NASD

# Notice To Members

National Association of Securities Dealers, Inc. January 1991

**Number 91-7**

**Suggested Routing:***

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

*These are suggested departments only. Others may be appropriate for your firm.

## Subject: Nasdaq National Market System (Nasdaq/NMS) Additions, Changes, and Deletions As of December 12, 1990

As of December 12, 1990, the following six issues joined Nasdaq/NMS, bringing the total number of issues to 2,587:

| Symbol | Company | Entry Date | SOES Execution Level |
|---|---|---|---|
| CBEX | Cambex Corporation | 11/20/90 | 1000 |
| DEPLF | Deprenyl Research Limited | 11/20/90 | 1000 |
| UHCOW | Universal Holding Corp. (Wts) | 11/21/90 | 500 |
| CCEAW | Coca-Cola Enterprises, Inc. (Wts) | 12/4/90 | 1000 |
| ILDCY | Israel Land Development Company Limited (The) | 12/4/90 | 200 |
| KSRI | Kaiser Steel Resources, Inc. | 12/4/90 | 500 |

### Nasdaq/NMS Symbol and/or Name Changes

The following changes to the list of Nasdaq/NMS securities occurred since November 13, 1990:

| New/Old Symbol | New/Old Security | Date of Change |
|---|---|---|
| MOTOZ/MOTOZ | Moto Photo, Inc. (11/25/91 Wts)/Moto Photo, Inc. (11/25/90 Wts) | 11/15/90 |
| BIRT/BIRT | Birtcher Medical Systems, Inc./Birtcher Corporation (The) | 12/3/90 |
| ARIB/ARIB | Aspen Imaging International, Inc./Aspen Ribbons, Inc. | 12/4/90 |
| TXMX/ELCH | Southwest Cafes, Inc./El Chico Corporation | 12/6/90 |

### Nasdaq/NMS Deletions

| Symbol | Security | Date |
|---|---|---|
| ENVT | Environmental Tectonics Corporation | 11/13/90 |
| CFNH | Cheshire Financial Corporation | 11/14/90 |

| Symbol | Security | Date |
|---|---|---|
| CBAM | Cambrex Corporation | 11/15/90 |
| ALFB | Abraham Lincoln Federal Savings Bank | 11/16/90 |
| CHFD | Charter Federal Savings Bank (Virginia) | 11/16/90 |
| FYBR | Critical Industries, Inc. | 11/16/90 |
| DSII | Decom Systems, Inc. | 11/16/90 |
| KWIKF | KWIK Products International Corporation | 11/16/90 |
| PHXA | Phoenix American Incorporated | 11/16/90 |
| TRADE | Traditional Industries, Inc. | 11/16/90 |
| TRSL | Transnational Industries, Inc. | 11/16/90 |
| WSBX | Washington Savings Bank, F.S.B. (The) | 11/16/90 |
| FRTR | Frontier Insurance Group, Inc. | 11/19/90 |
| OSHWF | OSHAP Technologies Ltd. (Wts) | 11/19/90 |
| POPX | POP Radio Corporation | 11/19/90 |
| HMSB | Home Savings Bank (The) | 11/20/90 |
| AZIC | Arizona Instrument Corporation | 11/29/90 |
| MCRN | Micron Technology, Inc. | 11/30/90 |
| FCTR | First Charter Corporation | 12/3/90 |
| FFWP | First Federal of Western Pennsylvania | 12/3/90 |
| SLRV | Sellersville Savings and Loan Association | 12/3/90 |
| SMRK | Southmark Corporation | 12/3/90 |
| CNNR | Conner Peripherals, Inc. | 12/4/90 |
| ANSL | Action Savings Bank, S.L.A. | 12/7/90 |
| LDMFA | Laidlaw Inc. (Cl A) | 12/10/90 |
| LDMFB | Laidlaw Inc. (Cl B) | 12/10/90 |
| NHSB | New Hampshire Savings Bank Corp. | 12/10/90 |
| INTK | U.S. Intec, Inc. | 12/10/90 |

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (301) 590-6429.

NASD
# Notice To Members
National Association of Securities Dealers, Inc. January 1991

**Number 91-8**

**Suggested Routing:***

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

*These are suggested departments only. Others may be appropriate for your firm.

## Subject: Annual Check List of NASD *Notices to Members*

The NASD published the following *Notices to Members* during 1990. Duplicate copies are available at $25 per monthly or special issue. Requests, accompanied by a self-addressed mailing label and a check payable to the National Association of Securities Dealers, Inc., should be sent to NASD Book Order Department, P.O. Box 9403, Gaithersburg, MD 20898-9403.

| Notice | Date | Topic |
|---|---|---|
| 90-1 | 1/90 | Proposed Amendment to Schedule C to the NASD By-Laws Re: Fees Charged by Members to Applicants for Registration |
| 90-2 | 1/90 | Supervisory Obligations for Members That Employ or Intend to Employ Statutorily Disqualified Persons |
| 90-3 | 1/90 | 1990 Registration Renewal Rosters and Final Adjusted Invoices |
| 90-4 | 1/90 | Trade Date-Settlement Date Schedule for 1990 |
| 90-5 | 1/90 | Nasdaq National Market System Additions, Changes, and Deletions as of December 12, 1989 |
| 90-6 | 1/90 | Annual Check List of NASD *Notices to Members* |
| 90-7 | 2/90 | Presidents' Day: Trade Date-Settlement Date Schedule |
| 90-8 | 2/90 | Nasdaq National Market System Additions, Changes, and Deletions as of January 11, 1990 |
| 90-9 | 2/21/90 | Mandatory Participation by Self-Clearing Firms in the Automated Confirmation Transaction (ACT) Service Begins March 1, 1990 |
| 90-10 | 3/90 | Mail Vote: Proposed Corporate Financing Rule |
| 90-11 | 3/90 | Mail Vote: Proposed Amendment Re: Disclosure of Payment for Order Flow Practices on Customer Confirmations |
| 90-12 | 3/90 | Mail Vote: Proposed Amendments to Article III, Sections 2 and 21(c) of the Rules of Fair Practice Re: Customer Account Information |
| 90-13 | 3/90 | Mail Vote: Proposed Technical Amendment to Pending Prompt Receipt Rule |
| 90-14 | 3/90 | Mail Vote: Proposed Amendments to Article III, Section 35 of NASD's Rules of Fair Practice Re: Communications |

| Notice | Date | Topic |
|---|---|---|
| | | With the Public |
| 90-15 | 3/90 | Amendment to Uniform Practice Code Regarding Buy-In Procedures, Effective February 1, 1990 |
| 90-16 | 3/90 | New Interim Criteria for Initial Inclusion in the Nasdaq System |
| 90-17 | 3/90 | Nasdaq National Market System Additions, Changes, and Deletions as of February 9,1990 |
| 90-18 | 3/19/90 | SEC Staff Interpretations of Rule 15c2-6 |
| 90-19 | 4/90 | Proposed Amendments to the NASD By-Laws and Code of Procedure to Implement the Recommendations of the Special Committee on NASD Structure and Governance |
| 90-20 | 4/90 | Proposed Amendments to Article III, Section 5(b) and Article IV, Sections 3 and 4 of the NASD By-Laws, and Article IV, Section 5 of the NASD Rules of Fair Practice |
| 90-21 | 4/90 | Collection of Fines and Costs in Disciplinary Proceedings |
| 90-22 | 4/90 | SOES Tier Levels to Change for 416 Issues on April 16, 1990 |
| 90-23 | 4/90 | Administrative Conversion of the Series 7 General Securities Representative Examination to PLATO Computer-Based Delivery |
| 90-24 | 4/90 | Good Friday: Trade Date-Settlement Date Schedule |
| 90-25 | 4/90 | Nasdaq National Market System Additions, Changes, and Deletions as of March 15, 1990 |
| 90-26 | 4/16/90 | Proposed Amendments to Subsections (b)(4) and (d) of Article III, Section 26 of the NASD Rules of Fair Practice Re: Regulation of Asset-Based Sales Charges by the NASD |
| 90-27 | 5/90 | Mail Vote: Proposed Amendment to Article III, Section 26 of the NASD Rules of Fair Practice Re: Disclosure of Deferred Sales Charges on Confirmations of the Sale of Investment Company Shares |
| 90-28 | 5/90 | Automated Confirmation Transaction (ACT) Service Fees |
| 90-29 | 5/90 | SEC Approval of New Schedule I to the NASD By-Laws Establishing and Setting Rules for The PORTAL℠ Market for Primary Distributions and Secondary Trading of Private Placements |
| 90-30 | 5/90 | New Nasdaq Listing and Maintenance Standards |
| 90-31 | 5/90 | Electronic Filing of Forms U-5 and Amendments to Form U-4 |
| 90-32 | 5/90 | Revised Forms U-4 and U-5 Go Into Effect |
| 90-33 | 5/90 | Memorial Day: Trade Date-Settlement Date Schedule |
| 90-34 | 5/90 | Nasdaq National Market System Additions, Changes, and Deletions as of April 12, 1990 |
| 90-35 | 5/9/90 | SEC Approval for and Startup of the OTC Bulletin Board |
| 90-36 | 6/90 | Mail Vote: Proposed Amendments to the NASD By-Laws Implementing the Recommendations of the Special Committee on NASD Structure and Governance |
| 90-37 | 6/90 | Mail Vote: Proposed New Rule Re: Handling Customer Limit Orders |
| 90-38 | 6/90 | Proposed Concept for Continuing Assessment of Registered Representatives in the Form of Amendment to Part III, Section (1)(d) of Schedule C to the NASD By-Laws |
| 90-39 | 6/90 | Amendments to Schedule E to the NASD By-Laws Regarding Potential Conflicts of Interest |
| 90-40 | 6/90 | SEC Approval of an Amendment to Schedule H to the NASD By-Laws Requiring Members to Demonstrate Compliance With Rule 15c2-11 Before Initiating Quotations in a Quotation Medium |
| 90-41 | 6/90 | Independence Day: Trade Date-Settlement Date Schedule |

| Notice | Date | Topic |
|---|---|---|
| 90-42 | 6/90 | Nasdaq National Market System Additions, Changes, and Deletions as of May 14, 1990 |
| 90-43 | 7/90 | Proposed Amendement to Part I, Schedule C to the NASD By-Laws |
| 90-44 | 7/90 | SEC Approval of Amendment to Code of Procedure Regarding Summary Remedial Proceedings, Effective July 1, 1990 |
| 90-45 | 7/90 | SEC Approval of Amendments to Articles II and III of the NASD's Code of Procedure Regarding Board of Governors and Committee Proceedings in Disciplinary Actions, Effective August 1, 1990 |
| 90-46 | 7/90 | Reporting Disciplinary Information on Form BD |
| 90-47 | 7/90 | Amendments to Code of Arbitration Procedure |
| 90-48 | 7/90 | Nasdaq National Market System Additions, Changes, and Deletions as of June 14, 1990 |
| 90-49 | 7/90 | SIPC Trustee Appointed for First Ohio Securities Company |
| 90-50 | 8/90 | Proposed Amendment to Article III, Section 28 of the Rules of Fair Practice Re: Associated Person Notifying and Obtaining Approval of Employer Prior to Opening Securities Account With Another Member |
| 90-51 | 8/90 | SEC Approval of Amendment to Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities |
| 90-52 | 8/90 | SEC Approval of Amendments to Article III, Sections 2 and 21(c) of the Rules of Fair Practice Re: Customer Account Information |
| 90-53 | 8/90 | Labor Day: Trade Date-Settlement Date Schedule |
| 90-54 | 8/90 | Nasdaq National Market System Additions, Changes, and Deletions as of July 13, 1990 |
| 90-55 | 8/3/90 | SIPC Trustee Appointed for Blinder, Robinson & Company, Inc. |
| 90-56 | 9/90 | Mail Vote: Proposed Amendments to Subsections (b) ("Definitions") and (d) ("Sales Charge Rule") of Article III, Section 26 of the NASD Rules of Fair Practice Re: Regulation by the NASD of Mutual Fund Asset-Based Sales Charges |
| 90-57 | 9/90 | Implementation of Amendment to Rules of Practice and Procedures for the Small Order Execution System Re: Market Makers' Entry of Agency Orders into SOES, Effective July 27, 1990 |
| 90-58 | 9/90 | Clarification of Schedule H Reporting Requirements |
| 90-59 | 9/90 | Columbus Day: Trade Date-Settlement Date Schedule |
| 90-60 | 9/90 | Nasdaq National Market System Additions, Changes, and Deletions as of August 13, 1990 |
| 90-61 | 10/90 | Mail Vote: Proposed Amendments to Article III, Section 5(b) and Article IV, Sections 3 and 4 of the NASD By-Laws, and Article IV, Section 5 and Article V, Sections 1 and 3 of the NASD Rules of Fair Practice Re: Retention of Jurisdiction Over Member Firms and Associated Persons |
| 90-62 | 10/90 | Mail Vote: Proposed Amendment Re: Use and Disclosure of Member Names |
| 90-63 | 10/90 | Mail Vote: Amendment to Proposed Rule Re: Disclosure of Payment for Order Flow Practices on Customer Confirmations |
| 90-64 | 10/90 | Amendments to the NASD By-Laws and to Schedule B Thereof to Modify the Size and Composition of the Board of Governors and the Number and Configuration of the Districts, Effective September 4, 1990 |
| 90-65 | 10/90 | Suggested Customer Suitability Statement and Agreement to Purchase Form for Members' |

| Notice | Date | Topic |
|---|---|---|
| | | Compliance With SEC Rule 15c2-6 |
| 90-66 | 10/90 | Proposed Amendments to SEC Rule 15c3-1 Regarding Withdrawals of Net Capital |
| 90-67 | 10/90 | SOES Tier Levels to Change for 450 Issues on October 15, 1990 |
| 90-68 | 10/90 | Amendment to Schedule C of the NASD By-Laws Regarding Requalification by Examination for Persons Whose Registration Has Been Revoked, Effective October 1, 1990 |
| 90-69 | 10/90 | Amendment to Schedule C of the NASD By-Laws Regarding Use of the Modified General Securities Representative Examination to Qualify Persons Registered With the Securities Association of the United Kingdom, Effective Immediately |
| 90-70 | 10/90 | Veteran's Day: Trade Date-Settlement Date Schedule |
| 90-71 | 10/90 | Nasdaq National Market System Additions, Changes, and Deletions as of September 13, 1990 |
| 90-72 | 10/90 | SIPC Trustee Appointed for DFW Clearing, Inc. |
| 90-73 | 11/90 | Mail Vote: Proposed Amendment to Article III, Section 28 of the Rules of Fair Practice Re: Associated Person Notifying Employer Prior to Opening Securities Account With Another Member |
| 90-74 | 11/90 | Proposed Amendment to Article IV, Section 1 of the NASD Rules of Fair Practice Re: the Suspension of the Membership of Any Member or of the Registration of a Person Associated With a Member for a Definite Period Assessed As a Penalty for a Rule Violation |
| 90-75 | 11/90 | New Requirement for Market Makers to Display Size in Quotations |
| 90-76 | 11/90 | Broker-Dealer and Agent Renewals for 1990 |
| 90-77 | 11/90 | Thanksgiving Day: Trade Date-Settlement Date Schedule |
| 90-78 | 11/90 | Nasdaq National Market System Additions, Changes, and Deletions as of October 11, 1990 |
| 90-79 | 12/90 | Receipt of Differential Compensation for Soliciting Proxies in Partnership Roll-Ups |
| 90-80 | 12/90 | SEC Approval of Risk Management Functions of the Automated Confirmation Transaction Service |
| 90-81 | 12/90 | Amendments to the Code of Procedure to Change the Disciplinary Process and Provide That Decisions of the National Business Conduct Committee Are Final Actions of the NASD |
| 90-82 | 12/90 | Inclusion of Non-SRO Arbitration Forum as an Alternative Forum in Predispute Arbitration Agreements |
| 90-83 | 12/90 | Christmas Day and New Year's Day: Trade Date-Settlement Date Schedule |
| 90-84 | 12/90 | Nasdaq National Market System Additions, Changes, and Deletions as of November 13, 1990 |
| 90-85 | 12/90 | SIPC Trustee Appointed for Carolina First Securities Group |

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# Disciplinary Actions

National Association of Securities Dealers, Inc. January 1991

## Disciplinary Actions Reported for January

The NASD is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice, securities laws, rules, and regulations, and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions began with the opening of business on Wednesday, January 2, 1991. The information relating to matters contained in this notice is current as of the 20th of the month preceding the date of the notice. Information received subsequent to the 20th is not reflected in this publication.

### FIRMS EXPELLED, INDIVIDUALS SANCTIONED

**Gettins Financial Group, Inc. (San Carlos, California), James Morgan Gettins (Registered Principal, San Carlos, California),** and **Lewis Frederick Hazelwood (Registered Representative, Cupertino, California)** submitted an Offer of Settlement pursuant to which the firm was fined $15,000, jointly and severally with Gettins, and expelled from membership in the NASD. In addition, Gettins was barred from association with any member of the NASD in any capacity. Hazelwood was fined $15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they offered and sold securities to public customers by means of false and misleading representations and omissions of material facts.

**Taylor, Garret & Co., Inc. (Monroe, Louisiana)** and **Terry G. McCart (Registered Principal, Monroe, Louisiana).** The firm was fined $15,000 and expelled from membership in the NASD, and McCart was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through McCart, failed to file its FOCUS Part I and Part II reports, and failed to respond to NASD requests for information.

### FIRMS SUSPENDED, INDIVIDUALS SANCTIONED

**Sacks Investment Company, Inc. (Novato, California)** and **Richard Lawrence Sacks (Registered Principal, Novato, California)** were fined $101,891.20, jointly and severally. The firm was prohibited from engaging in principal transactions for two years, and Richard Sacks was suspended from association with any member of the NASD in any capacity for 60 days, and required to requalify by examination as a principal. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 2. The sanctions were based on findings that the firm and Sacks charged retail customers unfair prices with markups ranging from 5.4 to 100 percent above their contemporaneous costs. In addition, they used a customer's account as a second inventory account for the firm and failed to disclose on customer confirmations the firm's markups or the fact that the firm was acting in a principal capacity. Also, the respondents guaranteed a customer against loss, executed fictitious trades to facilitate a loan to a customer, operated without a financial and operations principal, and engaged in municipal securities transactions without registering with the Municipal Securities Rulemaking Board and without having a municipal securities principal.

This action has been appealed to the Securities and Exchange Commission, and the sanctions are not in effect pending consideration of the appeal.

### FIRMS SUSPENDED

**Bagley Securities, Inc. (Salt Lake City, Utah)** was fined $8,360 and suspended from effecting transactions on a principal basis for two business days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 3. The sanctions were based on findings that Bagley refused to complete a securities transaction in which it bought shares of stock from another member firm.

## FIRMS FINED, INDIVIDUALS SANCTIONED

**North American Investment Corp. (East Hartford, Connecticut)** and **Edward M. Kopko (Registered Principal, Glastonbury, Connecticut)** submitted an Offer of Settlement pursuant to which they were fined $60,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through Kopko, failed to make a bona fide public distribution of a new issue that traded at a premium in the immediate aftermarket by retaining shares in the firm's syndicate account. The findings also stated that the firm failed to prepare and maintain accurate books and records. In addition, the NASD determined that the firm sent false and misleading confirmations to customers disclosing that transactions were executed as either agent or dual agent when, in fact, the transactions were executed on a principal basis.

**Allison, Rosenblum & Hannahs, Inc. (Little Rock, Arkansas), Robert C. Allison, Jr. (Registered Principal, Little Rock, Arkansas), Robert C. Goodwin (Financial and Operations Principal, Sherwood, Arkansas),** and **Tommy T. Tullos (Registered Principal, Little Rock, Arkansas)** submitted an Offer of Settlement pursuant to which the firm was fined $10,000, Allison was suspended from association with any member of the NASD in any principal capacity for one week, Goodwin was suspended from association with any member of the NASD as a financial and operations principal for one week, and Tullos was suspended from association with any member of the NASD in any capacity for one week. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Allison and Goodwin, improperly reclassified funds of principal and interest payable to miscellaneous income, improperly used the funds in the firm's business, and failed to deposit these monies into the reserve account. They also prepared an inaccurate balance sheet, income statement, and net capital computation and filed inaccurate FOCUS Part I and Part II reports, according to the findings. The NASD also determined that the firm, acting through Allison and Goodwin, violated the terms of its restriction agreement by failing to transfer customer securities to a clearing firm or to the customer, failed to maintain possession or control of shares of stock that were wholly owned by a public customer, and improperly hypothecated these customer securities by using them as a clearing deposit. In addition, the NASD determined that the firm, acting through Allison and Goodwin, inaccurately computed the firm's net capital and aggregate indebtedness and conducted a securities business while the firm's net capital was under its minimum requirement. According to the findings, the firm, acting through Allison, made commission payments to two unregistered broker-dealers. The findings also stated that the firm, acting through Tullos, executed corporate securities transactions with public customers on a principal basis at prices that were unfair. And the findings stated that the firm, acting through Goodwin, failed to file its annual audit report on a timely basis, and that Robert Allison failed to establish, maintain, and enforce written supervisory procedures.

**Apple Securities, Inc. (North Little Rock, Arkansas), Larry G. Norwood (Registered Principal, Sherwood, Arkansas),** and **Frank E. Sparks, II (Registered Representative, Sherwood, Arkansas)** submitted an Offer of Settlement pursuant to which the firm was fined $50,000. Norwood was suspended from association with any member of the NASD in any capacity for one day and must requalify by examination as a principal. Sparks was suspended from association with any member of the NASD in any capacity for one month. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Sparks, executed numerous government securities transactions in an institutional account that were excessive in size and frequency and unsuitable in view of the institution's investment objectives and financial situation. The findings also stated that the firm and Sparks failed to disclose these excessive transactions to the institution's board of directors and senior officers. In addition, the NASD found that Norwood failed to supervise properly the activities of Sparks.

**Texas Securities, Inc. (Fort Worth, Texas), Gary Don Edwards (Registered Principal, Graham, Texas),** and **Robert Payne Jackson, (Financial and Operations Principal, Fort Worth, Texas)** submitted an Offer of Settlement pursuant to which the firm was fined $79,000. The firm and Edwards were fined $10,000, jointly and severally, and the firm and Jackson were 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, in contravention of the NASD's Mark-up Policy, the firm, acting through Edwards and Jackson, effected corporate securities transactions with retail customers at prices that were unfair. Also, the findings stated that Texas Securities effected transactions in securities while failing to maintain required minimum net capital.

## INDIVIDUALS BARRED OR SUSPENDED

**Russell E. Appenzeller (Registered Representative, Poland, Ohio)** submitted an Offer of Settlement pursuant to which he was fined $5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Appenzeller consented to the described sanctions and to the entry of findings that he forged the signatures of coworkers on commission checks that totaled $544.20 and converted the funds to his own use.

**William D. Bower (Registered Representative, Sherman, Illinois)** was fined $30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bower received funds totaling $1,984.17 from five public customers with instructions to pay premiums on various insurance policies. He failed to follow the customers' instructions and, instead, deposited the funds in his personal account and used the monies for his own benefit. In addition, Bower failed to disclose on his application for securities industry registration, Form U-4, that he had been terminated from a member firm.

**John H. Bowles (Registered Representative, Denver, Colorado)** was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bowles misused firm funds by utilizing $4,000 that was erroneously credited to his personal securities account by his member firm.

**James O. Brewer (Registered Representative, Metairie, Louisiana)** and **James M. Clarke (Registered Representative, Longwood, Florida)** submitted an Offer of Settlement pursuant to which Brewer was fined $15,000 and barred from association with any member of the NASD in any capacity. Clarke was suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Brewer participated in a scheme to defraud a financial institution and a member firm by executing certain documents that made false representations, contained material omissions, and failed to disclose certain information. In addition, the NASD determined that, in connection with such activity, Clarke failed to observe high standards of commercial honor and just and equitable principles of trade.

**Debra C. Bryant (Registered Representative, Aurora, Colorado)** was fined $5,000, suspended from association with any member of the NASD in any capacity for 45 days, and required to make restitution of $1,875 to her member firm. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 3. The sanctions were based on findings that Bryant misused firm funds in that she accepted and endorsed a check made payable to herself for $2,067.75 that contained an overpayment of $1,875. Bryant converted the overpayment to her own use and benefit.

**Michael G. Cioppa (Registered Representative, Albany, New York)** was fined $2,000 and suspended from association with any member of the NASD in any capacity for six months. The sanctions were based on findings that Cioppa failed to respond to NASD requests for information concerning his termination from a member firm.

**Bryan Lee Claggett (Registered Principal, Hot Springs Village, Arkansas)** submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any member of the NASD in any capacity for one day.

Without admitting or denying the allegations, Claggett consented to the described sanctions and to the entry of findings that he offered and sold securities that were outside the regular course of his employment with his member firm without providing prior written notice of these transactions to his member firm, in contravention of the Board of Governors' Interpretation with respect to Private Securities Transactions. In addition, the NASD found that Claggett recommended 12 direct participation programs to a public customer and caused these securities to be purchased for the customer's account without having reasonable grounds to believe these recommendations were suitable considering the customer's investment objectives and financial situation.

**Willem Dragt (Registered Representative, Eugene, Oregon)** was fined $30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Dragt made improper use of customer funds in that he received a $500 check from two customers for the purchase of shares of a mutual fund. When the customers complained of not receiving a confirmation, Dragt sent them an undated confirmation and a $500 check that was drawn on an account containing insufficient funds. Dragt also failed to respond to NASD requests for information.

**Kenneth Flynn (Registered Representative, Bayonne, New Jersey)** was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Flynn received $5,000 from a public customer for the purchase of a variable appreciable life insurance policy. Flynn failed to remit to his member firm all of the monies and, instead, converted $1,056 of such funds to his own use and benefit.

**Calvin Ford, Jr. (Registered Representative, Bronx, New York)** was fined $33,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ford executed nine unauthorized securities transactions in the joint account of two public customers. In addition, he failed to respond to NASD requests for information.

**James L. Gibbons (Registered Representative, Central Square, New York)** was fined $100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gibbons withheld and misappropriated customer funds totaling $60,077 intended for the purchase of insurance policies.

**Roger M. Gilbert (Registered Representative, Jackson, Michigan)** was fined $130,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gilbert obtained funds totaling $57,369.24 from 11 public customers through loans against existing insurance policies or surrender of accumulated dividends without the customers' knowledge or consent and retained the funds for his own benefit. In addition, he received $13,948.27 from another customer with instructions to pay an insurance policy loan, failed to follow the customer's instructions, and converted the funds to his own use and benefit. Gilbert also failed to respond to NASD requests for information.

**Nazmi C. Hassanieh (Registered Representative, Memphis, Tennessee)** submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for two weeks and must requalify by examination as a general securities representative. Without admitting or denying the allegations, Hassanieh consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers and induced some of these customers to trade options by agreeing to reimburse them one half of any losses sustained as a result of such trading. In addition, the NASD found that Hassanieh executed margin transactions in the joint account of two public customers without having reasonable grounds for believing that such trading was suitable in view of their previous investment experience and investment objectives.

**Julian P. Johnson (Registered Representative, Rochester, New York)** was fined $100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Johnson failed to respond to NASD requests for information concerning three customer complaints and his termination from two member firms.

**Wookjin Kim (Registered Representative, Flushing, New York)** was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kim purchased options positions for which he failed to pay in his personal securities account. He also failed to pay for and failed to respond to NASD requests for information.

**Neil James Koranda (Registered Representative, Beaverton, Oregon)** submitted an Offer of Settlement pursuant to which he was fined $7,500 and suspended from association with any member of the NASD in any capacity for 30 days. Without admitting or denying the allegations, Koranda consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a customer and recommended the purchase and sale of securities to the customer without having reasonable grounds for believing that such recommendations were suitable, considering the customer's financial situation and investment needs.

**Adam Scott Kriftcher (Registered Representative, Valley Stream, New York)** was fined $75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kriftcher effected unauthorized purchase and sale transactions in four customer accounts. Kriftcher also falsely represented to a customer that he used his own funds to cover a margin call in the customer's account. In addition, he directed the customer to wire $3,224.76 to a bank account that was under his control and converted the funds to his own use and benefit. Kriftcher induced another customer to wire $20,000 to a bank account that was under his control and also converted those funds to his own use and benefit rather than using the funds to purchase securities for the customer. Furthermore, Kriftcher engaged in private securities transactions without providing prior written notice to his member firm. In connection with these transactions, Kriftcher issued written guarantees against loss to the customers concerning their investments. Kriftcher also failed to respond to NASD requests for information.

**Frank Kurburski (Associated Person, Grand Haven, Michigan)** was fined $25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kurburski participated in his firm's failure to maintain minimum required net capital, filed inaccurate FOCUS Parts I and II reports, and failed to prepare accurate books and records. In addition, he prepared inaccurate reserve account computations, failed to make required reserve account deposits, and failed to maintain weekly reserve computations. Kurburski also failed to respond to an NASD request for information.

**Daniel J. Lee (Registered Representative, Conway, Arkansas)** submitted an Offer of Settlement pursuant to which he was fined $1,000 and suspended from association with any member of the NASD in any capacity for one day. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to public customers.

**Dennis A. Liljegren (Registered Representative, Tucson, Arizona)** was fined $50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Liljegren accepted from a public customer checks totaling $25,000 intended for investment purposes, but failed to establish the customer's account and invest the funds as instructed. Instead, he sent the customer five statements that contained false information in order to create the appearance that the funds were invested when, in fact, they were not. Liljegren also failed to respond to NASD requests for information.

**Jeffrey Martin Maher (Registered Representative, Lindenhurst, New York)** submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Maher consented to the described sanctions and to the entry of findings that he engaged in an elaborate scheme by which he diverted customer funds and securities to accounts that he controlled, to the detriment of his member firm and the investing public. In contravention of the Board of Governors' Free-Riding and Withholding Interpretation, Maher sold shares of new issues that traded at a premium in the immediate aftermarket to a restricted account, according to the findings. The NASD found that Maher failed to disclose that he had a beneficial interest in customer accounts and that he shared in the profits of these accounts. Also, Maher failed to respond to NASD requests for information.

**Sallie M. McConnell (Registered Representative, Birmingham, Alabama)** was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McConnell improperly signed the name of a deceased relative to letters that requested the liquidation of shares of a government fund. McConnell also forged the customer's name to four redemption checks and converted the funds to her own use and benefit. In addition, the NASD found that McConnell failed to respond to NASD requests for information.

**Sue Ann McHugh (Registered Representative, Henderson, Nevada)** was fined $5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McHugh failed to honor a $3,520 arbitration award.

**Bradley D. Moore (Registered Representative, Bloomington, Minnesota)** was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Moore effected three purchase transactions in his own account and gave his member firm a personal check, drawn on a closed account, for $11,480.25 in payment. Thereafter, Moore failed to pay his member firm for the transactions in a timely manner.

**Edward L. Moskop (Registered Representative, Belleville, Illinois)** was fined $15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Moskop received checks totaling $30,000 from two public customers with instructions to invest in mutual funds. Moskop failed to follow the customers' instructions and, instead, deposited the funds in an account in which he had a beneficial interest and converted the funds to his own use and benefit.

**Dan Allen Nielsen (Registered Representative, Battleground, Washington)** submitted an Offer of Settlement pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Nielsen consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning customer complaints.

**Robert G. Paquette (Registered Representative, Bristol, Connecticut)** was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Paquette failed to respond to NASD requests for information concerning his termination from a member firm.

**Beverly Parker (Registered Representative, Detroit, Michigan)** was fined $30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without the knowledge or consent of a public customer, Parker obtained three checks totaling $2,730.15 drawn against the customer's account, signed the customer's name to the checks, and retained the funds for her personal use and benefit. In addition, she failed to respond to NASD requests for information.

**George P. Primbas (Registered Representative, Brookline, Massachusetts)** was fined $20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Primbas failed to respond to NASD requests for information concerning his termination from a member firm.

**Frank Salvatore Riccio (Registered Representative, Westfield, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Riccio consented to the described sanctions and to the entry of findings that he forged the signatures of two public customers on a cash surrender form for a life insurance policy without the authorization or consent of either individual. As a result of the cash surrender request, Riccio took possession of a check for $149.63, forged the customers' endorsement, and converted the proceeds to his own benefit. In addition, the findings stated that, on three other occasions, Riccio took possession of checks totaling $5,321.70, payable to customers, forged the customers' endorsements, and converted the funds to his own use and benefit.

**John Ray Ryan (Registered Representative, Liberty Lake, Washington)** was fined $10,000, suspended from association with any member of the NASD in any capacity for two years, and required to requalify by examination. The sanctions were based on findings that Ryan sold preferred stock in an entity to eight investors without providing prior written notification to his member firm.

**Steven Mark Sanders (Registered Representative, St. Anne, Illinois)** was fined $50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sanders participated in private securities transactions with four public customers without providing his member firm with prior written notice. In addition, Sanders failed to respond to NASD requests for information.

**Gary L. Smith (Registered Representative, Detroit, Michigan)** was fined $30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Smith received a check for $10,000 from a public customer for the purchase of securities. He failed to follow the customer's instructions and retained the funds for his own use and benefit. Smith also failed to respond to NASD requests for information.

**William B. Starr (Registered Principal, Inver Grove Heights, Minnesota)** submitted an Offer of Settlement pursuant to which he was fined $2,000 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Starr consented to the described sanctions and to the entry of findings that he participated in private securities transactions with 18 public customers without providing prior written notice to his member firm.

**David R. Strother (Registered Principal, Shreveport, Louisiana)** was fined $50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Strother received from six public customers a total of $768,848.89 by representing that he would invest the funds in securities, but instead converted the funds to his own use and benefit.

**William M. Strouse, III (Registered Representative, Mill Hall, Pennsylvania)** was fined $10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Strouse received a check for $20,000 from a public customer for payment on a life insurance policy. He caused only $6,000 to be applied as a premium on the policy, caused $5,500 to be applied to policies belonging to other customers, and converted the remaining $8,500 to his own use and benefit.

**Anthony Van Marle (Registered Representative, Tucson, Arizona)** was fined $25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Van Marle recommended to public customers the purchase and sale of common stock, warrants, or rights without having reasonable grounds for believing that such recommendations were suitable for the customers considering their financial situations and needs. In connection with these recommendations, Van Marle engaged in unfair sales practices in that he made exaggerated and misleading statements to the customers.

**John M. Warwick (Registered Representative, Aurora, Colorado)** was fined $15,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination as a registered representative. The sanctions were based on findings that Warwick effected unauthorized transactions in the accounts of two public customers.

**Frank J. Zawlocki (Registered Representative, Mauston, Wisconsin)** was fined $75,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Zawlocki received funds totaling $36,042.06 from five public customers with instructions to pay premiums on insurance policies. He used $11,323.38 as instructed and retained the remaining $24,718.68 for his own use and benefit. In addition, Zawlocki failed to respond to NASD requests for information.

**William Erwin Zilys (Registered Principal, Spokane, Washington)** and **William Edward Kinzel (Registered Representative, Veradale, Washington)**. Zilys was fined $25,000 and barred from association with any member of the NASD as a general securities principal. Kinzel was fined $325,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, on three separate occasions, Kinzel received funds from customers for investment purposes, failed to use the funds as instructed, and never returned the funds to the customers. Zilys and Kinzel made unsuitable recommendations to customers considering their financial situations and needs. Also, in connection with these unsuitable recommendations, Zilys made unwarranted, misleading, and inaccurate statements to the customers. Furthermore, Zilys engaged in private securities transactions without providing prior written notification to his member firm and failed to supervise properly the activities of Kinzel. In addition, Kinzel failed to respond to NASD requests for information.

### FIRMS EXPELLED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

**Agency Financial Services, Incorporated,** Spring Valley, New York

**Metta Financial Group,** Boca Raton, Florida

### FIRMS SUSPENDED

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

**Adams & Davis Incorporated,** North Miami, Florida (December 10, 1990)

**Chartered Financial Consultants, Ltd.,** Armonk, New York (December 10, 1990)

**Hanes, Morgan & Company,** New York, New York, (December 10, 1990)

**Integrated Assets Group, Inc.,** New York, New York (December 10, 1990)

**Joint Capital Securities, Inc.,** Huntsville, Alabama (December 10, 1990)

**Kinetic Capital, Inc.,** Lake Forest, California (December 10, 1990)

**William Penn Securities Corp.,** New Hyde Park, New York (December 10, 1990)

**Riverside Securities, Inc.,** Chicago, Illinois (December 10, 1990)

**Robinson Securities Corporation,** San Francisco, California (December 10, 1990)

**J.R. Thompson & Co.,** Cranford, New Jersey (December 10, 1990)

**Tri-Bradley Investments,** Englewood, Colorado (December 10, 1990)

**Wall Street South, Inc.,** Mobile, Alabama (December 10, 1990)

**Westcor Financial, Inc.,** Santa Fe, New Mexico (December 10, 1990)

### SUSPENSION LIFTED

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

**Crowley & Busk, Inc.,** Glen Rock, New Jersey (November 16, 1990)

### INDIVIDUALS WHOSE REGISTRATIONS WERE REVOKED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS

Anthony J. Angotta, Dallas, Texas
Trevor S. Bailey, Tampa, Florida
Nathan L. Heilweil, Bayside, New York
Douglas E. Hicks, Marietta, Georgia
Donald E. Jeffers, Jr., Chicago, Illinois
Richard B. Landreau, Granada Hills, California
Henry N. Levine, Boca Raton, Florida
Diane M. Miller, Del Mar, California
Thomas L. Oglebay, Cresaptown, Maryland
Larry J. Phillips, Del City, Oklahoma
Jann E. Sandlin, Kenner, Louisiana
Hank Smith, Little Rock, Arkansas
Larry D. Svehla, San Francisco, California
Peter C. Tosto, Atlanta, Georgia
Richard A. Vaughan, Sherman, Texas

### NASD EXPELS FIRST FIDELITY CAPITAL CORP., BARS ITS PRESIDENT, AND FINES THEM $650,000 FOR FRAUDULENT MISCONDUCT IN UNDERWRITING AND TRADING "PENNY STOCKS"

The NASD has taken disciplinary action against First Fidelity Capital Corp. of New York, New York, and Ted Lawrence Rubin, the firm's President, General Securities Principal, and trader.

The allegations of misconduct against the firm and Rubin involved fraudulently excessive markups, totaling more than $510,000, charged to the firm's customers who purchased shares of Resource Network International, Inc., an over-the-counter stock. Rubin and the firm were also sanctioned for violating Article III, Section 18 of the NASD's Rules of Fair Practice, which prohibits the use of any manipulative, deceptive or other fraudulent device in the purchase or sale of any security, and various antifraud provisions of the federal securities laws, for misconduct in the underwriting involving the use of nominee accounts, and for failure to make a bona fide public distribution of the stock.

As a result of the egregious nature of the violations, the NASD censured and, jointly and severally, fined First Fidelity Capital and Rubin $650,000, expelled the firm from membership in the NASD, and barred Rubin from association with any NASD member in any capacity. The sanctions were imposed after the acceptance of an Offer of Settlement made by the firm and Rubin, pursuant to which they neither admitted nor denied the allegations against them.

First Fidelity Capital underwrote the Resource Network International initial public offering (IPO) and sold 90 percent of the offering to its customers. The NASD found that, from the beginning of aftermarket trading in the stock on July 8, 1987, through July 24, 1987, the firm, acting through Rubin, dominated and controlled the market for Resource Network International securities. In 171 transactions during this time, customers who purchased the stock from the firm were charged fraudulently excessive markups totaling $73,000 and ranging from 14 percent to 52 percent above the prevailing market price of the securities, the findings stated.

First Fidelity Capital also acted as the underwriter for the secondary public offering of Resource Network International in July 1988 and placed 100 percent of the securities offered with its customers. The NASD found that, during the period from September 1, 1988, through December 31, 1988, the firm, acting through Rubin, once again dominated and controlled the market for Resource Network International securities and that, in 553 transactions during this time, customers who purchased the stock from the firm were charged fraudulently excessive markups totalling $438,000, ranging from 18 percent to 95 percent above the prevailing market price of the securities.

Almost half of the Resource Network International securities sold by First Fidelity Capital in the IPO were sold to customers of Rubin. The NASD found that Rubin controlled the price, trading, and repurchase of Resource Network International in the aftermarket and that he used the control arbitrarily to set the opening price for the stock at a premium. It further found that Rubin used the inducement of the premium price to urge many of his own customers to sell their Resource Network International stock back to the firm, which then resold the stock back to public customers at higher prices.

The NASD concluded that the customers of Rubin who bought shares at the public offering price were not bona fide public customers, but rather were nominees of Rubin, and that the underwriting distribution of Resource Network International continued until all of the stock distributed to and repurchased from these individuals came to rest in accounts of bona fide public customers. Accordingly, the NASD found that First Fidelity Capital and Rubin violated SEC Rules 10b-6 and 10b-9.

SEC Rule 10b-6 is an antifraud regulation that prohibits an underwriter from bidding for or purchasing the securities offered until it has completed its participation in a distribution. The rule is intended to prevent persons benefiting from a distribution from engaging in market transactions to increase artificially the market price for those securities.

SEC Rule 10b-9, another antifraud regulation, requires that the proceeds of an all-or-none offering, such as the Resource Network International issue, be refunded if all of the offering is not sold to the public within a specified time.

The NASD also found that First Fidelity Capital's sales of 4,500 units (45,000 shares) of Resource Network International Inc. to the wife of the president of another broker-dealer and 140 units (1,400 shares) to an associated person of a different broker-dealer were in violation of the NASD's fair-dealing rules and in contravention of the NASD's "Free-Riding and Withholding Interpretation." The interpretation prohibits the sale of "hot issue" securities, those that trade at a premium in the immediate aftermarket, to another broker-dealer, an associated person of a broker-dealer, or a member of the immediate family of any such person.

The investigation of this matter was jointly conducted by the NASD's District 12 office in New York and its Anti-Fraud Department in Washington, D.C. It is part of a continuing nationwide effort by the NASD to eliminate sales and trading practice abuses in the penny-stock market.

## NASD SANCTIONS MALONE & ASSOCIATES, INC., ITS PRESIDENT, AND OTHERS FOR EXCESSIVE MARKUPS IN "PENNY STOCK"

The NASD has taken disciplinary action against Malone & Associates, Inc. of Denver, Colorado; Robert G. Malone, its President; Ted Paul Spires, Jr., the firm's former sales manager; and J. Paul Carter, formerly a trader at the firm.

The misconduct involved fraudulently excessive markups in units of Chartwell Cable Fund, Inc., an over-the-counter "penny stock," and a failure to supervise with respect to those markups.

Pursuant to a Letter of Acceptance, Waiver and Consent, without admitting or denying the allegations, the firm and Robert Malone were censured and fined $136,000, jointly and severally. Robert Malone was suspended from association with any member in any capacity for 15 calendar days and was suspended for 75 calendar days from associating with any member in any principal or supervisory capacity. Robert Malone was also ordered to requalify as a principal by examination prior to acting in such a capacity.

Separately, Spires, Carter, Robert Malone, and the firm were fined $25,000, jointly and severally. Spires was censured and suspended from associating with any member in any principal or supervisory capacity for 30 calendar days. Spires was also ordered to requalify as a principal by examination before acting in such a capacity. Carter was censured and suspended for 30 calendar days from associating with any member in any trading capacity. As part of the settlement, the firm further agreed to make certain changes to its business practices. These changes include delivering shares to customers rather than holding them in street name in underwritings in which the firm sells 60 percent or more of the offering to its own customers.

All respondents, without admitting or denying the allegations, consented to findings that they violated various NASD rules, including Section 18 of its Rules of Fair Practice, the NASD's antifraud provision that prohibits the use of any manipulative, deceptive, or other fraudulent devices in the purchase or sale of any security.

The firm underwrote Chartwell's initial public offering dated December 4, 1987, and placed almost 95 percent of the offering with its own clients. The NASD found that, from the beginning of aftermarket trading on January 7, 1988, through January 29, 1988, the firm, Robert Malone, Spires, and Carter, while dominating and controlling the market for Chartwell units, charged fraudulently excessive markups of more than 10 percent above the firm's contemporaneous cost in its principal sales to retail customers. The NASD also found that, during the same time period, the firm, Robert Malone, and Spires failed to properly supervise the firm's associated persons and its over-the-counter trading department to assure compliance with the NASD's rules and policies with respect to markups.

This investigation was carried out by the NASD's Anti-Fraud Department and is another in a series of enforcement actions taken by the NASD on a nationwide basis to address fraud and sales-practice abuses in penny stocks. The disciplinary action was taken by the NASD's Market Surveillance Committee, which consists of 12 executives from securities firms across the country. The Committee is responsible for maintaining the integrity of the Nasdaq and non-Nasdaq markets and for disciplining members that fail to comply with relevant NASD rules and federal securities laws.

The suspensions imposed on the respondents began November 26, 1990.

NASD

Board Briefs

National Association of Securities Dealers, Inc. January 1991

## Actions Taken by the NASD Board of Governors in November

■ **President's Report** — These continue to be challenging times for the industry and the NASD. In many respects, but not all, the NASD mirrors what is occurring in the industry. As the industry is adjusting to the pressures of a weakening economy and reduced volume, so too is the NASD. Every program, project, and activity is being carefully reviewed to ensure its relevance in today's environment. Some of these programs and projects are being eliminated while others are being delayed or reduced.

Not all NASD activities are being pared back or maintained at current levels — some are expanding. One such area is regulation. The success of the OTC Bulletin Board coupled with new trade reporting in the over-the-counter market have added to the regulatory workload. In addition, the acquisition of the PLATO Testing Centers, effective January 1, 1991, means that the NASD will administer qualification examinations directly.

Other areas that will command our attention in the year ahead include the need for additional short-sale regulation, protecting against improper use of automated systems by market participants, expanding the hours of The Nasdaq Stock Market to accommodate international trading, and providing member and market services that are efficient and cost-effective.

Tight budgets, exacerbated by the requirement to do more, have caused us to find alternative ways to balance needs with resources. Among other things, we have asked our professional-level employees to work longer hours. We have also begun looking for ways to reduce redundant costs to members through inter-industry cooperation. To achieve this, we are urging our members to encourage other self-regulatory organizations (SROs) to join us in developing the most appropriate mechanisms to reach the goal. We are also preparing multitiered contingency budgets to ensure adequate flexibility to handle economic developments through the coming year.

The NASD remains active in the movement toward international standards in both the regulatory and clearance and settlement areas. We are an affiliate member of the International Organization of Securities Commissions (IOSCO), a charter member of the International Councils of Securities Dealers and Self-Regulatory Associations, and we participate in the sessions of the International Federation of Stock Exchanges that address various regulatory and system concerns. In November, NASD Board member David Ruder, former SEC Chairman, was elected President of IOSCO's Consultative Group, which was formed in 1989 to help forge links between IOSCO's full members and its 12 self-regulatory organization members.

In addition, NASD recently testified before the SEC on clearance and settlement issues in international markets. The primary issues under consideration were a three-day settlement cycle and same-day funds settlement. In our testimony, we cited our successful efforts at automating the comparison process and noted that, with the increase in transactions resulting from the quickening pace of globalization, the ease and cost of clearing and settling those transactions will become an even more meaningful factor in deciding where to execute than it is today.

On the legislative front, 1990 has been a most prolific year. In all, three major pieces of legislation were enacted. They are:

• **Securities Law Enforcement Remedies and Penny Stock Act** — Combining an SEC-requested remedies bill and the House's "penny stock" bill, this measure gives the SEC authority to assess new civil monetary penalties in administrative and civil proceedings under the securities laws. It also allows the SEC to bar violators from serving as directors or officers of public companies, adds cease-and-desist authority and other powers, authorizes the SEC to issue orders requiring an accounting and disgorgement, allows the SEC to define penny stock, brings promoters under coverage of the 1934 Securities Exchange Act, requires disclosures by broker-dealers in penny-stock sales, and mandates the future development of a penny-stock automated quotation system. In addition, the law makes voidable certain contracts that violate SEC rules, authorizes the SEC to make rules to restrict "blank check" offerings, requires the NASD to establish a toll-free phone number for customer inquiries concerning disciplinary history of NASD members and to provide such customers with a written response, and mandates a General Accounting Office study of penny-stock regulation by SROs.

• **Market Reform Act** — This law permits the SEC to take emergency actions to close the markets (unless the President disapproves), requires large trader reporting and holding-company risk assessment disclosure, mandates coordinated clearing and settlement, and authorizes the SEC to take action to curb unusual volatility in the equity markets.

• **International Cooperation, SEC Authorization, Shareholder Communications Improvement and Trust Indenture Reform Act** — This statute permits increased cooperation between the SEC and foreign regulators; makes any felony conviction a statutory disqualification; authorizes appropriations for the SEC through 1991 and allows it to lease its own space; extends to investment company shareholders the benefits of the SEC shareholder communications rules; and makes five technical improvements to the Trust Indenture Act of 1939. *Joseph R. Hardiman* (202) 728-8100.

■ **Board Elections** — The NASD elected new officers for its 1991 Board of Governors along with eight new Governors. Formal installation will occur at the January meeting. The incoming Chairman is William B. Summers, Jr., President and Chief Operating Officer of McDonald & Company Securities, Inc., in Cleveland. Ronald P. Lynch, Managing Partner of Lord, Abbett & Co. in New York is the Vice Chairman-Elect.

Philip S. Cottone, Vice President of MBI Equities Corp. in Cherry Hill, New Jersey, was chosen as the 1991 Chairman of the National Business Conduct Committee (NBCC). Jerry Roberts, President of Hill, Crawford & Lanford, Inc. in Little Rock, is the Committee's next Vice Chairman.

Four new Governors-at-Large, elected by the Board, are John C. Burton, Ernst & Young Professor of Accounting and Finance at the Columbia University Graduate School of Business; Stephen J. Friedman, Executive Vice President and General Counsel for The Equitable Life Assurance Society of the United States; Margo N. Alexander, Executive Vice President and Co-Director of Capital Markets of PaineWebber Incorporated; and Robert Cohn, Chairman and Chief Executive Officer of Octel Communications Corporation.

The five new Governors elected by the NASD's regional Districts to replace representatives whose three-year terms expire in January 1991 are Norman Frager, Senior Vice President, Stifel, Nicolaus & Company, Incorporated, St. Louis; Peter B. Madoff, Director of Trading, Bernard L. Madoff Investment Securities, New York; James M. McMullan, Partner, William Blair & Company, Chicago; David J. Powell, Senior Vice President, Eppler, Guerin & Turner, Inc., Dallas; and Frederick M. Roberts, President, F.M. Roberts & Company, Inc., Los Angeles.

■ **Business Conduct Matters** — The Board ordered changes to the recent member-approved order-flow disclosure language. The new language, which is a more affirmative statement of payment practices follows:

*The firm receives remuneration for directing orders to particular broker/dealers or market centers for execution. Such remuneration is considered compensation to the firm, and the source and amount of any compensation received by the firm in connection with your transaction will be disclosed upon request.*

The proposed language is more in keeping with SEC Rule 10b-10, which requires the member to state *whether* it has received additional remuneration in connection with transactions.

To ensure that orders entered into the Small Order Execution System are purely those of public customers, the Board approved a change to the SOES operation rules. The proposal expands the definition of "professional trading account" to include new criteria for the NASD to consider when reviewing an account for professional trading activity in SOES.

These new criteria include:

• Excessive frequency of short-term trading.

• Excessive frequency of short-sale transactions.

• Existence of discretionary powers.

• Direct or physical access to SOES execution capability.

• Direct or physical access to Nasdaq Level 2 service.

Changes that update and amend the NASD's Uniform Practice Code were approved by the Board. The amendments focus on clarifying long-standing rules, consolidating redundant sections, and addressing the ultimate delivery of problem aged fails such as nontransferable, bankrupt, worthless, and expired securities.

The Board approved for filing with the SEC a change to its Prompt Receipt and Delivery of Securities Interpretation. Under the proposal, members selling short during the restricted period, as proscribed in SEC Rule 10b-21, before a secondary offering would have to verify the source of the securities used to cover the short sales. For two days after the offering, members with short positions in securities would have to get from selling customers representations that the securities sold were not purchased from or through an underwriter or broker-dealer participating in the offering. This approach should ensure that market makers can determine whether a covering transaction conforms with the prohibitions in SEC Rule 10b-21.

Because Rule 10b-21 does not cover them, the proposal would not apply to best-efforts or Rule 415 "shelf" offerings. In addition, the representation would not be required for customer transactions involving 3,000 shares or less effected through automated execution systems.

Publication for member comment of a proposal on the roll-up of limited partnerships received Board approval. The proposed amendment would prohibit the receipt by a member of differential compensation in a roll-up transaction that is tied to the solicitation of "yes" votes only from limited partners, irrespective of the form of entity resulting from the roll-up (i.e., a partnership, real estate investment trust, or corporation). *Frank J. Wilson* (202) 728-8319.

■ **Trading Issues** — The Board approved changes to the SelectNet℠ service that became effective with the service's recent startup. SelectNet lets Level 2/3 Nasdaq subscribers send orders in Nasdaq securities to market makers or broadcast the orders to all NASD members that subscribe to Nasdaq. With the service, participants can preference an active market maker in an issue, send an unpreferenced order to all market makers in an issue, or preference an order with an option to broadcast any unfilled quantity to all market makers.

The service is available only for agency or principal orders greater than the Nasdaq SOES tier limits. In addition, market makers receiving orders through SelectNet will not be required to execute partial orders but may execute partials at their discretion. However, in an emergency or during extraordinary market conditions, the NASD may eliminate either one or both of these conditions under authority granted to the Board of Governors and its designees in Article VII, Section 3 of the NASD By-Laws.

The Board ratified Nasdaq, Inc.'s, action to replace the communications network that carries Level 1, the last-sale data stream, the Nasdaq data stream, and the computer-to-computer-interface connections to the membership. Once in place, this new network will be the exclusive means for members to receive these services. This approach will reduce costs and enhance Nasdaq's back-up capability. *John T. Wall* (202) 728-8200.

■ **Arbitration Issues** — The board adopted three amendments to the Code of Arbitration dealing with party service of amended pleadings, case eligibility for application of simplified procedures, and award contents. Details concerning these changes will be provided in the near future. *Deborah Masucci* (212) 858-4400.

NASD

# For Your Information

National Association of Securities Dealers, Inc. January 1991

## NASD Encloses New *Guide to Information and Services*

With this issue of *Notices to Members*, NASD members are receiving the new edition of the *NASD Guide to Information and Services*. The *Guide* is arranged by subject headings and includes the names and phone numbers for NASD contacts on each subject.

## Date Changes for January First Saturday Examination

The date for the January 1991 first Saturday examination in Rio Piedras, Puerto Rico, has been changed to January 19, 1991. Appointments will be necessary for all candidates who wish to take an examination that day and can be made by calling the NASD Member Services Phone Center at (301) 590-6500. Appointment requests must be received **no later than Wednesday, January 9, 1991.**

## Date Changes for February Foreign Examination in Tokyo

The date for the February 1991 regular foreign examination in Tokyo, normally held on the third Saturday, has been changed to February 2.

## American Stock Exchange Raises Agent Fees Effective January 1

As of January 1, 1991, the American Stock Exchange raised its fees for agent registration and transfer. The agent registration fee increased from $25 to $40, while the agent transfer fee rose from $10 to $25. Questions regarding these changes should be directed to the NASD Member Services Phone Center at (301) 590-6500.

# Tap Into Our Resources

## NASD and Nasdaq Publications for Sale

The NASD publishes many valuable educational and informational materials. These comprehensive references and newsletters contain handy, concise, and up-to-date information about matters directly affecting your day-to-day business activities. Here are some of the publications currently available.

☐ ***July 1990 Nasdaq Company Directory.*** This book lists all Nasdaq stock market companies, their securities' symbols, industry codes, addresses, media and investor relations contacts, and telephone numbers. (Approx. 150 pages) **$15.**

☐ ***NASD Guide to Rule Interpretations (Net Capital Customer Protection Rules).*** This guide contains NASD interpretations of the SEC's Net Capital Rule (15c3-1) and Customer Protection Rule (15c3-3). Each interpretation has been distilled from one or more of the following sources: letters from the SEC Division of Market Regulation to the NASD; letters from the SEC to other self-regulatory organizations; letters from the SEC to attorneys, accountants, NASD members, and other parties; and discussions between self-regulatory organizations and the SEC. (1989. 85 pages) **$25.**

☐ ***NASD Subscription Service.*** Members and others interested in the NASD and The Nasdaq Stock Market can take advantage of belonging to our Subscription Service. Subscribers receive *the NASD Annual Report, NASD Notices to Members, Nasdaq Fact Book, NASD Regulatory and Compliance Alert, and Nasdaq Subscriber Bulletin.* **$350 annually.**

☐ ***The Nasdaq Handbook.*** In this hardcover book, corporate executives, scholars, consultants, journalists, and investment professionals explore the uses, efficacy, implications, and opportunities of the The Nasdaq Stock Market. The handbook profiles Nasdaq market investors, provides an overview of Nasdaq companies, and analyzes trends in liquidity, economic efficiency, trading characteristics, and market technology. (1987. 577 pages). **$24.95.**

### NEWSLETTERS

☐ **NASD Notices to Members.** A monthly compendium informing members about regulatory and other NASD developments, including actions taken at bi-monthly Board of Governors meetings. Requests for member votes and comments are disseminated through *Notices to Members*. **$200 annually.**

☐ ***NASD Regulatory & Compliance Alert.*** Quarterly newsletter dealing with NASD, federal, and state compliance developments and updates on NASD regulatory policy. **$80 annually.**

☐ ***Nasdaq Subscriber Bulletin.*** Bi-monthly newsletter covering developments in the Nasdaq market with emphasis on new trading technologies and regulations and enhancements to the Nasdaq system. **$80 annually.**

### ECONOMIC STUDIES — Research Reports

A series of monographs written by leading academic researchers. **$15 per monograph**. Some of the titles featured in this series are:

☐ ***The Economic Impact of Initial Public Offerings. (December 1989)***

☐ ***Exchange Listing and the Cost of Equity Capital. (March 1982)***

☐ ***Liquidity, Exchange Listing and Common Stock Performance. (August 1983)***

☐ ***Listing and the Liquidity of Bank Stocks. (August 1983)***

☐ ***Nasdaq/NMS Qualifications Standards, Ohio Registration Experience, and the Price Performance of Initial Public Offerings. (April 1987)***

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