620
Pittsburgh (Braddock Ave.) 412-247-4463
Plymouth Meeting 610-941-6284
York 717-755-7471

Puerto Rico

Hato Rey 787-753-6394

Rhode Island

Cranston 401-942-8552

South Carolina

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Greenville 864-676-1506
Irmo 803-749-0356

South Dakota

Sioux Falls 605-338-1446

Tennessee

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Clarksville 931-647-2003
Franklin 615-790-5018

<i>Knoxville</i>	423-690-0671	Virgin Islands	
<i>Madison (Nashville)</i>	615-860-0376	<i>St. Croix</i>	340-773-5751
<i>Memphis</i>	901-266-4606	<i>St. Thomas</i>	340-777-8292
Texas		Virginia	
<i>Abilene</i>	915-698-7858	<i>Arlington/DC Area</i>	703-807-5813
<i>Amarillo</i>	806-359-1037	<i>Lynchburg</i>	804-832-0778
<i>Arlington</i>	817-572-6690	<i>Mechanicsville</i>	804-730-5844
<i>Austin</i>	512-441-1978	<i>Newport News</i>	757-873-0208
<i>Beaumont</i>	409-899-9798	<i>Richmond</i>	804-750-2823
<i>Corpus Cristi</i>	512-993-3793	<i>Roanoke</i>	540-344-3688
<i>Dallas</i>	972-385-1181	Washington	
<i>El Paso</i>	915-587-7323	<i>Lynnwood</i>	425-774-3922
<i>Houston (Saturn Ln)</i>	281-488-6144	<i>Puyallup</i>	253-848-0771
<i>Lubbock</i>	806-785-4400	<i>Spokane</i>	509-467-8715
<i>Mesquite</i>	972-686-3310	West Virginia	
<i>Midland</i>	915-520-9418	<i>South Charleston</i>	304-744-4144
<i>San Antonio</i>	210-494-7263	Wisconsin	
<i>Sugar Land</i>	281-491-9200	<i>Fox Point</i>	414-540-2223
<i>Waco</i>	254-772-2467	<i>Madison</i>	608-231-6270
Utah		<i>New Berlin</i>	414-796-0808
<i>Orem</i>	801-226-5544	<i>Racine</i>	414-554-9009
<i>Salt Lake City</i>	800-578-6273	Wyoming	
Vermont		<i>Casper</i>	307-235-0070
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Linda D. Fienberg
George H. Friedman
- 599D02 **Neutral List Selection System**
- 599D03 **Avoiding Common Mistakes**
- 599D04 **Sticky Issues that Arise in Arbitration**
- 599D05 **Mediation Session**
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- 599S01 **General Session Keynote Address**
State of the SRO Mary L. Schapiro
General Session Panel: Open Forum with Senior Regulatory Staff
- 599S02 **Communications With The Public**
- 599S03 **Impact Of Technology On Markets**
- 599S04 **Effective Supervision**
- 599S05 **Examination Program: Process & Priorities**
- 599S06 **Best Practices In Broker/Dealer Regulatory Technology**
- 599S07 **A Look Inside The Disciplinary Process**
- 599S08 **Fixed Income Securities**
- 599S09 **Small Broker/Dealer Compliance Issues**
- 599S10 **Dynamics of Customer Complaints**
- 599S11 **Continuing Education**
- 599S12 **Modernized CRD System And CRD/Public Disclosure Issues**
- 599S13 **Open Forum With District Directors**
- 599S14 **Year 2000 Contingency Planning**
- 599S15 **Market Regulation Issues**
- 599S16 **New And Continuing Member Application Process**
- 599S17 **Securities Law**
- 599S18 **Market Volatility And Associated Trading Issues**
- 599S19 **Independent Contractors/Financial Planners/Investment Advisers**
- 599S20 **Q&A with NASDR Senior Staff**
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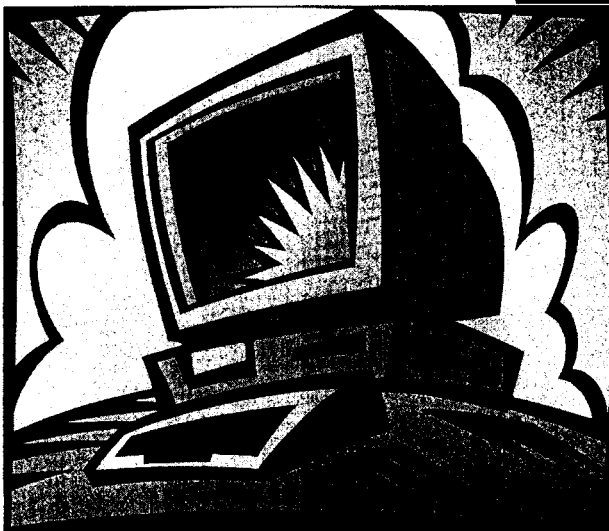
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NASD Disciplinary Actions

In April, May, and June 1999, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

District 1 - Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

April Actions

Gale Lynne Fairbrother (Registered Representative, Novato, California) submitted an Offer of Settlement pursuant to which she was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fairbrother consented to the described sanctions and to the entry of findings that she participated in private securities transactions without providing prior written notification to her member firm. Fairbrother also provided false testimony to the NASD.

L.H. Alton & Company (San Francisco, California) and Lewis Hunt Alton (Registered Principal, San Francisco, California) were censured and fined \$40,000, jointly and severally. In addition, the firm was suspended from participation in underwriting activities for 30 business days, and ordered to hire an independent consultant to audit the firm's compliance and written supervisory policies, procedures, and practices and to comply with the requirements in the consultant's written report. Alton was suspended from association with any NASD member in any principal capacity for 30 days, and ordered to comply with the consultant's recommendations before acting again in any principal capacity. Alton must also requalify by examination before acting in any principal capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following the appeal of a December 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Alton, conducted a securities business while maintaining insufficient net capital, filed false and inaccurate FOCUS Parts I and II Reports, and permitted an unregistered person to act as a representative and principal of the firm. Furthermore, the respondents participated in the underwriting of several "hot issues" without obtaining required information from the purchasers of the hot issues, and failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Requirements. In addition, the firm, acting through Alton,

failed to maintain written supervisory procedures relating to the customer complaint reporting requirement.

L.H. Alton & Company and Alton have appealed this action to the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

May Actions

None

June Actions

Robin Bruce McNabb (Registered Principal, San Jose, California) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that McNabb participated in private securities transactions without giving prior written notification to his member firm. In addition, McNabb recommended to public customers the purchase of securities without having reasonable grounds for believing that the investments were suitable for the customers in light of the facts disclosed by the customers as to their other security holdings and as to their financial situation and needs.

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

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

April Actions

Dale Andrew Diskant (Registered Representative, Huntington Beach, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Diskant consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he received compensation, and failed to provide his member firm with prompt written notification of these activities.

La Jolla Capital Corporation (San Diego, California), Harold Bailey Gallison (Registered Principal, Las Vegas, Nevada), Christopher S. Knight (Registered

Principal, Forest Hills, New York), and Gregory Karl Mehlmann (Registered Principal, Englewood, Colorado). The firm and Gallison were censured, barred from engaging in penny stock transactions in any capacity, fined \$297,380, jointly and severally, and fined \$50,000 each individually, and required to present proof of restitution or rescission to their damaged customers, jointly and severally. Gallison was also barred in all principal and supervisory capacities, and suspended in all capacities for 30 days. Knight was censured, fined \$95,854.55, barred in all principal and supervisory capacities, barred from engaging in penny stock transactions in any capacity, and suspended in all capacities for 15 days. Mehlmann was censured, fined \$10,000, suspended in all principal and supervisory capacities for 10 days, and required to requalify as a general securities principal.

The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that the firm, Gallison, and Knight violated the SEC's penny stock rules by failing to make adequate disclosure to their customers who purchased penny stocks. In addition, the firm, Gallison, Mehlmann, and Knight failed to establish, maintain, and enforce procedures reasonably designed to detect and prevent violations of the penny stock rules. Knight also permitted unregistered personnel to engage in the securities business at the firm's New York office while he managed that office.

La Jolla Capital Corporation and Gallison have appealed this action to the SEC and the sanctions, other than their bars, are not in effect pending consideration of the appeal.

David Carmichael Montano (Registered Principal, Orange, California) was censured, fined \$10,000, and ordered to requalify by exam as a general securities principal. The NAC affirmed the sanctions following a July 1998 SEC decision remanding the matter to the NASD. The sanctions were based on findings that Montano appeared on a television program and made recommendations regarding a stock while failing to provide a sound basis for evaluating the stock's financial prospects or his recommendation to sell the stock short. Montano also failed to describe market conditions while highlighting the success of past recommendations. The findings also stated that Montano made exaggerated and unwarranted claims; made improper comparisons by referring to previous specific recommendations and implied comparable future results for his current recommendation; and made specific predictions and projections concerning future investment results.

May Actions

Stephen Vaillancourt Burns (Registered Representative, Pasadena, California) 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, Burns consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to provide documents and testimony.

Mark David Couron (Registered Representative, Carlsbad, California) and Steven Roy Schroeder (Registered Representative, Carlsbad, California) submitted Offers of Settlement pursuant to which Couron was censured and suspended from association with any NASD member in any capacity for 45 days, and Schroeder was censured and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they participated in private securities transactions but failed to provide prompt written notification to their respective member firms prior to participating in such transactions.

Nancy Hoff Martin (Registered Principal, Tustin, California) submitted an Offer of Settlement pursuant to which she was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, suspended from associating with any NASD member firm in the capacity of a general securities principal for two years, and ordered to requalify by exam as a general securities principal. Without admitting or denying the allegations, Martin consented to the described sanctions and to the entry of findings that she permitted unregistered persons to actively trade in public customer accounts, using her account executive number. The NASD also found that Martin failed to follow procedures reasonably designed to carry out the supervision of a representative to ensure compliance with the NASD Membership and Registration Rules. Furthermore, Martin failed to carry out her supervisory responsibilities when confronted with, or exposed to, various situations that indicated that the representative was engaging in the securities business of a member firm without being properly registered.

Robin Michele Rushing (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$5,000, jointly and severally, with a member firm, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations Rushing consented to the described sanctions and to the entry of findings that a member firm, acting under the direction and control of Rushing, failed to have and maintain sufficient minimum net capital.

Sutro & Co., Inc. (San Francisco, California) and Glenn P. Kernweis (Registered Representative, Burbank, California) submitted Offers of Settlement pursuant to which the firm was censured and fined \$60,000. Kernweis was censured, fined \$30,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to requalify by exam as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Kernweis failed to take appropriate action to prevent unsuitable recommendations that were made to a customer by another registered representative with whom Kernweis did business in a partnership called the KKS Group. Kernweis benefited substantially from the violative trading. Furthermore, the NASD determined that the firm failed to establish, maintain, and/or enforce clear lines of authority and responsibility in response to certain findings relating to its supervision of KKS Group that were cited in a New York Stock Exchange special examination report and the firm's undertakings made in response to the report.

Robert Joseph Torres (Registered Representative, Rancho Mirage, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Torres consented to the described sanctions and to the entry of findings that he failed to provide information in the form of testimony concerning a customer complaint involving apparent misuse of customer funds, selling away, and other apparent misconduct.

Ronald Anthony Travisano (Registered Principal, Tujunga, California) 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, Travisano consented to the described sanctions and to the entry of findings that he failed to appear for an on-the-record interview requested by the NASD in connection with a customer complaint.

Mare Van Sickler (Registered Representative, Valley Village, California) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Van Sickler failed to respond to NASD requests for information.

June Actions

Marcos Beltran Barcelo (Registered Principal, Santa Fe Springs, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$81,614.80, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barcelo consented to the described sanctions and to the entry of findings that he received commission checks in the total amount of \$322.96 issued by his member firm and payable to an employee under his supervision. According to the findings, rather than giving the checks to the employee, Barcelo converted the checks to his own use and benefit by endorsing and depositing the checks in his wife's personal bank account without the employee's knowledge or consent.

Lilia Frianeza Cayabyab (Registered Representative, Sherman Oaks, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Cayabyab consented to the described sanctions and to the entry of findings that she submitted a Form U-4 to her member firm that failed to disclose that she was the subject of an embezzlement conviction.

Maria Magdalena Coats (Associated Person, Moreno Valley, California) submitted an Offer of Settlement pursuant to which she was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Coats consented to the described sanctions and to the entry of findings that she submitted to her member firm a Form U-4 that contained false responses to disciplinary questions, when in fact, she was the subject of a welfare fraud conviction and a state action. Furthermore, the NASD found that Coats failed to action the Form U-4 to disclose the conviction and state action.

Ronald Ernest Collins (Registered Representative, Redlands, California) 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, Collins consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to provide documents and testimony.

Harry Gliksman (Registered Principal, Beverly Hills, California) was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The NAC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Gliksman made unsuitable recommendations to a public customer.

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

John Vernon Hiers (Registered Representative, Canyon Lake, California) was censured, fined \$137,500, barred from association with any NASD member in any capacity, and ordered to pay \$6,106.77, plus interest, in restitution to a public customer. The sanctions were based on findings that Hiers received a \$7,500 check from a public customer intended for investment purposes, and without the customer's knowledge or consent, deposited the check in his personal brokerage account, used the funds to cover

a day trade previously made in his account, and dissipated all but \$1,393.23 of the funds through trading in his personal account. Furthermore, Hiers falsely represented to the customer on numerous occasions that the account statements reflecting the trade that the customer had authorized in his account would be forthcoming. Contrary to these representations, however, no such statements were ever provided to the customer because no account was ever established in the customer's name. Hiers later paid the customer \$1,393.23 but failed to return any portion of the remaining \$6,106.77.

Interfirst Capital Corporation (Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, ordered to offer rescission or early redemption to all investors in a contingent offering, and to the extent the offer of rescission is accepted by any investors, the firm was ordered to exchange each investor's interest in the investment for full and complete restitution and to provide proof of the required rescission or early redemption offers to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it offered and sold investments in a contingent offering of securities and failed to deposit and retain customer funds in a separate escrow account until the minimum number of units had been sold.

Robert Louis Plomgren (Registered Principal, Solana Beach, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Plomgren 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 describing the proposed transactions and his proposed role therein.

Richard San Miguel, Jr. (Registered Representative, Oceanside, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, San Miguel consented to the described sanctions and to the entry of findings that he submitted Forms U-4 to his member firms and failed to notify his firms that he was convicted of petty theft and was disciplined by the state of California for failing to disclose the conviction on a registration application.

Thomas Robert Sanford (Registered Principal, Dana Point, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, barred from association with any NASD member in any capacity with the right to reapply after five years, required to show proof of restitution to public customers, and required to reimburse his member firm \$21,800. Without admitting or denying the allegations, Sanford consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the customers' knowledge, authorization, or consent and initiated unauthorized wire transfers totaling \$21,800 from the joint account of public customers. The findings also stated that, in order to facilitate this unauthorized wire transfer, Sanford forged the customers' signatures on wire transfer instruction forms, and as a result, \$21,800 belonging to the customers was transferred from their joint account to bank accounts of which the customers had no beneficial nor other interest.

Greg Steven Sklar (Registered Representative, Los Angeles, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and ordered to requalify by exam as a general securities representative. Without admitting or denying the allegations, Sklar consented to the described sanctions and to the entry of findings that he knew, or should have known, that the

recommendations in the account of a public customer were unsuitable for the customer and that the account was excessively traded. Sklar failed to take appropriate action to prevent the violative activity in the account and substantially benefited from the violative trading activity.

Alejandro Vargas (Associated Person, Inglewood, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Vargas consented to the described sanctions and to the entry of findings that he submitted a Form U-4 to his member firm that failed to disclose a petty theft conviction.

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

April Actions

Michael Andrew Maher (Registered Representative, Portland, Oregon) submitted an Offer of Settlement pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maher consented to the described sanctions and to the entry of findings that he withdrew at least \$12,097.97 from a scholarship fund operated by employees of his member firm, without the knowledge or approval of the scholarship fund board of directors, and used the funds for his own personal use and benefit.

Gerald Cash McNeil (Registered Representative, North Bergen, New Jersey) was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, ordered to pay restitution in the amount of \$3,712.50 plus interest, and required to requalify by examination in all capacities prior to associating with a member firm. The NAC imposed the sanctions following appeal and review of a New York DBCC decision. The sanctions were based on findings that McNeil executed transactions in the accounts of public customers without their prior authorization or consent.

Freddie Joe Royer, Jr. (Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity with a right to reapply after two years. Without admitting or denying the allegations, Royer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and business activities outside the scope of his employment without giving his member firm prior written notice of his activities, and he failed to notify his member firm of securities accounts he maintained or established at other member firms for a non-member firm. The findings also stated that Royer failed to notify the firms holding the accounts of his association with his member firm. In addition, Royer opened a securities brokerage account with an NASD member, omitted to disclose that he was associated with a member firm, and purchased shares in an initial public offering (IPO) that traded at an immediate premium in the secondary market and was considered a "hot issue" for purposes of the NASD's Free-Riding and Withholding Interpretation. Furthermore, the NASD determined that Royer co-signed a membership agreement for another member firm, held a 40 percent ownership stake in the firm, and during the first and only examination of the firm, the NASD discovered that the firm had failed to comply with the membership agreement, with two of the noted violations attributable to Royer.

Strategic Resources Management, Inc. (Aurora, Colorado) and William Arthur Moler (Registered Principal, Aurora, Colorado) submitted an Offer of Settlement pursuant to which they were censured and fined \$7,500, jointly and severally, and both the firm and Moler were suspended from membership in the NASD for six months. In addition, Moler must requalify as a Series 24 general securities principal prior to resuming duties that require registration as a principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Moler failed to file an amended Form U-5 for an individual to disclose the filing of an arbitration claim against the individual.

Jay Alan Yeggy (Registered Representative, Boise, Idaho) 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, Yeggy consented to the described sanctions and to the entry of findings that he submitted a falsified application for insurance for a public customer and a falsified delivery receipt for the insurance policy for this customer to his member firm. The findings also stated that Yeggy transmitted to a client falsified Common Remitter Billing Notices that overstated amounts due and owing on the client's insurance policies and, submitted a falsified insurance application for another public customer to his member firm.

May Actions

Ralph Charles Altomare (Registered Representative, Bellevue, Washington) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Altomare consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the prior authorization of the customers.

Craig Steven Berman (Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, suspended from association with any NASD member in any capacity for 18 months, and required to pay restitution in the amount of \$93,370 to public customers. Without admitting or denying the allegations, Berman consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material information in connection with the solicitation of transactions in securities to public customers. The findings also stated that Berman effected transactions without the prior authorization and consent of the customers in whose accounts the transactions were effected, predicted the future prices of a security to customers when he did not have a reasonable basis for the prediction, and failed to sell securities when instructed to do so. Furthermore, the NASD found that Berman conducted a securities business with a public customer who resided in a state in which he was not yet registered, and indicated another representative's broker number on the new account card.

Frederick H. Camp (Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$15,000. Without admitting or denying the allegations, Camp consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notice to his member firm describing in detail the proposed transactions, his role therein, and stating whether he had received or might receive selling compensation in connection with the related transactions.

Robert Leon Chris (Registered Representative, Caldwell, Idaho) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$85,000, barred from association with any NASD member in any capacity, and ordered to pay \$14,990 in restitution to a public customer. Without admitting or denying the allegations, Chris consented to the described sanctions and to the entry of findings that he received at least \$29,721 from a public customer for the purpose of helping her pay her bills and to otherwise manage her money. The NASD found that Chris used approximately \$10,126 to cover the customer's bills, returned a check in the amount of \$5,000 to the customer, spent the balance of funds, \$14,990, to pay his business and personal expenses, and to pay debts of other clients, without the authorization or consent of the customer.

Jasen Michael Devlin (Registered Principal, Bayshore, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$27,000, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Devlin consented to the described sanctions and to the entry of findings that he solicited public customers to purchase securities by means of misrepresentations and omissions of material facts and predictions of the future price of securities. The findings also stated that Devlin failed to sell securities when instructed to do so.

Leslie Saul Feldman (Registered Representative, Evergreen, Colorado) was censured; fined \$103,563.95, with the proviso that the fine be reduced to \$20,000 upon demonstration to the NASD that he has made full restitution in compliance with a settlement agreement; and barred from association with any NASD member in any capacity. The sanctions were based on findings that Feldman misappropriated funds totaling \$16,712.79 from his member firm.

Philip Steven Harmon (Registered Representative, Camano Island, Washington) 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, Harmon consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in connection with his alleged private securities transactions.

Charles Wesley Rhodes, Jr. (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, Rhodes consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written notice to his member firm describing in detail the proposed transaction, his role therein, and stating whether he had received or might receive selling compensation in connection with the related transactions.

Smith, Benton & Hughes, Inc. (Los Angeles, California) and Michael Zaman (Registered Principal, Calabasas, California). The firm was censured and expelled from NASD membership, and Zaman was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Zaman, filed a Form U-5 that contained inaccurate and misleading information, and failed to provide a reasonable basis for the information concerning the circumstances surrounding an associated person's termination.

Glen Loren Thormodsgaard (Registered Principal, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Thormodsgaard consented to the described sanctions and to the entry of findings that

he obtained commission checks payable to a former representative of his member firm to whom he had loaned money and a personal computer that had not been returned, and deposited the checks, which totaled \$416.47, into his personal bank account.

June Actions

Everette Ward Artist (Registered Representative, Phoenix, Arizona) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Artist failed to respond to NASD requests for information.

Jeffrey John Chaimowitz (Registered Principal, Rock Point, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Chaimowitz consented to the described sanctions and to the entry of findings that he effected transactions in public customer accounts without the prior authorization of the customers. The findings also stated that Chaimowitz made material misrepresentations, omitted to disclose material facts, and predicted the future prices of securities to public customers in connection with solicitations to sell securities. Furthermore, the NASD determined that Chaimowitz received instructions from public customers to sell securities from their accounts and failed to sell the securities.

Chatfield Dean & Company, Inc. (Greenwood Village, Colorado) and Scott Carothers (Registered Principal, Greenwood Village, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$5,000, jointly and severally, and the firm was fined an additional \$6,000. Carothers was suspended from association with any NASD member in any capacity for one day and ordered to requalify as a financial and operations principal. Without admitting or denying the allegations, the firm and Carothers consented to the described sanctions and to the entry of findings that the firm, acting through Carothers, conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm failed to report customer complaints to the NASD on a timely basis and failed to have adequate written supervisory procedures to address compliance with NASD reporting requirements.

Philip Edward Colgan (Registered Representative, Redmond, Washington) 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, Colgan consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received, or would receive, selling compensation in connection with the transactions.

Joseph Gaspare Coluccio (Registered Representative, West Hampton Beach, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for nine months, and required to demonstrate that he has made restitution to a public customer in the amount of \$180,650. Without admitting or denying the allegations, Coluccio consented to the described sanctions and to the entry of findings that he solicited public customers to purchase securities by means of misrepresentations of material fact and omissions to disclose material fact. The findings also stated that Coluccio solicited a customer to purchase a security by predicting the future price of the security to the customer without a reasonable basis, and with knowledge that the security

was speculative. Furthermore, the NASD determined that Coluccio solicited a customer to purchase securities by guaranteeing the customer against loss in the investment and failed to take the promised actions to prevent loss.

James Alvis Elkins, Jr. (Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Elkins consented to the described sanctions and to the entry of findings that he participated in private securities transactions totaling \$1,013,787 in promissory notes and failed to provide his member firm written notice describing in detail the proposed transactions, his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions.

Donald Howard Estey, Jr. (Registered Representative, Bozeman, Montana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Estey consented to the described sanctions and to the entry of findings that he participated in private securities transactions totaling \$1,567,883.39 in promissory notes without providing his member firm written notice describing in detail the proposed transactions, his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions.

Joseph Edward Mattera (Registered Representative, Medford, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for nine months, and required to pay \$58,200 in restitution to public customers. Without admitting or denying the allegations, Mattera consented to the described sanctions and to the entry of findings that he solicited public customers to purchase securities and omitted to disclose material information concerning the nature of the transaction recommended and the issuer of the securities. The findings also stated that Mattera predicted the future price of a security to members of the public, and effected a purchase of a security in the accounts of public customers without their prior authorization. Furthermore, the NASD found that Mattera represented to a customer that the customer's failure to pay for an unauthorized transaction would have a negative effect on the customer's credit rating.

Christopher Thomas McNamara (Registered Representative, Dix Hills, New York) was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$140,101.72, plus interest, in restitution to public customers. The sanctions were based on findings that McNamara induced public customers to purchase securities by making numerous material misrepresentations, false and misleading statements, and omissions of fact about the companies and the securities. The findings also stated that McNamara misrepresented the amount of the commissions he would earn on these transactions. In addition, McNamara effected unauthorized transactions in customer accounts and made fraudulent price predictions. McNamara also failed to follow, or follow promptly, a public customer's instructions to sell securities.

Brad Ralph Miles (Registered Representative, Hooper, Utah) submitted an Offer of Settlement pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Miles consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give his member firm prior written notification of his participation in the transactions.

David Charles Olson (Registered Principal, Aurora, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Olson consented to the described sanctions and to the entry of findings that he made a material misrepresentation to a public customer regarding the customer's investment. The NASD found that, based on Olson's false representation, the customer continued to hold his position of the stock and purchased additional shares through another broker/dealer.

Paradise Valley Securities, Inc. (Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500, jointly and severally, with two individuals. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, in connection with a private offering of securities, extended the date by which the minimum number of units was required to be sold without making a reconfirmation offer to the persons who had purchased units prior to the termination date stated in the offering materials. The findings also stated that the firm failed to conduct a needs analysis, prioritize its training needs, or develop a training plan to comply with the Firm Element Continuing Education requirement.

Rex Dale Schilling (Registered Principal, Portland, Oregon) 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, Schilling consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information.

David Jordan Smith (Registered Representative, Kailua, Hawaii) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed to respond to NASD requests for information.

Jennifer Marie Tew (Registered Representative, North Glenn, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$11,250, suspended from association with any NASD member in any capacity for one year, and required to repay \$250 to a bank. Without admitting or denying the allegations, Tew consented to the described sanctions and to the entry of findings that she used the computer accounting function of a bank associated with her member firm to cause her checking account at the bank to be credited in the aggregate amount of \$250. The NASD found that this amount was credited to offset charges that had been debited to the account.

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

April Actions

Matthew Edward Haggerty (Registered Principal, Overland Park, Kansas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$60,000, barred from association with any NASD member in any capacity, and required to pay \$4,000, plus interest, in restitution to entitled parties. Without admitting or denying the allegations, Haggerty consented to the described sanctions and to the entry of findings that he requested checks totaling \$10,000 from the securities accounts of public customers, and converted the funds to his own use and benefit by endorsing the checks and depositing them into his personal bank account, without the knowledge or consent of the customers. Furthermore, the NASD determined that Haggerty did not

return any portion of the funds until he journaled \$6,000 of funds from his personal securities account to one of the customer's securities account.

Siva Kumar Pemmaraju (Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$55,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pemmaraju consented to the described sanctions and to the entry of findings that he transferred funds from public customer accounts into accounts that he controlled, and converted \$9,015.92 to his own use and benefit, without the knowledge or consent of the customers.

May Actions

Gerald Don Behnkendorf (Registered Principal, Rolfe, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$63,095, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Behnkendorf consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, he converted \$12,619 to his own use and benefit.

Kelly Gene Culpepper (Registered Representative, Warsaw, Missouri) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Culpepper consented to the described sanctions and to the entry of findings that he submitted applications to purchase variable and/or fixed insurance policies for fictitious customers.

Robert Lee Davis, Jr. (Registered Representative, Sacramento, California) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay \$8,500, plus interest, in restitution to a public customer. The sanctions were based on findings that Davis failed to deposit \$8,500 he received from a public customer for the purchase of real estate in an escrow account, failed to use the funds for investment purposes, or to return the funds to the customer, and, without the knowledge or consent of the customer, used the funds to pay his business and personal living expenses. Davis also failed to respond to NASD requests for information.

Timothy James Manson (Registered Representative, Guttenberg, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Manson consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on forms without the customers' knowledge or consent.

Donald Eugene Radle (Registered Principal, Springfield, Missouri) was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$86,375, plus interest, in restitution to public customers. The sanctions were based on findings that Radle made unsuitable recommendations to customers.

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

Kevin Harrison Stricklin (Registered Principal, Cranston, Rhode Island) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and

suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Stricklin consented to the described sanctions and to the entry of findings that he intentionally or recklessly employed devices to defraud public customers by recommending and urging customers to buy speculative and/or unseasoned securities through baseless price predictions and/or predictions of returns. The findings also stated that Stricklin omitted or misstated material information in sales of securities recommended by his member firm to customers.

Michele Mente Taylor (Associated Person, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$20,000, and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that she functioned as a principal of a member firm without proper qualification and/or registration in any capacity.

June Actions

Barington Capital Group, L.P. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$23,500, and fined \$2,000, jointly and severally with an individual. In addition, the firm was required to pay \$3,815 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 failed to implement and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and submitted inaccurate free-riding questionnaires to the NASD for several offerings. In addition, the firm failed to obtain required documentation on a timely basis in connection with "hot issue" purchases by customer accounts. The findings also stated that the firm participated in contingency offerings, failed to deposit investor funds in an independent escrow account, and failed to include in the private placement memoranda a statement that persons associated with the firm would be purchasing a portion of the offering. In addition, the NASD determined that the firm failed to execute customer limit orders in some instances and to timely execute other customer limit orders in others.

Financial Advantage Brokerage Services, Inc. n.k.a. Corporate Funding Ltd. (Minot, North Dakota), Roger William Domres (Registered Principal, Minot, North Dakota), Mark Steven Guttormson (Registered Principal, Minot, North Dakota), Bruce Allan Hager (Registered Principal, Fargo, North Dakota), and Bradley Paul Wells (Registered Principal, Minot, North Dakota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$25,000, jointly and severally. In addition, the firm was ordered to provide the following information to the NASD: (a) documentation that the firm has established an audit committee; (b) documentation that the firm has appointed an independent director to its board of directors and the audit committee; and (c) documentation that the firm has put in place a system for periodic reports to the firm's shareholders. If the firm does not provide this documentation to the NASD within the required time frame, it shall be suspended from membership with the NASD until it provides the requested information. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wells, Domres, Hager, and Guttormson, failed to file offering documents for intrastate offerings with the NASD, failed to submit to the NASD an estimate of the maximum underwriting discount or commission that the firm anticipated receiving as a result of its participation in the offerings and any documents and

information pertaining to the terms, conditions, and arrangements relating to the underwriting or distribution of such shares. The findings also stated that the firm, acting through Wells, Domres, Hager, and Guttormson, sold these offerings without the submissions and proceeded without obtaining "no objection" letters to the underwriting terms and arrangements of the offerings; participated in the underwriting and/or distribution of the firm's stock without retaining a qualified independent underwriter to conduct due diligence and provide a pricing opinion; failed to have the qualified independent underwriter act as manager of the offerings, which was required since the firm had not been engaged in the investment banking or securities business for the five-year period immediately preceding the offering; failed to establish an audit committee for the firm within 12 months after its initial offering; and failed to appoint to its board of directors and the audit committee a public director to serve as a committee member to protect the interests of the investors. The firm, acting through Wells, Domres, Hager, and Guttormson, also failed to provide ongoing periodic reports to the firm's shareholders which would inform shareholders of the current condition of the firm.

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

April Actions

Richard Dean Holloway (Registered Representative, Tulsa, Oklahoma) was censured, fined \$85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Holloway received insurance refund checks issued by his member firm totaling \$1,991.65 payable to public customers, failed to deliver the refund checks to the customers, and instead, converted the funds to his own use and benefit by forging endorsements on the checks without the public customers' knowledge or consent. In addition, Holloway failed to respond to NASD requests for information.

May Actions

James Hugh Brennan, III (Registered Representative, Chattanooga, Tennessee) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brennan consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers without the customers' knowledge or consent. The findings also stated that Brennan recommended and engaged in such transactions in the accounts of public customers without having reasonable grounds for believing these recommendations and resultant transactions were suitable for the customers on the basis of their investment objectives and needs. Furthermore, in connection with unsuitable transactions, the NASD found that Brennan verbally misrepresented to a public customer that the subject transactions had been effected in error and overstated the value of the account by approximately \$146,000. Brennan also guaranteed a public customer against loss in his accounts in that Brennan stated that he would be responsible for making up any shortfall in the value of securities that occurred in a specified time period.

Lonnie Gene Brown (Registered Principal, Ninnekah, Oklahoma) 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 principal capacity for one week. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he failed and neglected to exercise reasonable and proper supervision

over certain activities in a branch office of his member firm in that he permitted the payment of commissions to a registered representative who was not licensed to sell the securities products on which the commissions were paid.

Hattier, Sanford & Reynoir, L.L.P. (New Orleans, Louisiana) and Gus Anthony Reynoir (Registered Principal, New Orleans, Louisiana) submitted an Offer of Settlement pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm must issue to public customers amended confirmations reflecting correct disclosures for the transactions at issue along with cover letters reviewed and approved by the NASD prior to issuance. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Reynoir, failed and neglected to provide full and complete disclosure on confirmation statements for municipal bond sales transactions with public customers in that the confirmation statements failed to disclose one or more of the following: (i) the lower of the yield to call or yield to maturity; (ii) the fact that the securities were initially offered at an "original issue discount"; (iii) the fact that the securities were subject to the alternative minimum tax; or (iv) the fact that the securities were non-rated.

June Actions

Arthur Bruce Bahlav (Registered Principal, New York, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Bahlav consented to the described sanctions and to the entry of findings that he executed a promissory note in the amount of \$21,906 with public customers, and after making an initial payment of \$7,326, failed to make either of the two subsequent monthly payments totaling \$14,580.

William Terrill Hundley (Registered Representative, Moore, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hundley consented to the described sanctions and to the entry of findings that he shared in the losses in the account of public customers by reimbursing the customers with a cashier's check in the amount of \$4,112.70 and issuing a promissory note for \$6,000 as repayment for losses incurred in the customers' account. The findings also stated that Hundley failed to timely and completely respond to NASD requests for information.

Jeffrey David Miller (Registered Representative, Moody, Alabama) was censured, fined \$50,000, suspended from association with any NASD member in any capacity for one year, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miller received a check in the amount of \$2,558 from a public customer for the purchase of insurance policies, failed and neglected to execute the purchases of these insurance policies, and instead, made improper use of the customer's funds. Miller also failed to amend his Form U-4 to disclose a civil judgment and the filing of a federal tax lien against him. Furthermore, Miller failed to respond to NASD requests for information.

Russell Investment Corporation n.k.a. Lakeside Trading (Metairie, Louisiana) and Thomas Griswold Russell (Registered Principal, Metairie, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$26,500, jointly and severally. In addition, Russell was suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Russell,

conducted a securities business while failing to maintain the minimum required net capital, and prepared and maintained an inaccurate trial balance, general ledger, and computation of net capital. The findings also stated that the firm, acting through Russell, failed to timely file an amended Form BD with the NASD listing the firm's current address and all direct owners, executed proprietary transactions using the Small Order Execution SystemSM (SOESSM), executed two orders within five minutes of each other on the same side of the market in the same security through SOES that, when aggregated, exceeded SOES maximum order sizes in the security. In addition, the NASD found that the firm, acting through Russell, failed to prepare, maintain, and enforce adequate supervisory procedures addressing the execution of transactions using SOES. The firm also failed to timely file its quarterly FOCUS Part IIA Report, and failed to respond fully, accurately, and timely to NASD requests for documentation, and in some instances, provided false and/or misleading information.

District 6 - Texas

April Actions

Frank John Ingersoll (Registered Principal, San Antonio, Texas) submitted an Offer of Settlement pursuant to which he was censured, fined \$388,535, barred from association with any NASD member in any capacity, and ordered to pay \$301,088 in restitution to public customers. The NAC imposed the sanctions following a review of a Dallas DBCC decision. Without admitting or denying the allegations, Ingersoll consented to the described sanctions and to the entry of findings that he effected transactions in securities through an entity without providing prior written notice to his member firm, and acted as an unregistered broker/dealer by failing to register either himself or the entity as a securities broker/dealer with the SEC or the NASD. The findings also stated that Ingersoll caused misleading sales literature in the form of research reports to be distributed to the public, and failed to disclose a material adverse interest in connection with the sale of securities. Furthermore, the NASD determined that Ingersoll effected sales of shares of stock, and failed to disclose to customers and to his member firm the total remuneration he received in connection with those sales.

Jerri Marlene Masley (Registered Representative, Killeen, Texas) submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Masley consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information and to provide documentation.

May Actions

John Thomas Bridges (Registered Representative, Ft. Worth, Texas) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bridges failed to respond to NASD requests for information and to provide testimony about a customer's allegations of unauthorized trading.

June Actions

Charles Allen Eskew, Jr. (Registered Representative, Bastrop, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eskew consented to the described sanctions

and to the entry of findings that he received a check in the amount of \$102,779.61 from a public customer; deposited \$74,779.61 into a bank account he controlled, without the customer's knowledge or consent; and failed to return the funds to the affected customer until a later date.

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

April Actions

Barron Chase Securities, Inc. (Boca Raton, Florida) submitted an Offer of Settlement pursuant to which the firm was censured and fined \$40,743.76. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to function as a general securities representative and execute transactions on behalf of public customers when the individual was not registered as a general securities representative.

Ronald Tolbert Braswell (Registered Representative, Wintersprings, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Braswell consented to the described sanctions and to the entry of findings that he misused and mishandled a public customer's funds by holding \$10,000 of the customer's funds for over two months and failing to timely purchase mutual funds as requested by the customer.

Robert Alan Denton (Registered Principal, Parkland, Florida), Lee Michael Rough (Registered Principal, Aventura, Florida), and Marc David Siden (Registered Principal, New York, New York) submitted Offers of Settlement pursuant to which Denton was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Rough was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 45 days; and Siden was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Denton, Rough, and Siden consented to the described sanctions and to the entry of findings that they solicited public customers to purchase warrants while knowingly or recklessly failing to disclose to the customers that they were selling warrants from their personal accounts, or accounts which they controlled, at or about the same time as they were making recommendations to public customers.

Sandy Charles Giglio (Registered Representative, Palm Coast, Florida) was censured, fined \$20,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by taking and passing the Series 7 exam. The sanctions were based on findings that Giglio forged the signatures of public customers on forms to move their accounts from his former member firm to his current member firm.

Michael John Price (Registered Principal, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$22,500, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any proprietary, principal and/or supervisory capacity. Without admitting or denying the allegations, Price consented to the described sanctions and to the entry of findings that he gave false or misleading statements to an NASD examiner as to the whereabouts of an individual, and failed to disclose that the individual had resigned. The findings also stated that Price failed to establish, implement, and enforce reasonable supervisory procedures designed to ensure compliance with NASD rules and federal securities laws.

May Actions

William Joseph Beaton, III (Registered Representative, Dunwoody, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Beaton consented to the described sanctions and to the entry of findings that he effected securities transactions in the accounts of public customers without the customers' authorization.

George Evans Brooks (Registered Principal, Charlotte, North Carolina) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brooks failed to respond to NASD requests for information.

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

Teresa Fei Chan (Registered Representative, Seattle, Washington) was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. The sanctions were based on findings that Chan exercised discretion in the securities account of a public customer without obtaining prior written authorization from the customer and without obtaining acceptance of the account as a discretionary account from her member firm.

Joseph Dubois Cornwell (Registered Principal, Canton, Georgia) and **Rodney Declay Sailor (Registered Representative, Berkeley Lake, Georgia)** were each censured, fined \$70,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cornwell permitted Sailor to function as a registered representative and to execute transactions on behalf of customers without being registered as such with the NASD. In addition, Sailor effected unauthorized transactions in the securities accounts of public customers. Sailor and Cornwell also failed to respond to NASD requests for information.

J.P. Carey Securities, Inc. (Atlanta, Georgia) and **Joseph Carey Canouse (Registered Principal, Alpharetta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Canouse functioned, and the firm permitted Canouse to function, as president of the firm while his registration was inactive as a result of his failure to satisfy the Regulatory Element of the NASD's Continuing Education Program.

James Raymond Lackey (Registered Representative, Ft. Myers, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Lackey consented to the described sanctions and to the entry of findings that he effected unauthorized trades in the accounts of public customers without the customers' prior authority.

James Robert Laymac (Registered Representative, Roswell, Georgia) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Laymac consented to the described sanctions and to the entry of findings that he engaged in outside business activities and participated in private securities transactions without providing prior written notice to his member firm.

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

Samuel Taylor Noland (Registered Principal, Evans, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Noland consented to the described sanctions and to the entry of findings that he changed the address of record of a public customer's account to his own business address, withdrew a total of \$80,000 from the customer's account paid out in three separate checks, forged the customer's endorsement on each of the checks, and received the proceeds, all without the customer's knowledge or authorization.

David Eugene Singer (Registered Representative, Wellington, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Singer consented to the described sanctions and to the entry of findings that he completed a "request for verification of employment" form for a loan application that listed a false manager for his member firm and a false salary amount for himself, and forged the false manager's signature on the form.

Brian Mark Smith (Registered Representative, Dunwoody, Georgia) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed to respond to NASD requests for information.

Jerrold Alan Soff (Registered Representative, Seminole, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$12,238, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Soff consented to the described sanctions and to the entry of findings that he effected the sale of shares of common stock in the securities accounts of public customers without the customers' knowledge or consent. The findings also state that Soff effected the purchase of shares of common stock, some on margin, in the securities account of a public customer without the customer's knowledge or consent.

Gregory Scott Stafford (Registered Representative, Asheville, North Carolina) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stafford failed to respond to NASD requests for information.

June Actions

Larry Jon Ames (Registered Principal, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to pay \$4,242.66, plus interest, in restitution to a member firm. Without admitting or denying the allegations, Ames consented to the described sanctions and to the entry of findings that he diverted customer transactions to his personal broker number at his member firm and as a result, received \$4,242.66 in net commissions, without receiving prior explicit approval from his member firm.

Merlin Richard Gackle (Registered Principal, Odessa, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for 15 business days in a supervi-

sory capacity. Without admitting or denying the allegations, Gackle consented to the described sanctions and to the entry of findings that, as the president of a member firm, Gackle failed to address, or failed adequately to address, the firm's written supervisory procedures regarding, among other things, insider trading, receipt of customer funds and securities, mutual fund breakpoints, variable annuities and variable life insurance, options, municipal securities, customer complaint reporting, cold calling, sales supervision, and discretionary accounts. Furthermore, the findings stated that Gackle, as president of the firm, failed to inspect each branch office according to the cycle set in its written supervisory procedures, and failed to supervise and/or enforce the firm's written supervisory procedures adequately as they relate to the review of daily transactions, mutual fund switches, branch office inspections and examinations, and advertising and correspondence. Moreover, the NASD found that the firm failed to have each registered representative participate in an annual compliance meeting, failed to conduct a periodic examination of all customer accounts to detect and prevent irregularities or abuses, failed to report customer complaints, and allowed an individual to serve as the firm's acting chief administrative officer when the individual was never registered properly with the NASD in any capacity.

Michael Wayne Hawkins (Registered Representative, Atlanta, Georgia) was censured, fined \$65,000, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Hawkins guaranteed a customer against loss in connection with securities transactions. Hawkins also participated in private securities transactions and failed to provide his member firm with written notice of these transactions or to obtain approval or acknowledgment from the firm.

James Salvatore Heitzer (Registered Principal, Atlanta, Georgia) and Christine Ann Heitzer (Registered Principal, Atlanta, Georgia) were each censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that James and Christine Heitzer failed to respond to NASD requests for information concerning the investigation of various customer complaints and the Form U-5 filed on behalf of the Heitzers by a member firm.

Timothy Jones (Registered Representative, Tallahassee, Florida) was censured, fined \$65,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones participated in outside business activities without providing prompt written notice to his member firm of such activities. Jones also failed to respond to NASD requests for information.

George Jerry Merges (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in a supervisory capacity for 10 business days. Without admitting or denying the allegations, Merges consented to the described sanctions and to the entry of findings that he failed to supervise adequately an individual so as to be able to detect unsuitable recommendations made to a public customer.

Securities America, Inc. (Omaha, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$50,000, and required to retain an independent consulting firm for one year to review the firm's compliance and written supervisory procedures relating to the review and approval of new accounts and daily trading activity effected in the firm's branch offices to determine their adequacy and consistency with applicable laws and regulations. Without admitting or denying the allegations, the firm consented to the described

sanctions and to the entry of findings that it failed to establish adequate written supervisory procedures designed to detect and prevent unsuitable trading activity. The firm also failed to supervise an individual adequately in that the actions taken by the firm were insufficient to detect or prevent his unsuitable trading activity.

TAJ Global Equities, Inc. (Tampa, Florida) and Wilber Glen Jurdine (Registered Principal, South Florida, Florida) were censured and fined \$100,000, jointly and severally. In addition, the firm was expelled from NASD membership and Jurdine was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Jurdine, engaged in options transactions and failed to register an options principal, conducted a securities business while maintaining insufficient net capital, and failed to give telegraphic notice of its net capital deficiency. In addition, the firm, acting through Jurdine, filed inaccurate FOCUS reports, kept inaccurate books and records, engaged in inaccurate trade reporting activities, and failed to report certain customer complaints.

Furthermore, the firm, acting through Jurdine, failed to develop and implement a continuing education program, breached its restrictive agreement with the NASD by servicing discretionary accounts, and Jurdine failed to respond to NASD requests for information.

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

April Actions

James Edward Bickle (Registered Representative, Freeport, Illinois) 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, Bickle consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions by participating in the sale of promissory notes to public customers, and failed to give written notice of his intention to, and receive written approval from, his member firm prior to engaging in such activities.

Mark Joseph Federowicz (Registered Representative, Williamsville, New York) was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Federowicz failed to respond to NASD requests for information.

Kenneth Edward Grant (Registered Representative, Oxford, Michigan) submitted an Offer of Settlement pursuant to which he was censured, fined \$11,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanctions and to the entry of findings that he received checks totaling \$2,622 made payable to insurance customers which included the repayments for insurance policies canceled by the customers, but also included a mistaken overpayment for insurance policies purchased for the customers. According to the findings, Grant endorsed the checks by writing the customers' names on the checks, without the customers' knowledge or consent, cashed the checks, and used \$2,185 for some purpose other than the benefit of his member firm or the customers, and later paid his firm \$2,165.

Brett Elliot Hirsch (Registered Representative, New York, New York), Richard Paul Simone (Registered Representative, New York, New York), William Patrick Rosemond (Registered Representative, New York, New York), Jack Jay Wolynez (Registered Principal, Jericho, New York), John James McAndris (Registered Principal, Montvale, New Jersey), and Frank Michael Lucia, Jr. (Registered Representative, Robbinsville, New Jersey) submitted Offers of Settlement pursuant to which Hirsch was censured, fined \$110,000, and barred from association with any NASD member in any capacity. Simone was censured, fined \$104,000, and barred from association with any NASD member in any capacity, and Rosemond was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Wolynez was censured, fined \$100,000, and barred from association with any NASD member in any capacity, and McAndris was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Lucia was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Hirsch, Simone, Rosemond, and Lucia engaged in unauthorized transactions in the accounts of public customers and in the absence of written or oral authorization to exercise discretion in the accounts. Hirsch also purchased securities for the account of a limited partnership without the knowledge or consent of the partnership or its agent. The findings also stated that Hirsch purchased shares of securities from his firm but failed to pay for the securities, Simone failed to follow a customer's instructions to sell securities, and Wolynez and McAndris failed to establish, maintain, or enforce written supervisory procedures or to otherwise supervise Hirsch, Rosemond, Simone, and Lucia properly to prevent the occurrence of such violations.

The NASD also determined that Wolynez and McAndris participated in an IPO of common stock and warrants to the public on a best efforts, minimum/maximum basis, and induced the purchase of stocks by means of manipulative, deceptive, and/or other fraudulent devices or contrivances. Moreover, the findings stated that Wolynez and McAndris continued to receive investor funds, and failed to return promptly to public customers \$9 million in excess of the stated maximum for the offering, and commenced trading securities in the secondary market, without the consent of the customers.

Lawrence Ralph Kassl (Registered Representative, Danville, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$53,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kassl consented to the described sanctions and to the entry of findings that he received checks totaling \$10,500 with instructions to deposit the funds in a variable annuity and, contrary to the customer's instructions, and without the customer's knowledge or consent, Kassl deposited the checks in a bank account in which he either had an interest or controlled, and used the funds for some purpose other than the benefit of the customer until he returned the funds to her with interest.

Nicholas Robert Marino (Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured and fined \$15,000. Without admitting or denying the allegations, Marino consented to the described sanctions and to the entry of findings that a member firm, acting through Marino, effected, as principal, sales of warrants to public customers at prices that were unfair and unreasonable taking into consideration all relevant circumstances in that the prices charged to customers were not reasonably related to the prevailing market price.

Keith Laurence Mohn (Registered Representative, West Bloomfield, Michigan) was censured, fined \$52,222, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Mohn participated in private securities transactions without giving written notice of his intention to engage in such activities to his member firm and receiving prior written approval from his member firm.

Mohn has filed an appeal to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

David Irving Proctor, Jr. (Registered Principal, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Proctor consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The findings also stated that Proctor engaged in outside business activities and failed to give prompt written notice of his engagement in such activities to his member firm.

John Joseph Rogers (Associated Person, Rochester, 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, Rogers consented to the described sanctions and to the entry of findings that, while taking the Series 7 exam, he brought unauthorized study materials into the testing area, despite being informed that unauthorized materials were prohibited, and referred to those materials during the exam.

Stephen James Wilson (Registered Representative, Grand Haven, Michigan) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam as a representative. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he purchased securities for the accounts of a public customer, in which he had a beneficial interest, in violation of the Board of Governors' Free-Riding and Withholding Interpretation.

May Actions

Michael Evan Berger (Registered Representative, Peoria, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Berger consented to the described sanctions and to the entry of findings that he purchased shares of stock that traded at a premium in the secondary market, in violation of the NASD Free-Riding and Withholding Interpretation.

Richard Lee Bushey (Registered Representative, Columbus, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$36,250, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Bushey consented to the described sanctions and to the entry of findings that he sold a securities product on behalf of an entity that was not a NASD member firm to public customers and failed to provide prior written notice to his member firm describing the transactions and his role therein.

Peter In Cho (Registered Principal, Buffalo Grove, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cho failed to respond to NASD requests to appear to provide information.

Patrick Michael Dennis (Registered Representative, Bay Shore, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dennis failed to respond to NASD requests for information relating to the investigation of customer complaints.

Adolphus Cleveland DuBose, Jr. (Registered Principal, Columbus, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$3,000, and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, DuBose consented to the described sanctions and to the entry of findings that he effected transactions in securities, and received customer checks payable to his member firm, when the firm failed to maintain the minimum required net capital.

Derrick Fellows (Registered Representative, East Cleveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fellows consented to the described sanctions and to the entry of findings that, without the customer's knowledge or consent, he completed an insurance disbursement request form which caused a \$1,200 loan to be taken against the customer's insurance policy. Furthermore, the NASD found that Fellows forged the customer's name on both the disbursement request form, and the subsequent loan check issued in remittance of the loan proceeds, and used the funds for his own benefit. Moreover, the findings stated that Fellows created a letter in an attempt to conceal his activity, and forged the customer's name on the letter which he then submitted to his member firm.

Scott Kevin Kelly (Registered Representative, Grove City, Ohio) submitted an Offer of Settlement pursuant to which he was censured, fined \$78,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he executed the purchase and sale of shares of stock in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral discretionary authority in the accounts. The findings also stated that Kelly failed to respond to NASD requests for information.

Robert Charles Madrid (Registered Representative, Blue Island, Illinois) was censured and fined \$10,000. The sanctions were based on findings that Madrid executed unauthorized transactions in the account of a public customer without the knowledge or consent of the customer.

Mills Financial Services, Inc. (Chicago, Illinois) and Joseph Edward Kurczodyna (Registered Principal, Lake Bluff, Illinois) submitted an Offer of Settlement pursuant to which they were censured and fined \$12,500, jointly and severally, and Kurczodyna was suspended from acting in a supervisory or managerial capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kurczodyna, conducted a securities business despite the fact that the firm did not have an appropriately qualified and registered limited financial and operations principal associated with it. The findings also stated that the firm failed to prepare an annual needs analysis and training

plan regarding the Firm Element component of the Continuing Education Program requirement, and failed to evidence having conducted a requisite training program with its covered registered personnel at any time during 1996.

Anthony Paul Perry (Registered Representative, Wadsworth, Ohio) 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, Perry consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents.

Joseph David Pichla, Jr. (Registered Representative, Bay City, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pichla consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed and neglected to provide written notice to, or to receive written authorization from, his member firms of his participation in such transactions.

Seasongood and Mayer (Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to adopt, maintain, and enforce an adequate supervisory system to ensure that individuals were properly qualified to engage in municipal securities activities.

June Actions

Sylvester Cannon, Jr. (Registered Representative, Detroit, Michigan) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cannon failed to respond to NASD requests for information regarding alleged forgeries.

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

Paul Joseph Garceau, Jr. (Registered Representative, Clinton Township, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Garceau consented to the described sanctions and to the entry of findings that he engaged in outside business activities by receiving approximately \$19,000 in compensation for selling fixed annuities through a non-member insurance brokerage company, and in connection therewith, failed to give prompt written notice of his engagement in such activities to his member firm.

Mark Edwin Gort (Registered Principal, Wyoming, Michigan) submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gort consented to the described sanctions and to the entry of findings that he executed securities transactions for the account of a public customer, without the knowledge or consent of the customer, and in the absence of written or oral authorization to exercise discretion in said account. Gort also failed to respond to NASD requests for documents and information.

Keith Allen Heichel (Registered Representative, Berea, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$33,142.25, and suspended from association with any

NASD member in any capacity for two years. Without admitting or denying the allegations, Heichel consented to the described sanctions and to the entry of findings that he received a \$1,000 check for financial planning services. The NASD found that Heichel deposited the check in his personal bank account and did not make restitution to his member firm until a later date. Heichel also participated in outside business activities and failed to give prompt written notice to his member firm of such activities.

Harriet Jacqueline Kozyn (Registered Representative, Ann Arbor, Michigan) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kozyn failed to respond to NASD requests for information.

Robert Charles Madrid (Registered Representative, Blue Island, Illinois) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Madrid engaged in unauthorized trading and failed to respond to NASD requests for information.

Wayne Charles Maier (Registered Representative, Bay City, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Maier consented to the described sanctions and to the entry of findings that he participated in a private securities transaction in the form of a promissory note in the amount of \$50,000, and failed and neglected to provide written notice to, or to receive written authorization from, his member firm of his participation.

Marquis Financial Services of Indiana, Inc. (Valparaiso, Indiana) and Timothy Martin Scannell (Registered Principal, Valparaiso, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$18,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Scannell, effected options transactions while no partner or officer of the firm was registered as a registered options principal or designated to serve as the firm's senior registered options principal, and failed to identify specifically a senior registered options principal who was responsible for the diligent supervision of all of its customer accounts and all orders in these accounts. The findings also stated that the firm, acting through Scannell, failed to comply with the terms of its membership agreement when it effected options transactions while agreeing to conduct only certain types of securities business that did not include such transactions.

Gerald James Stoiber (Registered Representative, Mokena, Illinois) was fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. However, the fine may be reduced by any amounts Stoiber pays in restitution to public customers. The United States Court of Appeals for the District of Columbia dismissed Stoiber's appeal of an SEC decision rendered September 1997 sustaining NASD disciplinary action, and the Supreme Court of the United States denied a writ of certiorari in April 1999. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior written notice to, and obtain prior written approval from, his member firm to engage in such activities.

Stoiber's suspension began on May 31, 1999, and will conclude at the close of business on November 29, 1999.

Daniel Phillip Whaley (Registered Principal, Bay City, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for five business days, and required to equal-

ify by exam as a general securities principal. Without admitting or denying the allegations, Whaley consented to the described sanctions and to the entry of findings that a member firm, acting through Whaley, failed to ensure that an individual was qualified and/or registered in the appropriate capacity with the firm prior to permitting the individual to engage in securities transactions.

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

April Actions

Maximo Justo Guevara (Registered Representative, Philadelphia, Pennsylvania) was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$13,992, plus interest, in restitution to a public customer. The NAC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Guevara made unsuitable recommendations in connection with sales of partnership interests to retail customers. Guevara also engaged in private securities transactions outside the regular course or scope of his employment without providing written notice to his member firm.

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

Sturdivant & Co., Inc. (Clementon, New Jersey), Harvey Richard DeKrafft (Registered Principal, Mount Laurel, New Jersey), and Albert Anzael Sturdivant (Registered Principal, West Orange, New Jersey). The firm and Sturdivant were censured and fined \$7,500, jointly and severally, and the firm was fined \$3,500, individually. Sturdivant was suspended from acting in the capacity of general securities principal for 30 days, and DeKrafft was censured, fined \$10,000, and suspended from acting in his capacity as a principal for 60 days. Sturdivant's and DeKrafft's suspensions will be served consecutively. The sanctions were based on findings that DeKrafft operated as a principal at the firm without being properly registered. In addition, the firm conducted a general securities business while only having one registered general securities principal when a minimum of two was required. The firm and Sturdivant failed to conduct a training needs analysis and failed to provide the firm's registered persons with the required Firm Element training. In addition, the firm failed to file MSRB Form G-37 in a timely manner.

Sturdivant's suspension began on April 19, 1999, and concluded at the close of business on May 18, 1999. DeKrafft's suspension began on May 19, 1999, and will conclude at the close of business on July 16, 1999.

Richard Allan Yaksic (Registered Representative, Pitcairn, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$925,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Yaksic consented to the described sanctions and to the entry of findings that he caused a total of \$142,348.52 to be withdrawn from policies and mutual fund accounts owned by public customers and converted the funds to his own use and benefit. The findings also stated that Yaksic failed to remit approximately \$10,425 in premiums received from public customers, retaining them for his own use and benefit, and improperly caused a total of \$6,439.17 to be withdrawn from their policies and converted the monies to his own use and benefit. In addition, the NASD found that Yaksic failed to remit \$5,642.49 in premiums received from a public customer and converted such monies to his own use and benefit. Yaksic also converted to his own use and benefit \$1,081.48 of a public customer's funds intended to be used for the purchase of an annuity by the customer.

May Actions

Michael David Hersh (Registered Representative, Topton, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$125,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hersh consented to the described sanctions and to the entry of findings that he received checks totaling \$86,565.46 from public customers for the purpose of remitting the funds to his member firm to be applied toward either an insurance policy or an annuity. The NASD found that Hersh failed to follow the customers' instructions and deposited the checks in a personal bank account. Hersh also failed to respond to NASD requests for information.

Sander Lee Lenenberg (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lenenberg consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Michael Joseph Malone (Registered Principal, Ellicott City, Maryland) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Malone failed to respond to NASD requests for information.

Joseph Anthony Watters (Registered Representative, Monroeville, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Watters consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving prior written notice to, or receiving approval from, his member firm. The findings also stated that Watters recommended to a public customer the purchase of securities when he did not have reasonable grounds for believing such recommendation (and resulting transaction) were suitable for the customer on the basis of the customer's financial situation, investment objectives, and needs. Furthermore, the NASD determined that Watters made misrepresentations to a customer regarding the safety and security associated with her investment, and guaranteed a return on the customer's investment although there was no reasonable basis for such representations.

James Clark Williams (Registered Representative, Bloomsburg, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$932,800, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he received checks totaling \$166,560 from a public customer drawn to the order of Williams that the customer intended for investment purposes and for paying an insurance premium. The findings stated that Williams negotiated the checks and failed to remit the proceeds to his member firm, nor otherwise cause the proceeds to be applied to the purposes for which the customer gave him the checks. The NASD determined that Williams mailed the customer false account statements purporting to have been issued by his member firm for the customer's investments when, in fact, she did not have such accounts.

June Actions

Brian Douglas Angiuli (Registered Representative, Port Washington, New York) was censured, fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to

requalify as a general securities representative. The NAC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Angiuli executed unauthorized transactions in the account of a public customer.

Albert Joseph Ford (Registered Representative, Oakton, Virginia) and Douglas Francis Andrews (Registered Representative, Ashburn, Virginia) submitted an Offer of Settlement pursuant to which Ford was censured, fined \$95,000, and barred from association with any NASD member in any capacity, and Andrews was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ford and Andrews assisted in the "boiler room" operations of their member firm, and recruited and trained inexperienced registered representatives to telemarket aggressively low-priced, speculative securities recommended by their member firm to the public. According to the findings, Ford and Andrews directed, fostered, or induced the registered representatives to engage in the following abusive sales practices: making baseless price predictions about the stock recommended by their member firm, making material misrepresentations and omitting material negative information during sales presentations to customers, discouraging or prohibiting registered representatives from independently researching the firm's stocks, and, discouraging or prohibiting registered representatives from processing unsolicited customer sell orders. Furthermore, the NASD found that Ford and Andrews engaged in these abusive sales practices in their individual capacities during presentations to their customers. Ford, acting through other registered representatives, directed, encouraged, caused, and/or facilitated the purchase of stock by other registered representatives for their customers' accounts without the customers' prior authorization or consent, and Ford purchased stocks for his own customers' accounts, without the customers' prior authorization or consent. Ford and Andrews also failed to establish, implement, and enforce reasonable procedures to deter or prevent the above violations.

Jeffrey Harold Hamsher (Registered Representative, Wyomissing, Pennsylvania) submitted an Offer of Settlement pursuant to which he was censured, fined \$125,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hamsher consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his solicitation of public customers' funds in that he misrepresented to the investors that their funds would be invested in U.S. Treasury bonds when, in fact, the funds were used to trade U.S. Treasury bond/Treasury note options and futures; misrepresented that monies would be deposited with an NASD securities firm; misrepresented that the investments were "risk-free" and that the investors would receive an annual return of 44 percent although there was no reasonable basis for such a representation. The findings also state that Hamsher failed to timely disclose the terms of the "Profit Participation Agreement" or that he had entered into a separate agreement with an unregulated third party which assumed discretionary authority over the customer funds. Furthermore, the NASD determined that Hamsher transferred approximately \$80,000 of the investors' funds to the third party without their consent or authority. Hamsher engaged in private securities transactions without prior written notice to, and approval from, his member firm in that he offered and sold securities which he represented to be U.S. Treasury bonds to the investors, and failed to respond to NASD requests to provide complete bank records.

District 10 - The five boroughs of New York City

April Actions

Michael Howard Carstens (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carstens consented to the described sanctions and to the entry of findings that he participated in private securities transactions by selling limited partnership interests without giving written notice to, and receiving written approval from, his member firms with which he was registered at the time.

Joseph Vincent Detrano (Registered Representative, Nesconset, 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 two years, and required to requalify by exam as a Series 6 investment company and variable contract representative. Without admitting or denying the allegations, Detrano consented to the described sanctions and to the entry of findings that, during the sale of an insurance product to a policyholder, Detrano commingled the policyholder's check in the amount of \$14,000 with his own personal funds.

Daniel Joseph DiPoalo (Registered Representative, Matawan, New Jersey) was censured, fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DiPoalo received \$144,850.58 in funds from public customers for investment purposes, and contrary to the customers' instructions, deposited their checks in his own bank account or otherwise diverted their funds. DiPoalo also failed to respond to NASD requests for information.

Jawahar Keshavlal Doshi (Registered Principal, Bayside, New York) was censured, fined \$22,500, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Doshi guaranteed a customer against loss and gave untruthful testimony during an on-the-record interview conducted by the NASD.

Paul Ian Dratel (Registered Representative, Flushing, New York) 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, Dratel consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the customer's account.

Warren Benjamin Minton, Jr. (Registered Representative, Helmetta, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Minton failed to respond to NASD requests for information.

Pond Securities Corp. (Brooklyn, New York) and Ezra Yehuda Birnbaum (Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$7,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm reported transactions in Nasdaq National Market® (NNM), Nasdaq SmallCap™, OTC equity securities, listed securities executed over-the-counter, and in the Automated Confirmation

Transaction Service™ (ACT™), in violation of applicable securities laws and regulations regarding trade reporting. The finding also stated that the firm failed to prepare written supervisory procedures which adequately covered the firm's trade reporting requirements, in that they did not specify the procedures that a qualified principal of the firm would follow to ensure compliance with all relevant rules. Furthermore, the NASD determined that the firm effected transactions in municipal securities without paying an initial fee to the MSRB, effected transactions in municipal securities without qualifying an individual at the firm as a municipal securities principal, and failed to abide by the terms and conditions agreed to in the firm's restrictive agreement with the NASD. The firm also failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Program.

Royal Alliance Associates, Inc. (New York, New York) and Kathryn Travis (Registered Principal, Lattingtown, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000; Travis was censured, fined \$10,000, and barred from association with any NASD member in a supervisory capacity with a right to re-apply after one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Travis failed to supervise adequately the activities of a registered representative resulting in the individual engaging in unsuitable and excessive trading, including excessive mutual fund and annuity switching activity in the accounts of public customers.

Igor Eric Stolyar (Registered Representative, Brooklyn, New York) was censured, fined \$35,000, suspended until he pays an arbitration settlement, plus an additional 30 business days, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stolyar failed to execute an order from a public customer to sell certain securities in the customer's account. Stolyar also failed to pay a \$10,300 arbitration settlement, and failed to respond to an NASD request for information and to appear for an interview.

May Actions

Peter Scott Antonelli (Registered Representative, Valley Stream, 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, Antonelli consented to the described sanctions and to the entry of findings that prior to receiving approval from the NASD, he was improperly associated with a member firm, received monies from the firm, and was involved in assisting the firm in recruiting registered representative trainees.

Patrick John Flanagan (Registered Representative, Parlin, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Flanagan failed to respond to NASD requests for information.

Michael Harvey Gibson (Registered Representative, New York, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gibson failed to appear at an on-the-record interview scheduled by the NASD.

William Theodore Goldenberg (Associated Person, Flushing, New York) was censured, fined \$65,000, and barred from association with any NASD member in any

capacity. The sanctions were based on findings that Goldenberg entered indecorous, abusive, and threatening remarks on the survey portion of his Series 63 exam and attempted to cover up his conduct by entering another individual's name on that section. Goldenberg also failed to respond to NASD requests for information.

Peter Lawrence Greenberg (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, required to disgorge \$250 in net commissions, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that he executed the purchase and sale of securities in a public customer's account, without the customer's prior knowledge, authorization, or consent. Greenberg also failed to respond to NASD requests for information.

Michael Joseph Hayes (Registered Representative, Long Island City, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hayes failed to respond to NASD requests for information.

Javier Hernandez (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Hernandez consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview.

Eddie Miller (Registered Representative, Woodmere, New York) 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, Miller consented to the described sanctions and to the entry of findings that he refused, or failed to follow, public customers' orders to sell shares of common stock on certain dates.

Luis Jaime Ramirez (Registered Representative, Manhasset Hills, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ramirez consented to the described sanctions and to the entry of findings that he requested his member firm issue checks totaling \$17,124.51 that represented dividend disbursements from public customers' life insurance policies, had the checks forwarded to his post office box, and deposited the proceeds from the checks into his own account without the knowledge, permission, or authority of the customers. The findings also stated that Ramirez engaged in forgery by causing his member firm to issue a disbursement check in the amount of \$5,759.46 to a public customer, when that customer had not given Ramirez permission or authority to issue the check, and had not provided the firm with a change of address notification that listed Ramirez's post office box as the customer's current address. Ramirez also failed to respond to NASD requests for information and documents.

Benjamin Vince Salmonese, Jr. (Registered Representative, New York, New York) was censured, fined \$11,250, and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Salmonese failed to respond to NASD requests for information in a timely manner.

Frank William Schiavone (Registered Representative, Ozone Park, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that

Schiavone failed to respond to NASD requests for information.

June Actions

Anthony Vito Biondo (Registered Representative, Valley Stream, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Biondo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Angelo John Bosco (Registered Representative, Huntington, New York) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bosco failed to respond to NASD requests for information regarding a customer complaint.

Adebayo Bankole Cole (Registered Representative, Staten Island, New York) was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cole submitted Form U-4 applications that failed to disclose information or provided inaccurate and misleading information concerning, among other things, his criminal record. Cole also failed to respond to NASD requests to provide testimony.

Thomas John Connell (Registered Representative, Melville, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Connell consented to the described sanctions and to the entry of findings that, in response to a telephone call he received from an individual from the NASD asking why his member firm was not answering its telephones, Connell responded to the question by stating the firm was experiencing telephone problems. The NASD found that the firm was not experiencing telephone problems, but rather, Connell had been directed not to answer the telephones in the trading room.

Nicholas Joseph Cosmo (Registered Principal, Wantagh, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$68,209, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cosmo consented to the described sanctions and to the entry of findings that he replaced a public customer's name on an account transfer form with the name of an account at a member firm over which he had sole control, and attached to the transfer form a letter authorizing the transfer of the customer's account to the firm account he controlled, without the customer's knowledge or consent. The findings also stated that Cosmo provided the customer with an account statement and trade confirmation, purportedly reflecting the customer's account at the firm when, in fact, no such account existed.

Steven Fishman (Registered Principal, Brooklyn, New York) was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that a former member firm, acting through Fishman, operated a securities business without a financial and operations principal and conducted a securities business while failing to maintain its minimum required net capital. In addition, the firm, acting through Fishman, failed to establish, maintain, and enforce written supervisory procedures that addressed the receipt of customer checks made payable to the firm.

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

Patrice Roberto Harris (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$16,036.21 in restitution to public customers. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to Harris to exercise discretion in these accounts.

Meredith Ivan Horowitz (Registered Principal, Brooklyn, New York) was censured, fined \$1,000, and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that a former member firm, acting through Horowitz, conducted a securities business while failing to maintain its minimum required net capital and effected a withdrawal of equity capital while its net capital was under the minimum requirement.

Christopher S. Knight (Registered Principal, Forest Hills, 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, Knight consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and/or information.

Brian Joseph Lichtlin (Registered Representative, Secaucus, New Jersey) was censured, fined \$65,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lichtlin effected unauthorized trades in the accounts of public customers and forged the signatures of public customers on documents stating that certain of the unauthorized purchases were unsolicited. Lichtlin also failed to respond to NASD requests for information.

Mario J. Liriano (Registered Principal, Bronx, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$40,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Liriano consented to the described sanctions and to the entry of findings in that he received a check from public customers in the amount of \$5,000 to invest in several mutual funds, failed to submit the check to his member firm, presented the check to a third party for payment, and converted the funds to his personal use. Liriano attempted to conceal his conversion by sending his member firm the customers' application and his own personal check that was dated the same day he received the funds from the customers in an attempt to mislead his employer into believing that the customers' funds were submitted contemporaneously with the investment application and not improperly used by Liriano. The findings also stated that Liriano presented his member firm with a personal check that was rejected for insufficient funds.

Kevin Michael Mahon (Registered Representative, Manalapan, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mahon failed to respond to NASD requests for information concerning customer complaints, private securities transactions, and dual registration with member firms.

Andrew Means (Associated Person, Brooklyn, New York) was censured, fined \$65,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Means failed to respond

to NASD requests for information. Means also filed an inaccurate Form U-4 and failed to disclose that he had been convicted or plead guilty to felony charges on several occasions.

James Scott Morrill (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Morrill consented to the described sanctions and to the entry of findings that, in connection with an IPO, Morrill solicited public customers to purchase units of the offering by telling the customers that they could only purchase units in the IPO if they agreed to commit to aftermarket purchases. The findings also stated that Morrill effected an unauthorized purchase of shares of the IPO for a public customer when the customer agreed only to purchase aftermarket units, effected an unauthorized cancellation of the customer's authorized IPO purchase because the customer refused to pay for the unauthorized shares, and canceled a public customer's purchase of units because the customer was unable to timely remit funds to purchase aftermarket units. In advising customers that their rights to purchase units in the IPO were contingent upon their committing to purchase aftermarket shares, the NASD found that Morrill misrepresented to the customers certain material facts relating to the terms and conditions of the IPO and misrepresented the customers' actual rights under the federal securities laws, and failed to advise them of certain material facts, such as the extensive risks associated with the proposed investment, including but not limited to the history of operating losses. Furthermore, the NASD determined that Morrill attempted to induce, and did in fact induce, persons to purchase units, shares, and warrants prior to the completion of the IPO.

Huang Huei Ong (Registered Representative, Singapore) was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 days. The sanctions were based on findings that Ong provided false information on a Form U-4.

RBC Dominion Securities Corporation (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm permitted individuals to act in the capacity of general securities principals prior to their properly qualifying and becoming registered in that capacity.

Christopher Johnalbert Richardson (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he submitted materially inaccurate Forms U-4, and failed to amend his Form U-4 to disclose state actions taken against him. The findings also stated that Richardson failed to respond timely to NASD requests for information.

Matthew Joseph Samul (Registered Representative, Henderson, Nevada) was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Samul used indecorous language during a conversation with a potential customer.

Mark Anthony Savage (Registered Representative, Morristown, New Jersey) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Savage failed to respond to NASD requests for information.

Andrew Daniel Schiff (Registered Representative, West Long Branch, New Jersey) was censured, fined \$14,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Schiff executed transactions in the accounts of public customers without the customers' knowledge, authorization, or consent.

Frank John Spinelli, Jr. (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Spinelli consented to the described sanctions and to the entry of findings that he solicited public customers, took customer orders to open new accounts, and executed securities transactions while he was unregistered. According to the findings, Spinelli forwarded the customer information to a co-worker who opened the accounts and executed the securities transactions under his name and internal account executive number. Spinelli failed to inform the customer or his member firm of this matter. The NASD found that upon completion of his registration with the NASD, these accounts were transferred back to Spinelli's name and internal account executive number. Furthermore, the NASD determined that Spinelli solicited customers securities without first knowing the customers and the customers' suitability for the securities.

Richard Kent Steele, Jr. (Registered Representative, Los Angeles, California) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Steele failed to respond to NASD requests for information and an on-the-record interview.

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

April Actions

Gary Leroy Armstrong (Registered Representative, Binghamton, New York) 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, Armstrong consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm or numerous public customers, Armstrong fraudulently effected mutual funds transactions at a time when any exchanges between two firms were to be done at net asset value with no sales charge and customers who made redemptions or received distributions were allowed to reinvest the funds at net asset to another fund of the same class. Armstrong utilized new account applications that generated sales charges of at least \$103,661 of which he was paid commissions totaling approximately \$71,076, in lieu of submitting exchanges at net asset value with no sales charges.

Auerbach, Pollak & Richardson, Inc. (Stamford, Connecticut) and Harry Nathaniel Bloch II (Registered Principal, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$17,500, jointly and severally, and the firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm split a customer's 4,000-share order for a single security into four separate 1,000-share orders for entry into SOES. In addition, the NASD found that the firm, acting through Bloch, failed to report to the NASD statistical and summary information regarding customer complaints, and

the firm failed to report customer complaints. The findings also stated that the firm, acting through Bloch, failed to report, in a timely manner, the settlement of a customer's claim against one of its registered representatives, failed to develop a written training plan for continuing education, failed to maintain records documenting the implementation and completion of its continuing education plan, and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and NASD rules relating to continuing education and the reporting of customer complaints.

Jeffrey Michael DeForest (Registered Representative, Medway, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, DeForest consented to the described sanctions, and to the entry of findings that he recommended and sold securities to a public customer without having reasonable grounds for determining this activity to be suitable for his customer.

Daniel Richard Hillard (Registered Representative, White River Junction, Vermont) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hillard consented to the described sanctions and to the entry of findings that he improperly converted at least \$65,000 belonging to a client for his own use and benefit.

Michel Andre Rebonati (Registered Representative, Kilchberg, Switzerland) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rebonati consented to the described sanctions and to the entry of findings that he falsified a client instruction letter that authorized the sale of bonds belonging to a public customer and requested the proceeds totaling \$950,331.25 be wired to a nominee account. The findings also stated that Rebonati failed to respond to NASD requests for information.

Tobin Joseph Senefeld (Registered Principal, Crestwood, Kentucky) 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 principal capacity for 20 days. Without admitting or denying the allegations, Senefeld consented to the described sanctions and to the entry of findings that, as branch manager, he failed to take appropriate action that was reasonably designed to supervise a registered representative and prevent unsuitably excessive trading in a customer's account by the individual.

Ronald Adam Stewart (Registered Representative, Mahopac, New York) 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, Stewart consented to the described sanctions and to the entry of findings that he forged contract withdrawal forms requesting partial liquidations from a public customer's annuity contracts and then converted the \$19,500 in proceeds to his personal use. The findings also stated that Stewart caused \$10,108 to be withdrawn from customers' accounts and converted the proceeds to his own use. Stewart converted a total of \$29,608 from public customers without their knowledge or consent.

Dale Cochren Trask (Registered Representative, Swampscott, Massachusetts) submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, and barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, Trask consented to the described sanctions and to the entry of findings that he improperly converted \$157,250 of customer funds for his own use and benefit.

May Actions

Franklin Leonard Grey, Sr. (Registered Representative, Cooperstown, New York) was censured, fined \$60,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Grey participated in private securities transactions with public customers and failed to give notice to his member firms of such transactions. Grey also failed to respond to NASD requests for information.

William Felix Hughes, Sr. (Registered Representative, Sherman, Connecticut) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hughes failed to respond to NASD requests for information.

June Actions

Cantella & Co., Inc. (Boston, Massachusetts) and Vincent Michele Cantella (Registered Principal, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$50,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cantella, failed to establish, maintain, and enforce procedures reasonably designed to achieve compliance with securities laws and applicable NASD rules in that the firm was unable to meet its required reserve deposit for its reserve computation. The findings also stated that Cantella failed to exercise, adequately or reasonably, his supervisory responsibilities with the firm.

John Michael Doughty (Registered Representative, Farmington, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$157,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Doughty consented to the described sanctions and to the entry of findings that he obtained blank checks from a public customer's securities account that he forged and negotiated, without the customer's knowledge or consent. The NASD found that Doughty converted the proceeds totaling approximately \$29,500 to his own use and benefit.

Jon Douglas Erickson (Registered Principal, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000,000, barred from association with any NASD member in any capacity, and ordered to pay \$943,000 in restitution to appropriate parties. Without admitting or denying the allegations, Erickson consented to the described sanctions and to the entry of findings that he engaged in outside business activities in that he acted as a trustee for trusts established for public customers without providing prompt written notice to his member firm. The findings also stated that Erickson converted approximately \$943,000 in trust property to his own use and benefit, without the knowledge or consent of the donors.

Theodore Scott Geller (Registered Representative, Rome, 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, Geller consented to the described sanctions and to the entry of findings that he took the Series 7 exam, obtained a failing score, and altered his copy of the test

report to reflect a passing grade. The findings also stated that Geller then sent copies of the falsified test report to the NASD and his member firm using envelopes with the testing center indicated as the return address in an attempt to convince them that he had qualified as a general securities representative.

Frank Albert Ghergurovich (Registered Representative, Scituate, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ghergurovich consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that, in connection with the above private securities transactions, Ghergurovich recommended to customers the purchase of securities without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs.

Jonathan Ki Jung (Registered Representative, Boston, Massachusetts) 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 one year, and required to requalify by exam as a general securities representative by taking the Series 7 exam prior to acting again in any registered capacity with the NASD. Without admitting or denying the allegations, Jung consented to the described sanctions and to the entry of findings that he falsified documents and sent these documents to customers to create the erroneous impression that the execution price on options purchase transactions was lower than the actual price that had been previously reported to the customers.

Michael Anthony Petrucci (Registered Representative, New Haven, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$32,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Petrucci consented to the described sanctions and to the entry of findings that he engaged in outside business activities and engaged in a private securities transaction without prior written notice to, or approval from, his member firm. The findings also stated that Petrucci made untrue statements of material facts, and omitted to state material facts necessary to make the statements not misleading, in connection with his offer and sale of a promissory note to a public customer. Furthermore, the NASD found that Petrucci guaranteed the customer that he would not lose any money as an inducement for the customer to invest in the promissory note.

Thomas James Quesnel (Registered Representative, South Hadley, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$7,558.52, plus interest, in restitution to a member firm. Without admitting or denying the allegations, Quesnel consented to the described sanctions and to the entry of findings that he misappropriated \$7,558.52 in cash surrender proceeds from the life insurance policies of his customers. According to the findings, the customers had endorsed cash surrender checks and requested that Quesnel use the funds to pay the premium on their new insurance policies. The NASD found that, instead, Quesnel double-endorsed the checks and improperly converted the funds for his own use and benefit.

Randy James Wishinsky (Registered Principal, Clinton, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$20,000. Without admitting or denying the allegations,

Wishinsky consented to the described sanctions and to the entry of findings that he improperly paid commissions to a registered representative of another firm for transactions with public customers he never met. According to the findings, Wishinsky had no involvement in these transactions except to the extent that each of the accounts was opened and the transactions accomplished with his registered representative number through his member firm.

Enforcement Department

April Actions

Daniel Charles Sanders (Registered Representative, Martinez, California) 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, Sanders consented to the described sanctions and to the entry of findings that he failed to appear for an NASD on-the-record interview.

May Actions

James Edward Cohen (Registered Principal, Lattingtown, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$200,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he manipulated the price of certain stock to benefit himself and others. The manipulation artificially increased the price of registered shares and was also designed to increase the price of then-restricted shares in the event those shares became freely tradable, and to increase the price of those securities in anticipated future offerings. The findings also stated that Cohen failed to take appropriate steps or to establish and maintain procedures reasonably designed to achieve compliance with the Penny Stock Rules with respect to purchases of certain stock by public customers. Furthermore, the NASD found that Cohen failed to disclose and confirm in writing to customers the control relationship which existed between his member firm and the security as required by the NASD, or to establish and maintain procedures reasonably designed to achieve compliance with the NASD rule concerning disclosure of a control relationship with an issuer.

Robert William Koch, II (Registered Representative, Katonah, New York) submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam prior to becoming associated with any member firm. Without admitting or denying the allegations, Koch consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions pertaining to highly speculative securities and engaged in unauthorized trading in a customer's account. The findings also stated that Koch improperly discouraged or refused to execute sell orders, improperly promised to limit losses, and made false and misleading disclosures as to risk. Furthermore, the NASD determined that Koch made false and misleading statements as to an issuer and falsely claimed access to inside information.

Richard Stephen Levitov (Registered Principal, Bayonne, New Jersey) and **Ralph Joseph Angeline (Registered Principal, Katonah, New York)** were each censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 18 months. The sanctions were based on findings that Levitov and Angeline failed to produce documents and to appear for on-the-record interviews.

Levitov and Angeline have appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Robert Joseph Rosato (Registered Principal, Melville, New York) was censured, fined \$30,000, suspended from association with any NASD member in any capacity for eight months, and ordered to pay restitution in the amount of \$17,957.69 plus pre-judgment interest. The sanctions were based on findings that Rosato engaged in a baseless and improper price prediction and an improper promise to recover losses to a public customer. Rosato also engaged in unauthorized trading in the accounts of public customers.

June Actions

Mark Jude Iacono (Registered Principal, Smithtown, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Iacono consented to the described sanctions and to the entry of findings that he repeatedly failed to make the required "affirmative determination" that certain securities he sold short would be delivered or were available and could be borrowed. The findings also stated that Iacono failed to comply with the rule requiring that all order tickets be marked either as a "long" or "short" transaction.

William Nunziato (Registered Principal, Whitestone, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nunziato consented to the described sanctions and to the entry of findings that, acting with others, Nunziato arranged to purchase approximately 1.3 million shares of common stock from former affiliates of an offering and, acting alone and with others, engaged in a secondary distribution using special selling efforts and selling methods at a time when his firm acted as a Market Maker; bid for and purchased securities which were the subject of the distribution; and induced other persons to purchase such securities before the distribution was completed. Moreover, the findings stated that Nunziato failed to inform his firm's customers that the IPO was not a bona fide public distribution nor were they informed of the secondary distribution that diluted the shareholders' interests in the aftermarket. The findings also stated that a member firm, acting through Nunziato, failed to supervise adequately and properly an individual with respect to "flipping" IPO shares to ensure compliance with applicable rules and regulations, and failed to take any steps to discharge his supervisory responsibilities with the firm. Nunziato also failed to respond to an NASD request to appear for an on-the-record interview.

Greg Todd Vittor (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Vittor consented to the described sanctions and to the entry of findings that he repeatedly failed to make the required "affirmative determination" that certain securities he sold short would be delivered or were available and could be borrowed.

Market Regulation Department

April Actions

ABN-AMRO Incorporated (Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$13,500. Without admitting or denying the allegations, the firm consented to

the described sanctions and to the entry of findings that it failed to provide, in connection with transactions where the firm acted as principal, written notification to its customer of the reported trade price of the transaction. The findings also stated that the firm failed to report the correct price to ACT in transactions in NNM securities, and failed to report the correct price to ACT in one transaction in Nasdaq SmallCap securities. The NASD also determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the designation of supervisory personnel, trade reporting, best execution, the Limit Order Protection Interpretation, the Order Handling Rules, the registration of persons with the NASD, the use of SOES, and anti-competitive practices.

Everen Securities, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$13,000, and required to pay restitution and interest to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to preserve for a period of not less than three years memoranda of brokerage orders that showed the time of receipt of the order. The firm also failed to use reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to buy and sell in such market so that the resultant prices to the customers were as favorable as possible under the prevailing market conditions. The findings also stated that the firm failed to contemporaneously execute customer limit orders after it traded each subject security for its own market-making account at a price that would satisfy each customer limit order and failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders.

GVR Company, Inc. (Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. In addition, NASD determined that the firm failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer, and the national best bid or offer and the orders represented more than a de minimis charge in relation to the size associated with the firm's bid or offer in each security. The findings also stated that the firm failed to establish and maintain written supervisory procedures relating to the SEC Order Execution Rules, best execution, books and records, the Limit Order Protection Interpretation, trade reporting rules, and locked and crossed markets.

Wien Securities Corporation (Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$23,500, and ordered to pay \$356.25 in restitution plus interest to the public customers whose orders did not receive best execution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT, in violation of applicable securities laws and regulations. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, ACT reporting, books and records, locked and crossed markets, SOES, the order handling rules, anti-competitive practices, and best execution.

May Actions

BancAmerica Robertson Stephens (San Francisco, California) 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 reported transactions to ACT in violation of applicable securities laws and regulations regarding limit orders. The firm also provided written notification to its customers that the price listed was the reported price when the price listed was an average price. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding locked and crossed markets, SOES, limit orders, and best execution.

Barron Chase Securities, Inc. (Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was fined \$27,000 and required to submit revised supervisory procedures to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously execute customer limit orders after it traded each subject security for its own market-making account at a price that would satisfy each such customer limit order. The NASD also determined that the firm reported transactions to ACT, designating its capacity as principal when it was actually acting as agent. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures regarding ACT compliance, best execution, books and records, limit order protection, SOES order eligibility, order handling, registration of trading personnel, trade reporting, markups/markdowns, locked and crossed markets, and the anti-competitive issues enumerated in the SEC's 21(a) Report.

M.A. Berman Company (Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$29,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NNM securities at or below the inside bid when the current inside bid was below the preceding inside bid in the securities. The findings also stated that the firm executed short-sale orders in certain securities and failed to maintain a written record of the affirmative determination made for such orders, failed to report transactions to ACT with a short-sale indicator, and failed to mark properly the order tickets as short. In addition, the firm failed to report transactions in NNM securities to ACT that it was required to report, failed to designate some transactions as late, failed to include the time of executions in each transaction report, and failed to designate as "T" a security transaction executed outside normal market hours. Moreover, the findings stated that the firm failed to prepare a training plan designed to implement the results of its needs analysis and failed to cause required employees to participate in the firm's Element Training, and failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with short sales, trade reporting, limit order protection, best execution, and ACT reporting rules.

Merrill Lynch, Pierce, Fenner & Smith, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that a preferenced SelectNetSM order was presented to the firm at the firm's published bid or offer in an amount up to its published quotation. The NASD found that the firm failed to execute the orders and thereby, failed to honor its published quotation. In addition, the firm failed to establish and maintain written procedures reasonably designed to achieve compliance with the applicable securities laws and regulations SEC and NASD firm quote rules.

William Edward Scuteri (Registered Representative, Northport, New York), Robert John Paulson (Registered Representative, Manor Park, New York), Brian Patrick Kearney (Registered Principal, Woodbury, New York), Timothy J. Matthews (Registered Principal, Nissequoque, New York), Joseph John Ferrante (Registered Principal, Deer Park, New York), Michael Howard Cohn (Registered Principal, Babylon, New York), Claudia Lyn Silver (Registered Representative, New York, New York), and Diana Coblin (Registered Principal, New York, New York) submitted Offers of Settlement pursuant to which Scuteri was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$223,200 in restitution to customers. Paulson was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$82,006 in restitution to customers. Kearney was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$64,410 in restitution to customers. Matthews was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$135,706 in restitution to customers. Ferrante was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, required to requalify by exam as a general securities representative, and required to pay \$75,577 in restitution to customers. Cohn was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$94,341 in restitution to customers. Silver was censured, fined \$12,500, suspended from association with any NASD member in any capacity for 30 days, required to requalify by exam as a general securities representative, and required to pay \$13,322.50 in restitution to customers. Coblin was censured, fined \$100,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$152,347 in restitution to customers.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in high pressure, "boiler room" sales practices, including fraudulent misrepresentations, baseless price predictions, and omissions of material facts in recommending to customers that they purchase securities. The findings also stated that the respondents effected numerous unauthorized transactions in customer accounts.

Warburg Dillon Read L.L.C. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, customer orders, and limit orders. The findings also stated that the firm failed to establish and maintain adequate written supervisory procedures reasonably designed to achieve compliance with the short-sale rules.

June Actions

Vincent Michael Carrella (Registered Principal, East Islip, New York) was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to disgorge commissions totaling \$161,623.75 to his customers. The sanctions were based on findings that Carrella made fraudulent misrepresentations to public customers while recommending that they purchase interests in an IPO and aftermarket stock underwritten by his member firm. Carrella failed to disclose to customers material information concerning the risks attendant to investing in the offering.

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

NationsBanc Montgomery Securities LLC (San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to pay \$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 reported transactions to ACT in violation of applicable securities laws and regulations regarding limit orders. In the execution of customer orders, the firm failed to use reasonable diligence to ascertain the best inter-dealer markets for securities and sell in such markets so that the resultant prices to customers were as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to immediately display customer limit orders in the firm's public quote where each such order was at a better price than the firm's public quote or at a price equal to the firm's public quote when such quote was priced equal to the national best bid or offer in such security and that order represented more than a de minimus change in relation to the size associated with the firm's bid or offer. In addition, the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures with respect to: ACT compliance, trade reporting, the SEC Order Handling Rules, the Limit Order Protection Interpretation, best execution, anti-competitive practices, the use of SOES, and the annual review of the firm's OTC Trading Department.

Sherwood Securities Corp. (Jersey City, New Jersey) submitted an Offer of Settlement pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute purchase or sell orders at the firm's published bid or offer and failed to honor its bid or offer quotations.

Vincent Gerard Vaccaro (Registered Principal, Lydenhurst, New York). Vaccaro was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to disgorge commissions totaling \$135,982.50 to his customers. The sanctions were based on findings that Vaccaro participated in a "boiler room" at his member firm and made material misrepresentations and omissions to public customers while recommending that they purchase interests in an IPO and aftermarket stock underwritten by his member firm. In addition, Vaccaro made an unauthorized purchase for a public customer and failed to execute sell orders he received from customers.

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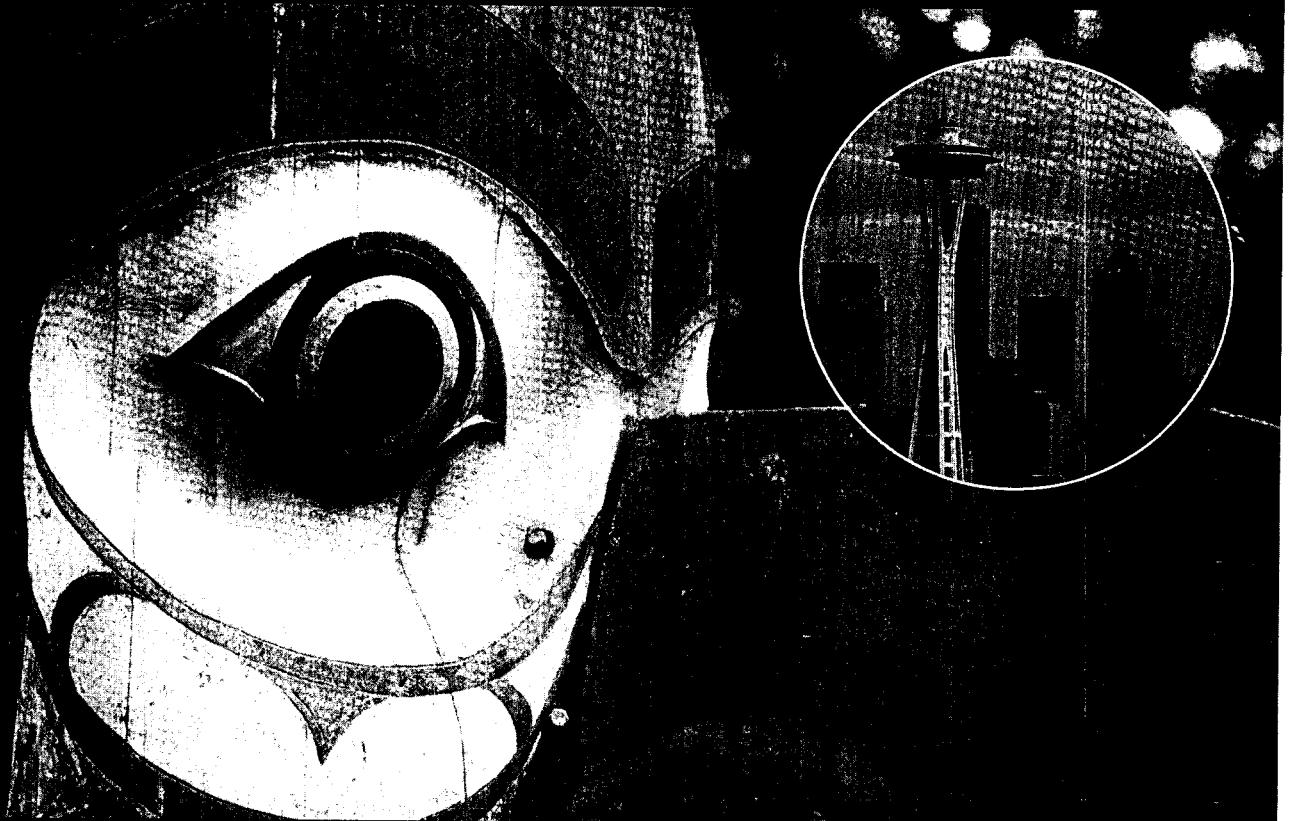
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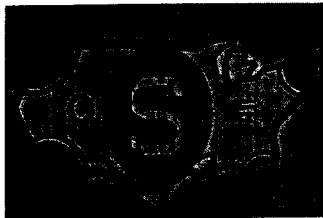


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