

# Regulatory & Compliance Alert

A PUBLICATION OF NASD REGULATION, INC.

13.1

MARCH 1999

## *Deadline For Completion Of Form BD-Y2K Is Near*

The National Association of Securities Dealers, Inc. (NASD®) recently mailed a Form BD-Y2K package to each member firm for completion by **April 30, 1999**. Recent amendments to Securities and Exchange Commission (SEC) Rule 17a-5 require all NASD members with minimum net capital requirements of \$5,000 or greater as of March 15, 1999, to file the Form BD-Y2K report with the SEC and the firm's designated examining authority (DEA). Broker/dealers with minimum net capital requirements of \$5,000 or greater as of March 15, 1999, are required to file Part I of Form BD-Y2K by **April 30, 1999**.

In addition to Part I of the Form BD-Y2K, broker/dealers with minimum net capital requirements of \$100,000 or greater are required to file, also by **April 30, 1999**, the Part II narrative and Part III—an independent public accountant's report. Part III of the Form must be completed by an independent public accountant. To complete this review, the independent public accountant must review completed Parts I and II. For background on constructing the independent public accountant's report, visit the American Institute of Certified Public Accountants Web Site ([www.aicpa.org](http://www.aicpa.org)).

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**NASD**  
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An NASD Company

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REGULATION, INC.

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*Deadline For Completion Of Form BD-Y2K Is Near, from page 1*

If you did not receive a copy of this Form BD-Y2K package, please call the NASD Year 2000 Program Office at (888) 227-1330 or visit the Year 2000 Web Pages on the NASDR and NASD Web Sites ([www.nasdr.com](http://www.nasdr.com) and [www.nasd.com](http://www.nasd.com), respectively).

### **1999 Form BD-Y2K Best Practices And Helpful Hints**

Firms should keep in mind the following points when completing and submitting the Form BD-Y2K:

- 1) *Each broker/dealer firm must file separately.*
- 2) *Reports must be signed by those authorized to sign FOCUS reports. Unsigned and/or incomplete forms will not be accepted or considered filed by the deadline.*
- 3) *The CRD number must be that of the member firm responding.*
- 4) *The address must be the firm's principal place of business and not a Post Office Box number.*
- 5) *Reports submitted to the DEA must be preserved in accordance with SEC Rules 17a-3 and 4 (for a period of three years).*
- 6) *Each firm must fill out the proper filing and identification information at the top of each page.*
- 7) *The original report and two copies must be mailed to the Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop A-2, Washington, DC 20549. The NASD provided in the Form BD-Y2K package a pre-addressed envelope for your convenience.*
- 8) *One copy must be mailed to Lyn Kelly, NASD Year 2000 Program Office, 15201 Diamondback Drive, Rockville, MD 20850, ATTN: Report-BD-Y2K. An envelope has been provided for your convenience.*
- 9) *Firms required to file Parts I, II, and III must file these parts together for receipt at the SEC and DEA by close of business on **April 30, 1999**. Incomplete report submissions will not be accepted, and reports will not be considered as "filed" unless all applicable parts are received together with the signed cover sheet (Appendix A) by the **April 30th** due date.*
- 10) *All Parts of Form BD-Y2K will be made available to the public.*
- 11) *Each firm should send the Form BD-Y2K in as early as possible (your firm may want to use a form of delivery that permits a receipt to be kept for records).*
- 12) *The Form BD-Y2K may not be filed electronically or by fax.*
- 13) *The Form BD-Y2K should represent each firm's Year 2000 progress, not that of a separate clearing firm or service bureau.*
- 14) *If the firm's DEA is a self-regulatory organization (SRO) other than the NASD, the report should be sent to that DEA, not to the NASD.*

### **SEC Readiness Information**

The SEC has provided a searchable database on the SEC Web Site ([www.sec.gov](http://www.sec.gov)), which features information from Year 2000 required reports from securities firms, and other constituents. Currently, the database includes more than 13,000 reports that describe for each firm included in the database:

- ❖ state of Year 2000 readiness;
- ❖ costs to address the Year 2000 problem;
- ❖ Year 2000 risks; and
- ❖ progress in developing contingency plans.

*For more information on the NASD's Year 2000 Program or help in completing the Form BD-Y2K, call (888) 227-1330 or send an e-mail to [y2k@nasd.com](mailto:y2k@nasd.com).*

### **Proposed Year 2000 Rule Out For Comment**

The SEC has released for comment proposed rules, which apply to all broker/dealers, that focus on Year 2000 readiness and public disclosure of Year 2000 problems. All comments must be submitted to the SEC by **April 12, 1999**.

The proposed rulemaking requires broker/dealers to have sufficient "operational capability" to conduct a securities business, and addresses the meaning of operational capability relative to Year 2000 readiness. The rules state that a broker/dealer would not be operationally capable if it had a material Year 2000 problem, and would require a broker/dealer to disclose material Year 2000 problems to the SEC and its DEA by **August 31, 1999**. The proposed rules specify instances when a broker/dealer would have or be "presumed" to have a material Year 2000 problem. A broker/dealer that is not operationally capable because it has a material

Year 2000 problem would be prohibited from conducting business, unless, in addition to the notice described above, it provided the SEC and its DEA with a certificate stating that it is correcting the problem and will be Year 2000 compliant by **October 15, 1999**. A broker/dealer that is not Year 2000 compliant by **October 15, 1999** would be required to unwind its business and transfer its records to a firm that was Year 2000 compliant. A summary of the proposed rules follows.

The NASD encourages you to review the proposed rules and provide comments to the SEC on or before **April 12, 1999**. The full text of the proposed rules, with the accompanying discussion, is available on the SEC's Web Site – [www.sec.gov](http://www.sec.gov). You may also view that document on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)).

Comments about the proposed rules should be directed to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549-0609. Comments may also be e-mailed to *rule-comments@sec.gov*. In your comment letter, you should refer to File No. S7-8-99.

## **Summary Of SEC Proposed Rules On Operational Capability Requirements And Year 2000 Compliance**

### **I. Sufficient Operational Capability**

The proposed rules would expressly require broker/dealers to have sufficient operational capability and their computer systems to be Year 2000 compliant. The SEC's release states that by codifying the operational capability requirement, it would be able to take preventive measures—such as a cease-and-desist order—before a broker/dealer's operational problems adversely affected its customers or the markets.

The rules specifically address the meaning of operational capability in the context of Year 2000, and state that a broker/dealer would not be considered operationally capable if it has a material Year 2000 problem. While this may depend in part on facts and circumstances, the rules state that a broker/dealer would have a material Year 2000 problem if, at any time on or after **August 31, 1999**:

- ❖ any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and
- ❖ the error impairs or, if uncorrected, is likely to impair, any of its mission-critical computer systems.

In addition, a broker/dealer would be presumed to have a material Year 2000 problem (and would therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, it:

- ❖ does not have written procedures to identify, assess, and remediate any Year 2000 problems in its mission-critical systems;
- ❖ has not verified its Year 2000 remediation through internal testing;
- ❖ has not satisfied any applicable Year 2000 testing requirements imposed by a self-regulatory organization; or
- ❖ has not remediated all exceptions contained in any public independent accountant's report filed with the BD-Y2K.

### **II. Notification To The SEC And DEA**

The proposed rules would require any broker/dealer that has (or under the rules is presumed to have) a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the SEC and its DEA of the problem. This information will be made public on the SEC Web Site.

### III. Prohibition On Non-Compliant Broker/Dealers And Certification

A broker/dealer that is not operationally capable because it has a material Year 2000 problem would be prohibited, on or after **August 31, 1999**, from effecting any transaction in, inducing the purchase or sale of, any security, receiving or holding customer funds or securities, or carrying customer accounts. However, a broker/dealer with a material Year 2000 problem could continue to operate its business if it provided the SEC and DEA a certificate signed by its chief executive officer stating:

- ❖ the broker/dealer is in the process of remediating its material Year 2000 problem;
- ❖ the broker/dealer has scheduled testing of its affected mission-critical systems and specifies the testing dates;
- ❖ the date (which cannot be later than **October 15, 1999**) by which the broker/dealer anticipates it will have remediated any Year 2000 problems; and

- ❖ based on inquiries and to the best of his or her knowledge, the broker or dealer does not anticipate that the existence of the material Year 2000 problem will impair its ability to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities.

This information also will be made public on the SEC Web Site. The target remediation date cannot be later than **October 15, 1999**. The SEC's proposed rules would require a broker/dealer that did not meet this deadline to unwind its business and to either return funds and securities to its customers or make alternative arrangements with another broker/dealer that is Year 2000 compliant.

### IV. Back-Up Records

Furthermore, the proposed rules would require broker/dealers to keep a back-up of their trade blotter and securities record for the last two business days of 1999.

## *How Broker/Dealers Can Address Customer Concerns About The Year 2000*

Investors may become more concerned about the coming millennium change and more frequently question broker/dealers about the potential effects of the Year 2000 issue on customer transactions, accounts, and services. It is important to communicate accurate and complete information about your firm's Year 2000 readiness.

### ***Some information a broker/dealer might communicate to investors include:***

- ❖ **Year 2000 Readiness**—Discuss your firm's participation in Year 2000 testing, particularly industry-wide testing; contingency plans; and other preparedness activities.
- ❖ **Industry Preparedness**—Inform customers that the securities industry is coordinating efforts on Year 2000 readiness in order to protect investors. According to the U.S. Senate Year 2000 Committee's February 24, 1999 report on the Impact of the Year 2000 Problem, "As a result of early attention to the problem and significant regulatory and Congressional oversight, the financial services sector ranks ahead of virtually all other industries in its remediation and testing efforts."
- ❖ **Industry-Wide Testing**—Discuss the Year 2000 industry-wide testing, being conducted during March and April with over 400 market participants, to assess trading and settlement cycles.
- ❖ **Good Recordkeeping**—Indicate that, as always, customers should keep track of their regular account statements. In the event that Year 2000 computer glitches create incorrect information in personal account records, encourage customers to keep copies of personal records such as bank statements, investment account statements, social security records, medical records, bill payment records, and others. Good recordkeeping makes sense at any time.

## District Directors Answer Questions At Conference Open Forum

At the November 4-6, 1998, NASD Regulation Fall Securities Conference, an open forum was conducted with NASD Regulation District Office Directors and home office executives. Conference attendees, primarily representatives of NASD members, asked a number of questions encompassing a variety of subjects. This article is the second in a two-part series to capture many of the questions and the answers provided during this session. Part one appeared in the December 1998 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; Frank J. Birgfeld, Vice President and District Director, Denver; James Dawson, District Director, Seattle; Elisabeth P. Owens, District Director, San Francisco; Jack Rosenfield, Vice President and District Director, Kansas City; and Lani M. Woltmann, District Director, Los Angeles. The questions and answers have been grouped by related topics and edited for clarity. Considering the forum in which the answers were provided, readers should not rely on this article as definitive guidance or formal interpretive advice.

### **Specific Rules/Regulatory Issues**

*Q: How do exams on independent broker/dealers differ, if at all, from exams on other types of firms?*

*A: In general, examinations differ in that the NASD reviews the business that each individual firm conducts. So, if you are specialized in your business you're going to get a different examination than an independent broker/dealer might have, for example. There are some threshold areas that are similar for all firms, such as continuing education, Year 2000, etc. Also, an "independent broker/dealer" designation doesn't signify exactly what kind of business the firm conducts. In a sense, the examination program has grown almost from what one might call a one-size-fits-all approach, to a much more focused exam philosophy. The NASD is looking at dramatically different ways of examining the smallest or the most specialized firms, versus the medium size versus the large firms. In a couple of years from now, the environment will be very different from today. In the future, the NASD may be able to spend much less time on-site, because of technology. Exams will be less intrusive, but much more powerful, accurate, and streamlined. It'll be a better process all the way around.*

One example of innovation is the new municipal securities off-site module. The Municipal Securities Rulemaking Board (MSRB) rules specify that an examination be conducted every 24 months. The rules do not, however, require on-site examinations. So the NASD scrutinized the firms with the least amount of risk, smallest



amount of business, no public finance activities, and, rather than have only on-site visits, NASD Regulation introduced an off-site questionnaire that, if necessary, is followed up with an on-site visit. This is a pilot program for now. So far it has been well received. The NASD is fairly confident that this is the kind of creativity that will be used in the future.

- Q: Should a broker/dealer that performs investment advisory services create a separate entity for its Investment Adviser activities, should it use its existing broker/dealer, what would the NASD prefer?*
- A:** This is your business decision. The NASD doesn't prefer one format over the other. You have to decide whether you want to conduct your investment advisory business inside the existing broker/dealer, or whether you want to run the investment advisory activity through a separate entity. Please remember that you assume responsibility for supervision and recordation of the transactions that are occurring through any third-party broker/dealer. And, there are issues to think about, such as supervision, suitability, and communications.
- Q: Can you please detail the types of abuses seen most often, particularly with respect to the insurance-related broker/dealers?*
- A:** Abuses generally focus on suitability, specifically suitability in the variable annuity area. Also, the handling of money by insurance people is something that is closely looked at. There have been a number of

formal actions involving diversion and misappropriation of customer funds in connection with the payment of insurance premiums.

- Q: If a registered representative with a Series 6 license discusses with clients investment risk tolerance issues in order to recommend certain asset allocation model products that are comprised exclusively of redeemable securities of companies pursuant to the 1940 Act, is a Series 7 license needed? The representative will receive no special compensation for any investment advice.*
- A:** This answer is framed in terms of mutual funds—if you are only discussing mutual funds, then a Series 6 is appropriate. If you are, in discussing your risk tolerance issues, discussing other products, you'll need a Series 7. Also, depending on which state you're located in, you may very well need an investment adviser representative license. You should check with your local state administrator.
- Q: NASD Rule 3040 is selling away, when you allow your representatives to go and conduct business through a third-party broker/dealer, giving yourself supervisory and recordkeeping responsibilities. Rule 3030 is the outside business activity rule; it does not trigger the same requirements. It's a very different rule because it applies to any kind of outside business activity, apart from the securities business. So what hot buttons would be of concern in the 3030 arena?*

A: Rule 3030 is really a companion rule to Rule 3040 and addresses those areas that do not expressly involve securities transactions. There are a lot of activities that your registered representatives may become involved in that do not directly involve a "security" and that the firm may have an interest in. The requirement is essentially that each registered representative is obligated to tell you what activities he/she is engaged in and earning income on. You should pay closest attention to any areas that are remotely associated to the business that you're in. Also, there are a number of registered representatives who are fairly inactive and have no real means of support, nevertheless they are living well. And the question is, how are they doing this? One red flag would be, if someone is temporarily out of production or is not giving you a lot of business, but nevertheless is able to maintain his/her standard of living, you should inquire as to how they're doing that. And, make those inquiries directly to those individuals.

*Q: In the Rule 3030 area, what best practices have you seen with respect to outside business activities, and how can a firm find out if a registered representative is involved in these activities if the representative does not tell the firm?*

A: It's an important issue to address as one is hiring people. Ask, "Do you have any outside work opportunities, or any other outside connections for which you've got a business engagement, whether you're earning money at it or not?" Remember, earning

money at it isn't the only feature. After that initial brush, firms should check each year. It could be done very specifically with each employee, annually, as the annual compliance meetings are being done. Nobody then could say "I wasn't aware that I had to tell you that." In areas where problems are discovered, without naming individuals, the situation could be used as a lesson for other people. Managers should also be coached or trained to be alert to various red flags, not unlike the guy who drives a Ferrari, but earned \$50 in commissions last month. Also, watch the mail flow in the office, because a lot of people who are prone to these kinds of activities will bend the rules enough to be either making calls from the office or sending things out from the office. Those are certainly red flags. Firms are well advised to ensure that they're picking up on any red flags that come in incoming correspondence. Often times firms get tipped to this kind of activity by someone who asks about an investment that nobody's ever heard of. Or, a customer says "you promised this." It also pays to ensure that periodically the firm communicates with customers, either on the monthly statements, a confirmation, perhaps a special mailer, or some other fashion, to remind customers that there are official statements from the firm. So, if they have investments that do not appear there, or investments appear that shouldn't, they should contact the firm.

*Q: Can you please clarify the differences of the following categories: introducing brokerage firm, a dealer firm, a clearing firm?*

A: If the question is "what is the difference between the categories of firms", introducing means firms that are fully disclosed through another broker/dealer. A clearing firm is one that clears for itself. Sometimes, the term "clearing" is used in a couple of different ways. The more appropriate use of the term is that it means someone that either self clears, and/or may include firms that clear for others.

There will be another Open Forum with District Directors at the upcoming NASD Regulation Spring Securities Conference to be held at the Sheraton New Orleans Hotel in New Orleans,

Louisiana on May 19-21. Each NASD member firm has been mailed a copy of the brochure. To request a brochure, call NASD Conference Services at (202) 728-8383, or you can see the brochure on the NASDR Web Site ([www.nasdr.com](http://www.nasdr.com)).

*General questions regarding this article may be directed to Daniel M. Sibears, Senior Vice President and Deputy, Member Regulation, NASD Regulation, Inc., at (202) 728-8221. Specific written interpretive questions should be directed to NASD Regulation, Office of General Counsel, 1735 K Street, NW, Washington, DC 20006.*

#### ADVERTISING REGULATION

## *Electronic Trading Advertisements Raise Investor Protection Concerns*

NASD Regulation recently reminded members that advertising and promotional materials must not set unrealistic expectations about investors' ability to "instantaneously" access markets during volatile times or about the opportunity to profit through electronic trading, including day trading. NASD Regulation issued these cautions as part of a larger discussion of volatility in the markets and electronic trading issues in *Notice to Members 99-11* and in a letter addressed to CEOs of member firms from Frank Zarb, Chairman and CEO of NASD, Inc., the parent company of NASD Regulation. NASD Regulation has recently become concerned about reports of investor dissatisfaction with service and execution of on-line brokerage firms.

NASD Regulation has identified the following areas in which members need to exercise greater care with respect to their communications with the public regarding electronic or day trading.

#### **Accuracy**

Members must accurately describe their services and avoid language that misleads customers about their trading capabilities. NASD Conduct Rule 2210 requires that firms be able to substantiate claims they make in communications with the public regarding the speed or accuracy of executions. For example, language such as "best" or "fastest" cannot be included unless the member firm can substantiate such claims. Similarly, language

that guarantees trade executions within a set time frame may pose a risk to both the customer and the member firm if circumstances prevent the firm from providing the trade within the guaranteed time frame. The Rule specifically prohibits exaggerated statements or claims in members' communications and requires that members limit their communications to accurate information.

Similarly, if communications describe a member firm's electronic trading systems, they should not exaggerate customers' access to the markets by stating or implying that a customer can execute trades without reliance on a broker/dealer. Accuracy is also critical in describing how a member's internal trading systems will interact with market proprietary systems such as SOES<sup>SM</sup> (Small Order Execution System<sup>SM</sup>), SelectNet<sup>SM</sup>, or the ECNs (Electronic Communication Networks). Members must not imply that such third-party provided services are the firm's own proprietary product.

NASD Regulation has observed certain communications regarding day trading that state or imply a member firm is recruiting employees when, in fact, the firm is soliciting customers who will pay commissions to the firm for using its trading services. Such communications are misleading and fail to reflect the just and equitable principles of trade mandated by the NASD Conduct Rules.

#### **Disclosure Regarding Delays**

Members must balance discussions of the speed, accessibility, or reliability of electronic

trading services with disclosure that market volatility and volume may delay system access and trade execution. Because this information is material to an investor's understanding of the service and may impact an investment decision, members must ensure that it is communicated clearly and prominently. For example, television advertisements should present the information in the audio portion of the communication and not merely in an on-screen footnote.

#### **Disclosure Regarding Risk Of Loss**

If a communication promotes the opportunities associated with using an electronic trading service or day trading strategy, at minimum, it must prominently disclose that there are risks including the possible loss of capital. Specific claims regarding the future profitability of a service or strategy run a high risk of misleading the reader and cannot be cured by the addition of disclosure or hedge clauses. Conduct Rule 2210 prohibits promises of specific future results and/or projections of investment returns to customers.

General claims regarding the past success of a service or strategy are permitted provided the member firm has a documented basis for such claims. This documentation must be maintained in the member's files and must be produced for examination upon the request of NASD Regulation staff. Failure to maintain such files may be deemed a violation of the rules regarding maintenance of books and records. Further, the communication itself must disclose that past performance is no guarantee of future results.

If members include specific claims regarding the past success of an electronic trading service or day trading strategy in a communication, they must provide accurate and complete information. Members must not select or manipulate performance data to show only positive results or to overemphasize short-term positive performance. Also, performance data should reflect all costs normally associated with the service or strategy. Specific performance claims must be accompanied by the basis for such performance. As with general claims regarding historical performance, the firm must maintain documentation of the performance data and the communication must explain that past performance is no guarantee of future results.

If a communication focuses on an investment approach that involves a high volume of trades, it must disclose the risks and costs associated with such a strategy. Such disclosures must be

set forth prominently to ensure the reader understands them.

#### Investor Education

With a broader range of individual investors in the marketplace, increased use of technological tools for trading, and the expansion of trading activity such as day trading, educating the investor is more important than ever. The issue of investor education was addressed in both *NASD Notice to Members 99-11* and Mr. Zarb's letter to CEOs of member firms. As discussed in the *Notice*, many firms devote portions of their Internet Web sites to investor education on issues related to market volatility.

*If you have questions regarding electronic or day trading communications or wish to file such communications for review by NASD Regulation, please contact the Advertising/Investment Companies Regulation Department at (202) 728-8330.*

## Ask The Analyst

"Ask the Analyst" provides member firms a forum to pose questions to the NASDR Advertising/Investment Companies Regulation Department (the Department) on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication. However, we will respond to all questions we receive either here or by contacting you directly. If you have any questions or comments, please contact the Department at (202) 728-8330. We have devoted this month's column to questions about the supervision of electronic communications with the public.

## Question

#### Electronic Communications

*Q: Must a member firm's written supervisory procedures regarding advertising address electronic communications?*

**A:** As with any other aspect of your securities business, if a firm or its registered representatives use advertisements, sales literature, or correspondence, the firm's written procedures must address how these communications with the public will be supervised.

While no specific rule requires separate procedures for electronic communications,

given their widespread use, members' procedures for communications with the public should address them. Many firms have amended their supervisory procedures to include electronic methods of communication such as electronic mail, Web sites, bulletin boards, and chat rooms when defining, or giving examples of, communications with the public. Some procedures contain provisions specific to selected electronic communication methods. For example, a firm might restrict the use of electronic mail in the conduct of the firm's securities business to a centrally controlled mail system.

*Q: Does NASD Regulation have any suggestions for how firms can ensure their Web sites are compliant?*

A: The most important factor in ensuring compliance is that a registered principal must review and approve in writing, prior to posting, all Web sites, including updates to an existing site (see NASD Conduct Rule 2210(b)(1)). To ensure continued compliance, many firms regularly monitor Web sites or choose to conduct random spot checks of their sites. Firms may also restrict the ability to make changes to a Web site to qualified, authorized individuals.

*Q: How can a member firm supervise the use of Web sites by individual registered representatives?*

A: Web sites used by individual representatives to promote their securities business must also receive written approval of a registered principal prior to posting. To

facilitate the compliance process, many firms require representatives to use firm-approved formats for their Web sites. After the initial approval, a member firm can ensure that the representative's Web site remains compliant using the monitoring approaches mentioned above. At a minimum, firms should obtain and maintain records of the domain name(s) of all Web sites used by their representatives.

*Q: If a registered representative participates in a chat room, is that discussion subject to the advertising rules?*

A: As stated in the "Internet Guide for Registered Representatives" (the Guide) which is available on the Internet at [www.nasdr.com](http://www.nasdr.com), chat rooms are subject to the same guidelines as radio and television public appearances. Representatives must follow the same requirements for participating in a chat room that they would if they were speaking in person before a group of investors. There are no filing requirements, but individuals are accountable under NASD Conduct Rules and the federal securities laws for what they say regarding securities or services. Also, member firms are responsible for supervising the investment-related activities of their registered personnel, including chat room participation.

*Q: How can a member firm supervise its representatives' participation in chat rooms and bulletin boards?*

A: Because of the difficulties of supervision and the potential liabilities from participat-

ing in chat rooms and bulletin boards, many firms limit or prohibit participation altogether. If a firm permits its representatives to discuss securities in chat rooms or bulletin boards, its procedures must reflect how the firm will supervise this activity. If a firm permits participation in extemporaneous chat room discussions, it must ensure that the representatives conform to the content standards set forth in Conduct Rule 2210. Some firms require representatives to obtain written approval before participating in these activities. In addition, firms have adopted content guidelines that their representatives

must review, acknowledge in writing, and adhere to during chat room discussions. Firms may also require their representatives to provide print copies of chat room comments to their compliance department for monitoring purposes. Some firms may also permit the use of scripted chat room presentations or bulletin boards. Firms must supervise these activities in the same way as any other advertisement. Bulletin board postings and scripted chat room presentations must receive approval by a registered principal prior to use and in writing.

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**TRADING & MARKET MAKING**

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## *Compliance With SEC Rule 15c2-11 And NASD Marketplace Rule 6740 Following An SEC Trading Suspension*

It has come to the attention of NASD Regulation that following recent trading suspensions some members have been entering quotations into quotation mediums without complying with SEC Rule 15c2-11 and NASD Marketplace Rule 6740. The NASD wishes to remind members of their obligations under SEC Rule 15c2-11 and NASD Marketplace Rule 6740 following trading suspensions imposed by the SEC. In particular, members must fully comply with the requirements of

those rules before entering quotations into any "quotation medium," including ECN's.

### ***SEC Rule 15c2-11 And NASD Marketplace Rule 6740***

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SEC Rule 15c2-11 establishes requirements for the publication and submission of quotations for certain over-the-counter securities on a "quotation medium" (as defined below). Unless a member can rely upon an exception to 15c2-11<sup>1</sup>, NASD Marketplace Rule

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<sup>1</sup> Securities listed on an exchange, securities quoted on Nasdaq, and municipal securities are exempt from the Rule. 15c2-11(f)(1), (4) and (5). The Rule also provides for "piggy back" exemptions for securities which have been the subject of quotations for certain periods of time or for market makers who have continued to publish quotations in the security. 15c2-11(f)(3). The piggy back exemptions are not available immediately following a trading suspension however. Finally, members may also enter unsolicited quotations "solely on behalf of a customer (other than a person acting as or for a dealer)" 15c2-11(f)(2).

6740(a) provides that before a member initiates or resumes the quotation of a non-Nasdaq over-the-counter security in any quotation medium, the member must demonstrate compliance with the information maintenance requirements of Rule 15c2-11.

***SEC Rule 15c2-11(e)(1) Defines Quotation Medium As Follows:***

*“Quotation medium” shall mean any “inter-dealer quotation system” or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.*  
(emphasis added)

Accordingly, ECNs, just like the Over-the-Counter Bulletin Board, “Pink Sheets,” and other

quotation devices, fall within Rule 15c2-11’s definition of “quotation medium” in that they are devices used by brokers or dealers to make known to others their interest in transactions in any security.<sup>2</sup>

***Trading Suspensions***

The SEC is authorized by Section 12(k)(1)(A) of the Securities Exchange Act of 1934 to suspend trading in the securities of an issuer for up to 10 business days.<sup>3</sup> Members should be aware that after a trading suspension, compliance with SEC Rule 15c2-11 and NASD Marketplace Rule 6740 must be reestablished before entering quotations in any quotation medium.

*Questions regarding entering quotations following a trading suspension may be directed to the Legal Section of NASD Regulation’s Market Regulation Department at (301) 590-6410.*

<sup>2</sup> “[I]t is possible that broker-dealers view Rule 15c2-11 as applying only to quotations published in the OTC Bulletin Board or the Pink Sheets. In fact, the Rule applies to quotations published in any quotation medium.” Publication or Submission of Quotations Without Specified Information, Securities and Exchange Commission Release No. 34-39670 (February 17, 1998) (emphasis in original) (release proposing amendments to Rule 15c2-11).

<sup>3</sup> Information about SEC trading suspensions is available on the SEC Web Site, [www.sec.gov/enforce/tsuspend.htm](http://www.sec.gov/enforce/tsuspend.htm)



## REGULATORY SHORT TAKES

## *Continuing Education Council To Hold Industry Forum*

The Securities Industry/Regulatory Council on Continuing Education (Council) will hold its next open meeting for industry firms in Boston on Thursday, May 27 from 4-6:30 p.m. Firms located within the New England area will receive personal invitations to the open meeting.

The open meeting in May will be the latest in a series of similar sessions held by the Council. The particular goal of this meeting will be to obtain input from firms on topics such as:

- ❖ undertaking the Firm Element Needs Analysis;
- ❖ writing the training plan;
- ❖ documenting Firm Element implementation;
- ❖ Firm Element training materials used; and

- ❖ how firms are using Firm Element resources available from vendors or SROs.

The meeting will comprise a series of roundtable discussions facilitated by members of the Firm Element Committee of the Council at which firms can share their experiences in complying with the Firm Element. Results of the discussions will then be shared with all in attendance. Industry representatives and regulatory staff will be available to address participants' questions. The Firm Element Committee will use the input to help develop future Council publications.

*For more information on this forum or about the Council, contact John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (301) 208-2932.*

## *Viatical Settlement Contracts*

A viatical settlement is an investment contract pursuant to which an investor acquires an interest in the life insurance policy of a terminally ill person at a discount, the amount of which depends upon the insured's life expectancy. When the insured dies, the investor receives the benefit of the insurance. The investor's profit is the difference between the discounted purchase price paid to the insured and the death benefit collected from the insurer, less transaction costs, premiums paid, and other administrative costs.

In the past several years, sales of viatical contracts appear to have increased substantially. NASD Regulation has found that registered persons sometimes become involved in the marketing and sale of viaticals to investors, in addition to their activities on behalf of member firms.

There are regulatory implications when a registered person sells viaticals. Several years ago, the legal status of viatical settlements was called into question by the U.S. Court of

Appeals for the District of Columbia Circuit, which ruled in one case that viatical settlement contracts are not subject to the federal securities laws [SEC v. *Life Partners, Inc.*, 87 F.3d 536 (D.C. Cir. 1996)]. For now, NASD Regulation is not taking disciplinary action under Conduct Rule 3040 in cases involving solely the marketing and sale of viatical settlement contracts by registered individuals outside the scope of their employment with a member firm. Nevertheless, conduct involving viaticals presently is subject to certain other NASD rules.

Conduct Rule 3030 provides that no registered associated person shall be employed by or accept compensation from anyone, other than his employer firm within the scope of his employment, as a result of any business activity (except a passive investment), **unless** he has provided prompt written notice to the member. NASD Conduct Rule 3030 applies to a registered person's involvement in the marketing and sale of viatical settlement contracts. The notice requirements of NASD Rule 3030 extend to **any** business activity (except passive investments), whether securities-related or not.

Member firms should take steps to ensure that registered persons are informed about their obligations under Rule 3030. Among other things, the written notice must describe the outside activity in sufficient detail to enable the firm to evaluate the specifics of the proposed activity. When notified that a registered person is engaging in outside activities involving viaticals, member firms should make inquiry sufficient to satisfy themselves that the instruments

involved are truly viatical settlement contracts and not some variant that is more clearly considered to be a security.

NASD Regulation has encountered situations where promissory notes are sold to investors and the proceeds are pooled and used to purchase viatical settlements. Unlike the situation presented in the *Life Partners* case, investors do not obtain an interest in any particular viatical settlement. Instead, the death benefits are pooled and investors are paid from this capital pool pursuant to the terms of their notes, which are for a fixed term. Inasmuch as the profits in these arrangements are derived from the efforts of the promoters, including their skill in selecting the policies to be purchased and other business management activities, these investments are viewed as securities transactions. Activities by associated persons away from the firm which involve securities are subject to NASD Rule 3040, not NASD Rule 3030, and require (a) prior written notice; (b) prior written approval or disapproval when compensated; and, if approved, (c) recordkeeping; and (d) supervision by the member firm.

Member firms and their registered persons also should take note of a recent SEC decision, *In re Robert Wallace*, 1934 Act Release No. 40654 (Nov. 10, 1998). In that case, the SEC upheld NASD findings against a registered principal and representative of a member firm for distributing exaggerated and misleading advertisements involving viatical settlement contracts. The SEC ruled that the NASD advertising rule in question, NASD Conduct Rule 2210(d), applies by its terms to "[a]ll member

communications," and thus rejected the contention that the NASD lacked authority to regulate the advertisement in question simply because it involved a non-securities product.

*Direct any questions about this article to Jeffrey Holik, Director, Member Regulation, NASD Regulation, Inc., at (202) 728-8387.*

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## *Investor Education And Protection*

As a reminder, all member firms, except those that do not carry customer accounts or hold customer funds and/or securities, must comply with NASD Conduct Rule 2280. The Rule, effective January 1, 1998, requires such members to notify their customers in writing, at least once every calendar year, about the availability of information through the NASD's Public Disclosure Program. Specifically, member firms must provide customers with the Public Disclosure Program's Hotline, (800) 289-9999;

the NASD Regulation Web Site address, [www.nasdr.com](http://www.nasdr.com); and, a statement as to the availability of an investor brochure that includes information describing the Public Disclosure Program. The investor brochure may be obtained via the NASDR Web Site or through NASD MediaSource at (301) 590-6142.

*Questions concerning this Rule and its requirements may be directed to your local NASD Regulation District Office.*

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## *Employee Embezzlement*

Employee theft is a significant issue. Did you know that at retail stores, for example, employees frequently steal more assets than shoplifters? Studies have shown that employees steal as much as \$120 billion annually from employers. While the typical bank robbery nets only a few thousand dollars, embezzlements are often in the tens of thousands. When it comes to employee theft of company assets, your brokerage firm is as susceptible as any other business.

Interestingly, most embezzlements start small. Take, for example, the bookkeeper who: (a) writes a small check for a personal expense;

or, (b) periodically writes himself an extra paycheck without being found out. That person becomes emboldened with small successes. Small pilferages expand into large thefts.

Two factors are required for embezzlement: opportunity and motivation. Some people argue, however, that given human nature, opportunity is motivation. Every person wants more money, especially employees who rarely believe they are adequately compensated.

In any business, opportunity is inversely proportional to the extent of effective internal accounting controls. The more extensive and

effective the controls, the less the opportunity for embezzlement.

But, small firms, especially, are not equipped with ideal internal accounting controls. Ideal internal controls require segregation of duties. For example, the person who opens the mail should be separate from the person who writes the checks, who should be separate from the person who carries out the bank reconciliations. This segregation of duties requires people. People cost money. And often at small firms, ideal segregation of duties is just not feasible.

All embezzlements require some form of false documentation, and almost all embezzlements leave behind red flags. The more brazen the perpetrator, the more red flags he leaves behind. The red flags are as varied as the methods of embezzlement.

Here are just a few of the frequent red flags of embezzlement:

- ❖ Payments without appropriate or authentic original supporting invoices and other documents.
- ❖ Unexplained payments to a bank for cashiers checks.
- ❖ Check registers that do not agree in all regards with the canceled checks.
- ❖ Unusual numbers of paychecks or duplicate checks to a single person.
- ❖ Unusual numbers of voided or canceled checks.

- ❖ Employee living above his/her expected life style.

And, here are just a few ways that employees embezzle funds:

- ❖ A bookkeeper makes payments to a bank account he controls with a name similar to that of a usual vendor or legitimate business payee.
- ❖ The payroll clerk cranks out a few extra payroll checks to herself.
- ❖ A bookkeeper writes checks with erasable ink or prints checks on the computer with a tear off strip over the payee, and then changes the payee name.
- ❖ An employee who writes checks payable to the bank, and then uses those checks to buy cashiers checks that he makes payable to himself.
- ❖ A simple scheme of merely writing checks for personal expenses.

Here are just a few of the internal controls your firm can institute to guard against embezzlement:

- ❖ Assure that your computer system has built-in controls that preclude altering information.
- ❖ A person of authority should perform the bank reconciliations and review the actual canceled checks for unusual payees and other characteristics.

- ❖ If you are the signatory, never sign a block of checks in advance.
- ❖ Review the check register frequently for unusual payments and assure that the register agrees with the canceled checks.
- ❖ Account for all checks, and assure that all checks are used in sequential order.
- ❖ Do not accept photocopies of supporting documents when originals would normally be available.
- ❖ Verify a person's references before you hire a new employee.
- ❖ Scan canceled checks for alterations.
- ❖ Examine canceled payroll checks for unknown payees, unexplained checks, or employees with the same Social Security Number.
- ❖ Conduct surprise audits of the check writing system and petty cash fund.

And, most important, to the extent possible, segregate the duties of the accounting staff so that different people open and review the mail, authorize payments, write checks, review the check register and canceled checks, perform bank reconciliations, and control payroll and accounts payable.

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## *NASD Institute Survey*

The NASD encourages its member firms and other constituents to complete an on-line survey to provide feedback to the newly created NASD Institute for Professional Development. The Institute—created in late 1998—was developed to provide quality educational programs for financial industry professionals and regulators. Later this year, the Institute will hold various certificate programs and other workshops, seminars,

and roundtables focusing on topics of interest to the securities industry.

Your responses to this survey will greatly assist the NASD in producing valuable programs. The survey will be on-line within the next month on the NASDR and NASD Web Sites ([www.nasdr.com](http://www.nasdr.com) and [www.nasd.com](http://www.nasd.com), respectively). The NASD Institute looks forward to hearing from you.

## COMPLIANCE

**Compliance Questions & Answers**

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

**Use Of (k)(2)(i) Account**

*Q: Are there any limitations on the use of the (k)(2)(i) account by an introducing broker/dealer other than those detailed under this section of SEC Rule 15c3-3?*

*A: Yes. A (k)(2)(i) account cannot be used as a conduit between an introducing firm and its clearing firm even if the introducing firm has \$250,000 in net capital. That is, an introducing firm cannot use a (k)(2)(i) account as a vehicle to move funds or securities to its clearing firm.*

**Broker/Dealer Serving As A General Partner Of An Investment**

*Q: What is the net capital requirement of a broker/dealer (BD) who sells interests in an investment, when that broker/dealer is also the general partner (GP) of the same investment? Can the BD/GP accept customer funds for investment and deposit those funds into a non-escrow account in the name of the partnership?*

*A: A broker/dealer cannot "wear two hats." If the broker/dealer acts as a general partner for an investment sold by the broker/dealer to customers, it has unlimited liability and, therefore, must have \$250,000 in minimum net capital in order to accept customer funds and it must comply with SEC Rule 15c3-3. Alternately, the broker/dealer can be a \$5,000 broker/dealer if a proper escrow account is established pursuant to SEC Rule 15c2-4.*

**ECN Compensation**

*Q: Is it acceptable for a broker/dealer that operates an ECN to consider compensation from other broker/dealers utilizing the ECN as a commission rather than a fee? Such treatment would allow the receivable to be treated as a good asset for 30 days per the Net Capital Rule.*

*A: No. An ECN provides a service for a fee. Although the fee is receivable from broker/dealers utilizing their service, the fee is not a commission as the term is used in the SEC Net Capital Rule 15C3-1. Therefore, it cannot be treated as such under the Net Capital Rule.*

### **SEC Rule 15c3-1 Regarding Payment Of Bonuses**

*Q: Does the payment of bonuses constitute a withdrawal of capital under SEC Rule 15c3-1(e)?*

*A: Only bonuses paid to a controlling stockholder would be considered a withdrawal under the Rule.*

### **Accrued Interest On Bonds**

*Q: On Page 15 of NASD's 1996 Guide to Rule Interpretations, there is an interpretation titled "Accrued Interest on Municipal Bonds With Semiannual Coupon Payable Dates." Can this interpretation be applied to all bonds (i.e., government, corporate) with any payment schedule (i.e., quarterly, annual)?*

*A: Yes.*

### **Haircut On Euro**

*Q: What is the Foreign Currency Haircut and the haircut on Foreign Denominated Securities Positions for the Euro?*

*A: The Euro carries a haircut of 6 percent.*

### **Notice Requirement Of SEC Rule 17a-11**

*Q: SEC Rule 17a-11(c)(3) requires a broker/dealer to send notice promptly if a net capital computation shows that the firm's total net capital is less than 120*

*percent of the broker/dealer's "required minimum net capital." Do the words "required minimum net capital" in that subparagraph refer only to the dollar requirement from SEC Rule 15c3-1(a)(2), or do they also refer to the requirements of the Aggregate Indebtedness (AI) or Alternative Standards in 15c3-1(a)(1)? For example, if a broker/dealer has been operating less than 12 months, operates pursuant to 15c3-1(a)(2)(vi) requiring minimum net capital of \$5,000, has not elected the Alternative Standard, has AI of \$124,200, and has net capital of \$16,120, must the broker/dealer send notice pursuant to 17a-11(c)(3)?*

*A: The words "required minimum net capital" in SEC Rule 17a-11(c)(3) refer to the broker/dealer's net capital requirement based on both 15c3-1(a)(1) and/or (2). In the example given above, the broker/dealer's net capital requirement based on 15c3-1(a)(2)(vi) is \$5,000. Its net capital requirement based on 15c3-1(a)(1)(i) is \$15,525 (computed, because it has been operating for less than 12 months, as one-eighth of \$124,200). The firm must send notice promptly pursuant to 17a-11(c)(3), because its net capital of \$16,120 is less than 120 percent of its "required minimum net capital" of \$15,525.*

## Examination Program Questions & Answers

### **Customer Complaint Filing System**

*Q: Under what circumstances can a member amend a previous customer complaint filing made pursuant to Rule 3070(c)?*

*A: A member may amend a previous customer complaint filing that includes erroneous information, such as the misspelling of a registered representative's name or an inaccurate security symbol. If a member discovers that it inadvertently failed to include a customer complaint in a required report, it should file an amended report. Directions on how to amend complaint information filed under Rule 3070 can be found in the January 26, 1998, electronic regulatory filing information memo from Lewis Dellarco.*

*(For more questions and answers on the Customer Complaint Filing System, see NASD Notice to Members 96-85. A copy of the January 26, 1998, memo can be found on NASD Regulation's Web Site at [www.nasdr.com](http://www.nasdr.com).)*

### **Payment For Order Flow Disclosure**

*Q: SEC Rule 11Ac1-3 requires broker/dealers to make various disclosures upon opening a new account and on an annual basis thereafter, including "a statement as to whether any payment for order flow is received for routing customer orders." Must this required statement be made in an affirmative tone?*

*A: Yes. The Rule 11Ac1-3 language quoted in the question is very similar to the requirement in SEC Rule 10b-10 that, for certain transactions, the broker/dealer must provide "a statement whether payment for order flow is received by the broker or dealer...". That requirement was discussed in the September 1997 *Regulatory & Compliance Alert*, and examples were provided ([www.nasdr.com](http://www.nasdr.com)). As explained there, statements such as "In some cases your broker receives..." or "Your broker may receive..." are not affirmative and therefore do not comply with either Rule. (Please review Rule 11Ac1-3 for other requirements of that Rule that are not discussed here.)*

### **Update To Question Published In The Regulatory & Compliance Alert, March 1997**

The following question and answer is being updated to reflect that the securities markets now observe Martin Luther King, Jr., Day as a holiday.

*Q: Are Columbus Day and Veterans' Day, as observed by the U.S. banking community, considered to be business days for receiving customer payments under Regulation T of the Federal Reserve Board (Reg. T)?*

*A: Yes. These days are considered business days for receiving payments under Reg. T and are counted as business days when determining the "Reg. T date" of a trade. However, they are not considered to be*



settlement dates under Reg. T because many of the nation's banking institutions are closed, even though the securities markets are open for trading.

The following holidays are not considered business days when determining settlement dates and Reg. T dates: New Years Day, Martin Luther King, Jr. Day, Presidents Day, Good Friday, Memorial Day, Independence Day,

Labor Day, Thanksgiving Day, Christmas Day. The specific trade dates, settlement dates, and Reg. T dates surrounding a specific holiday may be obtained by reviewing the appropriate *NASD Notices to Members*.

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

QUALIFICATIONS/TESTING/CONTINUING EDUCATION

## *Certification Testing And Continuing Education Update*

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

### ***CRD Postings From The PROCTOR System***

Technical problems were experienced in January as the result of some software problems on the PROCTOR® system.

- 1) Firms whose candidates used the Sylvan telephone system to reschedule or cancel a session were charged a late cancellation fee. The fee was charged regardless of how far in advance the candidate called to reschedule or cancel the appointment.

Sylvan has reported that the condition is resolved. We are in the process of confirming this and identifying all candidates affected by the problem. All erroneous charges will be backed-out of the system and reported to the firm.

- 2) Candidates who had a late cancel or no-show processed prior to completing their exam did not get their results posted to CRD. We have identified approximately 2,500 candidates who had this problem, and have forwarded their results to CRD. The PROCTOR Software Team will continue to monitor candidate records to ensure that results are promptly posted to CRD, and will be making manual updates until the situation has been successfully resolved.

We sincerely regret any inconvenience these problems may have caused, and will communicate soon the corrective action for those firms that were incorrectly charged for late cancellations.

### ***Candidate Contact Phone Numbers***

When scheduling an appointment, two candidate contact phone numbers are requested; the first is the candidate's **daytime** number, the second the candidate's **home** number. The phone numbers are critical pieces of information if, for any reason, the candidate needs to be contacted.

During recent Winter storms across the country that caused Sylvan Technology Center (STC) closures, it was noted that center staff had difficulty notifying candidates of the closure because home phone numbers had not been provided during the appointment scheduling process. STC staff attempt to notify candidates the night before and/or the early morning of the closure. When candidate home phone numbers are not provided, the candidate runs the risk of traveling through harsh conditions only to find that the center is closed. Providing a home phone number for the candidate will eliminate this risk. We urge all Compliance/Registration staff to provide home phone numbers for candidates, and to educate the candidate as to the importance of providing the home number.

Over the past year, we have noticed a marked increase in the use of 800 numbers, cell phone numbers, and pager numbers as the primary daytime phone number for candidates. This practice has caused problems in contacting the candidate as well.

If providing an 800 number as a point of contact, an extension number should be given as well. Many of the 800 numbers connect the caller into a "call center." It is difficult to get to the individual unless the extension number is provided.

Individual cell phone and/or pager devices **should not** be used as a primary contact point. STC and NASDR Field Support Services staff are rarely successful in contacting the candidate if a problem should arise when these number are used.

Providing a contact phone number that connects directly to the candidate is a "best practice" to ensure that a possible problem can be corrected; not escalated.

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

## Certification Testing & Continuing Education Delivery Location List

Current as of March 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

### Arizona

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

### Arkansas

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

### California

Anaheim 714-637-7894  
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 949-552-3487  
LaJolla 619-454-4384  
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 805-495-6367

### Canada

Calgary 403-777-1365  
Halifax 902-422-7323  
Montreal 514-876-8818  
Richmond BC 604-231-1966  
Whitby 905-404-1818  
Windsor 519-974-8747  
Winnipeg 204-988-5050

### Colorado

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

### Connecticut

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

### Delaware

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

### District of Columbia

Washington, DC 202-955-5887

### Florida

Davie 954-423-0782  
Ft. Myers 941-275-1130  
Gainesville 352-371-6891  
Jacksonville 904-739-3000  
Maitland/Orlando 407-875-8118  
Miami 305-825-2708  
Sarasota 941-923-9399  
Tallahassee 850-385-8696  
Temple Terrace (Tampa) 813-989-9988  
Winter Park 407-671-2332

### Georgia

Atlanta 706-868-1888  
Augusta 706-868-1888

|                                 |              |                      |              |
|---------------------------------|--------------|----------------------|--------------|
| Jonesboro                       | 770-478-5356 | <b>Maryland</b>      |              |
| Macon                           | 912-474-5909 | Baltimore            | 410-843-6400 |
| Savannah                        | 912-354-2660 | Bethesda             | 301-718-9893 |
| Smyrna                          | 770-801-0215 | Columbia             | 410-740-8137 |
| Valdosta                        | 912-245-1069 | Lanham               | 301-552-3400 |
| <b>Hawaii</b>                   |              | Pikesville           | 410-486-9045 |
| Honolulu County                 | 808-263-6656 | Salisbury            | 410-341-4100 |
| <b>Idaho</b>                    |              | <b>Massachusetts</b> |              |
| Boise                           | 208-322-3555 | Boston               | 617-345-8980 |
| <b>Illinois</b>                 |              | E. Longmeadow        | 413-525-4901 |
| Bloomington                     | 309-452-4788 | Waltham              | 781-890-0466 |
| Carbondale                      | 618-529-4664 | <b>Michigan</b>      |              |
| Carpentersville                 | 847-836-2031 | Ann Arbor            | 734-665-7323 |
| Chicago (LaSalle St.)           | 312-609-2525 | Grand Rapids         | 616-957-0368 |
| Chicago (S. Wabash)             | 312-663-5632 | Lansing              | 517-372-7413 |
| Homewood                        | 708-798-0238 | Livonia              | 734-462-2150 |
| Northbrook                      | 847-559-2461 | Portage              | 616-321-8351 |
| Peoria                          | 309-682-0825 | Troy                 | 248-643-7323 |
| Springfield                     | 217-546-0381 | Utica                | 810-739-0270 |
| Westchester                     | 708-947-2800 | <b>Minnesota</b>     |              |
| <b>Indiana</b>                  |              | Bloomington          | 612-831-7461 |
| Evansville                      | 812-479-6855 | Duluth               | 218-723-1494 |
| Ft. Wayne                       | 219-436-2710 | Rochester            | 507-292-9270 |
| Indianapolis (E. 86th St.)      | 317-257-7546 | St. Cloud            | 320-529-4830 |
| Indianapolis (Girl's School Rd) | 317-247-7664 | Woodbury             | 612-702-6791 |
| Lafayette                       | 765-447-5996 | <b>Mississippi</b>   |              |
| Merrillville                    | 219-736-1113 | Jackson              | 601-366-6400 |
| Mishawaka                       | 219-254-1055 | <b>Missouri</b>      |              |
| <b>Iowa</b>                     |              | Ballwin              | 314-394-7742 |
| Bettendorf                      | 319-359-1001 | Creve Coeur          | 314-997-1555 |
| Cedar Rapids                    | 319-393-0555 | Gladstone            | 816-468-7901 |
| Des Moines                      | 515-223-6650 | Springfield          | 417-882-0740 |
| <b>Kansas</b>                   |              | St. Joseph           | 816-671-9900 |
| Topeka                          | 785-272-7500 | <b>Montana</b>       |              |
| Wichita                         | 316-651-5350 | Billings             | 406-259-1659 |
| <b>Kentucky</b>                 |              | Helena               | 406-443-9205 |
| Lexington                       | 606-269-3933 | <b>Nebraska</b>      |              |
| Louisville                      | 502-423-0340 | Columbus             | 402-564-2862 |
| <b>Louisiana</b>                |              | Omaha                | 402-334-9449 |
| Baton Rouge                     | 225-293-8489 | <b>Nevada</b>        |              |
| Bossier City                    | 318-742-7349 | Las Vegas            | 702-876-4090 |
| New Orleans                     | 504-245-2600 | Reno                 | 702-829-2700 |
| <b>Maine</b>                    |              | <b>New Hampshire</b> |              |
| Orono                           | 207-581-1708 | Concord              | 603-228-2911 |
| Portland                        | 207-775-5812 |                      |              |

**New Jersey**

East Brunswick 732-390-4040  
Fairlawn 201-475-1670  
Hamilton Township 609-631-9794  
Union 908-964-2862

**New Mexico**

Albuquerque 505-296-0609

**New York**

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

**North Carolina**

Asheville 828-253-4224  
Charlotte 704-364-7758  
Gastonia 704-853-2038  
Greensboro 336-288-1311  
Greenville 252-756-0342  
Raleigh 919-846-1933

**North Dakota**

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

**Ohio**

Cincinnati 513-671-7030  
Columbus (Henderson Rd.) 402-564-2862  
Cuyahoga Falls 330-929-6554  
Dayton 937-435-8417  
Hilliard 614-529-4232  
Lima 419-331-7323  
Mentor 440-255-0055  
New Berlin WI 414-796-0808  
Niles 330-652-1886  
Reynoldsburg 614-864-4090  
Solon 440-349-4153  
Strongsville 440-238-0530

**Oklahoma**

Oklahoma City 405-947-6248  
Tulsa 918-249-0820

**Oregon**

Eugene 541-485-4589  
Milwaukie 503-659-9575  
Portland 503-254-2009  
Salem 503-363-2996

**Pennsylvania**

Allentown 610-791-5320  
Clark Summit 717-586-4362  
Erie 814-864-6100  
Harrisburg 717-652-0646  
Lancaster 717-391-6519  
North Wales 215-412-7822  
Philadelphia 215-238-8380  
Pittsburgh (North Hills) 412-367-4620  
Pittsburgh (Braddock Ave.) 412-247-4463  
Plymouth Meeting 610-941-6284  
York 717-755-7471

**Puerto Rico**

Hato Rey 787-753-6394

**Rhode Island**

Cranston 401-942-8552

**South Carolina**

Charleston 803-766-5599  
Greenville 864-676-1506  
Irmo 803-749-0356

**South Dakota**

Sioux Falls 605-338-1446

**Tennessee**

Chattanooga 423-894-6249  
Clarksville 931-647-2003  
Franklin 615-790-5018  
Knoxville 423-690-0671  
Madison (Nashville) 615-860-0376  
Memphis 901-266-4606

**Texas**

Abilene 915-698-7858  
Amarillo 806-359-1037  
Arlington 817-572-6690  
Austin 512-441-1978  
Beaumont 409-899-9798  
Corpus Cristi 512-993-3793  
Dallas 972-385-1181  
El Paso 915-587-7323  
Houston (Saturn Ln) 281-488-6144

|                          |              |                         |              |
|--------------------------|--------------|-------------------------|--------------|
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| <i>Mesquite</i>          | 972-686-3310 | <i>Lynnwood</i>         | 425-774-3922 |
| <i>Midland</i>           | 915-520-9418 | <i>Puyallup</i>         | 253-848-0771 |
| <i>San Antonio</i>       | 210-494-7263 | <i>Spokane</i>          | 509-467-8715 |
| <i>Sugar Land</i>        | 281-491-9200 | <b>West Virginia</b>    |              |
| <i>Waco</i>              | 254-772-2467 | <i>South Charleston</i> | 304-744-4144 |
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| <i>Orem</i>              | 801-226-5544 | <i>Fox Point</i>        | 414-540-2223 |
| <i>Salt Lake City</i>    | 801-581-8733 | <i>New Berlin</i>       | 414-796-0808 |
| <b>Vermont</b>           |              | <i>Racine</i>           | 414-554-9009 |
| <i>Williston</i>         | 802-872-0845 | <b>Wyoming</b>          |              |
| <b>Virgin Islands</b>    |              | <i>Casper</i>           | 307-235-0070 |
| <i>St. Croix</i>         | 340-773-5751 |                         |              |
| <i>St. Thomas</i>        | 340-777-8292 |                         |              |
| <b>Virginia</b>          |              |                         |              |
| <i>Arlington/DC Area</i> | 703-807-5813 |                         |              |
| <i>Lynchburg</i>         | 804-832-0778 |                         |              |
| <i>Mechanicsville</i>    | 804-730-5844 |                         |              |
| <i>Newport News</i>      | 757-873-0208 |                         |              |
| <i>Richmond</i>          | 804-750-2823 |                         |              |
| <i>Roanoke</i>           | 540-344-3688 |                         |              |

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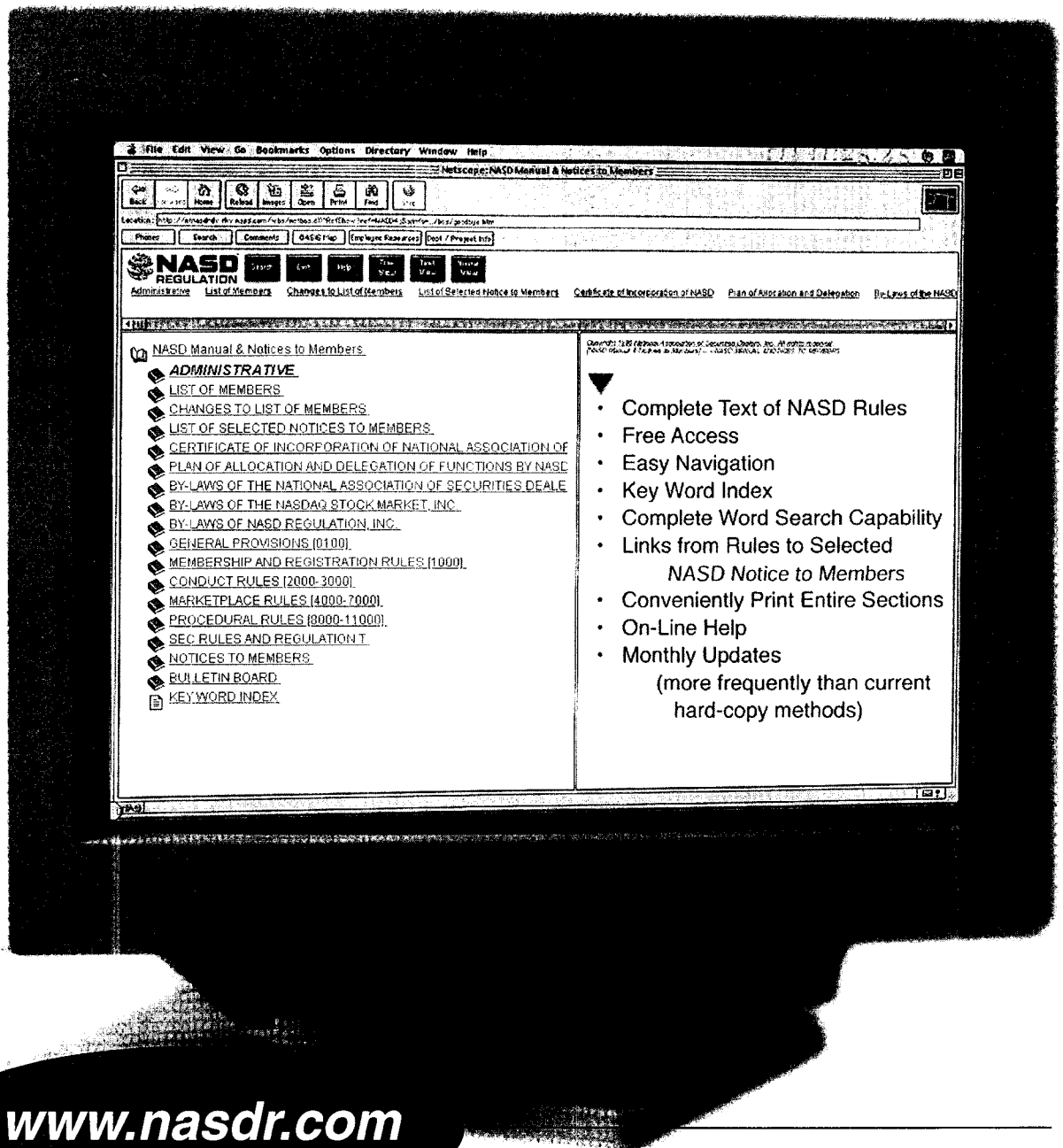


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## NASD Disciplinary Actions

*In January, February, and March 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

### January Actions

None

### February Actions

**Clyde Joseph Bruff (Registered Principal, Oakland, California)** was censured and barred from association with any NASD member in any capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of an August 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Bruff exercised effective control over the account of a public customer and made recommendations to the customer that resulted in unsuitable excessive trading.

This action has been appealed to the Ninth Circuit Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

**Daniel Wright Sisson (Registered Principal, Menlo Park, California)** was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. The National Adjudicatory Council (NAC) imposed the sanctions following review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Sisson recommended trades that were unsuitable as to size and frequency in the accounts of public customers.

### March Actions

**Butler Larsen Pierce & Company, Inc. (San Francisco, California), Dane Allan Larsen (Registered Principal, Danville, California), and Eric Hall Zurla (Registered Representative, Glen Ridge, New Jersey)** submitted an Offer of Settlement 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 the firm, acting through Larsen, permitted individuals to perform the duties of registered persons when their registrations were inactive due to their failure to complete the Regulatory Element of the Continuing Education Program. The findings also stated that Zurla performed, and the firm and Larsen permitted him to perform, the duties of a registered person when Zurla's registration was inactive due to his failure to complete the Regulatory Element of the Continuing Education Program. Furthermore, the NASD determined that the firm, acting through Larsen, failed to establish and implement adequate written supervisory procedures to ensure compliance with the definition of municipal securities principals or representatives pursuant to Municipal Securities Rulemaking Board (MSRB) Rule G-3.

**Nelson Eric Roseland (Registered Representative, Oakland, California)** was censured, fined \$67,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roseland made unsuitable recommendations to a public customer and exercised discretionary trading authority in the account of a public customer without prior written approval from the customer and his member firm. Roseland also failed to respond to NASD requests for information.

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

### January Actions

**Kirk Robert Nehdar (Registered Representative, West Hills, California)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Nehdar engaged in purchase and sale transactions in various securities for the joint account of public customers without having reasonable grounds for believing that the transactions were suitable for the customers in view of the size, frequency, and nature of the recommended transactions and the facts disclosed by the customers as to their financial situation, objectives, circumstances, and needs.

**Ronald Alvin Okum (Registered Representative, San Marino, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Okum 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.

**Elie M. Sakaran (Registered Representative, San Dimas, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$14,400, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sakaran consented to the described sanctions and to the entry of findings that he recommended, offered, and sold corporate securities to public customers when he was not registered to do so by the NASD. Sakaran used the account executive number of a registered representative who received the commission checks for the trades and signed the commission checks over to Sakaran.

### February Actions

**John Milford Buob (Registered Representative, Henderson, Nevada)** 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, Buob consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prompt written notification to his member firm prior to participating in such transactions. The findings also stated that, in connection with the offer or sale of limited partnership interests, Buob made misrepresentations to investors and failed to return investor funds when the terms of the contingency were not met. The findings also stated that Buob recommended and induced public customers to purchase the security by means of fraudulent and deceptive devices and contrivances in that he represented to customers that proceeds of a limited partnership offering would be used to pay the purchase price of real estate and office building improvements. The NASD found that Buob knew, or should have known, that only \$64,399.43 of the necessary \$212,500 had been raised and, therefore, the proceeds were insufficient to pay the purchase price of such real estate and were instead used to pay suppliers of goods or services consumed or used by Buob in the conduct of his business.

**Roger Harry Chlowitz (Registered Principal, Northridge, California)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chlowitz failed to respond to NASD requests for information and to provide documents.

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

**Lance Reed Dalton (Registered Representative, Isle Of Palms, South Carolina)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$22,400. Without admitting or denying the allegations, Dalton consented to the described sanctions and to the entry of findings that he engaged in numerous purchase and sale transactions in various securities without having reasonable grounds for believing that such recommendations were suitable for the customers and accounts in view of the frequency of the recommended transactions; the risks associated with the recommended transactions; and the customers' financial situations, objectives, circumstances, and needs.

**Equity Programs Corporation (San Diego, California) and Barton Basel Switzer (Registered Principal, Ramona, California)** submitted an Offer of Settlement pursuant to which they were censured and fined \$25,000, 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 Switzer, failed to establish, maintain, and enforce a system reasonably designed to achieve compliance with applicable securities laws and regulations, and the rules of the NASD in order to supervise the activities of a branch office. The firm also knew, or should have known, that the branch office was offering and selling interests in a contingent offering.

**Gregory Marclafau Hawkins, Jr. (Registered Representative, Mission Viejo, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$112,900, barred from association with any NASD member in any capacity, and ordered to pay \$7,580 in restitution to a public customer. Without admitting or denying the allegations, Hawkins consented to the described sanctions and to the entry of findings that he solicited and sold to a public customer an investment in a business entity he formed away from his member firm. Although the customer gave Hawkins \$20,000 for investment purposes, the customer received a promissory note evidencing only a \$10,000 investment in the company. In addition, the NASD found that Hawkins proceeded to convert approximately \$7,580 of the customer's funds to his personal use and benefit. The above-described transactions were effected outside the regular course and scope of his employment with his member firm, and Hawkins failed to provide prior written notice to, or obtain written approval from, his firm.

**Kennedy, Cabot & Co., (Beverly Hills, California) and James Dominic Toussaint (Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$25,000, jointly and severally, and the firm was fined an additional \$2,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Toussaint, aired television commercials concerning registered investment companies, and failed to file the advertisements with the NASD's Advertising Department. The findings also stated that the firm, acting through Toussaint, engaged in communications to the public through television commercials that failed to provide a sound basis for evaluating the facts in regard to the securities offered, and omitted material facts and qualifications which, in light of the context of the material presented, caused the advertisements to be misleading. Moreover, the NASD found that the firm, acting through Toussaint, made exaggerated and unwarranted claims, and/or contained comparative references that were incomplete and unbalanced. The NASD also determined that the firm failed to establish, maintain, and enforce adequate procedures to address the NASD's filing requirements for mutual fund advertisements, and to identify in its written supervisory procedures, a supervisory principal responsible for communications with the public.

**Donerval Kevin Moreland (Registered Representative, San Clemente, California)** was censured, fined \$65,000, barred from association with any NASD member in any capacity, and ordered to pay \$25,000 plus interest in restitution to a public customer. The sanctions were based on findings that Moreland recommended, offered, and sold securities without being properly registered. Furthermore, Moreland recommended securities to a public customer without having reasonable grounds for believing the securities were suitable for the customer. Moreland also failed to respond to NASD requests for information about his sales practices.

**James Basil Peters (Registered Representative, Oxnard, California)** was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify as a general securities representative. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Peters forged the signature of a bank branch manager on documents submitted to his firm that falsely reflected purchases involving new funds and thereby increased Peters' commission payout.

**Christopher John Plucinski (Registered Representative, Stevenson Ranch, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$255,000, barred from association with any NASD member in any capacity, and ordered to pay \$782.17 in restitution to a member firm. Without admitting or denying the allegations, Plucinski consented to the described sanctions and to the entry of findings that he received \$35,000 from a public customer for investment purposes. According to the findings, Plucinski did not apply the funds as directed by the customer, and instead, converted the funds to his own use and benefit by depositing the funds into his bank account, and writing personal and business checks on the funds without the customer's knowledge or consent.

### March Actions

**Henderson Basco Berberabe (Registered Representative, West Covina, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berberabe consented to the described sanctions and to the entry of findings that he converted a total of \$58,000 from public customers through deceptive means. According to the findings, Berberabe obtained the signatures of the customers on blank or incomplete wire authorization forms and later completed the forms, without the knowledge or consent of the customers, in order to facilitate the unauthorized transfer of their funds into a personal brokerage account at a firm other than his employer. The funds were subsequently misused by Berberabe for his own benefit.

**Carl John Hagmaier (Registered Representative, San Luis Obispo, California)** 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, Hagmaier consented to the described sanctions and to the entry of findings that he received checks totaling \$120,000 from public customers for investment, deposited the checks into a bank account that he controlled, and misused the funds himself or permitted others to misuse the funds. In one instance, Hagmaier fabricated an account statement for the customer which falsely stated that her funds had been invested in a cash and stock fund. The findings also state that Hagmaier received contributions totaling approximately \$539,000 for the creation of a defined benefit plan and misused \$68,262.61 of the plan's funds for unrelated business and/or personal expenses. Hagmaier also approached public customers to purchase life insurance, took out loans totaling \$160,000 on the value of the policies, and forged the signatures of the customers on the loan checks without the knowledge or consent of the customers. Hagmaier also failed to respond to NASD requests for information.

**Deborah Wertz Henke (Registered Representative, Newbury Park, California)** was censured, fined \$61,000, barred from association with any NASD member in any capacity, and ordered to pay \$5,200 in restitution to a member firm. The sanctions were based on findings that Henke converted customer securities and failed to respond to NASD requests for information.

**J. Alexander Securities, Inc. (Los Angeles, California) and James Alexander (Registered Principal, Los Angeles, California)** submitted an Offer of Settlement pursuant to which they were censured and fined \$20,000, 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 under the direction and control of Alexander, allowed an individual to become and remain associated with the firm as a principal when he was barred by the SEC from acting in the capacity of a securities principal for 14 months and required to apply for reinstatement in that capacity.

**Pacific Continental Securities Corporation (Beverly Hills, California) and James Albert Allen (Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also ordered to undertake to hire sufficient qualified personnel to perform all the duties required to be performed by a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Allen, in contravention of its Restriction Agreement with the NASD, changed its status to that of a fully computing firm subject to the provisions of the SEC Customer Protection Rule 15c3-3, but failed to obtain prior written approval from the NASD and to undertake to comply with the requirements of the Rule. Furthermore, the NASD found that the firm, acting through Allen, held customer funds and failed to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to make weekly computations of the amount required to be deposited into the Reserve Account due to inadequate financial and operational personnel to identify the deficiencies.

**Sean Michael Perry (Registered Representative, Rancho Cucamonga, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Perry consented to the described sanctions and to the entry of findings that he failed to disclose misdemeanors involving possession of a false identification and providing false identification to a police officer on his Form U-4 that he submitted to his member firm and the NASD.

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

### January Actions

**Shaun Patrick Attwood (Registered Principal, Phoenix, Arizona) and Scott Dominic Davis (Registered Representative, Phoenix, Arizona)**. Attwood was censured, fined \$68,016.90, and barred from association with any NASD member in any capacity. Davis was censured, fined \$11,164.80, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam before re-associating with any member firm. The sanctions were based on findings that Attwood and Davis engaged in excessive trading in a customer account. Attwood also failed to respond to NASD requests for information.

**Troy D. Bachis (Registered Representative, Albuquerque, New Mexico)** was censured, fined \$45,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bachis forged a public customer's signature on an application to purchase a variable annuity contract, without the customer's authorization and consent, and presented such documents as genuine. Bachis also failed to respond to NASD requests for information.

**Capital West Investment Group, Inc. (Phoenix, Arizona) and Lawrence Lester Kohler (Registered Principal, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$3,500, jointly and severally, with Kohler; fined \$6,500 jointly and severally with Kohler and another individual; and fined \$5,000, jointly and severally, with a third individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through an individual, conducted a securities business while failing to maintain its minimum required net capital, failed to prepare and maintain the required books, records, and reports called for as a result of "self-clearing" customer transactions, and failed to establish a "Special Reserve Account for the Exclusive Benefit of Customers" and perform the required customer reserve computation. The findings also stated that the firm, acting through Kohler, failed to designate a principal responsible for the Regulatory Element and Firm Element of the NASD's Continuing Education requirements, failed to address the Regulatory Element in its procedures, and failed to prepare a needs analysis and develop a written training program. Furthermore, the NASD determined that the firm, acting through Kohler and another individual, guaranteed a customer against loss in the customer's account.

**Jerry Michael Hall (Registered Representative, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for 30 days which shall have been deemed served concurrent with the suspension imposed by the State of Arizona in its proceeding, and required to pay restitution to public customers in the amount of \$10,000. Without admitting or denying the allegations, Hall consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing his member firm prior written notice of such participation.

Hall's suspension began January 14, 1998, and concluded February 14, 1998.

**James R. Mancuso (Registered Principal, Patchogue, New York)** 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 30 days, required to requalify as a general securities representative, and required to demonstrate that prior to associating with a member firm, he has made restitution totalling \$55,613 to public customers. Without admitting or denying the allegations, Mancuso consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted material information in the offer and sale of securities. Mancuso also made fraudulent price predictions in the offer and sale of securities.

**Charles Vaughn Pankey (Registered Principal, Denver, Colorado)** 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 10 days, suspended from association with any NASD member as a general securities principal for six months, and required to requalify by taking the Series 24 exam prior to resuming general securities principal duties. Without admitting or denying the allegations, Pankey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. The findings also stated that Pankey, as president of a member firm, failed to comply with all of the conditions outlined in the membership agreement for the firm.

**Robert Scalzi (Registered Representative, Scottsdale, Arizona)** 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, Scalzi consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. The findings also stated that Scalzi allowed an advertisement for an investment program to be placed in a newspaper identifying himself as the sales representative without having the advertisement approved by a principal of his member firm.

**Securities America, Inc. (Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. In addition, the firm must retain an independent consultant to complete a review and needs assessment of the firm's current supervisory system. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to supervise the activities of an individual and to establish, maintain, and enforce written supervisory procedures to ensure that the individual refrained from engaging in unsuitable recommendations of discretionary purchases and sales in the securities account of a public customer, including excessive trading, excessive use of margin, and short position exposure. The findings also stated that the firm's supervisory procedures failed to include procedures for all the types of business in which the firm engaged, failed to designate the principal responsible for the supervision of registered representatives and principals in the firm's Offices of Supervisory Jurisdiction, and failed to identify the individual responsible for the updating of the written procedures. Moreover, the procedures failed to outline the methodology for supervision of account activity, concentration, and use of margin in connection with accounts located in single person Offices of Supervisory Jurisdiction and branch offices.

**Louis Elvin Sharp (Registered Representative, Lafayette, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$1,405 in restitution to public customers. Without admitting or denying the allegations, Sharp consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written notification to, and obtaining approval from, his member firm before participating in such transactions. The findings also stated that Sharp purchased units in a limited partnership and then sold such units to members of the public at prices that substantially exceeded the prices Sharp paid contemporaneously for the transactions, and at prices that were not reasonably related to the market price for these securities at the time of the sales. Moreover, the NASD determined that Sharp failed to disclose to members of the public to whom he sold the securities that he had made the purchases at such prices. In addition, Sharp received purchase payments from public customers, deposited the funds into a bank account he controlled, and failed to request a transfer of the securities from his name to the customers' name until a later date.

## February Actions

**Craig Douglas Baker (Registered Representative, West Jordan, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$12,250, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Baker consented to the described sanctions and to the entry of findings that he intercepted approximately \$450 worth of gift certificates/checks intended to compensate other employees for overtime they had earned, deposited the checks into his own bank account, and used the money for his personal use.

**Carlton Case Ellis (Registered Principal, Mercer Island, Washington)** was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities before again being employed in the securities industry. The sanctions were based on findings that Ellis participated in private securities transactions without giving his member firm prior written notification. Ellis also signed a letter agreement on behalf of his member's clearing firm without authority to do so.

**James Andrew Hyde (Registered Principal, Niwet, Colorado)** 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 two years. Without admitting or denying the allegations, Hyde consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

**Pellett Investments, Inc. (Missoula, Montana) and Ronald Neil Pellett (Registered Principal, Missoula, Montana)** 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 the firm, acting through Pellett, participated in contingent offerings of limited partnership interests and failed to transmit funds received from investors to a proper escrow account as required by SEC Rule 15c2-4(b). The findings also stated that the firm, acting through Pellett, failed to maintain records documenting the completion of the Continuing Education training plan for covered registered persons, and failed to complete and implement a needs analysis and training plan for the Continuing Education Firm Element.

### March Actions

**Stephen Bruce Carlson (Registered Principal, Denver, Colorado)** was censured, fined \$10,000, jointly and severally, with a member firm and barred from association with any NASD member in any capacity. The SEC imposed the sanctions following appeal of a September 1997 NBCC decision. The sanctions were based on findings that Carlson, acting for himself and on behalf of his firm, attempted to obtain stock at below market prices by means of threats, intimidation, and coercion.

**Michael Dylan Gregory (Registered Representative, Scottsdale, Arizona)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gregory failed to disclose a reportable misdemeanor charge on Form U-4 applications.

**Kenneth Craig Krull (Registered Principal, Marysville, Washington)** was censured, fined \$20,000, barred from association with any NASD member in any principal or supervisory capacity, suspended from association with any NASD member in any capacity for one year, ordered to pay \$81,705 in restitution to customers, and required to requalify by exam as a general securities representative. The SEC imposed the sanctions following appeal of a July 1997 NBCC decision. The sanctions were based on findings that Krull recommended unsuitable mutual fund switches in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the frequency of the transactions, the type of transaction being recommended, and the customers' financial situations, circumstances, and needs.

On February 3, 1999, the SEC granted a stay of the sanctions for 60 days based upon Krull's stated intent to seek review of the SEC's order in the U.S. Court of Appeals for the Ninth Circuit. The principal and supervisory bars are not included in the stay order. In the event that Krull files a

timely appeal, the SEC's order shall be further stayed to that extent pending determination of the appeal to the Court of Appeals.

**Jeremy L. Slovik (Registered Representative, Bayshore, New York)** submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Slovik consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that Slovik executed an unauthorized transaction in the account of a public customer.

**Thomas W. Smith (Registered Principal, Portland, Oregon)** 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 two years. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he submitted misleading documentation to his member firm to obtain reimbursements through the petty cash fund in his branch office. The findings also stated that Smith charged these expenses to his firm's corporate account such that the firm was directly billed for these charges in addition to the payments from petty cash. Smith obtained reimbursement in the amount of \$1,038.47; however, due to the nature of the firm's procedures for reimbursing branch office expenses and its compensation arrangement with Smith, the actual benefit to Smith was \$951.99.

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

### January Actions

**Ansula Pet Hwa Liu (Registered Representative, Brooklyn Park, Minnesota)** was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$50,000, plus interest, in restitution. The sanctions were based on findings that Liu engaged in private securities transactions without providing prior written notification to her member firm. Liu also failed to respond to NASD requests for information.

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

**Mark E. Swett (Registered Representative, Omaha, Nebraska)** 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 firm in any capacity for three months. Without admitting or denying the allegations, Swett consented to the described sanctions and to the entry of findings that he purchased securities in his personal margin account at his member firm and utilized the proceeds from the sale of the same securities to pay for the purchases without otherwise paying for the trades or maintaining sufficient margin excess in the account.

**Beth Kohlnhofer Raskovich (Registered Representative, Bloomington, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured and fined \$12,509. Without admitting or denying the allegations, Raskovich consented to the described sanctions and to the entry of findings that she opened a securities account at a member firm and did not provide written notice to the firm that she had become registered as an investment company and variable contracts representative. In addition, Raskovich failed to provide written notice to her employing member firm that she had a beneficial interest in this securities account at the time she

opened the account. Raskovich also purchased shares or units of public offerings which traded at a premium when the secondary market commenced for each security.

**Dennis Nick VanAuken (Registered Representative, Buffalo, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any member firm in any capacity. Without admitting or denying the allegations, VanAuken consented to the described sanctions and to the entry of findings that in connection with the solicitation and sale of shares of stock to public customers, he, intentionally or recklessly, made untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. The findings also stated that VanAuken intentionally or recklessly made projections of future prices without a reasonable basis for predicting such price increases.

**Michael David Wooden (Registered Representative, Perry, Kansas)** 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, Wooden consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to provide an on-the-record statement and documentation.

#### February Actions

**Harvey Michael Burstein (Registered Representative, Leawood, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$57,100, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Burstein consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received compensation and engaged in private securities transactions without prior written notice to, and approval from, his member firm.

**James Dean Loeffelbein (Registered Representative, Bucyrus, Kansas)** 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 one day. Without admitting or denying the allegations, Loeffelbein 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.

**Donald Charles Panek (Registered Representative, Fort Madison, Iowa)** 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, Panek consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, and written approval and/or acknowledgment from, his member firms.

**Donald Eugene Radle (Registered Principal, Springfield, Missouri)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Radle failed to respond to NASD requests to appear for an on-the-record interview.

#### March Actions

**Jerald Fred Albin (Registered Representative, Independence, Missouri)** 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, Albin consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, and written approval and/or acknowledgment from, his member firm. The findings also stated that Albin failed to respond truthfully to NASD requests for information in that he provided the NASD with altered bank statements that contained inaccurate, false, and misleading information.

**Dickie Lynn Connors (Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent 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, Connors consented to the described sanctions and to the entry of findings that she withdrew funds totaling \$22,000 from the accounts of public customers without their knowledge or consent and converted the funds to her own use and benefit.

**Paul Daniel Willette (Registered Representative, Eden Prairie, Minnesota)** 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 15 business days, and required to pay \$10,000 in restitution to a public customer. Willette must also submit to additional supervision by his member firm for 365 days following the suspension. Without admitting or denying the allegations, Willette consented to the described sanctions and to the entry of findings that he failed to disclose a customer complaint and settlement with the customer on a Form U-4. The findings also stated that Willette exercised effective control over customer accounts and recommended to the customers numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the size and frequency of the transactions, and the nature of the customers' accounts.

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

#### January Actions

**Joseph Randolph Belew (Registered Principal, Jackson, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$4,957,000, barred from association with any NASD member in any capacity, and required to pay \$601,625.80 in restitution to the appropriate parties. Without admitting or denying the allegations, Belew consented to the described sanctions and to the entry of findings that he received funds totaling approximately \$971,425.80 from public customers for the purpose of investment, failed to make any investments on the customers' behalf, and either misused or converted the funds to his own use and benefit without the customers' knowledge or consent.

**Donald Ray Gates (Registered Representative, Cabot, Arkansas)** was censured, fined \$53,261.05, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam before acting in any capacity requiring registration. The NAC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Gates engaged in securities transactions while not registered with the NASD or with the state where the customer was domiciled.

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

**Hattier, Sanford & Reynoir (New Orleans, Louisiana), Gus A. Reynoir (Registered Principal, New Orleans, Louisiana), and Vance G. Reynoir (Registered Principal, New Orleans, Louisiana)** were censured and fined \$60,000, jointly and severally. In addition, the firm was required to engage an independent auditor within 90 days to review its books and records and supervisory procedures and to implement the auditor's recommendations in a manner satisfactory to the NASD. Gus Reynoir and Vance Reynoir were suspended from association with any NASD member in any capacity for 30 days, suspensions not to run concurrently. Gus Reynoir and Vance Reynoir were required to requalify as a general securities principal and as a municipal securities principal, respectively, within 180 days or be suspended until they requalify. The U.S. Court of Appeals for the Fifth Circuit affirmed the sanctions following appeal of a January 1998 SEC decision. The sanctions were based on findings that the firm, acting through Gus Reynoir and Vance Reynoir, issued 453 confirmations that misrepresented the capacity in which trades were executed.

Gus Reynoir's suspension will commence on the opening of business January 18, 1999, and will conclude at the close of business February 16, 1999. Vance Reynoir's suspension will commence with the opening of business February 17, 1999, and will conclude at the close of business March 18, 1999.

**Fred Cordery Knight, Jr. (Registered Representative, Edmond, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$175,000, barred from association with any NASD member in any capacity, and required to pay \$75,432.45 in restitution to the appropriate parties. Without admitting or denying the allegations, Knight consented to the described sanctions and to the entry of findings that he engaged in acts, practices, and a course of business which operated as a fraud or deceit upon various persons, in connection with the purchase and sale of shares of common stock, by directly entering into transactions with stockholders that were executed at excessive and fraudulent prices. The findings also stated that Knight engaged in private securities transactions without prior written notice to and approval from his member firm.

**Tony Dale Moore (Registered Representative, Brandon, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$165,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he received a check for \$2,989.25 from a public customer for the purpose of paying the premium on a fixed annuity policy; failed and neglected to remit the funds to his member firm; and, instead, endorsed the check and deposited it into his personal bank account thereby converting the \$2,989.25 to his own use and benefit, without the customer's knowledge or consent. In response to an NASD request for information, Moore provided false and misleading statements and documents, including falsified correspondence, bank statements, and cashiers' checks in an apparent attempt to mislead the staff during its investigation.

**Gerald M. Trevor (Registered Representative, Metairie, Louisiana)** 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 two years. Without admitting or denying the allegations, Trevor consented to the described sanctions and to the entry of findings that he received a check for \$5,000 from a public customer for the purpose of investment. Instead, Trevor erroneously deposited the funds into a bank account he controlled and failed to return the funds to the customer until a later date. The findings also stated that Trevor sent correspondence to the customer that incorrectly stated the customer had an

account balance of \$6,585 invested at his firm. In addition, Trevor failed to respond timely to NASD requests for information.

## February Actions

**Wallace Efford Sheely (Registered Principal, Gulfport, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,800, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Sheely consented to the described sanctions and to the entry of findings that he exercised discretion in the individual accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

## March Actions

**John Barrett Bryant (Registered Representative, Collierville, Tennessee)** submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity with the right to reapply in three years. Without admitting or denying the allegations, Bryant consented to the described sanctions and to the entry of findings that he received \$1,000 from a public customer for the purpose of investing in the customer's universal life policy account, failed to invest the funds in the account, and retained possession of the funds until a later date, without the customer's knowledge or consent. The findings also stated that Bryant sent correspondence to the customer that was misleading in that it overstated the funds maintained by the customer in the life insurance account by approximately \$1,000.

**Capital Resources, Inc. (Washington, D.C.)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$13,500, and required to undertake to review and revise its written supervisory procedures to ensure that procedures are maintained, implemented, and enforced regarding private placements, contingency offerings, trading practices, and continuing education in a manner satisfactory to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it participated in contingency offerings and distributed offering materials that contained misleading information, failed to establish a bank escrow account, and failed to record receipt of customer funds for purchases of interests in contingency offerings on the firm's books and records. The findings also stated that the firm failed to require all covered employees to complete the Firm Element of the Continuing Education requirement, to maintain records documenting the content of, and completion of, the Firm Element of the Continuing Education requirement, to conduct an annual needs analysis, and to develop a Firm Element Training Plan. Furthermore, the NASD found that the firm failed to indicate the limit order terms and conditions on order tickets to reflect that the customers' limit orders were changed to market orders, to time-stamp the order tickets at the time the orders were changed, and to record all the order terms and conditions of customer limit orders. Moreover, the firm failed to execute limit orders within 60 seconds of completing trades in the firm's market making account at prices equal to or better than the customers' protected prices, and failed to establish, maintain, and enforce proper supervisory procedures governing the above violations.

**J.J.B. Hilliard, W.L. Lyons, Inc. (Louisville, Kentucky), James Reid Allen (Registered Principal, Louisville, Kentucky) and Robert Clinton Oliver, Jr. (Registered Principal, Louisville, Kentucky)** submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000; Allen and Oliver were each censured, fined \$7,500, and suspended from association with the NASD in any principal 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 permitted Allen and Oliver to act in the capacity of a general securities principal prior to their properly qualifying and becoming registered in that capacity.

**PaineWebber Incorporated (Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$50,000, and required to review its supervisory procedures regarding registration of personnel and to implement changes necessary to ensure that all persons actively engaged in the firm's investment banking or securities business, or in the management thereof, are properly registered with the NASD. Without admitting or denying the allegations, PaineWebber consented to the described sanctions and to the entry of findings that it failed to ensure that persons actively engaged in the firm's investment banking or securities business, or in the management thereof, were properly registered as general securities representatives or general securities principals with the NASD. PaineWebber also failed to establish, maintain, and enforce written supervisory procedures that would ensure the proper registration of individuals.

**SCA Development, Inc. (Birmingham, Alabama)** 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 handle customer funds properly in connection with a contingency offering in that it failed to establish a bank escrow account and accepted and forwarded investor checks directly to the issuer, and closed the offering prior to the sale of the requisite number of units. The NASD also determined that the firm failed to timely file a Form U-5 on behalf of an individual, and failed to establish, maintain, and enforce proper supervisory procedures concerning the establishment and use of bank escrow accounts in contingency offerings, the extension of contingency offering periods, proper registration of principals, and timely submissions of Forms U-5 for terminated individuals.

**David Madden Shehan (Registered Representative, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$12,500. Without admitting or denying the allegations, Shehan consented to the described sanctions and to the entry of findings that he sent correspondence to mutual fund wholesalers without prior approval from his member firm. According to the findings, the correspondence solicited funds for a firm-sponsored educational meeting by improperly promising access to mutual fund wholesalers who contributed to the meeting and denying access to those unwilling to contribute.

District 6 - Texas

#### January Actions

**Blake Vincent High (Registered Representative, Plano, Texas)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that High failed to respond to an NASD request for information and to provide testimony.

**David Eugene Manning (Registered Principal, Webster, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000, suspended from association with any NASD member in the capacity of registered options principal for two years, and

required to requalify as a registered options principal. Without admitting or denying the allegations, Manning consented to the described sanctions and to the entry of findings that a member firm, acting by and through Manning, failed to properly establish and maintain an adequate supervisory system that was reasonably designed to achieve compliance with applicable securities laws and regulations, and with the rules of the NASD. Specifically, the firm failed to supervise the activities of each registered representative with respect to options trading since it failed to establish and maintain adequate written procedures to supervise trading in options.

**Ralph Rufus Rush (Registered Representative, El Paso, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Rush consented to the described sanctions and to the entry of findings that he received payments of commissions in connection with the sale of variable annuity products, in the form of checks written by a registered representative associated with another member firm, without prior oral or written authorization from his member firm. Furthermore, the NASD determined that, at the time of these transactions and resultant payments, his member firm was not authorized to sell variable annuity products in the state where the sales took place.

#### February Actions

**Terry Don Rader (Registered Principal, Dallas, Texas)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rader failed to respond to NASD requests for information.

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

#### March Actions

**Peter Joseph Cammarano (Registered Principal, The Woodlands, Texas)** 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, Cammarano consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony.

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

#### January Actions

**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 as a general securities representative by taking and passing the Series 7 exam. The sanctions were based on findings that Giglio forged the signatures of public customers on "change of Broker Dealer/Representative" forms to move their accounts from other member firms to his current member firm.

**Peter Anthony Perez (Registered Representative, Parkland, Florida)** 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, Perez consented to the described sanctions and to the entry of findings that he recommended and engaged in a course of trading in the account of a public customer that was unsuitable for the customer based upon her other securities holdings, and financial situation and needs. The findings also stated that Perez participated in private securities transactions without providing prior written notice to his member firm.

**Wayne Beckley Vaughan (Registered Representative, Cumming, Georgia)** was censured, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam in any capacity in which he seeks to do business. The NAC imposed the sanctions upon appeal and review of an Atlanta DBCC decision. The sanctions were based on findings that Vaughan engaged in unsuitable trading for a public customer's account.

**Steven David Wyman (Registered Principal, Boynton Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Wyman consented to the described sanctions and to the entry of findings that he failed to reasonably supervise registered representatives' handling of public customers' accounts in order to prevent and/or detect unsuitable trading in the accounts.

#### February Actions

**Glenn Adam Davis (Registered Principal, West Palm Beach, Florida)** was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis executed unauthorized transactions in a public customer's account.

**William H. Gerhauser, Sr. (Registered Principal, Surrey, Great Britain) and William C. Gerhauser, Jr. (Registered Principal, Brentwood, New York)** were censured and fined \$15,000, jointly and severally. In addition, William H. Gerhauser was required to requalify by exam as a financial and operations principal, and William C. Gerhauser was required to requalify by exam as a general securities principal. The SEC imposed the sanctions following appeal of a November 1997 NBCC decision. The sanctions were based on findings that the Gerhausers, acting on behalf of a member firm, conducted a securities business while failing to maintain adequate net capital. The firm, acting through William H. Gerhauser, filed inaccurate FOCUS Part I and IIA reports, failed to maintain accurate books and records, and failed to give telegraphic notice of a net capital deficiency.

**Robert Gregory McCormack (Registered Principal, Ft. Myers, Florida)** was censured, fined \$60,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCormack conducted a securities business while not registered. McCormack also forged a registered representative's signature on a new account application and failed to respond to NASD requests for information.

**Arleigh Clayton Merrill (Registered Representative, Jacksonville, Florida)** was censured, fined \$17,500, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Merrill effected a private securities transaction and guaranteed a customer against a loss.

**Kirk Francis Ruffler (Registered Representative, Perrineville, 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 Ruffler failed to respond to NASD requests for information.

**Andrew Neal Watson (Registered Principal, Raleigh, North Carolina)** 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, Watson consented to the described sanctions and to the entry of findings that he misappropriated \$19,137.78 from his member firm by arranging to have himself paid unauthorized increases in his salary.

#### March Actions

**Austin Securities, Inc. (Forest Hills, New York) and Brian R. Mitchell (Registered Principal, Yorktown Heights, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also required to disgorge \$14,007 in excessive profits to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mitchell, entered into municipal bond sale and purchase transactions with public customers. The findings also stated that bond sales and bond purchases were conducted with excessive markups and markdowns, respectively, in light of the circumstances surrounding the transactions. In addition, the firm, acting through Mitchell, failed to establish or maintain an adequate written supervisory procedure pertaining to the pricing of municipal securities.

**David Charles Baron, Jr. (Registered Principal, Clearwater, Florida)** was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 45 days. The sanctions were based on findings that Baron failed to supervise a registered representative by allowing the individual to effect transactions in municipal securities without being registered.

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

**Joseph Giulio Chiulli (Registered Principal, Lynbrook, New York)** was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to an NASD request for information.

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

**Paul Cruz (Registered Representative, Colorado Springs, Colorado) and Lee Thomas Duran (Registered Principal, Colorado Springs, Colorado)** submitted an Offer of Settlement pursuant to which they each were censured, fined \$2,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to respond to NASD requests for information in a timely manner.

**Robert Henry Deighton, III (Registered Representative, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Deighton consented to the described sanctions and to the entry of findings that he sold approximately \$155,000 in chattel mortgages to public customers for which he received commissions totaling \$7,775 without giving prior written notice to, and receiving written approval from, his member firm.

**First Atlanta Securities, L.L.C. (Atlanta, Georgia) and James Andrew Steinkirchner (Registered Principal,**

**Marietta, Georgia**) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm was suspended from participating in any contingency offering for 30 days and thereafter until such time as it filed satisfactory revised written supervisory procedures governing the firm's participation in future contingency offerings with the NASD. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Steinkirchner, failed to ensure the establishment of a proper escrow account in connection with its participation in a best efforts contingency offering and conducted a securities business while failing to maintain its required minimum net capital. The findings also stated that the firm, acting through Steinkirchner, participated in sales in the offering in an amount exceeding the maximum specified in the offering documents, and beyond the time period specified in the offering documents, without providing notice to prior investors, reconfirming their purchases or offering them rescission.

The suspension began with the commencement of business on January 30, 1999, and concluded at the close of business on February 28, 1999.

**Howe, Solomon & Hall, Inc. (Miami, Florida) and Christopher John Hall (Registered Principal, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and required to retain an independent consulting firm mutually agreeable to both the firm and the NASD for one year. Hall was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity with no right to reapply. Hall has the right to continue as a passive investor in the firm, even during the term of the suspension. If it is ever determined that the scope of Hall's involvement with the firm during the term of the suspension ever goes beyond that, he shall immediately, and without notice, be permanently barred in all capacities. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm miscalculated its allowable assets thereby causing the firm to have insufficient net capital. The findings also stated that Hall parked securities by executing fictitious trades designed to overstate the firm's net capital thereby enabling the firm to continue in business in ostensible compliance with the net capital rule.

**IFC Holdings, Inc. (dba Invest Financial Corporation) (Washington, D.C.)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$75,000, and required to retain an independent consulting firm to conduct a review for one year of the firm's compliance and written supervisory procedures, in particular, but not limited to, procedures relating to conduct of branch office examinations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to address, or failed to address adequately, written supervisory procedures regarding, among other things, insider trading, receipt of customer funds and securities, mutual fund breakpoints, variable annuities and variable life insurance, option customer's background and financial information, municipal securities markups and markdowns, customer complaint reporting, cold calling, sales supervision, and discretionary accounts. Also, the firm's written supervisory procedures failed to designate a principal responsible for the review of mutual funds, variable products, and unit investment trusts. Furthermore, the findings stated that the firm failed to inspect each branch office according to the cycle set forth in its written supervisory procedures. In addition, the firm failed to supervise and enforce its written supervisory procedures concerning daily transactions, mutual fund switches, branch office inspections, advertising and correspondence, and employees' accounts at other broker/dealers. The firm failed to have

each registered representative participate in an annual compliance meeting. The findings also stated that the firm failed to conduct a periodic examination of all customer accounts to detect and prevent irregularities or abuses, failed to report forgery accusations from customers within 10 business days as required by the NASD, and allowed an individual to function as acting chief administrative officer without being properly registered.

**Keogler, Morgan & Co., Inc. (Atlanta, Georgia), Chris Stuart Guerin (Registered Principal, Marietta, Georgia), Douglas Albert Dyer (Registered Representative, Chattanooga, Tennessee), Craig Robert Smith (Registered Principal, Duluth, Georgia), and James Hugh Brennan, III (Registered Representative, Chattanooga, Tennessee)** submitted Offers of Settlement pursuant to which the firm was censured, fined \$25,000, and required to pay back \$63,264 in excessive profits to public customers. Guerin was censured, fined \$10,000, and suspended from association with any NASD member as a registered principal for six months; Dyer was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 60 days; Smith was censured, fined \$10,000, and suspended from association with any NASD member as a registered principal for six months; and Brennan was censured and fined \$10,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Smith and Dyer, effected principal purchases of common stock from public customers at prices that were marked down excessively. The firm, acting through Smith, failed to report trades within 90 seconds of execution without employing the requisite ".SLD" modifier, incorrectly reported wholesale trades as retail trades, and incorrectly reported the price on trades. Guerin and Brennan failed to supervise adequately the trading in common stock of Smith and Dyer, respectively, and failed to detect that Smith and Dyer were purchasing stock from the firm's retail customers subject to excessive markdowns. Furthermore, the NASD determined that Dyer effected securities transactions in the accounts of his customers without the customers' prior knowledge or authorization.

**Henry Clay Lowry (Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$80,000 to public customers. Without admitting or denying the allegation, Lowry consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to request, or receive, permission from his member firm to engage in such transactions.

**James Arlie Tyson, Sr. (Registered Representative, Lake Park, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$304,399.61 in restitution to public customers. Without admitting or denying the allegations, Tyson consented to the described sanctions and to the entry of findings that a public customer gave him checks totaling \$20,000 for the purchase of shares in a company "if and when" the company went public. The findings stated that Tyson gave the customer a "debenture" which carried an 11 percent interest rate and purportedly gave him the right to convert his investment into shares of stock. Instead of investing the customer's funds, Tyson converted them to his own use and benefit. In addition, Tyson converted a total of \$304,399.61 received from other public customers to his own use and benefit by telling the customers he was investing their funds in securities and evidenced the transactions by providing them with "Certificates of Direct Participation" he created that specified an investment amount, an annual yield, and a maturity date.

**Robert Lee Wallace (Registered Principal, Naples, Florida)** was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. The SEC affirmed the sanctions following appeal of a January 1998 NAC decision. The sanctions were based on findings that Wallace published an advertisement for viatical settlements in a newspaper that contained misleading, unwarranted, and exaggerated statements and failed to disclose the risks associated with the product being advertised.

**Andrew Scott Zeiger (Registered Representative, Fort Lauderdale, Florida)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zeiger 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

## January Actions

**Salvatore Joseph Anzelone (Registered Representative, Amherst, 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 Anzelone failed to respond to NASD requests for information.

**Gregory James Best (Registered Representative, Mogadore, 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, Best consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in connection with customer complaints.

**Deidra J. Blake (Registered Representative, Plainfield, Illinois)** 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 capacity. Without admitting or denying the allegations, Blake consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to provide written notice to, or to receive written authorization from, her member firm to participate in such transactions.

**Herbert Lewis Davis, Jr. (Registered Representative, Milwaukee, Wisconsin)** was censured, fined \$20,000, 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 Davis signed a customer's name to a \$945.58 check without the customer's authorization, knowledge, or consent and used the proceeds for some purpose other than for the customer's benefit. Davis also failed to respond to NASD requests for information.

**Edward Michael Freund (Registered Representative, Eastpointe, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Freund consented to the described sanctions and to the entry of findings that he signed and filed a Form U-4 that failed to disclose he had plead guilty to a misdemeanor in the state of Michigan involving larceny under \$100.

**Jeff Vaughn Gordy (Registered Representative, Chicago, 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. Without admitting or denying the allegations, Gordy consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information.

**Graicap, Inc. (Detroit, Michigan), Fred L. Prime, III (Registered Principal, Southfield, Michigan), and Kern David Smith (Registered Principal, Detroit, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Prime was censured, fined \$7,500, and suspended from association with any NASD member in a supervisory and managerial capacity for 10 business days, and Smith was censured, fined \$10,000, and suspended from association with any NASD member in the capacity of a limited principal financial and operations for 30 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 Prime and Smith, conducted a securities business while failing to maintain adequate net capital. The findings also stated that the firm, acting through Smith, failed to compute its net capital accurately, failed to maintain accurate books and records, submitted inaccurate FOCUS Part II reports, and failed to file its audited annual financial statements in a timely manner. In addition, the NASD found that the firm failed to submit an accurate quarterly Form G-37/38, and the firm, acting through Prime, failed to maintain a record of the date that the Forms G-37/38 were sent to the MSRB.

**Huntington Capital Corp. (Columbus, 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 establish and maintain an adequate enforcement system to ensure that individuals were properly registered to perform activities in which they were engaged. According to the findings, the firm permitted an individual to engage in activities requiring registration as a registered options principal without being registered in that capacity.

**Gerald Patrick Leffel (Registered Representative, Brook Park, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$51,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leffel consented to the described sanctions and to the entry of findings that he accepted cash payments for traditional life insurance policy premiums totaling \$299 from a public customer and failed to forward the proceeds to the insurance company in payment of the premiums. Instead, the NASD found that Leffel used the proceeds for his own benefit without the prior authorization or consent of the customer.

**John Li (Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Li consented to the described sanctions and to the entry of findings that he purchased or sold securities for the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the customer's account.

**Timothy James Kopacka (Registered Representative, Grosse Point Shores, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$340,289, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kopacka consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to

give written notice of his intention to engage in such activities to his member firms, and failed to receive written approval from the firms prior to engaging in such activities.

**Roger David McClammer (Registered Representative, Greenfield, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$25,000. Without admitting or denying the allegations, McClammer consented to the described sanctions and to the entry of findings that he received a check in the amount of \$8,030.16 from a public customer for the purpose of establishing a money market mutual fund. The NASD found that contrary to the customer's instructions, McClammer failed to open the fund until a later date at which time he signed the customer's name to the fund account application without the customer's knowledge or consent.

**John Louis Quaadman (Registered Representative, Chicago, Illinois)** 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 six months. Without admitting or denying the allegations, Quaadman consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on Individual Retirement Account transfer and/or risk acknowledgment forms without the customers' knowledge or consent.

**Eric John Wiegandt (Registered Principal, Hilliard, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Wiegandt consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a registered options principal without being registered in that capacity.

### February Actions

**Rudolph Crockett, Jr. (Registered Representative, Westerville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$925,000, barred from association with any NASD member in any capacity, and required to pay \$179,642 in restitution to a member firm. Without admitting or denying the allegations, Crockett consented to the described sanctions and to the entry of findings that he received funds totaling \$179,642 from public customers. The NASD determined that Crockett deposited these funds into accounts under his control without the knowledge or permission of the customers and used the funds for his own benefit without their knowledge, authorization, or consent.

**Norman Mathias Merz (Registered Principal, Brookfield, Wisconsin)** was censured, fined \$110,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following review of a Chicago DBCC decision. The sanctions were based on findings that Merz engaged in private securities transactions without prior written notice to, and approval from, his member firm. Merz also failed to give prompt written notice to his firm of compensation received from outside business activities.

**Randel Arthur Russell (Registered Representative, Wheeling, West Virginia)** 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 six months. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that he received cash from a public customer intended for deposit into a money market account and failed to handle the funds properly. According to the findings, Russell placed the funds in a non-secure location and certain funds were lost. The findings also stated that Russell accepted

checks intended for employee contributions to a company-sponsored Simple Individual Retirement Account (IRA) and failed to forward those checks promptly to the mutual fund company for investment.

**Steven Albert Seager (Registered Representative, Geneseo, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$275,000, barred from association with any NASD member in any capacity, and required to pay \$49,935.37 in restitution to a member firm. Without admitting or denying the allegations, Seager consented to the described sanctions and to the entry of findings that he caused loans totaling \$49,935.37 to be made against the life insurance policies of public customers. According to the findings, Seager caused the checks for these loans to be mailed to a post office box under his control, endorsed the checks, and used the proceeds for his own benefit without the prior authorization or consent of the customers.

**Chad Robert Soerens (Registered Representative, Middleton, Wisconsin)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Soerens failed to respond to NASD requests for information.

**Gerald James Stoiber (Registered Representative, Mokena, Illinois)** was censured, 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. The SEC affirmed the sanctions following appeal of a March 1996 NBCC decision, and following dismissal of an appeal to the U.S. Court of Appeals. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior written notification to his member firm of his intention to engage in such activities.

**Steve Tabaluyan (Associated Person, Palatine, Illinois)** 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, with the right to reapply for association with an NASD member firm three years from the date of the effectiveness of the bar. Without admitting or denying the allegations, Tabaluyan consented to the described sanctions and to the entry of findings that he altered his Series 6 test results to show that he passed the exam, when in fact, he failed the exam, and presented the altered results to his member firm.

**John Jeffrey Walker (Registered Representative, Covington, Kentucky)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Walker failed to respond to NASD requests for information.

**Todd Richard Woods (Registered Representative, Columbus, Ohio)** 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 60 days. Without admitting or denying the allegations, Woods consented to the described sanctions and to the entry of findings that he forged the signature of a public customer onto documents that caused the customer's IRA accounts to be transferred to another firm, without the prior knowledge or consent of the customer.

### March Actions

**Philip Allen Bowsher (Registered Representative, Wapakoneta, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$235,000, barred from association with any NASD member in any capacity, and required to pay \$45,133.50 in restitution to his member firm. Without admitting or denying

the allegations, Bowsher consented to the described sanctions and to the entry of findings that he endorsed checks received from public customers into his own name totaling \$45,133.50 and failed to remit their proceeds to his member firm, and instead, retained the funds for his own use and benefit.

**Carol Brantley (Associated Person, Akron, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$2,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brantley consented to the described sanctions and to the entry of findings that she submitted a materially false or inaccurate Form U-4 to her firm that failed to disclose a criminal conviction.

**Charles Edward Brown (Associated Person, Chicago, Illinois)** 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 60 days. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a general securities representative, general securities principal, and municipal securities principal without being registered in those capacities.

**Joseph Anthony DiMattina (Registered Representative, Glenview, Illinois)** 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, DiMattina consented to the described sanctions and to the entry of findings that he received a check issued by his member firm to a public customer in the amount of \$432 to refund the customer for an initial premium paid on a life insurance policy that was canceled. The findings also stated that DiMattina signed the customer's name on the back of the check without the customer's knowledge and consent, deposited the check in his personal account, and used the funds for some purpose other than for the benefit of the customer.

**Allen D. Fritz (Registered Representative, Wyandotte, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$4,889.56 in restitution to his member firm. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he effected numerous index option transactions in his personal margin account maintained at his member firm without depositing the required margin, which caused margin call notices to be issued by his firm's clearing firm. The NASD determined that Fritz made a practice of meeting margin calls by liquidating positions in his account.

**Daniel Scott Fuchs (Registered Representative, Plainview, New York)** was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Fuchs purchased securities for the account of a public customer without the knowledge, authorization, or consent of the customer, and, in the absence of written or oral authorization to Fuchs, exercised discretion in the account.

**Brian Keith Johnston (Registered Representative, Bremen, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$120,222.90, barred from association with any NASD member in any capacity, and ordered to pay \$24,044.58 in restitution to an insurance company. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he submitted fictitious annuity applications to an insurance

company for people who did not exist and collected \$24,044.58 in advances on commissions to which he was not entitled.

**Dean Joseph LoBrutto (Registered Representative, 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, LoBrutto consented to the described sanctions and to the entry of findings that he failed to respond, or to respond truthfully, to NASD requests for information.

**Patrick Thomas McRaith (Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McRaith consented to the described sanctions and to the entry of findings that he received a \$4,100 check from a public customer with instructions to use the funds for a new annuity account. The NASD found that McRaith failed to follow the customer's instructions and used the funds for his own use and benefit by endorsing the check, depositing the funds into his personal bank account, and spending the funds, without the knowledge or consent of the customer.

**Thomas Andrew O'Malley (Registered Representative, East Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$193,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Malley consented to the described sanctions and to the entry of findings that he received checks totaling \$31,546.75 from the securities account of a public customer, signed the customer's name to the checks, caused the checks to be deposited in an account in which he had a beneficial interest, and used the funds for some purpose other than the benefit of the customer without the customer's knowledge or consent. The findings also stated that O'Malley failed to respond to NASD requests for information.

**Dennis Ray Owens (Registered Representative, Hamilton, 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, Owens consented to the described sanctions and to the entry of findings that he failed to respond adequately to NASD requests for information.

**Calvin Patterson, III (Registered Representative, Peoria, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Patterson consented to the described sanctions and to the entry of findings that he effected numerous options transactions on a discretionary basis in the accounts of public customers without prior written authorization from the customers and written acceptance from his member firm. The findings also stated that Patterson effected options transactions without the authorization of a public customer after the customer requested Patterson liquidate her account.

**Theodore Lester Pittman III (Registered Representative, McFarland, Wisconsin)** was censured, fined \$20,000, 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 finding that Pittman failed to respond to NASD requests for information.

**Smith Barney Inc. (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or

denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce written supervisory procedures, and failed to supervise adequately and properly a registered representative. According to the findings, the firm failed to prevent the registered representative from making numerous sales of securities (hot issues) that traded at a premium in the immediate aftermarket to restricted persons, in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

**Kellie Anne Will (Registered Representative, Derby, New York)** 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, Will consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

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

### January Actions

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

**Pamela Ann Hartsock (Registered Representative, Montoursville, Pennsylvania)** was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam in any capacity in which she seeks to participate in the securities industry. The NAC imposed the sanctions following review of a Philadelphia DBCC decision. The sanctions were based on findings that Hartsock failed to remit customer funds and failed to inform her member firm of her omission.

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

### February Actions

**Ascend Financial Services, Inc. (St. Paul, Minnesota) and Barry Howard Burton (Registered Representative, Great Falls, Virginia)** submitted Letters of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000, and Burton was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm allowed a registered representative to sign a variable annuity application as the registered representative of record, falsely indicating that he had sold the investment, when, in fact, the variable annuity had been sold by another registered representative. Moreover, the NASD found that the firm accepted the variable annuity application knowing that the individual had never met with and/or discussed the variable annuity investment with the client. The findings also stated that Burton signed two variable annuities applications as the registered representative of record, falsely indicating that he had sold the investments, when, in fact, the variable annuities had been sold by another registered representative.

Burton, however, shall not be required to serve the suspension, having already served a 14-day suspension in July 1996 imposed by his member firm based on the same conduct.

**Keith Robert Cottrell (Registered Representative, Washington, D.C.)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cottrell failed to respond to NASD requests for information.

**Dennis Wayne Cowden (Registered Representative, Pittsburgh, Pennsylvania)** was censured, suspended from association with any NASD member in any capacity for two months, and required to requalify by exam before again becoming registered in any capacity. The sanctions were based on findings that Cowden recommended and effected securities transactions for the accounts of public customers without having reasonable grounds to believe that such transactions were suitable based on the information disclosed by the customers concerning their financial situations and needs.

**Kirby Michael Hryn (Registered Representative, Clearfield, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$18,000 in restitution to defrauded investment club members. Without admitting or denying the allegations, Hryn consented to the described sanctions and to the entry of findings that he converted approximately \$18,000 from members of an investment club, of which he was also a member, without the consent or authority of the club members.

**Robert Jay Kendzierski (Registered Representative, Erie, Pennsylvania)** was censured, fined \$80,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kendzierski converted \$6,000 in funds given to him by a public customer by receiving checks totaling \$10,000 from the customer to be deposited in an interest-bearing insurance policy. Kendzierski altered the checks made payable to his member firm and wrote his name instead on the payee line of the checks, converted \$6,000 of the funds to his own use and benefit. Also, Kendzierski made two payments to repay the customer for \$1,000 and \$5,050, and in an attempt to conceal his conversion, he backdated the \$5,050 check.

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

### March Actions

**Brian Douglas Angiuli (Registered Principal, 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 by exam 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 trades in the account of a public customer.

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

**Frederick Ernest Fischer, Jr. (Registered Representative, Tom's River, New Jersey)** 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, Fischer

consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Timothy Earl McGill, Sr. (Registered Representative, Shrewsbury, Pennsylvania)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McGill failed to respond to NASD requests for information.

**Navillus Securities, Inc. (West Conshocken, Pennsylvania) and William Joseph Sullivan, Jr. (Registered Principal, West Conshocken, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the respondents were censured and fined \$60,000, jointly and severally. Sullivan was suspended from association with any NASD member in any principal capacity and from performing any functions that require registration as a principal for four months, except that he is permitted to perform duties as a financial and operations principal for his firm during the period of suspension. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Navillus, acting through Sullivan, allowed trades to be entered through the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) for accounts belonging to family members of the firm's registered representatives and failed to establish, maintain, and enforce proper supervisory procedures governing the entry of trades through SOES. The findings also stated that Navillus, acting through Sullivan, conducted a securities business while failing to maintain its minimum required net capital and filed a FOCUS report with the NASD that was inaccurate and misleading in that it included a net capital amount for the firm that was overstated. In addition, Navillus, acting through Sullivan, failed to maintain sufficient records of order entry and execution times for securities transactions; failed to complete a written training plan for its Firm Element training requirement; and failed to conduct and complete its Firm Element training requirement.

**Shamrock Partners, Ltd. (Media, Pennsylvania) and James Thomas Kelly (Registered Principal, Newtown Square, Pennsylvania)** were censured; fined \$15,000, jointly and severally; required to pay \$10,053.13 in restitution to customers, jointly and severally; required to demonstrate corrective action with regard to their markup and markdown policy; and to submit to a staff interview. The SEC imposed the sanctions following appeal of an August 1997 NBCC decision. The sanctions were based on findings that the firm, acting through Kelly, effected in a principal capacity purchases of common stock for public customers at prices that were not fair and reasonable in that the markdowns on the purchases exceeded five percent.

**Timothy Patrick Sullivan (Registered Representative, Owings Mills, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, and barred from membership with any NASD member in any capacity. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he submitted applications for life insurance on the lives of public customers without their authorization and consent and affixed signatures purporting to be the customers to the applications and to policy delivery receipts. The findings also stated that Sullivan caused an insurance policy on the life of a public customer to be surrendered and its cash value applied to purchase an annuity. In connection with the surrender and purchase, Smith affixed the customer's signature to the application and related documents without the authorization or consent of the customer.

District 10 - The five boroughs of New York City

## January Actions

**William Hinton Clark (Registered Principal, Staten Island, New York)** 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 six months, and required to requalify by exam in all capacities prior to functioning again in any capacity that requires requalification. Without admitting or denying the allegations, Clark consented to the described allegations and to the entry of findings that he engaged in a securities business as a registered representative and executed transactions on behalf of public customers during a one month bar imposed by the New York Stock Exchange.

**John D'Aversa (Registered Representative, Waterbury, Connecticut)** 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, D'Aversa consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**David Dembinsky (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$8,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dembinsky consented to the described sanctions and to the entry of findings that he changed the addresses of record of policyholders without the knowledge or authorization of the policyholders to post office boxes held in the name of a client and acquaintance of Dembinsky. Loans requested against each of the policies, without the knowledge or consent of the policyholders, resulted in the issuance of checks totalling \$14,000 to the post office boxes. Dembinsky facilitated the transfer of the checks to a third party who negotiated the checks and agreed to remit to Dembinsky four percent of the proceeds of the negotiated checks for his assistance. The remaining proceeds were alleged to have been returned to another firm representative. Dembinsky also provided a false written statement to the NASD.

**Steven Laver Edelson (Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Edelson consented to the described sanctions and to the entry of findings that he failed to file in a timely manner quarterly statistical and summary information reports with the NASD regarding customer complaints received by his member firm.

**Semos Gardner (Registered Representative, West Hollywood, California)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gardner failed to respond to NASD requests for information.

**Robert Anthony Gatto (Associated Person, Brooklyn, New York)** was censured, fined \$45,469.20, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gatto forged the signatures of his member firm's officers on a \$1,093.84 compensation check and converted the proceeds of the check. Gatto also failed to respond to NASD requests for information.

**George W. Guttman (Registered Principal, Brooklyn, New York)** 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, Guttman consented to the described sanctions and to the entry of findings that he purchased shares of stock for the account of a public customer without having obtained prior written authorization from the customer and without prior written acceptance of the account as discretionary by his member firm. Guttman also agreed to reimburse the customer for the unauthorized transaction without the prior knowledge, authorization, or consent of his firm. The findings also stated that Guttman promised the customer that if he was unable to reimburse him, his member firm would assume full financial responsibility, without the prior knowledge or consent of the firm. Guttman also purchased for, or sold from, public customers' accounts securities without the customers' knowledge, consent, or authorization. The findings also stated that Guttman guaranteed a customer against loss.

**LCP Capital Corp. (New York, New York) and Charles Steven Stoffers (Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$37,500, jointly and severally, and Stoffers was required to requalify by taking the Series 24 exam prior to acting again as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stoffers, failed to report timely and accurately to the NASD statistical summary information regarding customer complaints. The findings also stated that the firm, acting through Stoffers, failed to report timely disciplinary information to the NASD and failed to implement the Firm Element of its Continuing Education program.

**Alfred Gertha Leonard (Associated Person, Queens, New York)** submitted an Offer of Settlement 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, Leonard consented to the described sanctions and to the entry of findings that he failed to complete his Form U-4 accurately. Leonard also failed to respond to NASD requests for information.

**Thomas Dominic Loffredo (Registered Principal, New City, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify as a general securities representative. If Loffredo fails to requalify within a 90-day mandated period, he will be suspended from association with any NASD member in any capacity until such examination is successfully completed. Without admitting or denying the allegations, Loffredo consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing written notice to, and receiving written approval from, his member firm.

**William Francis Palla (Registered Principal, Haverford, Pennsylvania)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Palla failed to respond to NASD requests for information.

**Joshua S. Shainberg (Registered Principal, New York, 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, Shainberg consented to the described sanctions and to the entry of findings that he arranged to have another individual complete the Series 27, Financial and Operations Principal Qualification Examination on his behalf. Shainberg also failed to respond to NASD requests to provide information and documentation.

**Chris John Votsis (Registered Representative, Brooklyn, New York)** was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge all net commissions received from 1995 through 1996 inclusive. The sanctions were based on findings that Votsis arranged to have an impostor take the Series 7 qualification exam on his behalf.

**David Hirsch Zinn (Registered Representative, Oldbridge, New Jersey)** was censured, fined \$5,000, suspended from associating with any NASD member in any capacity until such time as he fully complies with an arbitration award, but no less than 30 business days. The sanctions were based on findings that Zinn failed to pay a Chicago Board Options Exchange arbitration award of \$13,072.16 plus interest.

## February Actions

**Alfred Gerald Block (Registered Principal, Livingston, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from acting as a principal for 30 days. Without admitting or denying the allegations, Block consented to the described sanctions and to the entry of findings that he failed to have a financial and operations principal registered with the NASD at his member firm, and as a result, he was responsible for the firm's failure to file some of its FOCUS reports, to file some FOCUS reports in a timely manner, and to file its annual audit report.

**Djoly Boliere (Associated Person, Stamford, Connecticut)** 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, Boliere consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Michael Henry Christ (Registered Principal, Lynbrook, New York)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Christ failed to respond to NASD requests for information.

**Joseph Stevens & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$38,393. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a registered person to continue to perform duties as a registered person even though the person had not complied with the NASD Continuing Education requirements.

**Ann Wei Ping Lo (Registered Principal, 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 Lo failed to appear for an on-the-record interview.

**Smail Loutfi (Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$213,437.31, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Loutfi consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf.

**Vincent Michael Nunez (Registered Representative, Staten Island, New York)** was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge to the NASD all monies he earned in the securities industry before becoming registered, in the amount of at least \$5,151. The sanctions were



based on findings that Nunez arranged to have an impostor take the Series 7 exam on his behalf. Nunez also failed to respond to NASD requests to appear for on-the-record interviews.

**Russell Marlowe Ryan (Registered Representative, Hempstead, 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 Ryan failed to respond to NASD requests to appear for on-the-record interviews.

**Steven Paul Sanders (Registered Principal, Jericho, New York) and Daniel Mark Porush (Registered Principal, Oyster Bay Cove, New York)** Sanders was censured, fined \$25,000, and barred from association with any NASD member in any capacity, and Porush was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a December 1996 NBCC decision. The sanctions were based on findings that Sanders charged excessive markups in the sale of warrants as a consequence of his member firm's domination and control of the market for those securities. In addition, Porush failed to establish and enforce supervisory requirements that might have prevented the markup violations.

**J. Nolan & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$5,000, jointly and severally, with an individual, and required to disgorge \$22,060 in excessive markups to public customers. Should disgorgement payments not be completed by a specified time, the firm will be suspended until such time as such payments have been completed. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it effected municipal securities principal transactions at excessive markups.

### March Actions

**Donald Clyde Bozzi (Registered Representative, Basking Ridge, New Jersey)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Bozzi submitted life insurance applications that contained false information to his member firm. Bozzi also provided false information to the NASD.

**Eugene Joseph Cordano (Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution to public customers. Without admitting or denying the allegations, Cordano consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The findings also stated that Cordano provided false information to the NASD during the course of its investigation.

**Derby Securities, Inc. (New York, New York) and Otto Frederick Grote (Registered Principal, New Castle, New Hampshire)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm must pay \$18,240 in restitution to the appropriate parties. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grote, received checks totaling \$18,240 in selling concessions related to the public distribution of shares of stock from a

member firm. However, Derby Securities, Inc. was not entitled to such concessions because it did not render any services to the member firm. Furthermore, the NASD determined that Derby Securities, Inc., acting through Grote, failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Program and failed to maintain written supervisory procedures for compliance with the Regulatory Element of the NASD's Continuing Education requirements. In addition, the NASD found that the firm, acting through Grote, failed to establish, maintain, and enforce proper written supervisory procedures concerning syndication and selling group participation, transactions in U. S. government securities, the conduct of annual compliance meetings, internal inspections to ascertain compliance with firm procedures, telephone solicitations, and insider trading (i.e., Chinese Wall) procedures.

**Edward Joseph Dorr (Associated Person, Amityville, 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 Dorr failed to respond to NASD requests for information.

**Kai Fang (Registered Representative, Flushing, 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 30 days. Without admitting or denying the allegations, Fang consented to the described sanctions and to the entry of findings that he agreed to reimburse a public customer \$2,798.40 for a loss on a securities trade in the customer's account.

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

**Kory Evan Guglielminetti (Registered Representative, Staten Island, New York)** was censured, fined \$129,968.47, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Guglielminetti cheated on his Series 7 exam by having an impostor take the Series 7 in his name. Guglielminetti also failed to respond truthfully to questions during an NASD interview.

**Andrew Fensmark Harris (Registered Representative, Bronx, New York)** was censured, fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam as a general securities representative. The NAC imposed the sanctions following review of a New York DBCC decision. The sanctions were based on findings that Harris removed a piece of scratch paper on which he had written several exam questions and answers from a Series 7 exam.

**Harold Lee Jenkins (Registered Representative, Bronx, New York)** was censured, fined \$250,000, barred from association with any NASD member in any capacity, and ordered to pay \$28,751.90 in restitution. The sanctions were based on findings that Jenkins solicited public customers to provide funds for investment in mutual funds and/or insurance products and, instead of investing the customers' funds on their behalf, deposited the checks into his own personal money market account. Jenkins also failed to appear for an NASD on-the-record interview.

**Gerald Kurt Kempa (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for five business days, ordered to disgorge \$67.72 in net commissions to the NASD, required

to requalify by exam as a general securities representative, and ordered to make full restitution to a public customer in the amount of \$1,100, representing losses incurred and applicable interest. Failure to make complete restitution within 60 days will result in Kempa being barred from association with any member firm in any capacity until restitution is complete. Without admitting or denying the allegations, Kempa consented to the described sanctions and to the entry of findings that he effected the purchase of securities in a public customer's account without the customer's prior knowledge or consent.

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

**David Amin Monawar (Registered Representative, East Hanover, 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 Monawar failed to respond to NASD requests for information.

**Vincent Michael Nerlino (Registered Representative, New York, 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 15 days. Without admitting or denying the allegations, Nerlino consented to the described sanctions and to the entry of findings that he engaged in an outside business activity by acting as a consultant and by sitting on the Board of Directors of a company in which his wife was a majority shareholder.

**Steven Francis Perdie (Registered Principal, Port Jefferson Station, 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 Perdie failed to respond to NASD requests for information.

**Milson Carroll Raver, Jr. (Registered Representative, Sea Girt, New Jersey)** was censured, fined \$350,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,000, plus interest, in restitution to public customers. The sanctions were based on findings that Raver used a fraudulent scheme to sell securities in that he deposited \$15,000 of public customers' monies intended for purchasing securities into a brokerage account he opened and controlled. Furthermore, Raver failed to segregate or hold the monies in an escrow account, used the account to pay for personal expenses, withdrew all the money, and closed the account, without reimbursing the customers or delivering shares of stock to the customers. Raver also engaged in private securities transactions without giving prior written notice to his member firm and failed to respond to NASD requests for information.

**Robert Lowell Shatles (Registered Principal, Fort Salonga, New York)** 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 two months. Without admitting or denying the allegations, Shatles consented to the described sanctions and to the entry of findings that he allowed a firm to conduct a securities business by transacting with customers and making markets, while failing to maintain the minimum required net capital. The findings also stated that Shatles failed to record properly the firm's deficit net capital position on its financial books and records. In addition, Shatles failed to transmit notice of the firm's net capital deficiency to the SEC and the NASD and failed to file, and to file on a timely basis, the firm's FOCUS reports.

**Matthew Lee Towers (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 Towers failed to respond to NASD requests for information.

**Sean Martin Towey (Registered Representative, Union City, 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 Towey failed to respond to NASD requests for information.

**Triumph Securities Corporation (New York, New York) and Aubrey Theodore Stautberg, Jr. (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$14,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stautberg, failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engages, and to supervise the activities of registered representatives, associated persons, and registered principals that are reasonably designed to achieve compliance with applicable securities laws, regulations, the NASD rules, and the Regulatory Element of the Continuing Education requirement. The findings also stated that the firm, acting through Stautberg, maintained the registration for individuals while they were not active in the securities business, and failed to file its annual audit reports on a timely basis.

**Rocco Anthony Vignola (Registered Representative, Bohemia, New York)** was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Vignola forged a public customer's signature on an application for an insurance policy in the customer's name and submitted the application, without the customer's knowledge or authorization; forged the customer's signature on a check for \$908 which reflected the customer's credit resulting from the cash surrender of a separate insurance policy; and used a portion of the proceeds of that check to pay for the aforementioned unauthorized insurance policy.

**Mark Jonathan Weisman (Registered Representative, Basking Ridge, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, barred from association with any NASD member in any capacity, and ordered to pay restitution in the amount of \$465,031.70 to his member firms or their insurance company parent organizations. Without admitting or denying the allegations, Weisman consented to the described sanctions and to the entry of findings that he effected the unauthorized withdrawal of \$465,031.70 in loan checks from the policies of policy holders and public customers without their knowledge or consent, and deposited these funds into his personal bank account.

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)

## January Actions

**C.A. Atlantic Securities, Inc. (Boston, Massachusetts) and James Arthur Dixon (Registered Principal, Portsmouth, New Hampshire)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$50,000, jointly and severally. In addition, Dixon was suspended from association with any NASD member in any principal or managerial capacity for

30 days and required to requalify as a general securities principal by taking and successfully passing the general securities principal exam (Series 24). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to report trades within 90 seconds of execution and without the ".SLD" modifier. The findings also stated that the firm entered trades into SOES for the benefit of the firm's trading account, entered trades into SOES for the benefit of registered representatives or accounts they controlled, and entered trades into SOES as split orders. In addition, C.A. Atlantic, acting through Dixon, failed to prepare, maintain, and/or enforce adequate written supervisory procedures and failed to carry out a supervisory system relative to market making, order room functions, and trade reporting.

**Philip David Growick (Registered Representative, West Hartford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to disgorge \$58,071.03 in commissions. Without admitting or denying the allegations, Growick consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving approval from, his member firm.

#### February Actions

**Carlos Christopher Tellez (Registered Representative, Darmstadt, Germany)** submitted an Offer of Settlement pursuant to which he was censured, fined \$13,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Tellez consented to the described sanctions and to the entry of findings that he misused \$155,000 belonging to a public customer. According to the findings, Tellez deposited the funds in his personal business account, failed to purchase mutual fund shares for the customer, and failed to promptly return the funds to the customer as requested.

#### March Actions

**Michael Andrew Kelleher (Registered Representative, Beverly, Massachusetts)** 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, Kelleher consented to the described sanctions and to the entry of findings that he provided inaccurate and misleading account information to a public customer on several occasions.

**John Anthony Tabone (Registered Representative, Auburn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tabone consented to the described sanctions and the entry of findings that he changed the addresses of public customers to addresses under his control without the customers' knowledge or consent, took unauthorized loans and other disbursements from variable and non-securities insurance policies issued by his member firm, and converted the proceeds to his own use and benefit. The findings also stated that Tabone failed to apply funds given to him by public customers for insurance policy premiums, and, without the knowledge or consent of the customers, converted the funds to his own use and benefit. Tabone converted a total of \$253,573, of which \$24,435.28 was converted from non-securities insurance products. In furtherance of the conversion of funds, Tabone altered policy

statements to reflect fictitious account values and gave these altered statements to the customers.

### Enforcement Department

#### January Actions

**Kevin William Loomis (Registered Principal, East Northport, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by Series 7 exam prior to acting in that capacity. Without admitting or denying the allegations, Loomis consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions for speculative securities to public customers and made unauthorized trades in the accounts of public customers by purchasing more than he was authorized to purchase. The findings also stated that Loomis required that customers purchase aftermarket shares as a condition of purchasing initial public offering units.

#### February Actions

**Peter Thomas Chen (Registered Principal, Sayville, 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 Chen failed to respond to NASD requests for information and failed to appear for testimony.

**Steven Harry Vornea (Registered Representative, Brookville, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$700,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vornea consented to the described sanctions and to the entry of findings that he acted as principal of his member firm while failing to register as a principal with the NASD. The findings also stated that Vornea caused his firm and its registered representatives to purchase securities before the completion of each of the distributions. Furthermore, the NASD found that Vornea, through his direct and indirect actions, caused his firm to engage in numerous sales practice abuses including, but not limited to, baseless price predictions or guarantees, misrepresentations about issuers, failures to execute customer orders, and requiring customers to purchase aftermarket shares as a condition of receiving initial public offering units, and other high pressure tactics. In addition, the NASD determined that Vornea, through his direct and indirect actions, caused his firm and its registered representatives to manipulate the prices of securities in aftermarket trading, and as a result, the firm generated over \$6 million in illegal profits. Vornea also failed to supervise the activities of his member firm's registered representatives to ensure compliance with applicable securities laws, regulations, and NASD rules.

**William E. Simon & Sons Municipal Securities, Inc. (Morristown, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent 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 made a \$10,000 payment to a member firm purportedly in connection with a municipal bond transaction in the hope of developing a business relationship with the firm. According to the findings, the respondent's records regarding expenses for the transaction inaccurately reflected that \$10,000 was paid to the other firm in connection with that offering and its records regarding disbursement of cash and debits for the transaction inaccurately reflected that \$10,000 was paid to the firm as management fees for that offering.

## March Actions

**James Michael Gallaer (Registered Representative, Patchogue, 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, Gallaer consented to the described sanctions and to the entry of findings that he either refused or failed to execute sell orders put in by public customers and made baseless, unreasonable, and specific price predictions to public customers as to speculative securities, often predicting substantial price increases in a specified period of time. The findings also stated that Gallaer bought or sold securities for the accounts of public customers without obtaining the customers' authorization, and required public customers who desired to purchase units in initial public offerings to buy common stock and/or warrants of the issuer in order to be permitted to buy initial public offerings units.

**Adam Drew Levy (Registered Principal, Old Westbury, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$300,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Levy consented to the described sanctions and to the entry of findings that he caused his firm and its representatives to repurchase securities for the firm's account before the completion of IPO distributions at prices slightly higher than the IPO transactions and to solicit public customers to purchase aftermarket securities while the firm was still engaged in the distributions. The findings also stated that Levy caused his member firm and its representatives to engage in numerous sales practice abuses including, but not limited to, baseless price predictions or guarantees, failures to execute customer orders, and customer requirements to purchase aftermarket shares as a condition of receiving IPO units, and other high pressure tactics. Levy caused his firm and its registered representatives to manipulate the prices of securities in the aftermarket trading of those securities, which resulted in over \$8 million in illegal profits for the firm. Furthermore, the NASD found that Levy failed to supervise the activities of the firm's registered representatives to ensure compliance with applicable securities laws, regulations, and NASD rules.

**Lawrence Joseph Penna (Registered Principal, Franklin Lakes, New Jersey)** 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 two years. Without admitting or denying the allegations, Penna consented to the described sanctions and to the entry of findings that he failed to appear for testimony and failed to respond to NASD requests for information regarding his justification for failing to appear for scheduled testimony in a timely manner.

**Michael Ploshnick (Registered Principal, Boca Raton, Florida)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ploshnick failed to respond to NASD requests for information and to provide testimony.

**Robert Vincent Sherman (Registered Principal, Wheat Ridge, Colorado)** 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 30 days. Without admitting or denying the allegations, Sherman 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 available and could be borrowed.

## Market Regulation Department

## January Actions

**American Third Market Corporation (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 it reported transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures with respect to SOES execution, best execution, limit orders, order handling, anti-competitive practices, and trading and market making functions.

**Joseph Edward Haick (Registered Principal, Spring Lake, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Haick consented to the described sanctions and to the entry of findings that he directed a trader to send mixed-lot SelectNet<sup>SM</sup> orders to a competing Market Maker in a security in retaliation for the manner in which the firm was quoting and trading the stock, in violation of the NASD's Anti-Intimidation/Coordination Interpretation.

**Morgan Stanley & Co., Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$60,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to execute SelectNet orders and thereby, failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning SEC and NASD firm quote rules.

## February Actions

**M.H. Meyerson & Company, Inc. (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent 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 reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to update its own quotation for broadcast orders into SelectNet immediately. Furthermore, the firm failed to display customer limit orders immediately 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 change in relation to the size associated with the firm's bid or offer in each security.

**Jerome Edward Rosen (Registered Representative, Miami, Florida)** was censured, fined \$62,000, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Rosen engaged in anti-competitive harassment of another Market Maker by making a series of telephone calls to the broker in which he attempted to harass the broker for engaging in competitive trading and entering competitive quotations, and otherwise attempted to improperly influence and/or interfere with the broker's competitive activities. Rosen also made certain threatening statements to the broker. The findings also stated that Rosen backed away from a specific order another broker placed with him at his quoted bid or offer for a Nasdaq SmallCap<sup>SM</sup> security.

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

**Smith Barney, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to preserve for a period of not less than three years the memoranda of brokerage orders and failed to show the correct time of execution, or the time of execution, on memoranda of brokerage orders. The firm also failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and rules regarding trade reporting and recordkeeping.

### March Actions

**Dean Witter Reynolds Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to pay \$262.30 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 executed customer transactions without using reasonable diligence to ascertain the best prevailing inter-dealer market for each relevant security so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to provide, where it acted as principal for its own account, written notification to its customer disclosing that it acted as a Market Maker when executing the customer's transaction. Furthermore, the NASD determined that the firm failed to provide, where it acted as principal for its own account, written notification disclosing the reported price to each of its customers.

**Stephen K. M. Gourlay, Jr. (Registered Principal, Hicksville, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three months, suspended from acting as a principal or supervisor of a member firm for two years, ordered to pay \$38,646.25 in restitution to public

customers, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Gourlay consented to the described sanctions and to the entry of findings that he made fraudulent misrepresentations and omitted material facts in recommending the purchase of securities to public customers. The findings also stated that Gourlay effected unauthorized transactions in customer accounts.

**Mesirow Financial, Inc. (Chicago, Illinois)** was fined \$15,000. The sanctions were based on findings that the firm failed to execute contemporaneously member-to-member customer limit orders to sell shares of stock after it sold shares for its own market-making account at a price equal to or better than said orders. Also, the firm failed to establish, maintain, and enforce adequate written supervisory procedures to achieve compliance with the rules and regulations applicable to limit orders.

**R. J. Steichen & Company (Minneapolis, Minnesota)** 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 reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, ACT reporting, limit orders, books and records, registration, locked and crossed markets, SOES, the order handling rules, anti-competitive practices, and best execution.

## Regulatory & Compliance Alert Information

### Regarding Any Items In This Publication

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

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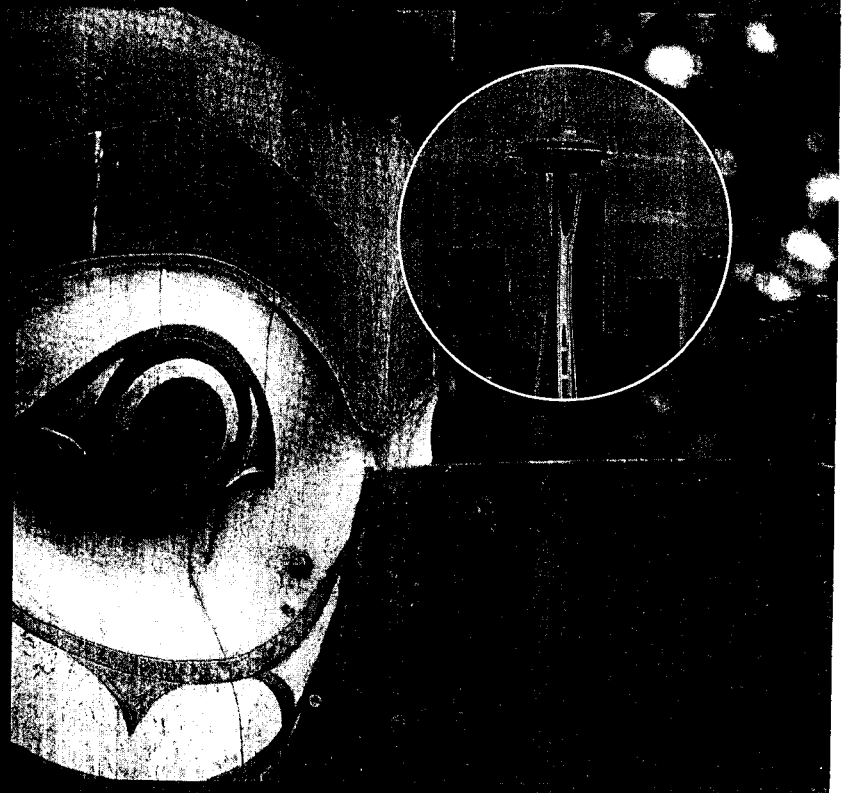
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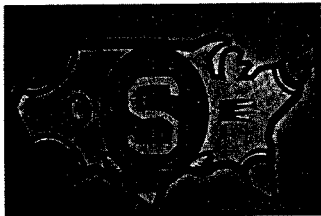


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