

ALERT



Pinto Backs Initiatives to Improve Muni Market Regulation

In recent testimony before the House Energy and Commerce Subcommittee on Telecommunications and Finance, NASD® Executive Vice President John E. Pinto expressed support for a series of initiatives of the Municipal Securities Rulemaking Board (MSRB) to improve regulation of municipal securities markets.

In his comments, Pinto said the National Association of Securities Dealers, Inc.

(NASD) supports the MSRB's proposed pilot program to collect and publish inter-dealer transaction information in frequently traded municipal issues on a next-day basis. Greater availability of market information for regulatory purposes will allow the NASD to implement more effective methods to supervise its markets.

With regard to political contributions, Pinto's testimony supported the
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NASD Reminds Members About Agency Commission Fairness and 5% Policy

To provide clarification and guidance to its membership, the NASD reminds members that the NASD's 5% Policy applies equally to commissions on agency trades and markups or markdowns on principal transactions. Members are urged to review the level of their agency commission charges to ensure that they are fair and reasonable and comply with all aspects of Article III, Section 4 of the NASD Rules of Fair Practice.

The fairness of members' charges to customers in regard to markups or markdowns on principal transactions and agency transaction commissions has been the subject of close NASD examination. With regard to egregious markup practices, the Association has

been an aggressive enforcer in ensuring fair dealing with customers as evidenced by the number of disciplinary actions taken in recent years that have resulted in imposition of serious sanctions on members and their associated persons. Concerns are now being raised about commissions charged to customers that in some instances are not fair and reasonable in view of the requirements of Article III, Section 4 of the NASD Rules of Fair Practice. In addition, members have asked questions about the specific applicability of Section 4 to agency commissions. Consequently, members should use the following information to adopt policies and procedures to comply with Section 4, and to resolve questions of fairness in agency
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commission transactions. Article III, Section 4 of the Rules of Fair Practice states in part that, if a member acts as agent for a customer in any transaction, the customer shall not be charged more than a fair commission or service charge, taking into consideration all relevant circumstances. To provide direction in this area, the NASD adopted its 5% Policy as an Interpretation of the Board under Section 4. It says that it may be conduct inconsistent with just and equitable principles of trade for a member to charge an unreasonable commission. The policy further states that it applies to all transactions where the member acts as agent and charges its customer a commission. Therefore, the NASD 5% Policy and Article III, Section 4 of the Rules clearly apply to commissions charged in agency transactions and are not limited to markups in principal transactions.

Regardless of product or type of transac-

tion, members should ensure that customers are receiving fair prices and not being charged unfair or unreasonable commissions. The issue of fairness relative to agency commission charges as well as markups is set by considering all relevant factors to the transactions. Article III, Section 4 requires any NASD member that acts as an agent for its customer to charge only a "fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefore." Disclosure does not justify a commission or markup that is unfair or excessive in view of all other relevant circumstances.

In addition, other relevant factors include the price of the security and the amount of money involved in the

transaction. In this regard, members should pay particular attention to commissions charged on agency transactions involving low-priced securities, including consideration of minimum commission charges. The NASD 5% Policy, originally adopted in 1943, provides guidance to members in determining the fairness of markups, markdowns, and commissions. Consistent regulatory policy requires that agency transactions come under the same guidelines as principal transactions.

Where consummated on an agency basis, the commission charged the customer must not be unfair and should not exceed the amount which, were the member to act as a principal, would be in accord with the standards of practices discussed above. In this regard, the 5% Policy is a guide, not a rule, and is applicable to commissions, markups, and markdowns. Thus, if a member undertakes an agency transaction, a commission should generally not exceed 5

percent of the total transaction amount unless the member can document factors under the policy that justify a higher amount. The NASD has consistently deemed it inconsistent with Article III, Sections 1 and 4, and just and equitable principles of trade for a member to charge a customer a commission or a markup/markdown that is not reasonable or fair in view of the 5% Policy.

The 5% Policy does not define specifically what constitutes a fair or reasonable commission, since what might be considered fair in one transaction could be unfair in another because of different circumstances. Instead, the Policy requires that a commission's fairness is based on a consideration of all the relevant factors of which the commission percentage is only one. Indeed, under the 5% Policy, as with a markup/markdown, commissions at that level, or even less, may be determined to be unfair or unreasonable when the other relevant factors have been carefully considered.

Market Conditions

When the market conditions for a security reflect active and competitive trading, the security typically is readily available for the member to buy or sell on behalf of its customer. Thus, active, competitive market conditions would not usually justify a higher commission. However, in the case of an inactive security, the member's effort and cost of buying or selling the security may have a bearing on the commission amount. Any special or unusual effort or cost should be documented by the member if a higher commission is to be justified.

Expense of Execution

The actual execution cost of the customer's transaction may also be taken into account. Normal overhead expenses, including commissions or other compensation to be paid to registered representatives, should not be taken into consideration in determining

whether commissions to be charged customers are reasonable. The SEC says that, although a member is entitled to a profit, it is merely one of the circumstances considered in determining whether a price is fair, and that excessive expenses cannot justify an excessive charge.

Value of Services Rendered

In most instances, a member's agency service to a customer when executing a buy or sell transaction is not extraordinary and therefore insufficient to justify a commission greater than 5 percent. For example, a member's efforts to promote the stock and stimulate its sales cannot be viewed as a service for which customers can be charged by raising commissions. Many of these factors were considered in a recent NASD disciplinary proceeding that involved a member, the sole market maker in the particular security at issue, that regularly charged its customers 7 to 9 percent commissions when acting as its customers' agent in the purchase or sale of securities. In its decision, the National Business Conduct Committee found that the member failed to demonstrate any "extraordinary" expense, service, or market condition to justify a commission exceeding 5 percent.

Members are also reminded of an obligation under Section 27 of the NASD Rules of Fair Practice to have adequate written supervisory procedures to monitor employee conduct in customer transactions, including the fairness of commissions.

Questions concerning this subject may be directed to your local NASD District Office, or to William R. Schief, Vice President, or Daniel M. Sibears, Director, NASD Regulation, 1735 K Street, NW, Washington, DC 20006-1500. □

(Muni Market, continued from page 1)

concepts being proposed at that time in MSRB Rule G-37 to curb abuses in this area. Since then, the MSRB has revised its proposal under G-37 to provide for more stringent requirements and greater specificity regarding what members and associated persons can and cannot do. The NASD, which will examine for compliance with the new rule when adopted, in general supports this proposal as well.

The NASD supports another MSRB proposal, now in the early stages of development, requiring dealers to inform investors in writing of the importance and availability of continuing disclosure information and how it affects their investments.

In discussing the interdealer transaction pilot program, Pinto said that a greater amount of market information for regulatory purposes would allow the NASD to establish automated regulatory systems for municipal securities that are not possible today because of lack of available price and volume information.

"For example, in Nasdaq®, the NASD has in place a detailed equity audit trail that permits the staff to reconstruct trading in a particular issue under review. If additional information were available in the municipal market," Pinto said, "the NASD would be able to establish more effective electronic systems to monitor and identify market aberrations."

For a copy of Pinto's testimony, including a one-page summary, call the Office of Congressional/State Liaison at (202) 728-8248. □

Trade Reporting in CQS Securities by Members Acting as Principals Must Follow Current Rules

Recent inquiries to the NASD have focused on the permissibility of trade reporting by member firms acting as principal in listed securities where the firm is neither a registered Consolidated Quotation Service (CQS) market maker in the security nor is it the sell side of the transaction.

Two premises underlie these inquiries:

- The accommodation of requests from members' customers.
- The suggestion of functional equivalency between a member firm acting in a dealer capacity and one acting as a registered CQS market maker.

To avoid potential confusion regarding trade-reporting obligations in listed securities, member firms are reminded of specific requirements in Schedule G of the NASD By-Laws. Schedule G does not permit the reassignment of trade reporting responsibilities between members under any circumstances. In addition, Schedule G contains the requirements for real-time transaction reporting in listed securities eligible for coverage over Network A or Network B of the Consolidated Tape. The reporting obligation in each situation depends on three factors: (1) whether the firm is a

registered CQS market maker in the particular eligible security under Part VI of Schedule D, (2) whether the contra party is a registered CQS market maker in the particular eligible security, and (3) whether the firm is on the buy or sell side of the transaction.

With respect to an individual transaction, a firm must determine its status, for reporting purposes, under Schedule G. There are two possibilities. First, the firm has the status of a registered reporting member in each eligible security in which it has registered with the NASD as a CQS market maker. Second, if the firm is not registered in the particular security, it has the status of a non-registered reporting member with respect to that security. Thus, a firm can have a different status, on a security-by-security basis, either by registering, or not registering as a CQS market maker in that issue.

A member firm has the obligation to report a transaction in an eligible security within 90 seconds of execution under these circumstances:

- In a transaction between two firms where both have the status of a registered reporting member in the eligible security, only the sell side reports.

- In a transaction between a registered reporting member and a non-registered reporting member in the eligible security, the registered reporting member must report regardless of whether it is on the buy or sell side of the trade.
- In a transaction between two firms that are non-registered reporting members in the eligible security, the firm on the sell side reports.
- In a transaction with a non-member, the member firm must report regardless of whether it is a registered reporting member or a non-registered reporting member in the eligible security.

Transactions in eligible securities executed on a national securities exchange are reported by the exchange, not by the NASD member.

For more information about Schedule G reporting requirements, please contact NASD Market Surveillance at (800) 925-8156 or (301) 590-6080, or Associate General Counsel Michael J. Kulczak at (202) 728-8811. □

Advertising

New Amendments to NASD Rules Address Comparisons, Projections, Misleading Statements

Effective July 1, 1993, the NASD amended Article III, Section 35 of the Rules of Fair Practice to further regulate how advertising and sales literature is written and designed. The text of the

amendments appeared in *Notice to Members 93-36*. Among other issues, the amendments govern the use of investment comparisons and projections, and explain certain factors

that can make a communication misleading.

The rule changes coincide with the rescission of the NASD's *Guidelines*

Regarding Communications with the Public About Investment Companies and Variable Contracts, many provisions of which became obsolete after the SEC amended Rule 482 and Rule 34b-1. The amendments revise the Rules of Fair Practice to add elements of the *Guidelines* that remained useful. Unlike the *Guidelines*, which applied only to investment companies and variable contract products, the new July 1 amendments apply to all types of investments.

Evaluate Context of Claims

Newly adopted Section 35(d)(1)(D)(i) requires members to be mindful that a statement made in one context may be misleading, even though it was acceptable in another. Context can be judged by whether the treatment of risks and potential benefits of the investment is balanced. For example, the unqualified use of the words “safety” or “stability” may be appropriate to describe a money market fund because it seeks to maintain a stable share value. But labeling an equity fund as safe or stable because of its diversification may be misleading.

Consider Audience Knowledge and Experience

Section 35(d)(1)(D)(ii) cautions that different levels of explanation may be necessary depending on the audience for the communication and the ability of the member to appropriately restrict the audience, considering the type of media used. If a statement in a communication is applicable only to a limited audience, or if additional information may be necessary for other audiences, members should remember that it is not always possible to restrict the readership or recipients of a particular communication. For example, communications sent to institutional investors may contain sophisticated financial discussions not suitable in an advertisement aimed at retail investors.

Observe Overall Clarity

Section 35(d)(1)(D)(iii) asserts that an unclear statement can result in misunderstandings and that an overly technical explanation may be worse than too little information. This new rule warns that material disclosure (i.e., information that can play a role in an investor’s decision to invest) placed in footnotes or legends may not help the reader understand the communication. While the new rule does not prohibit use of footnotes, members may have to include material information in the presentation’s text rather than in a footnote. Material disclosure in text or footnotes should be clear and easily understood.

Clarify Tax-Free Claims

The specific standard of Section 35(d)(2)(L) asserts that investment income may not be characterized as tax-exempt when tax liability is merely postponed and, if applicable, members must disclose that taxes are payable upon redemption. References to tax-exempt or tax-free current income must indicate which income taxes apply or do not, unless income is free from all applicable taxes.

Make Investment Comparisons Fair and Balanced

Section 35(d)(2)(M) states that members must make sure that their direct or indirect investment comparisons explain the purpose of the comparison and disclose the material differences between the subjects considered. These differences may be *any* factor necessary to make the comparison fair—including investment objectives, sales and management fees, liquidity, safety, insurance, guarantees, volatility, return potential, or tax features.

For example, low interest rates may cause members to target CD investors. Any comparison that promotes an equity investment versus CDs should state clearly that unlike the equity alternative, CDs are federally insured and offer a

fixed rate of return. The material should also disclose that the equity investment involves greater risk to principal than CDs, and its return may fluctuate.

Avoid Performance Predictions or Projections

The last Section, 35(d)(2)(N), states that investment results are not predictable and investment performance illustrations may not imply that past realized gain or income will be repeated in the future.

Members should distinguish between forecasts, permitted under certain conditions, and projections. Members should have a reasonable basis for any forecast used and must clearly label it as such. An example of an acceptable forecast might be a claim that, based on current market conditions, the member expects a certain market indicator to rise to a specific level during the next six months. In contrast, it is not appropriate to predict or project the performance of a mutual fund designed to mirror an index based on the forecasted increase in the index.

The new rule also permits illustrations of mathematical principles such as dollar-cost averaging, tax-free compounding, and the mechanics of variable life policies. These illustrations should be created carefully to indicate their hypothetical nature.

Members that want guidance regarding the application of the new rules to specific situations should contact the NASD Advertising Regulation Department at (202) 728-8330. □



“ASK THE ANALYST”

“Ask the Analyst” provides member firms a forum to pose questions to the NASD Advertising/Investment Companies Regulation 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 either here or by directly contacting you. If you have any suggestions or comments, please do not hesitate to contact us. We look forward to hearing from you.

Q. *Can a member use a “DBA” (doing business as) name in its advertising and sales literature?*

A. Yes, a member may use a DBA in its sales material so long as that is the only name under which the firm conducts its business, and provided the DBA name is disclosed on Form BD filed with the NASD. Please see Article III, Section 35(f)(3)(A)(i) of our Rules of Fair Practice.

Q. *Do business cards and letterhead need to identify the member firm as an NASD member?*

A. There is no requirement to identify a firm as an NASD member in its advertising or sales literature. Do note, however, that if a member chooses to indicate its NASD membership and an individual or other entity is also identified, it should be clear which entity is the NASD member. Identification of a firm’s NASD membership should not imply that an individual or other entity is the NASD member. Please see Article III, Section 35(f)(2)(H) of the NASD Rules of Fair Practice for more information.

Q. *If an advertisement includes only the telephone number of a local office not registered as a branch office of the member, what other information, if any, is needed?*

A. Article III, Section 27(g)(2) of the Rules of Fair Practice states that an advertisement may include a local telephone number and/or a post office box number so long as the ad also includes the full address and telephone number of the branch office or Office of Supervisory Jurisdiction (OSJ) responsible for supervising the non-branch location. The address of the local non-branch office may

not be included in an advertisement.

Please note that a local address may be included in advertising or sales literature (including business cards and letterhead) if it is accompanied by the address and telephone number for the branch office or OSJ. For definitions of advertising and sales literature, please refer to Article III, Section 35(a)(1) and (2). The address and telephone number of the member’s main office may be substituted for the branch office or OSJ address and phone number if the member has in place a significant and geographically dispersed supervisory system appropriate to its business that is capable of expeditiously handling customer complaints. See Article III, Section 27(g)(3).

Q. *How can mutual fund performance be shown with computer-produced hypothetical illustration packages?*

A. Computer-generated illustrations of historical performance for mutual funds may be used as sales literature so long as they include the standardized performance data and disclosure information required by SEC Rule 482. This Rule applies directly to illustrations used prior to prospectus delivery and indirectly, through SEC Rule 34b-1, to material preceded or accompanied by a current prospectus. The material must include the fund’s average annual total returns for the one-, five- and ten-year (or “since inception,” if the fund is less than five or ten years old) periods ending at the most recent calendar quarter. This performance must be calculated in accordance with Form N-1A, and appear in no lesser prominence than any other performance illustrated.

The applicable dates of the time periods for all performance data must be indicated.

The performance must be accompanied by disclosure that the data is historical, that investment return and principal value will fluctuate, and that an investor’s shares, when redeemed, may be worth more or less than original cost. The fund’s maximum sales charge must be stated as well. The formats for all such illustrations must be filed with the NASD Advertising Regulation Department within 10 days of first use as required by Article III, Section 35(c)(1) of the Rules of Fair Practice.

Q. *In RCA’s September 1993 issue, the “Ask the Analyst” column discussed the differences between sales literature and correspondence for purposes of approval and record keeping. What about filing requirements? Does correspondence need to be filed with the NASD Advertising Regulation Department?*

A. Correspondence is not subject to our filing requirements, because it is not considered advertising or sales literature. However, the content must conform to applicable NASD and SEC advertising rules.

Q. *Do communications directed to existing clients need to be filed?*

A. Sales literature directed to existing clients of a member is subject to the same filing requirements of Article III, Section 35(c) and Government Securities Rules Section 8(c) as sales material to prospective clients. The NASD does not recognize a distinction between prospective investors and existing clients when determining whether a sales-oriented communication should be filed and whether it should comply with applicable NASD and SEC advertising rules. □

NASD Hosts First Variable Insurance Products Compliance Seminar

On October 13 and 14, 1993, the NASD held its first conference devoted exclusively to compliance issues arising from concerns about marketing variable annuities and variable life insurance. Held at the ANA Hotel in Washington, D.C., the conference was attended by representatives of more than 90 member firms. The NASD's Advertising/Investment Companies Regulation Department, which oversees the activities of insurance-affiliated members activities, was the seminar sponsor.

R. Clark Hooper, Vice President of the NASD Advertising/Investment Companies Regulation Department, welcomed the 240 participants, and confirmed that the event was organized in response to substantial demand by NASD member firms. John E. Pinto, NASD Executive Vice President, Regulation, gave opening comments that addressed the growth in the securities industry, and the need for NASD member firms to be direct and diligent in

their approach to compliance efforts. Pinto indicated that the industry must recognize the opportunities this presents, but equally important, the significant responsibilities they have to today's first-time investors who are moving away from guaranteed, fixed-rate products, and who are unfamiliar with risks inherent in securities investment.

The seminar's four general sessions covered different topics of interest to members that sell variable products. Representatives from the Securities and Exchange Commission (SEC) discussed the presentation of variable annuity and variable life insurance performance in prospectuses and sales literature. NASD Advertising Regulation staff members held two panel discussions. The first addressed general advertising issues members face when selling variable products, while the second explained proposed "Guidelines for Communications with the Public About Variable Life Insurance and Variable Annuities."

The day's final session focused on compliance and supervision issues that arise in the sale of variable products. It featured speakers from the NASD Office of General Counsel, and its Compliance and Regulatory Policy Departments.

Lively question and answer sessions followed each presentation. Several key questions and answers can be found in the "Ask the Analyst" column preceding this article. Participants were enthusiastic about the conference and its timely content. Many said they look forward to attending a similar event annually. □

To order an audio tape of the seminar, please contact Carolyn Thrower in the NASD Advertising/Investment Companies Regulation Department at (202) 728-6977, or see order form on page 28 of this publication.

Securities Industry Task Force Report Recommends Continuing Education Program

The Securities Industry Task Force on Continuing Education, comprised of the NASD and other SROs—including the New York Stock Exchange, American Stock Exchange, Philadelphia Stock Exchange, Chicago Board Options Exchange, and the Municipal Securities Rulemaking Board—issued a report calling for a formal, two-element continuing education program for securities industry professionals. The proposal would require uniform training in regulatory matters and institute ongoing programs by firms to keep employees up-to-date on job-specific subjects. The NASD Board of Governors originally authorized its Membership Committee to develop a continuing education program in July 1991. (See *Regulatory & Compliance Alert*, March 1993).

"This represents a significant initiative on the part of the industry to ensure a minimum standard of professionalism for the securities business," says Frank McAuliffe, Vice President, Membership and Qualifications, NASD's Task Force representative. The report also recommends creation of a permanent Industry/Regulatory Council on Continuing Education to determine the specific content of the uniform regulatory component and mandate specific minimum core curricula to include in appropriate segments of ongoing firm training programs.

The report says the industry will be well served by an education program and that the group "attempted to build on the prior work of others to design a truly

beneficial program to transmit meaningful information to appropriate industry personnel while satisfying wide variations in the specific needs of individuals and their firms." The individual SROs will now consider the Task Force recommendations with the expectation that the program will start before January 1, 1994.

For a copy of the Report and Recommendations of the Securities Industry Task Force on Continuing Education, call NASD Corporate Communications at (202) 728-6900. □

SICA Seeks Comments on Non-Attorney Representation in Arbitration Proceedings

The Securities Industry Conference on Arbitration (SICA) is soliciting comments on an amendment to the Uniform Code of Arbitration to clarify who can render assistance to claimants in arbitration proceedings. The proposed change would permit a non-attorney to represent a party under specific circumstances and would prohibit such persons from seeking to represent claimants on a regular basis.

Under the proposed amendment, a non-attorney may represent a party in arbitration only if the non-attorney is:

- A friend, relative, or fellow employee.
- An officer or employee of a party that is a corporation.
- A partner or employee of a party that is a partnership.
- A business adviser not regularly engaged in representing parties in arbitration.

SICA proposes the rule because of its concern that certain advisers may not be competent to deal with complex issues that occur in arbitration proceedings. These issues include choice of forum, damage measures, and post-decision rights and remedies. They may also require legal research, brief writing, and oral arguments that neither claimants nor non-lawyer advisers can handle.

In addition, SICA is concerned that there is no supervisory body that polices such representatives and there are no ethical guidelines binding these advisers. In contrast, many states have disciplinary commissions that suspend or fine lawyers who violate written ethical rules. Most attorneys must carry malpractice insurance and many

jurisdictions establish trust funds to cover uninsured lawyers.

Finally, arbitration parties without legal representation are not protected by attorney/client privilege. As a result, claimants may find their advisers cross-examined regarding conversations they thought privileged. Furthermore, current

rule allows disbarred attorneys or broker/dealers barred from the industry to represent parties in arbitration.

For more information on this issue, call James E. Beckley, Esq., at (708) 668-1335, or Deborah Masucci, NASD Vice President, Arbitration, at (212) 858-4400. □

SEC Approves Changes to Make All Arbitration Awards Publicly Available

Effective October 1, 1993, the SEC approved an amendment to Part III, Section 41(f) of the Code of Arbitration Procedure that makes all NASD arbitration awards publicly available. Under prior regulations adopted May 10, 1989, customer awards were obtainable, but with the names of arbitrators deleted. Industry arbitration awards, including those involving employment disputes, have not previously been available to the public. Parties to an arbitration could, however, obtain copies of public customer awards previously rendered by arbitrators selected to decide their case.

Under the recent action, customer awards issued after May 10, 1989, will include arbitrators' names while industry awards issued after October 1, 1993, including employment cases, will be publicly available and will include arbitrators' names.

The SEC acted because the NASD indicated that the process by which parties obtained this information became unwieldy to all users, including the NASD Arbitration Department staff. Furthermore, the

amendment will make the Code consistent with other securities industry self-regulatory organizations. Upon implementation, the NASD will provide parties to an arbitration with a list of publicly available NASD awards rendered by each arbitrator selected for the case. Listings will include case name and number, and whether the arbitrator concurred or dissented in the decision. NASD's Rockville, Maryland, office will handle requests and distribute awards by mail or facsimile.

Finally, a party to an arbitration that makes a request will receive, at no cost, either the last five awards made by each arbitrator or all awards rendered by the arbitrator in the last 12 months, whichever is the greater number. Additional awards will be furnished for \$5 per award up to a maximum of \$70 per case. The charge per award for persons not a party to an arbitration is \$5.

For more complete information, please see *Notice to Members 93-63* (September 1993), or call the NASD Arbitration Department at (212) 480-4881. □



LEGISLATIVE NOTEBOOK

Congress Passes Government Securities Act Amendments and Partnership Rollups

After three years of negotiations, both the Senate and the House of Representatives passed S 422, the Government Securities Act Amendments of 1993, designed to strengthen regulation of the multi-billion dollar U.S. Treasury securities market. The bill permanently reauthorizes the 1986 Government Securities Act, which gives the Treasury Department regulatory authority to issue capital and recordkeeping rules for government securities dealers. It also gives the SEC access to the electronic transaction records of securities dealers to make it easier for the agency to investigate allegations of illegal trading activity.

Under the legislation, government securities brokers and dealers in the Treasury market would have to follow sales-practice rules written and enforced by the NASD and various bank regulatory agencies. The issue of full sales-practice authority was strongly supported by NASD President and CEO Joseph R. Hardiman throughout consideration of this legislation. Under present law, the NASD may write and enforce such rules for dealers in all other securities but not for government securities.

The bill also requires the Federal Reserve and the SEC to study the effectiveness of private systems in disseminating price and volume information on government securities and permits the Treasury to require large-position reporting.

Congress folded into the Government Securities Acts Amendments bill two rollup reform bills (HR 617 and S 424) designed to curb abuses when limited partnerships are reorganized or "rolled up" into new financial entities. The legislation aims to protect investors who have complained about the unfairness of rollups, in which limited partnerships—typically finite-term, nontraded investments in real estate projects—are reorganized into new financial entities that are publicly traded like stock.

The bill calls for the NASD to promulgate rules to regulate rollup transactions and set listing standards for rollups in The Nasdaq Stock MarketSM within a year of the effective date of the legislation. The rules also prohibit the New York and American Stock Exchanges from listing any security issued in a limited partnership rollup transaction unless the limited partner's rights, as defined in the bill, are protected. The NASD has proposed rules that are designed to comport with the legislation, pending SEC approval.

The bill also gives dissenting investors the opportunity for a financial or other alternative to the rollup, reforms proxy legislation to ensure better communication among investors, prohibits differential compensation for soliciting "yes" votes on proxies, and requires concise and clear disclosure for shareholders.

Senate Clears Investment Advisers Bill

The Senate passed S 423, a bill to give the SEC additional resources to oversee thousands of largely unregulated investment advisers. Currently, advisers can expect to be audited once every thirty years. There are now about 20,000 investment advisers registered with the SEC, managing assets exceeding \$5 trillion. The Senate bill would impose new fees on investment advisers and channel the funds to the SEC to pay for added staff.

The Senate bill is narrower than HR 578, which was passed by the House earlier this year. Both bills would raise fees paid to the SEC from the current \$150 annually to \$300 to \$7,000, depending on the size of the assets managed by the adviser. The House bill contains express suitability standards, increases disclosure requirements to include periodic and transaction reporting, and requires fidelity bonding. The Senate bill mandates only a study of fidelity bonding for advisers with custody of customer funds.

Differences between the two bills will be reconciled during 1994. □

NASD Announces Disciplinary Action Against Prudential Securities

SEC, State Regulators Also Levy Penalties

The NASD disciplined Prudential Securities Incorporated (Prudential) regarding sales of limited partnership offerings during the 1980s. In accordance with a Letter of Acceptance, Waiver and Consent, in which the firm neither admitted nor denied the allegations, Prudential was censured, fined \$5 million, and agreed to adopt several meaningful remedies to prevent the recurrence of the misconduct that brought about the disciplinary action. The NASD disciplinary action was taken in conjunction with settlements reached with the SEC and state regulatory agencies.

The Commission's settlement embraces an SEC Order Instituting Public Proceedings, Making Findings and Imposing Sanctions (including ordering Prudential to adopt, implement, and maintain certain remedial measures) and a Final Order entered by a Federal District Court under Section 21(e) of the Securities Exchange Act of 1934. The Order, among other things, provides for Prudential to pay \$330 million into a claims fund established for investors that have eligible compensatory damage claims and establishes an expedited claims resolution process supervised by a court-approved claims administrator. The NASD, the SEC, and a special task force of the North American Securities Administrators Association (NASAA) reached the settlement in a coordinated effort.

"The \$5 million fine levied in this action, in addition to other significant remedial measures, sends a clear message to securities firms. When dealing with the investing public, they must be diligent in assuring that recommendations to customers are suitable, and that investors are properly provided with adequate dis-

closure of all risks," says John E. Pinto, NASD Executive Vice President, Regulation. "Importantly, the establishment of a claims fund of at least \$330 million is a significant step toward safeguarding customer interests."

From 1980 through 1990, Prudential sold approximately \$8 billion of interests in more than 700 different limited partnership offerings to U.S. investors. The vast majority of these limited partnership interests carried significant risks of loss, because their financial success was largely dependent on the value of the assets in which the limited partnerships invested.

In many instances, Prudential misrepresented speculative, illiquid limited partnerships as safe, income-producing investments, suitable for safety-conscious and conservative investors. As a result, Prudential sold limited partnerships to a significant number of investors for whom the investments were not suitable in view of the individuals' financial condition or investment objectives. Consequently, many other investors bought securities they would not otherwise have purchased if they had been adequately informed of the risks inherent in these partnerships.

Prudential's origination and marketing of limited partnerships was handled by its Direct Investment Group (DIG). DIG was responsible, in conjunction with Prudential's co-sponsors, for Prudential's limited partnership offerings distribution of promotional materials, and administration of Prudential's subsequent participation in the operation of many limited partnerships. In virtually every aspect of its operations, but particularly in its marketing and promotional

efforts, DIG operated outside Prudential's supervisory and compliance structure.

Prudential did not adequately supervise DIG personnel or monitor its marketing activities. DIG's sales force promotional information contained materially false and misleading statements about limited partnerships that were frequently contrary to prospectus disclosures and misrepresented the safety, potential returns, and liquidity of the relevant limited partnership investments.

Real estate, oil and gas producing properties, and aircraft leasing ventures were the principal investments for Prudential's \$8 billion in limited partnerships. Limited partnership investors generally have suffered significant losses in recent years due largely to declining prices for these assets, among other factors. In many instances, the partnerships have substantially cut or altogether ceased making cash distributions to their limited partners.

"This enforcement action reflects a greater overall scrutiny the NASD places on sales practices in its periodic member firm reviews. Investors should know that the NASD is taking an even harder look to ensure that they are treated fairly," says Pinto. He also praised the cooperative efforts of the SEC and NASAA, indicating "this was an extensive and comprehensive investigation that demonstrates the effectiveness of the combined efforts of the NASD and federal and state agencies."

This disciplinary action was taken by the NASD District Business Conduct Committee for District 10 in New York, New York. □

Equitable Life Assurance of the U.S. Assessed \$1.5 Million Fine

The NASD implemented disciplinary action against The Equitable Life Assurance Society of the United States (Equitable) in New York, New York, for supervisory violations in connection with the sale of certain insurance securities products. Equitable is an SEC-registered broker/dealer and an NASD member in addition to its role as a nationwide major insurance company.

Pursuant to a Letter of Acceptance, Waiver and Consent, in which the firm neither admitted nor denied the allegations, Equitable was censured and fined \$1.5 million. The NASD waived collection of \$500,000 of the fine because Equitable paid restitution to its customers. In addition, Equitable must comply with the requirements described in its Statement of Mitigation whereby it implements certain improvements in its supervisory, compliance, and management structures.

The NASD found that Equitable failed to establish and maintain adequate written supervisory procedures to ensure proper management of two Detroit, Michigan, area registered representatives regarding sales practices used with the offer and sale of Equitable's variable life insurance products. Equitable also failed to properly supervise certain of its Milford, Connecticut, registered representatives in connection with private securities transactions involving limited partnerships issued by now-bankrupt Colonial Realty Company. The NASD also found that, during a five-year period, Equitable permitted individuals to act as officers and/or principals without taking the required qualification tests. Thus, they were not registered as principals with the NASD.

With respect to the two Detroit-area representatives, the NASD found that Equitable failed to establish and maintain adequate written supervisory procedures to ensure their proper supervision to prevent these rule violations: use of materi-

al misrepresentations and omissions; recommendation to purchase variable life insurance products without reasonable grounds to believe that the investments were suitable for the customers based on the facts disclosed to them concerning the customers' financial situations and needs; failure to timely disclose to the NASD that some 150 customer complaints had been filed against the two representatives; and use of inaccurate, incomplete, and/or misleading radio advertisements by one of the representatives.

Regarding the Connecticut agents, the NASD found that Equitable failed to properly supervise the representatives to prevent their sales of Colonial Realty limited partnerships without giving prior written notice to, and receiving prior written authorization from Equitable as required by NASD rules.

In addition to the censure and fine, Equitable agreed to comply with the undertakings described in its Statement of Mitigation, and it has told its Chief Compliance Officer to conduct a review of supervisory procedures and to make recommendations for improvements within 90 days of acceptance of this settlement by the NASD. Among the areas to be included in the review are sales practices, advertising, suitability, private securities transactions, and timely reporting of customer complaints to the NASD. Within a specific period thereafter, Equitable has undertaken to implement these recommendations.

Moreover, the firm has agreed not to permit a former senior executive officer to act, during the course of his association with Equitable in a principal or supervisory capacity, where such duties would include the supervision of securities product sales, until he has requalified by examination in the appropriate principal capacity. Further, unless he submits a written plan of supervision to the appropriate NASD district office

within 30 days after assuming those duties—which plan shall address at a minimum, his supervisory duties and responsibilities, and detail the steps to be taken by him to prevent violations of the NASD Rules of Fair Practice—he must cease acting in such capacity until a plan is submitted.

This coordinated disciplinary action was taken by the NASD's Boston and Chicago District Business Conduct Committees that exercise jurisdiction over members with main and branch offices in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, Illinois, Indiana, Michigan, Ohio, and Wisconsin. □

Nasdaq® Delists Future Communications

On October 14, The Nasdaq Stock MarketSM delisted Future Communications, Inc. (trading symbol FCMI), a Dallas-based cable-television company. After a qualifications hearing with the company, Nasdaq[®] informed FCMI that it was being delisted because it:

- Violated corporate governance rules.
- Provided erroneous and misleading information to Nasdaq and the public.
- Failed to disclose material information sought by Nasdaq for public dissemination.
- Failed to furnish information that would adequately explain the company's financial position.

NASD Fines Hermitage Capital More Than \$400,000, Disciplines 30 Individuals for Underwriting Violations

The NASD took disciplinary action against Hermitage Capital Corporation, Nashville, Tennessee, Beverly W. Landstreet, IV, its president, and 29 other individuals in connection with the underwriting and sale of Radiation Care, Inc. (RCI) shares.

Subject to a Letter of Acceptance, Waiver and Consent, in which the firm neither admitted nor denied the allegations, Hermitage was censured, fined \$100,000 and suspended from participation in any underwriting activity for six months. An exception is its selling group participation that does not involve primary record-keeping responsibilities. In addition, Hermitage agreed to install new management within 180 days and to submit to a reapplication proceeding subject to the approval of the NASD New Orleans District Business

Conduct Committee. Furthermore, Landstreet was censured, fined \$25,000, and suspended from association with any NASD member as a principal for six months.

The NASD found that Hermitage, acting through Landstreet, in connection with a 1992 new-issue public offering of RCI stock, failed to prepare and maintain accurate books and records. In addition, Hermitage did not ensure that the escrow agent was properly investing escrowed funds from the offering, and to prepare and maintain customer confirmations for RCI purchases with required disclosure. Furthermore, the firm, acting through Landstreet, sold shares in RCI—which was considered a “hot issue” because it began trading at a premium in the secondary market—to restricted persons, a violation of the

“Free-Riding and Withholding Interpretation” of the NASD Board of Governors. This Interpretation is designed to ensure that a bona fide offering is made to the investing public, and prohibits sales of hot issues to various categories of restricted persons.

The NASD also acted against 29 registered individuals, associated with other member firms that purchased shares of the RCI offering, in violation of the NASD Free-Riding and Withholding Interpretation, that specifically prohibits sale of hot issues to securities industry officials and employees. The NASD censured each individual and assessed \$317,717.50 in monetary penalties. Three persons consented to bars from association with any NASD member in any capacity. □

NASD Imposes Penalties of More Than \$2.4 Million Against Chatfield Dean & Co., Inc.

Suspends President and Others for Manipulation and Overcharging

The NASD imposed fines and ordered restitution totaling \$2,475,000 against Chatfield Dean & Co., Inc. (Chatfield), its President and owner, Sanford D. Greenberg, and other current and former Chatfield officers. The NASD action suspends Greenberg and Robert L. Lemon, Chatfield's Executive Vice President for Sales, from associating in any capacity with an NASD member firm for four months.

The NASD also imposed sanctions against several other individuals: Kenneth S. Bernstein, Compliance Director; William R. MacCallum, Jr., Head Trader; John K. Watton, Anthony DeCamillis, and Kevin Grom, former Branch Office Managers; and Steven Carolus, a trader. The NASD disciplinary action is based on

settlements reached with its Market Surveillance Committee in which Chatfield and the named individuals consented to findings without admitting or denying the allegations.

The focus of the NASD's disciplinary action concerns Chatfield's pricing and sales-practice policies involving several securities during specified time periods between 1989 and 1993. In this disciplinary action, the NASD alleged violations of several of its Rules of Fair Practice, including Section 18, which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

According to the settlement, Chatfield is required to pay more than \$1.79 million in restitution to customers within six

months of this settlement. Furthermore, disciplinary fines totaling \$685,000 have been imposed against Chatfield and the named individuals. Moreover, in addition to the Greenberg and Lemon four-month suspensions, Watton, DeCamillis, and Grom are also suspended from associating with any member firm in any capacity for four months. MacCallum is suspended from associating with member firms for six months in all capacities, and Bernstein is suspended from associating with member firms for two years in certain supervisory capacities.

Manipulative Behavior

Chatfield, Greenberg, Lemon, MacCallum, Watton, DeCamillis, and Grom consented to findings of violations of using manipulative, decep-

tive, or other fraudulent devices or contrivances from May 13-15, 1991, regarding transactions that the NASD alleged, when taken as a whole, constituted a violation of Section 18 of the Rules of Fair Practice. Specifically, the NASD alleged that Chatfield and these named individuals dominated and controlled the securities involved, and at the same time maintained the inside bid, despite having had significant long inventory positions for two of those days. In addition, Chatfield, through these individuals, delayed, and instructed registered representatives to delay, the prompt execution of customer orders by encouraging registered representatives to match purchase and sale transactions from different customers. Under this scheme, Chatfield paid its brokers increased commissions for matched sales, while the firm benefitted by effecting such transactions as essentially riskless principal transactions. Chatfield, through these agents, also recorded inaccurate quotes on order tickets and charged customers based on such inaccurate quotes. As a consequence of this manipulative behavior, Chatfield and its owner Greenberg profited by approximately \$350,000.

Excessive and Unfair Pricing

The NASD requires that broker/dealers sell securities to customers at fair prices that are reasonably related to the current market price of the security. Chatfield, Greenberg, Lemon, MacCallum, and Carolus consented to findings that

between 1989 and 1993, they charged excessive markups in more than 2,300 customer purchases of six different issues such that the prices were not fair to customers, thereby violating NASD rules. For all but one of these securities, Chatfield dominated and controlled the market during the time periods that they were charging these excessive prices. As a consequence of this violative conduct, Chatfield, through these agents, overcharged customers more than \$1.3 million by selling at prices that were marked up as much as 180 percent above the prevailing market price. The vast majority of the transactions charged were marked up more than 10 percent, constituting fraud under Section 18 of the NASD Rules of Fair Practice.

Additional Sanctions and Undertakings

The settlement also calls for Chatfield to engage in numerous undertakings. Among others, these include: a limitation on Chatfield's participation in underwritings; a limitation not to exceed a specified percentage of the post-distribution float; a limitation on the maximum compensation that can be received by brokers from customers in principal transactions; testing and training programs to be administered by Chatfield for its registered representatives; and the hiring of a new head trader and chief compliance officer. Chatfield also agreed to retain an outside consultant for two years to review the firm's compliance policies and recommend changes where appropriate.

Chatfield has agreed to implement all recommendations made by the consultant who will provide periodic reports regarding the recommendations and their implementation by the firm.

In addition, as a result of findings that they failed to properly supervise the conduct by Chatfield, thereby violating Section 27 of the NASD Rules of Fair Practice, Greenberg, Lemon, and Bernstein will be required to retake and pass a written examination in order to be allowed to again function in a supervisory or principal capacity. MacCallum, Watton, DeCamillis, and Grom will be retested in the same manner before being allowed to function in any registered capacity.

The settlement in this disciplinary matter stems from investigations conducted on a coordinated basis by the NASD's Denver, Colorado, District Office, the Enforcement Department, and the Market Surveillance Department. The NASD also acknowledges the assistance of the Denver Regional Office of the SEC. "These cooperative investigations reflect the concerted efforts by the NASD to prevent manipulative activity and abusive sales practices in the securities industry and reinforce what can be achieved to further the cause of investor protection through coordinated regulatory efforts," says John E. Pinto, NASD Executive Vice President, Regulation. □

NASD Expels R.B. Webster Investments, Bars Its President

In regard to a disciplinary action imposed by the NASD on July 30, 1993, the United States Court of Appeals for the Eleventh Circuit denied a motion by R.B. Webster Investments, Inc., of Lauderhill, Florida, and its president, Robert Bruce Orkin of Coconut Creek, Florida, for a stay of sanctions, pending the outcome of an appeal to the SEC. Consequently, the sanctions were effective immediately.

R.B. Webster and Orkin were censured and fined \$200,000, jointly and severally and ordered to pay \$53,784 in restitution to customers. R.B. Webster was expelled from NASD membership and Orkin was barred from association with any NASD member in any capacity. The disciplinary action was initiated by the NASD Atlanta District Business Conduct Committee. The NASD National Business Conduct

Committee issued a final decision following the appeal.

R.B. Webster, acting through Orkin, made principal transactions with public customers at unfair prices in units of Applied Geometrics, Inc. (Applied) and LMA Technical, Inc. (LMA) securities. Both issues were securities of "blind pool" companies traded over-the-counter and quoted in the "pink sheets."

R.B. Webster and Orkin charged markups ranging from 10 to 138 percent for Applied units, and from 10 to 84 percent for LMA units, thus violating the NASD 5% Mark-Up Policy. In addition, the respondents used their market domination and control for these securities to manipulate their prices from the \$10 initial public offering to \$27.50 in each case. The firm also abused its dominant position in the market to set arbitrary and extraordinarily high prices.

R.B. Webster and Orkin appealed NASD's decision to the SEC, requesting a stay of sanctions pending a Commission review of the disciplinary action. The SEC denied the request, cit-

ing the serious violations found by the NASD. The SEC stated, "While determination relating to applicants' conduct must await consideration of the merits of their appeal, excessive markup and market manipulation are serious violations . . . the denial of their (R.B. Webster and Orkin) stay request is outweighed by the need to protect the public interest." The respondents then appealed the SEC's denial of a stay to the U.S. Court of Appeals for the Eleventh Circuit. The SEC filed a motion to dismiss the appeal and voluntarily consented to an interim stay while the Court considered the respondents' emergency appeal for a stay. However, the Court denied the R.B. Webster and

Orkin emergency appeal and granted the SEC's motion to dismiss.

The NASD investigation is part of its continuing nationwide effort to eliminate trading and sales-practice abuses. "Obviously, the NASD is very pleased with the determination of the SEC and the U.S. Court of Appeals to permit expulsion of R.B. Webster and to bar Orkin. We believe the interests of the investing public have been well served by closing down R.B. Webster and removing Orkin from the securities business," says John E. Pinto, NASD Executive Vice President, Regulation. □

SEC Approves Major Revisions to Rule 17a-11

The SEC recently approved changes to Rule 17a-11 that eliminate certain burdensome filing requirements. The requirements to give notice basically are unchanged. These amendments, effective August 12, 1993, are the first major revisions to the rule in more than 20 years.

Adopted in 1971, SEC Rule 17a-11 requires broker/dealers to report net capital and other operational problems and to file reports regarding those problems within certain time periods. In October 1992, the SEC solicited comments on its proposal to relieve broker/dealers of the obligation to submit FOCUS reports when their net capital declines below certain levels. During the public comment period, the SEC Division of Market Regulation issued a no-action letter authorizing broker/dealers' designated examining authority (DEA) to waive the FOCUS filing requirements of paragraphs (a) and (b) of the rule when the notification was given by the broker/dealer within specified time frames.

After reviewing the comments, the SEC

decided these changes would not compromise the ability of the DEA or the SEC to monitor broker/dealers' condition. The SEC adopted the proposed amendments substantially as proposed. In general, the amendments reduce certain reporting burdens on broker/dealers by eliminating the requirement that a broker/dealer submit supplemental reports to the SEC and other regulatory organizations when its net capital declines below certain specified levels, or in other instances that indicate financial or operational difficulties exist. The specific rule changes are discussed below.

Notice of Net Capital Deficiency

Broker/dealers still have to transmit notice of a net capital deficiency on the same day it occurs. That notice must now specify the broker/dealer's net capital requirement and its current net capital. However, the amended rule eliminates the requirement that broker/dealers file a FOCUS report within 24 hours after notifying the SEC of a net capital deficiency. The amended rule also requires a broker/dealer to give notice of a net capital deficiency when

informed of such by its DEA or the SEC, even if the broker/dealer disagrees with the finding. The broker/dealer may specify in the notice its reasons for disagreeing.

Subordination Agreements Notification

The changes eliminate reference to the requirement that a broker/dealer notify the SEC by telegraph when its total outstanding principal amounts of satisfactory subordination agreements exceed the maximum allowable for more than 90 days. The SEC determined this reference was unnecessary because such a condition is a net capital violation that requires same-day notification to the DEA.

Early Warning Levels

Rule 17a-11 now contains three early warning levels. First, a broker/dealer that computes its net capital under the basic method must give notice if its aggregate indebtedness exceeds 1,200 percent of its net capital. Second, a broker/dealer that computes its net capital under the alternative standard has to give notice if its net capital falls below 5

percent of its aggregate debit items computed under the Reserve Formula. Third, a broker/dealer that computes its net capital under either standard is required to give notice if its total net capital declines below 120 percent of its minimum requirement.

Before, if any of these events occurred, a broker/dealer had to file a FOCUS report within 15 days after month end for three successive months. The amendments to the rule eliminate this filing requirement and replace it with a provision requiring a broker/dealer to give notice of any of these events within 24 hours of its occurrence. The SEC determined that the prompt notice requirement gives regulators enough warning. Thereafter, any additional information needed to monitor a broker/dealer's financial or operational condition may be requested by the DEA or the SEC.

Books and Records Deficiency

The amendments to the rule clarify the time within which a broker/dealer must give notice if it fails to make and keep current required books and records.

Instead of requiring a broker/dealer to give notice "immediately," the rule now specifies that notice must be given the same day of the event.

The amended rule lets a broker/dealer transmit any required notice by facsimile transmission or by telegraph. In addition, the reports regarding a books and records deficiency or a material inadequacy may be transmitted by overnight delivery. The amended rule also expands the list of references to the SEC's financial responsibility notice requirements to include all notice requirements in the net capital rule, the customer protection rule, and Rule 17a-5. This change does not add additional reporting requirements; instead, it clarifies the references by including all pertinent ones rather than just some of them.

Other Amendments

The structure of the rule has been reorganized and includes certain technical revisions. In addition, because some paragraphs have been redesignated, the SEC had to make technical revisions to Rule 17a-5 that refer to paragraphs in

Rule 17a-11.

A final amendment concerns the net capital rule's Appendix D. Currently Rule 15c3-1d prohibits a broker/dealer from entering into a temporary subordinated loan during a period when the firm is subject to any of the reporting provisions of Rule 17a-11, including the period in which a broker/dealer had to file FOCUS reports. Since the FOCUS filing requirement has now been eliminated, the amended rule now prohibits a broker/dealer from obtaining a temporary subordinated loan if it has given notice under Rule 17a-11 within the preceding 30 calendar days.

A copy of the SEC's release about the change to Rule 17a-11, appears in the *Federal Register*, Volume 58, Number 132, July 13, 1993, and is included with *Notice to Members 93-72* (October 1993). If you have any questions, please call Derick Black, NASD Compliance Department at (202) 728-8225. □

NASD Elects New Chairman, Governors-at-Large

Retail sales and marketing specialist Joseph J. Grano, Jr., was recently elected 1994 Chairman of the NASD Board of Governors, along with new Vice Chairmen David Brooke and Robert Kleinberg. In addition, the NASD Board announced governors and new governors-at-large whose terms begin in January 1994.

Grano, President of Retail Sales and Marketing for PaineWebber Inc., is responsible for the firm's entire retail sales business, including product development and marketing, and overall management of the branch system. He joined PaineWebber in February 1988 after 16 years at Merrill Lynch.

The 1994 Vice Chairmen, David Brooke and Robert Kleinberg, will succeed, respectively, Peter B. Madoff, Senior Managing Director, Bernard L. Madoff Investment Securities, and Richard D. Martini, President and Chief Operating Officer, Dean Witter Capital.

Brooke is a director of J O Hambro Company and Deputy Chairman of J O Hambro & Partners Ltd., London, England. He currently serves as Chairman of the NASD's International Markets Advisory Board. Kleinberg is Executive Vice President and General Counsel of Oppenheimer & Co., Inc. He served in 1993 as the Chairman of the NASD National Business Conduct Committee and is also a former

Chairman of its District 10 Committee.

New Governors-at-Large

The Board also elected five new governors-at-large to three-year terms: **Leonard Abramson**, founder and Chief Executive Officer of U.S. Healthcare, Inc.; **Bruce Clayton Hackett**, Co-head of Global US Equity Sales and Trading and a member of the Executive Committee for Salomon Brothers, Inc.; **Alice T. Kane**, Executive Vice President, General Counsel, and Secretary, New York Life Insurance Company; **C. Richard Kramlich**, Managing General Partner, NEA Partnerships I-VI, a venture capital group focused on early-stage, technically oriented companies; and **Alfred E.**

Osborne, Jr., Director of Entrepreneurial Studies in the John E. Anderson Graduate School of Management at the University of California, Los Angeles.

District Elections

The following four individuals were elected to serve three-year terms on the Board through the district election process:

Mary Alice Brophy, First Vice President-Compliance for Dain

Bosworth, Incorporated, Minneapolis, Minnesota, District 4.

Carl E. Lindros, Founder and President of Santa Barbara Securities, Inc., Santa Barbara, California, District 2.

William A. Rogers, Chief Operating Officer and Managing Partner with Wayne Hummer & Co., Chicago, Illinois, District 8.

Raymond E. Wooldridge, President,

Chief Operating Officer, and a director of Southwest Securities Group, Inc., Dallas, Texas, District 6. □

The National Business Conduct Committee elected **Richard G. McDermott, Jr.**, President, Chappelaine & Co., New York City, as its 1994 Chairman, and **James S. Holbrook**, President and Chief Executive Officer, Sterne, Agee & Leach, Inc., Birmingham, Alabama, as its Vice Chairman.

COMPLIANCE SHORT TAKES

The NASD reminds members of their obligations under the Rules of Fair Practice when recommending CMOs to customers, as part of its comprehensive program to monitor and enhance membership sales practices. In view of the complexity and varying risk characteristics of CMOs, under Article III, Sections 1 and 2 of the NASD Rules of Fair Practice, members and associated persons must be conversant with CMO characteristics to adequately assess their suitability for customers. The SEC recently approved an NASD proposal that would amend the Association's guidelines to direct member firms to educate customers about CMOs with specific educational materials. For more information about members' obligations when selling these securities, see *Notice to Members 93-73* (October 1993).

In a related action, the SEC approved a temporary one-year extension to November 16, 1994, for the prefiling requirement related to advertisements concerning CMOs. The prefiling mandate in Article III, Section 35(c)(2) of the Rules of Fair Practice, adopted in 1992, was scheduled to expire November 16, 1993. In a separate rule filing with the SEC, the NASD

proposed to make the CMO prefiling requirement permanent. □

The SEC issued a proposal on payment for order flow calling for amendments to Rules 10b-10 and 11A requiring disclosure on customer confirmations for transactions in exchange-listed and Nasdaq National Market® securities. In addition, disclosure would be required at account opening and annually to describe a firm's payment-for-order-flow policies, whether in cash or non-cash incentives. The SEC is seeking input on reforms that range from banning payments for order flow to returning payments to customers. The SEC received comments on its rule proposal in early December. □

The SEC recently adopted Rule 15c6-1 under the Securities Exchange Act of 1934 to establish three business days, instead of five, as the standard settlement time period for most securities transactions. The new rule is effective June 1, 1995, but does not apply to a contract for an exempted security, government or municipal security,

commercial paper, bankers' acceptances, or commercial bills. In adopting the rule, the Commission expressed confidence that broker/dealers can make the necessary changes to comply with three-day settlement by the rule's effective date. For more information, see November *Notice to Members 93-77*, and the *Federal Register*, October 13, 1993. Questions about this issue may be directed to Samuel Luque, NASD Associate Director, Compliance, or Brad Darfler, Supervisor, at (202) 728-8946. □

To help protect investors and enhance market quality, the NASD Board filed a measure with the SEC to change NASD's Rules of Fair Practice to prohibit members from trading ahead of customers' limit orders. According to the proposed changes, members holding their customers' limit orders may not keep trading for their own account at prices equal to or better than the limit-order price without first executing the limit orders. If approved by the SEC, members that trade ahead of their customers will be considered to have violated Article III, Section 1 of the Rules of Fair Practice regarding just and equitable principles of trade. □

□

The NASD Rules of Fair Practice, Article III, Section 21 (b)(i) requires associated persons of members to ask their selling customers if an order is a long or short sale and then note this on any sales ticket. Furthermore, under the Prompt Receipt Interpretation, if the order is a short sale, the member must make an affirmative determination that it will receive delivery of the security from the customer or can borrow the security on the customer's behalf for delivery by settlement date.

□

The NASD regularly reviews for members' compliance with the Board of Governors' Interpretation of the Prompt Receipt and Delivery of Securities in the Rules of Fair Practice, Article III, Section 1. According to Section (b)(2) of the Interpretation, no member may accept a short sale order from any customer—including retail, institutional, or hedge funds—in any security unless the member makes an affirmative determination that it will

receive delivery of the security from the customer or can borrow the security on the customer's behalf for delivery by settlement date. This requirement, however, does not apply to corporate debt securities transactions. For equity securities, only bona fide Nasdaq market-maker equity transactions and member trades that result in fully hedged or arbitrated positions are also exempt from the Interpretation's affirmative determination requirement.

□

The NASD's Fixed Income Pricing System (FIPSSM) for high-yield bonds will begin operating in the first quarter of 1994 with 60 firms participating. FIPS is a screen-based system operated by The Nasdaq Stock MarketSM that will collect, process, and display quotes and summary transactions in eligible high-yield corporate bonds to participants in the system and through information vendors. Participation in FIPS is mandatory for NASD members holding themselves out as brokers or dealers in securities listed on FIPS.

□

Beginning December 20, members trading over-the-counter (OTC) equity securities and Nasdaq-listed convertible debt must trade report transactions within 90 seconds of execution. The new reporting requirements follow closely those applicable to Nasdaq-listed securities and replace Schedule H procedures for reporting aggregate volume and price data for OTC securities.

□

A revised edition of NASD[®] Disciplinary Procedures is now available. The 30-page brochure is designed to furnish a brief overview of the NASD's disciplinary process. More detail is available in the NASD Code of Procedure found in the *NASD Manual*. For a copy of the brochure, call NASD Corporate Communications at (202) 728-6900.

NASD DISCIPLINARY ACTIONS

In August, September, and October 1993, 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

August Actions

Timothy L. Burkes (Registered Representative, Pleasanton, California) was fined \$16,200 and suspended from association with any NASD member in any capacity for 180 days. The SEC affirmed the sanctions following appeal of a May 1992 NBCC decision. The sanctions were based on findings that, to reach his target production for 1989, Burkes falsified customer names and account numbers so that funds totaling \$16,500.54 could be transferred from his member firm's account to his commission account. As a result, Burkes received credit for funds to which he was not entitled.

Raymond Edward Moore (Registered Representative, Santa Rosa, California) was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination upon completion of the suspension. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Moore effected 10 unauthorized securities transactions in a public customer's account and exercised discretion in another customer's account without obtaining the customer's prior written discretionary authority.

September Actions

David Alan Dodge (Registered Representative, Santa Cruz, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Dodge submitted to a member firm and filed with the NASD a *Uniform Application for Securities Industry Registration or Transfer* (Form U-4) which falsely represented that he had not been convicted of any felony.

Jeffrey Ray Ludes (Registered Representative, Novato, California) was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ludes prepared, signed, and sent a letter on his member firm's stationery to a customer using a fictitious name. The letter falsely informed the customer to ignore a notice

of policy lapse because the policy had been reinstated.

Roy Michael Mohr (Associated Person, Rushville, Indiana) was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$229 in restitution to a customer. The sanctions were based on findings that Mohr made unauthorized use of a public customer's credit card by making 11 personal charges totaling \$229 without the customer's knowledge or consent. Mohr also failed to respond to NASD requests for information.

Carlos B. Quirino (Associated Person, El Cerrito, California) was fined \$100,000, barred from association with any NASD member firm in any capacity, and ordered to pay \$33,122 in restitution to a member firm. The sanctions were based on findings that Quirino forged the signature of the president of a member firm on 21 checks totaling \$33,122, and misappropriated and converted the proceeds to his own use and benefit.

Charles Morton Southall (Registered Representative, Pebble Beach, California) submitted an Offer of Settlement pursuant to which he was fined \$35,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Southall consented to the described sanctions and to the entry of findings that he exercised effective control over the account of a public customer and recommended and effected in his account securities transactions that were

unsuitable for the customer in view of the size and frequency of the securities.

Jeffrey Jay Ward (Registered Representative, Roseville, California) was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to pay \$9,409.85 in restitution to a member firm. The sanctions were based on findings that Ward received from nine insurance customers \$9,409.85 and misappropriated the funds. In addition, Ward failed to respond to NASD requests for information.

October Actions

George Benjamin Carpenter (Registered Representative, Berkeley, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carpenter consented to the described sanctions and to the entry of findings that he misappropriated from the accounts of 10 public customers a total of \$67,776.34 and converted the funds to his own use and benefit.

Sacks Investment Company, Inc. (Novato, California) and Richard Lawrence Sacks (Registered Principal, Novato, California) were fined \$159,956.42, jointly and severally, and Richard Sacks was barred from association with any NASD member in any capacity. The SEC modified the sanctions following appeal of a June 1991 NBCC decision. The sanctions were based on findings that the firm, acting through Sacks, engaged in securities transactions with public customers at unfair prices with markups ranging from 9 to 220 percent over the firm's contemporaneous cost. In addition, the firm, acting through Sacks, failed to report securities transactions to The Nasdaq Stock Market™ and failed to employ a financial and operations principal and a municipal securities principal.

Furthermore, the firm, acting through Sacks, engaged in the sales of municipal securities without having first registered with the Municipal Securities Rulemaking Board and paying the required fees. The respondents also engaged in securities transactions on a principal basis without obtaining written approval from the NASD, in violation of its voluntary restriction agreement.

District 2—Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo) and southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye)

August Actions

Henry William Abts, III (Registered Principal, Los Angeles, California), Theron Hugh Murphy (Registered Principal, Simi Valley, California), and Jay Lynn Murphy (Registered Representative, Simi Valley, California). Abts was fined \$15,000, suspended from association with any NASD member in the capacity of general securities principal for 90 days, and required to requalify as a general securities principal before again acting in the aforementioned capacity. Theron Murphy was fined \$5,000 and suspended from association with any NASD member as a general securities principal for 30 days, and Jay Murphy was fined \$10,000 and suspended from association with any NASD member in any capacity for 45 days.

The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Jay Murphy, with the knowledge and consent of Abts and Theron Murphy, engaged in a securities business of a member firm without proper qualification or registration in any capacity whatsoever.

Adams Securities, Inc. (Las Vegas, Nevada), James William Adams (Registered Principal, Henderson, Nevada), Michael Richard Waldman (Registered Representative, Henderson, Nevada), John Bassell Hayden (Registered Representative, Chico, Califor-

nia), and Mark David Long (Registered Principal, Denver, Colorado). The firm was expelled from NASD membership and James Adams was barred from association with any NASD member in any capacity. Waldman was fined \$19,000, which may be reduced by any restitution paid to customers up to \$9,000. Hayden was fined \$12,935, which may be reduced by any restitution paid to public customers up to \$7,935. Long was fined \$13,408, which may be reduced by any restitution paid to customers up to \$3,408. Furthermore, Waldman and Hayden must requalify by examination as general securities representatives before acting in such capacities and Long must requalify as a general securities principal.

The sanctions were based on findings that the firm, acting through Adams, Waldman, Hayden, and Long, engaged in sales to customers of shares of stock in the secondary market at prices that were unfair, in contravention of the NASD Mark-Up Policy, in that such sales resulted in markups ranging from approximately 5.14 to 88 percent.

Antoine Doumad (Registered Representative, Rancho, California) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Doumad caused the issuance of 16 checks totaling \$5,409.57 from 13 customers' accounts and submitted forged documents to his member firm requesting the payment of cash surrender values associated with such customers' life insurance policies (and one customer's payment of accumulated dividends) without the customers' knowledge or consent. Doumad took delivery of nine checks totaling \$2,602.62, used the checks to purchase new life insurance policies, and received \$2,286.69 in commissions based on the purchase of these policies.

In addition, Doumad took delivery of seven other checks totaling \$2,806.95, forged the customers' signatures, deposited the funds in his personal checking account, and converted the proceeds. Doumad also failed to respond to NASD requests for information.

Casey Karen Green (Registered Representative, Huntington Beach, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Green consented to the described sanctions and to the entry of findings that she submitted applications for the purchase of life insurance by four fictitious customers and submitted "Requests for Redemption" forms bearing forged signatures in connection with various insurance policies owned by seven customers. According to the findings, Green used the funds so redeemed to purchase other insurance and securities products without the customers' knowledge or consent in order to generate commissions totaling \$17,155.

Gilbert M. Hair (Registered Representative, Newbury Park, California) and Vladimir Chorny (Registered Representative, Camarillo, California). Hair was fined \$13,250 and Chorny was fined \$18,500. The SEC affirmed the sanctions following appeal of a November 1991 NBCC decision. The sanctions were based on findings that Hair and Chorny participated in private securities transactions without giving prior written notification to their member firm.

La Jolla Securities Corporation (La Jolla, California) and Bruce Alan Biddick (Registered Principal, La Jolla, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$11,475, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Biddick, sold shares of a designated security in 18 transactions, in violation of SEC Rule 15c2-6. Specifically, the findings stated that the respondents failed to approve nine persons' accounts before each of the 18 transactions and failed to receive from each person a written agreement setting forth the identity and quantity of the desig-

nated security to be purchased.

William Frederick Rembert (Registered Representative, Torrance, California) was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Rembert submitted to his member firm falsified records relating to the purchase by 55 customers of tax-sheltered annuities. Specifically, the documents reported inflated total annual payments to be made by the customers, resulting in commission overpayments to Rembert totaling \$24,502.01.

September Actions

Crystal Renee Adjani-Williams (Registered Representative, Los Angeles, California) was fined \$32,000, which may be reduced by \$2,000 in restitution to be paid to a customer, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Adjani-Williams engaged in fraudulent activity by instructing a public customer to wire transfer to her personal bank account \$2,000 intended for the purchase of securities for the customer. However, Adjani-Williams did not purchase the securities for the customer nor return the funds; instead, she converted the funds to her own use and benefit. In addition, Adjani-Williams failed to respond to NASD requests for information.

Jose Aguilar (Registered Representative, Cochella, California) was fined \$166,493, which may be reduced by \$46,493 in restitution paid to a member firm, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Aguilar engaged in a scheme to convert customer funds totaling \$46,493 to his own use and benefit. Specifically, Aguilar withdrew funds from client accounts, diverted incoming client checks, and deposited such funds into his personal money market securities account. In addition, Aguilar failed to respond to NASD requests for information.

Gilksman Securities Corp. (Marina Del Rey, California) was fined \$5,000 and suspended from NASD membership until it pays a \$134,184 arbitration award. The NBCC imposed the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm failed to pay a \$92,000 arbitration award and \$42,184 in costs and attorneys' fees.

Kreskin Norman Lee (Associated Person, San Diego, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lee received assistance while taking a qualification examination by leaving the examination room, going to his car, and reviewing notes before returning to the examination room.

Nathaniel Randolph (Registered Representative, Santa Ana, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Randolph failed to respond to NASD requests for information concerning an investigation of his termination of employment and complaints of unauthorized trading in three customer accounts.

William John Seymour (Registered Representative, Bakersfield, California) was fined \$167,821, which may be reduced by any restitution paid to a customer up to \$67,821, and barred from association with any NASD member in any capacity. The sanctions were based on findings that, as executor for a deceased individual's estate, Seymour deposited all monies derived from the estate into a bank account entitled "William J. Seymour, Trustee." Furthermore, Seymour proceeded to convert approximately \$67,821 of the funds deposited for the benefit of the deceased individual's wife to his own use and benefit.

Michael Randolph Wittels (Registered Representative, Newport Beach, California) was fined

\$23,072.48, which may be reduced by any restitution paid to his former member firm up to \$3,072.48, and barred from association with any NASD member in any capacity. The sanctions were based on findings that, to generate \$3,072.48 in commissions for himself, Wittels submitted an insurance application for the purchase of insurance by a fictitious person and submitted an insurance application for an individual without the person's knowledge or consent. Furthermore, Wittels submitted an insurance application for an individual under false pretenses by explaining that the application was necessary for a sales contest. Moreover, Wittels submitted a "Notice Regarding Replacement" form which he forged or caused to be forged to facilitate and expedite the processing of an insurance application for another customer.

October Actions

Allan Harry Mawhinney (Registered Representative, Buena Park, California) was fined \$248,932.32, which may be reduced by any amount paid to a member firm up to \$128,932.32, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mawhinney solicited purchases of stock from two public customers and received from such customers \$128,932.32. Instead of purchasing stock for either customer, Mawhinney deposited the funds into his personal account and converted them to his own use and benefit. Mawhinney also failed to respond to an NASD request for information.

Gene Lester Roach (Registered Principal, Riverside, California) was fined \$5,000, jointly and severally with a former member firm, fined an additional \$219,000, and barred from association with any NASD member in any capacity. The SEC modified the sanctions following appeal of a November 1991 NBCC decision. The sanctions were based on findings that Roach defrauded investors and made improper use of the proceeds of a private offering. Specifically, he deposited \$169,000 of the investors' funds into a separate securities account maintained at another firm. Contrary to representations made in the offering memorandum concerning the use of funds, more than one third of the gross proceeds was used to purchase stock in two airlines, an unauthorized risk.

In addition, when acting for a member firm, Roach effected securities transactions while the firm failed to maintain its minimum required net capital.

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

August Actions

CENPAC Securities Corp. (Phoenix, Arizona) and **Gerald Nelson Bovee (Registered Principal, Phoenix, Arizona)** were fined \$20,000, jointly and severally. In addition, Bovee was suspended from association with any NASD member in any capacity for 10 business days and required to requalify by examination as a financial and operations principal. The sanctions were based on findings that the firm, acting through Bovee, conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS Part IIA reports.

Kenneth R. Clark (Registered Representative, Laramie, Wyoming) was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination in any capacity. The sanctions were based on findings that Clark effected two unauthorized transactions in the joint account of two public customers.

Richard A. Crosby (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Crosby consented to the described sanctions and to the

entry of findings that he failed to pay a \$1,450 NASD arbitration award.

Gary L. Cunningham (Registered Representative, Monte Vista, Colorado) was fined \$3,800 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cunningham received from two public customers \$1,000 intended for the purchase of an insurance policy. Cunningham, however, caused \$760 of the funds to be deposited into a bank account over which he exercised control and failed to return these funds to the customers for approximately two months.

First American Biltmore Securities, Inc. (Phoenix, Arizona) and **J. Gordon Nevers (Registered Principal, Phoenix, Arizona)** were fined \$25,000, jointly and severally, and required, jointly and severally, to pay restitution to customers in the amount of \$98,978.28, plus interest at the prime rate plus 3 percent from the date the trades were executed. In addition, Nevers was suspended from association with any NASD member in any capacity for 30 days and required to requalify by examination as a financial and operations principal before acting in that capacity with any NASD member.

The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that the firm, acting through Nevers, conducted a securities business when it failed to maintain its minimum required net capital and effected transactions in, and induced others to effect transactions in, shares of securities at unfair prices with markup/markdowns ranging from 7.69 to 52 percent above or below the prevailing market price of the securities.

Moreover, the firm, acting through Nevers, engaged in, and induced others to engage in, deceptive and fraudulent devices and contrivances in connection with the purchases and sales of the aforementioned securities.

First Inland Securities, Inc. (Spokane, Washington) and **Glen Lamoyne Ottmar (Registered Principal, Bothell, Washington)** were fined \$5,000, jointly and severally, and jointly and severally required to pay \$29,393.70 in restitution to customers. Ottmar was also required to requalify by examination as a general securities principal. The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that the firm, acting through Ottmar, effected 14 sales of common stock at unfair prices. Specifically, the respondents charged markups ranging from 15 to 57 percent over the prevailing market price, in violation of the NASD's Mark-Up Policy.

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

Hutchison Financial Corporation n/k/a Princeton American Equities Corporation (Phoenix, Arizona) was fined \$25,000, suspended from membership in the NASD in any capacity for six business days, and had its operations restricted. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a February 1992 NBCC decision. The sanctions were based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital and filed inaccurate FOCUS Part I reports with the NASD.

This action has been appealed to the United States Court of Appeals for the Ninth Circuit and a stay was granted following the term of the suspension.

The firm's suspension commenced July 12, 1993, and concluded July 19, 1993.

Stuart J. D. Mills (Registered Principal, Englewood, Colorado) and **Vincent J. Albanese (Registered Representative, Commack, New York)**. Mills was fined \$10,000 and suspended from association with any NASD member in any capacity for one year, and Albanese was fined \$11,624. In addition, Mills and Albanese were required to requalify by examination before acting in any capacity with any member firm.

The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Mills and Albanese either solicited, or otherwise caused customer orders to be received and processed for purchases of securities, at unfair and unreasonable prices with gross commissions ranging from 23.08 to 40 percent of the total price paid by customers. Moreover, the respondents failed to disclose to their customers that these prices were unfair and unreasonable.

Mills has appealed this action to the SEC, and the sanctions imposed against him are not in effect pending consideration of the appeal.

Richard R. Perkins (Registered Representative, Aurora, Colorado), and **Michael D. Pittman (Registered Representative, Aurora, Colorado)**. Perkins was fined \$97,500 and Pittman was fined \$44,500. In addition, Perkins and Pittman were suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of a March 1992 NBCC decision.

The sanctions were based on findings that Perkins and Pittman caused over 250 securities transactions to be effected with retail customers at unfair prices, in violation of the NASD's Mark-Up Policy. In addition, Perkins caused the distribution of sales literature regarding such securities that contained misleading information or failed to contain material information. Specifically, the literature failed to discuss the risks involved, contained promissory statements, and failed to disclose that Perkins' firm was a market maker in the securities. Furthermore, Perkins failed to have this literature approved for use by his member firm before its distribution.

(Michael D. Pittman (Registered Principal, Aurora, Colorado) was fined \$33,547 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions on review of a Denver DBCC decision. The sanctions were based on findings that Pittman effected principal sales of securities to public customers at unfair and excessive prices ranging from 6.52 to 58.73 percent above the firm's contemporaneous cost for the securities. Moreover, Pittman knew, or should have known, that the prices being charged to customers were unfair and unreasonable.

Randy Romero (Registered Representative, Englewood, Colorado) was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, he is required to disgorge \$200,000 in gross commissions and must offer rescission to customers.

The sanctions were based on findings that Romero effected securities transactions through an unregistered broker/dealer and failed to provide written notification of these transactions to his member firm. Furthermore, Romero effected transactions in the securities of a corporation without providing customers involved in these transactions with material information regarding the risks, merits, and nature of these investments, as well as the current financial condition of the corporation.

Securities America, Inc. (Omaha, Nebraska) and **Charles Felix Tummino (Registered Representative, Rogue River, Oregon)**. The firm submitted an Offer of Settlement pursuant to which it was fined \$10,000. Tummino, in a separate decision, was fined \$39,139 and required to requalify by examination before registering with any NASD member in any capacity. The sanctions were based on findings that Tummino distributed to customers and to the public a sales brochure that failed to disclose material facts, made exaggerated, unwarranted or potentially misleading statements or claims, and made promises of specific results. Moreover, Tummino placed advertisements soliciting attendance to seminars he conducted, distributed a seminar invitation letter to the public, and published an advertisement in the newspaper when such material was not approved by a registered principal of his member firm before use.

Without admitting or denying the allegations,

Securities America, Inc., consented to the described sanction and to the entry of findings that it failed to establish, maintain, and enforce adequate written supervisory procedures or otherwise failed to adequately supervise the activities of registered representatives of the firm to ensure compliance with applicable NASD rules.

September Actions

None

October Actions

Marvin L. Beckman (Registered Representative, Mesa, Arizona) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Beckman consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prior written notice to his member firm.

Dirth Terone Campbell (Registered Representative, Kirkland, Washington) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Campbell filled out and signed a customer's name to a new account form using inaccurate, false, and misleading information and submitted the form to his member firm. Campbell opened this new account because the customer's other account was restricted for late payment of a purchase, and this new account would permit the customer to purchase a recommended stock despite the restriction. Campbell also violated Regulation T of the Federal Reserve Board by arranging for the extension or maintenance of credit to the customer on terms and conditions that Campbell's member firm could not set under the rule. Campbell also failed to respond to NASD requests for information.

Todd Clark (Registered Representative, Arvada, Colorado) was fined \$25,000, required to pay \$25,000 plus interest in restitution to customers, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Clark misused customer funds by recommending to them a stock investment that was to be guaranteed by a promissory note from a non-member and by receiving from the customers a \$25,000 check payable to this firm based on the recommendation. However, the purchase of the stock was never reflected on Clark's member firm's books and records nor have the customers received shares of the stock or a refund of their investment. Clark also failed to respond to NASD requests for information.

David Joseph Dambro (Registered Representative, Aurora, Colorado) was fined \$2,500 and required to pay \$10,060 in restitution to the estate of a customer. In addition, Dambro must requalify by examination before acting in any capacity requiring registration. The SEC affirmed the sanction following an appeal of a June 1992 NBCC decision. The sanctions were based on findings that Dambro recommended and purchased securities for a public customer without having reasonable grounds for believing such recommendation was suitable for the customer.

Michael Ben Lavigne (Registered Principal, Spokane, Washington) was fined \$10,000 and barred from association with any NASD member in any principal capacity. The NBCC imposed the sanctions following appeal of a Seattle District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Lavigne permitted a statutorily disqualified individual to remain associated with a member firm. In addition, Lavigne failed to implement written procedures to ensure that the aforementioned individual did not effect any transactions directly or indirectly in his customer accounts during his association with the firm. Moreover, Lavigne failed to supervise the transactions effected by the individual in

customer accounts.

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

Linda L. Matsuyama (Registered Representative, Aurora, Colorado) submitted an Offer of Settlement pursuant to which she was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$13,577.48 in restitution to a member firm. She must also provide additional restitution in an amount to be determined.

Without admitting or denying the allegations, Matsuyama consented to the described sanctions and to the entry of findings that she made improper use of approximately \$13,500 in customer funds by inducing a public customer to invest in securities through the use of deceptive and fraudulent contrivances but failed to invest the funds as indicated. Moreover, the NASD found that Matsuyama sent false and misleading information to the aforementioned customer regarding the value of her accounts.

Anthony J. Puglisi (Registered Principal, Scottsdale, Arizona) and Bessie LaVerne Puglisi (Associated Person, Scottsdale, Arizona). Anthony Puglisi was fined \$150,000 and barred from association with any NASD member in any capacity and Bessie Puglisi was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anthony Puglisi received from nine public customers a total of \$255,803.51 either directly or through unauthorized withdrawals from their securities accounts and failed to apply these funds for the intended use and benefit of the customers. In addition, Bessie Puglisi aided and abetted Anthony Puglisi in the aforementioned improper use of customer funds.

Philip Samuel Wilder (Registered Representative, Lewiston, Idaho) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wilder engaged in outside business activities while failing to provide prompt written notice to his member firm. Wilder also failed to respond to NASD requests for information.

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

August Actions

Douglas Duane Chapman (Registered Representative, Salina, Kansas) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Chapman consented to the described sanctions and to the entry of findings that he instructed public customers who wished to purchase a variable annuity to redeem shares of mutual funds, deposit the proceeds, and then purchase the annuity.

In connection with these transactions, the findings stated that Chapman made a material misstatement or omitted to state a material fact by failing to advise the customers that they could have acquired the variable annuity through a free exchange, thereby avoiding the 8.5 percent sales commission that the customers would have been charged on the anniversary dates of their purchases.

Claude Ray Parrish (Registered Representative, Mexico, Missouri) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Parrish consented to the described sanctions and to the entry of findings that he received from an insurance customer \$4,500 to be applied to a life insurance policy premium. The findings also stated that Parrish failed to apply the funds as instructed and, instead, converted the monies to his own use and benefit without the cus-

tomers' knowledge or consent.

Robert Lloyd Patrick (Registered Representative, Chesterfield, Missouri) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions are based on findings that Patrick failed to respond to NASD requests for information concerning his termination from a member firm.

September Actions

Mark Allen Elliott (Registered Representative, Independence, Missouri) was fined \$7,500 and suspended from association with any NASD member in any capacity for two years. The NBCC imposed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Elliott failed to respond to NASD requests for information concerning a customer complaint.

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

Michael J. Gaffey (Registered Representative, Salix, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gaffey consented to the described sanctions and to the entry of findings that he received \$100 from a public customer for a life insurance contract but, instead, converted the monies to his own use and benefit.

Richard Wilburt Klindworth, Sr. (Registered Representative, Oronoco, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,016.15 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Klindworth consented to the described sanctions and to the entry of findings that he received from two public customers checks totaling \$1,407.23 for insurance purposes and, instead, deposited the checks in his personal bank account and converted the proceeds therefrom to his own use and benefit.

Mike K. Lulla (Registered Representative, Oklahoma City, Oklahoma) was fined \$220,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Lulla engaged in fraudulent activity in that he received from a public customer checks totaling \$200,000 for investment purposes and, instead, deposited the funds in his personal account and converted the funds to his own use and benefit.

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

Robert Dennis Rickard (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,308.24 and required to pay \$2,802.34 in restitution to the estate of a public customer. Without admitting or denying the allegations, Rickard consented to the described sanctions and to the entry of findings that he recommended securities transactions to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the frequency of the transactions and/or the customers' financial situations and needs.

William Michael Sanders (Registered Representative, Belton, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$13,807.85 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanders consented to the described sanctions and to the entry of findings that he received from a public customer a \$3,362.57 check for the purchase of an insurance policy. Instead,

the NASD found that Sanders deposited the check in his agency account, made 11 monthly premium payments, and converted the remaining \$2,761.57 to his own use and benefit without the knowledge or consent of the customer.

October Actions

Milan Leroy Dummer (Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dummer consented to the described sanctions and to the entry of findings that he borrowed \$158,900 from 19 public customers by recommending and inducing the customers to make loans to him for his personal use.

The findings also stated that Dummer failed to disclose to the customers the amount of his total indebtedness and the fact he was borrowing from certain customers to repay other customers. In connection with this activity, the NASD found that Dummer induced the customers to make high-risk, unsecured loans funded by monies withdrawn from savings accounts or borrowed against insurance policies by representing that the customers would receive a return of principal plus interest when he knew or should have known that it was unlikely the loans would be repaid.

Larry Wayne Lewis (Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$72,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he received from a public customer checks totaling \$14,500 for the purchase of shares of an income and bond fund and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent.

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

August Actions

Larry E. Brewer (Registered Representative, Germantown, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$13,500 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Brewer consented to the described sanctions and to the entry of findings that he recommended and engaged in mutual fund and securities transactions in the account of a public customer without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customer based on the customer's financial situation, investment objectives, and needs. In addition, Brewer exercised discretionary power in the same customer's account without obtaining the customer's prior written authorization or his member firm's prior written acceptance of the account as discretionary.

Keith T. Willett (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$90,000 in restitution to public customers. Without admitting or denying the allegations, Willett consented to the described sanctions and to the entry of findings that he engaged in the sale of unregistered securities, in violation of Section 5 of the Securities Act of 1933.

In addition, the NASD determined that Willett failed to exercise due diligence and examine the operations and assets of an entity before offering and selling the subject investments in the form of shares of collateral to be posted by the entity. The NASD also found that Willett failed to disclose to investors that he had not exercised due diligence and had not verified certain claims made by an individual negotiating a collateralized loan for the entity. Furthermore, the find-

ings stated that Willett engaged in private securities transactions without prior written notice to, and approval from, his member firm.

September Actions

Harry A. Fredrick III (Registered Principal, Memphis, Tennessee) was fined \$12,000 and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Fredrick executed certain U.S. Government agency securities transactions with public customers. However, Fredrick failed to disclose to the Board of Directors and senior officers that the prices were not reasonably related to the then current market price for the securities. This activity allowed one of the customers to avoid or postpone recognizing loss on its sale of the mortgage-backed securities, a practice commonly referred to as adjusted trading.

In addition, Fredrick caused the falsification of the books and records of one customer in that realized losses on the sales were concealed, and the new securities purchased by the other customer were recorded at inflated prices. Furthermore, Fredrick failed to reflect on his firm's books and records that the aforementioned transactions were not effected at the prevailing market price and caused false and misleading confirmations to be mailed to the customers.

Mark A. Griffin (Registered Principal, Bethany, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for one week, suspended from association with any NASD member in any principal capacity for six months, and required to requalify by examination as a general securities representative within 90 days and as an options principal before acting in that capacity. Without admitting or denying the allegations, Griffin consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without prior written authorization from the customer or prior written acceptance of the account as discretionary by his member firm.

William C. Matthews (Registered Principal, Walnut, Michigan) was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay \$6,000, plus interest, in restitution to a registered representative. The NBCC imposed the sanctions following review of a New Orleans DBCC decision. The sanctions were based on findings that Matthews received from a registered representative checks totaling \$6,000 for investment in mutual funds. However, instead of investing the funds, Matthews induced the representative to loan him the funds by promising an inordinate rate of return.

Michael J. Parker (Registered Representative, Oklahoma City, Oklahoma) submitted an Offer of Settlement pursuant to which he was fined \$522,000, barred from association with any NASD member in any capacity, and must pay \$472,000 in restitution. Without admitting or denying the allegations, Parker consented to the described sanctions and to the entry of findings that by means of manipulative, deceptive, and fraudulent devices, he misappropriated funds totaling \$472,000 from six public customers. In addition, the NASD determined that Parker failed to respond to NASD requests for information.

Edward G. Ratyniak (Registered Representative, Bayonne, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and must pay \$29,092.63 in restitution to his member firm. Without admitting or denying the allegations, Ratyniak consented to the described sanctions and to the entry of findings that he requested two loan checks and cash surrender checks totaling \$29,092.63 from the insurance policies of three public customers, forged two of their signatures, deposited the funds into his

bank account, and converted the monies to his own use.

Carol Ann Rhoads (Registered Principal, Little Rock, Arkansas) was fined \$6,700, suspended from association with any NASD member in any capacity for one week, and barred from association with any NASD member in any principal capacity. The NBCC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that, acting for an insurance customer, Rhoads sent correspondence to a financial institution that did not disclose certain information and misrepresented material facts that would have directly affected the decision of the lending institution in favor of her customer.

Rhoads also sent correspondence to another insurance customer without obtaining prior written approval of her member firm's designated principal, in accordance with restrictions placed on her by the firm.

October Actions

Arvis Harper, Jr. (Registered Representative, Edmond, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and must pay \$5,184.16 in restitution to the appropriate party. Without admitting or denying the allegations, Harper consented to the described sanctions and to the entry of the findings that he received a \$4,000 check from a public customer for investment purposes and failed to remit the funds to his member firm. In addition, the NASD found that Harper borrowed \$5,184.16 from the same public customer and represented that he would repay the loan within one year at interest rates from 10 to 50 percent.

John P. McDonald (Registered Representative, Montgomery, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$200,000, barred from association with any NASD member in any capacity, and required to pay \$171,828.10 in restitution to a public customer. Without admitting or denying the allegations, McDonald consented to the described sanctions and to the entry of findings that on several occasions he executed unauthorized purchase and sale transactions in the accounts of public customers without their knowledge or consent.

Furthermore, the NASD determined that McDonald caused the withdrawal of \$171,828.10 from the account of a public customer without the customer's knowledge or consent. In addition, the NASD found that McDonald opened an account in his wife's maiden name and executed transactions without her knowledge or consent.

William B. Michaels (Registered Representative, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which he was fined \$21,000 and suspended from association with any NASD member in any capacity for one week. Without admitting or denying the allegations, Michaels consented to the described sanctions and to the entry of findings that he recommended and engaged in transactions for public customers without having reasonable grounds for believing that the transactions were suitable based on the customers' financial situations, investment objectives, and needs. The findings also stated that Michaels executed transactions for a public customer without having prior written authorization to do so.

Ricky W. Stockton (Associated Person, Oklahoma City, Oklahoma) was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$227,392.05 in restitution to a public customer. The sanctions were based on findings that Stockton transferred a \$285,000 face amount Government National Mortgage Association (GNMA) Pool from the account of a public customer to the account of a company without the customer's knowledge or consent. In addition, Stockton issued shares of a preferred stock in the same customer's name in exchange for the aforementioned GNMA and

misappropriated the \$285,000 GNMA for use as capital for a former member firm without the customer's knowledge or consent.

District 6—Texas

August Actions

John Earl Law (Registered Representative, Morgan, Texas) submitted an Offer of Settlement pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$657,886 in restitution to his member firm and public customers. Without admitting or denying the allegations, Law consented to the described sanctions and to the entry of findings that he converted to his own use and benefit customers' funds totaling \$657,886.58 without their knowledge or consent.

Calvin Thomas McKibben (Registered Principal, Dallas, Texas) and **Hector Cristobal Carreno (Registered Principal, Dallas, Texas)**. McKibben was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a principal. Carreno was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity. The sanctions were based on findings that a member firm, acting through McKibben, engaged in securities transactions while failing to maintain its required minimum net capital and failed to maintain accurate books and records.

In addition, the firm, acting through Carreno, fraudulently induced and recommended the purchase of promissory notes to two public customers through the use of false statements while failing to disclose material facts to the customers.

Touchstone Capital Corporation (Dallas, Texas) was fined \$20,000 and required to disgorge \$16,122.63 in commissions paid to unregistered salesmen. The sanctions were based on findings that the firm permitted five individuals associated with the firm to sell nonexempt securities without proper qualification or registration with the NASD. In addition, the firm violated Section 5 of the Securities Act of 1933 and Rule 506 of Regulation D by selling unregistered, nonexempt securities to public customers who were not eligible to buy those securities.

September Actions

None

October Actions

None

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

August Actions

Atlanta Securities & Investments, Inc. (Atlanta, Georgia) was fined \$70,000, jointly and severally with other individuals and required to pay \$118,300 in restitution, plus interest, to customers. The sanctions were based on findings that the firm conducted a securities business while failing to maintain sufficient net capital and failed to make a record of customer funds received and forwarded. The firm also sold shares of common stocks, as principal, to its public customers at unfair prices with markups exceeding 128 percent.

Furthermore, the firm permitted an individual to function as president and sales representative of the firm without proper registration with the NASD as a general securities principal or registered representative. In addition, the firm failed to file documents with the NASD required by the Interpretation of the Board of Governors concerning Review of Corporate Financing, in connection with public offerings. Also, the firm made false representations concerning offering contingencies, in violation of SEC Rule 10b-9, and failed to establish, maintain, and enforce its written supervisory

procedures.

Charles King Baldwin (Registered Representative, Charlotte, North Carolina) was fined \$26,250, barred from association with any NASD member in any capacity, and ordered to pay \$1,250, plus interest, in restitution to a public customer. The sanctions were based on findings that Baldwin received checks from a public customer totaling \$1,250 for the purchase of a security and, instead, converted the funds to his own use and benefit without the knowledge and consent of the customer. In addition, Baldwin failed to respond to an NASD request for information.

Brian J. Bonner (Registered Representative, Coral Springs, Florida) was fined \$10,926.25 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bonner liquidated a mutual fund account for \$2,185.25 which he knew did not belong to him and misappropriated the proceeds to his own use and benefit without the owner's knowledge or authorization.

Don Allen Burk (Registered Principal, Delray Beach, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Burk failed to respond to an NASD request for information concerning customer complaints.

Cyrus B. Follmer, Jr. (Registered Representative, Greenville, North Carolina) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$53,000, plus interest, in restitution to public customers. The sanctions were based on findings that Follmer solicited and accepted from public customers checks totaling \$53,000 for the purchase of securities but, instead, deposited the funds in a bank account of a company he owned, and applied the proceeds to his own use and benefit. In addition, Follmer provided to the same customers false and misleading account statements reflecting investments when no such investments had been made.

Andrew H. Geyer (Registered Representative, Kings Park, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Geyer consented to the described sanctions and to the entry of findings that he effected the purchase of shares of a common stock in the account of a public customer without the knowledge or authorization of the customer.

Stephen F. Hinch (Registered Representative, Charlotte, North Carolina) was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay \$99,673.13, plus interest, in restitution to his member firm. The sanctions were based on findings that Hinch effected eight unauthorized transactions in the account of a public customer, converted to his own use and benefit funds received from the same customer totaling \$58,673.13 without the customer's knowledge or consent, and forged the customer's endorsement on four checks.

Hinch also opened a joint securities account with a member firm in his name and the name of the aforementioned customer using a post office box he controlled and forged the customer's signature on the customer account agreement.

Furthermore, Hinch caused the account of two other public customers to be transferred from his member firm to another member firm by using a post office box he controlled, forged the same customers' signatures on account transfer authorization forms, and effected unauthorized transactions in these accounts. In addition, Hinch wrote several checks totaling \$187,802.15 on their accounts, and attempted to negotiate the checks by forging the customers' signatures. He also converted \$41,000 from one of these customers' accounts.

The NASD found that Hinch opened a joint securities account and maintained an individual securities

account at a member firm without notifying the firm in writing that he was associated with another member firm and failed to notify his member firm in writing of the existence of the accounts. Hinch also failed to respond to an NASD request for information.

Ellen Lapin Margaretten (Registered Principal, North Miami, Florida) was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The suspension will continue thereafter until two arbitration awards have been paid and satisfactory proof of such payments are provided to the Atlanta NASD District staff. The sanctions were based on findings that Margaretten failed to pay \$12,000 in NASD arbitration awards.

Charles Frances Molnar (Registered Principal, Lawrenceville, Georgia) submitted an Offer of Settlement pursuant to which he was fined \$3,500 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Molnar consented to the described sanctions and to the entry of findings that, in violation of the NASD's Mark-Up Policy, a member firm, acting through Molnar, effected principal transactions of a common stock with public customers at prices that were unfair.

Stanley S. Schlorholtz (Registered Representative, Palm Harbor, Florida) was fined \$135,000, barred from association with any NASD member in any capacity, and required to pay \$16,080.17, plus interest, in restitution to a public customer. The sanctions were based on findings that Schlorholtz engaged in private securities transactions with two public customers without providing prior written notification to his member firm. In addition, Schlorholtz solicited and accepted from a public customer four checks totaling \$16,080.17 for investment purposes and, instead, applied the proceeds to his own use and benefit. Schlorholtz also failed to respond to an NASD request for information.

TriPark Securities, Inc. (Chapel Hill, North Carolina) was fined \$15,000 and expelled from NASD membership. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm engaged in activity contrary to representations contained in the private placement memoranda for three offerings of limited partnership interests. Specifically, for two of the offerings, the firm knew that the general partner had failed to purchase units that remained unsold by the termination date of the offerings, and sold these units to investors subsequent to the specified offering termination date. In addition, the firm failed to place investors' funds in escrow accounts for these offerings as required.

TriPark Securities, Inc. (Chapel Hill, North Carolina) and **Jeffrey R. Boak (Registered Principal, Chapel Hill, North Carolina)** were fined \$15,000, jointly and severally. Boak was barred from association with any NASD member in any principal or supervisory capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that the firm, acting through Boak, failed to file its FOCUS Part I reports and its annual audited reports in a timely manner. In addition, the firm, acting through Boak, failed to designate a financial and operations principal, as required by Schedule C of the NASD's By-Laws.

September Actions

Edward W. Bohm (Registered Representative, Atlanta, Georgia) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bohm failed to respond to NASD requests for information concerning a customer complaint.

Ray A. Booth (Registered Representative, Myrtle Beach, South Carolina) was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that

Booth solicited and accepted from four public customers \$23,740 for the purchase of annuities and, instead, converted the monies to his own use and benefit. In addition, Booth failed to respond to NASD requests for information.

Daniel L. Dailey (Registered Representative, Delray Beach, Florida) was fined \$21,186 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of an Atlanta DBCC decision. The sanctions were based on findings that Dailey exercised discretion in the account of a public customer without prior written authorization from the customer or written acceptance of the account as discretionary by his member firm. In addition, Dailey effected 34 options transactions in a public customer's account without authorization and failed to respond to NASD requests for information.

October Actions

Century Capital Corp. of South Carolina (Greenville, South Carolina) and **John W. Brown, III (Registered Principal, Travelers Rest, South Carolina)** were fined \$10,000, jointly and severally, and Brown was suspended from association with any NASD member in any capacity for 30 days. In addition, the firm was suspended from effecting principal transactions with retail customers except unsolicited liquidating transactions for 30 days and required to pay \$23,514 in restitution to public customers. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a March 1992 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Brown, effected principal transactions in six common stocks with public customers at unfair prices. The markups on these transactions ranged from 5.63 to 133.33 percent above the prevailing market price.

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

James P. Foley (Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Foley consented to the described sanctions and to the entry of findings that he completed and signed a public customer's name to an application for an annuity purchase of \$125,000 without the customer's knowledge or consent.

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

August Actions

None

September Actions

John Sinclair Davidson, Jr. (Registered Principal, Troy, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Davidson consented to the described sanctions and to the entry of findings that a former member firm, acting through Davidson, conducted a securities business while failing to maintain minimum required net capital and failed to file its FOCUS Parts I and IIA reports on a timely basis.

The findings also stated that the firm, acting through Davidson, failed to maintain a cash receipts and disbursements blotter, a securities received and delivered blotter, and failed to maintain at its main office copies of monthly mutual fund account statements for its customers. In addition, the NASD determined that the firm, acting through Davidson, failed to abide by the terms of its restrictive agreement

by conducting an options and a municipal securities business despite the prohibition of each such activity.

Furthermore, the NASD found that the firm, acting through Davidson, conducted a securities business while failing to have an appropriately qualified and registered Limited Principal-Financial and Operations designated by the firm, and Davidson acted in the aforementioned capacity but failed and neglected to become so registered or to pass the qualification examination required to act in such capacity.

Katherine V. Hart (Registered Representative, Norway, Michigan) submitted an Offer of Settlement pursuant to which she was fined \$29,000, barred from association with any NASD member in any capacity, and required to pay \$8,566.84 in restitution to customers or her former member firm. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that she received from public customers monies with instructions to purchase mutual funds. The NASD found that Hart failed to follow the customers' instructions, and used \$8,566.84 of the funds for some purpose other than the benefit of the customers.

Curtis W. Manning (Registered Principal, Park Ridge, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Manning consented to the described sanctions and to the entry of findings that he prepared and delivered to members of the public sales literature that failed to contain material information and/or contained exaggerated, unwarranted, or misleading statements regarding performance reports or summaries on securities owned by members of the public. According to the findings, Manning disseminated the aforementioned sales literature without obtaining prior approval by a designated registered principal of either of his member firms.

The findings also stated that Manning engaged in outside business activities while failing to give prompt written notice of his participation in such activities to his member firm.

Laura Ann Montgomery (Registered Representative, Indianapolis, Indiana) was fined \$115,000, barred from association with any NASD member in any capacity, and required to pay \$19,000 in restitution to a member firm. The sanctions were based on findings that Montgomery caused \$19,000 to be withdrawn from a public customer's account without the customer's knowledge or consent, deposited the funds in an account in which she had a beneficial interest, and used all but \$2,817.74 for purposes other than for the benefit of the customer. Montgomery also failed to respond to NASD requests for information.

Anthony Salvatore Quattrochi (Associated Person, Naperville, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$11,000, barred from association with any NASD member in any capacity, and required to pay \$2,200 in restitution to the appropriate party. Without admitting or denying the allegations, Quattrochi consented to the described sanctions and to the entry of findings that he obtained from two public customers a \$2,200 check payable to his member firm. According to the findings, the check was intended as insurance premium payments. However, instead of depositing the check as instructed, and without the customers' knowledge or consent, the NASD found that Quattrochi deposited the funds in an account in which he had a controlling interest and misappropriated the monies for his own use and benefit.

B.R. Stickle & Co. (Chicago, Illinois) and **Bruce R. Stickle (Registered Principal, Chicago, Illinois)** were fined \$15,000, jointly and severally. The NBCC imposed the sanction following appeal of a Chicago DBCC decision. The sanction was based on findings that the firm, acting through Stickle, conducted a securities business while failing to maintain its minimum required net capital and while failing to employ an

appropriately qualified and registered Limited Principal-Introducing Broker/Dealer Financial and Operations. In addition, Bruce Stickle acted in the aforementioned capacity without passing the appropriate qualification examination.

The respondents have appealed this action to the SEC, and the sanctions are not effective pending consideration of the appeal.

October Actions

John Dawson & Associates, Inc. (Chicago, Illinois) and **Douglas F. Samuels (Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. In addition, Samuels was suspended from acting as a financial and operations principal with any NASD member firm for five business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Samuels, conducted a securities business while failing to maintain its minimum required net capital and failed to prepare and/or maintain an accurate net capital computation. The NASD also found that the firm, acting through Samuels, filed an inaccurate FOCUS Part I report.

Michael Jay Glover (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Glover consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning his termination from a member firm and a customer complaint.

Daniel Richard Hajduk (Registered Representative, Mt. Prospect, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Hajduk consented to the described sanctions and to the entry of findings that he executed securities transactions for public customers without being registered as a representative and when he was under an NASD order to requalify by examination.

David G. Jackson (Registered Representative, Indianapolis, Indiana) submitted an Offer of Settlement pursuant to which he was fined \$60,000, barred from association with any NASD member firm in any capacity, and required to pay \$34,938.17 in restitution to the appropriate parties. The sanctions were based on the entry of findings that Jackson withdrew funds totaling \$34,938.17 from the accounts of public customers without their knowledge or consent, and used the funds for purposes other than for the customers' benefit. Jackson also failed to respond to NASD requests for information.

Roger J. Lange (Registered Principal, Paris, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$5,000, jointly and severally with a former member firm. In addition, Lange was suspended from association with any NASD member in any capacity for three months, required to requalify by examination as a general securities principal, and must pay restitution to customers.

Without admitting or denying the allegations, Lange consented to the described sanctions and to the entry of findings that a former member firm, acting through Lange, conducted a securities business while failing to maintain its minimum required net capital and failed to maintain an accurate net capital computation. Moreover, the firm, acting through Lange, filed an inaccurate FOCUS Part I report and failed to comply with the terms of its restriction agreement with the NASD in that it effected principal transactions with customers without NASD approval.

James L. Mangone (Registered Representative, Miami, Florida) submitted a Letter of Acceptance,

Waiver and Consent pursuant to which he was fined \$65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mangone consented to the described sanctions and to the entry of findings that he received checks totaling \$13,000 from a public customer for the purchase of securities and, instead, deposited the funds into an account he controlled.

Donna Pavlos (Registered Representative, Michigan City, Indiana) submitted an Offer of Settlement pursuant to which she was fined \$1,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Pavlos consented to the described sanctions and to the entry of findings that she withdrew \$328.80 from her member firm's checking account and used the funds for her personal benefit.

District 9—Delaware, District of Columbia, Maryland, southern New Jersey (the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem), Pennsylvania, Virginia, and West Virginia

August Actions

Dominick & Dominick, Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which it was fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to supervise two registered representatives properly and that its written supervisory procedures were inaccurate and failed to reasonably provide for appropriate supervision of its branch offices and account representatives. The findings also stated that the firm failed to conduct an annual examination of a branch office and an annual compliance meeting with its registered representatives of that branch.

Robert J. Berry (Registered Representative, Sewell, New Jersey) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Berry received from a public customer a \$2,000 check intended for the purchase of an individual retirement account. Instead, Berry converted the funds to his own use and benefit. In addition, Berry failed to respond to NASD requests for information.

John M. Hulley (Registered Representative, Grafton, West Virginia) was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hulley forged or caused to be forged a public customer's signature on a life insurance policy application and on a request to withdraw \$604.75 in accumulated dividends from the same customer's existing life insurance policy. He then caused the policy dividends to be applied to the new application without the customer's authorization or consent.

Michael J. Janik (Registered Representative, Cherry Hill, New Jersey) was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. In addition, Janik must requalify by examination as a general securities representative before becoming associated with any member in that capacity. The sanctions were based on findings that Janik executed unauthorized transactions in the joint account of two public customers.

Paul A. Mochinal (Registered Representative, Arlington, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mochinal consented to the described sanctions and to the entry of findings that he submitted a fictitious address change for an insurance customer's life insurance policy to reflect his own address and requested a \$1,048 loan against the policy. According to the findings, Mochinal forged the customer's endorsement on the check and converted its proceeds to his own use

and benefit.

The NASD also determined that Mochinal submitted to his member firm a fraudulent insurance form for another insurance customer without the customer's knowledge or consent.

John R. Moysey (Registered Principal, Great Falls, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any NASD member in any principal, supervisory, or managerial capacity. In addition, Moysey was prohibited from having a proprietary interest in a member firm except that he may maintain a non-controlling interest in a member whose stock is publicly traded and subject to the reporting requirements of Section 12(g) of the Securities Exchange Act of 1934. Moreover, Moysey was suspended from association with any NASD member in any capacity for 10 business days.

Without admitting or denying the allegations, Moysey consented to the described sanctions and to the entry of findings that he failed to supervise two registered representatives properly and thus failed to detect and prevent violations by these individuals.

Shahrokh Naghdi (Registered Representative, Ellicott City, Maryland) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, on two occasions, Naghdi indicated on his *Uniform Application for Securities Industry Registration or Transfer* (Form U-4) that he was employed with a firm when, in fact, he was never associated with the firm in any capacity. Naghdi also failed to respond to NASD requests for information.

Michael J. Paetzold (Registered Representative, Carlisle, Pennsylvania) was fined \$120,000 and barred from association with any NASD member in any capacity. In addition, he was ordered to pay restitution of the amounts he converted including interest from the dates of conversion. The sanctions were based on findings that Paetzold caused checks totaling \$114,247.14 to be issued against customer securities accounts maintained with his member firm and negotiated such checks by depositing the funds to his personal bank account, without the customers' authorization or consent.

Paetzold also failed to respond to NASD requests for information.

Michael A. Parker (Registered Representative, Baltimore, Maryland) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Parker consented to the described sanctions and to the entry of findings that he misrepresented to a public customer that there would not be any sales charges associated with a mutual fund investment when, in fact, there was a 4.5 percent front-end sales charge.

The findings also stated that Parker prepared for the same customer's signature a mutual fund disclosure form indicating that there would neither be a front-end nor deferred sales charge for the fund. Furthermore, the NASD determined that Parker forged the same customer's signature on another disclosure form indicating that there was a front-end sales charge of 4.5 percent totaling \$893.86, and submitted the forged disclosure form to his member firm.

Robert L. Prohaska (Registered Representative, Wheeling, West Virginia) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Prohaska received from an insurance customer \$126.32 in payment of a life insurance premium and, thereafter, retained the money and failed to remit it to the insurer. In addition, Prohaska received from another insurance customer \$77 in payment of an automobile insurance premium, retained the money, and failed to remit it to the insurer. Moreover, Prohaska provided the customer with a falsified certificate of insurance bearing a non-existent policy number.

Prohaska also failed to respond to NASD

requests for information.

Scott F. Yermish (Registered Representative, Chevy Chase, Maryland) was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Yermish must pay restitution to all aggrieved customers. The sanctions were based on findings that Yermish received from two public customers checks totaling \$41,490.81 intended for the purchase of securities. Yermish, instead, negotiated the checks and converted the funds to his own use and benefit.

In addition, Yermish received from another customer a \$19,123 check intended as payment on an Individual Retirement Account. Yermish applied only \$9,000 of the funds to the account and converted the balance of \$10,123 to his own use and benefit. Yermish also received from the same customer a \$7,000 wire transfer into his account for the intended purpose of purchasing municipal securities. Yermish never purchased any securities and converted the funds to his own use and benefit.

Furthermore, Yermish operated as an off-site representative through an entity and represented to a customer that the entity was a subsidiary of his member firm when, in fact, it was never a subsidiary or affiliate of the member. Yermish also prepared and delivered to another customer at least two account statements indicating that the customer had an account at his member firm; however, no such account had ever been established.

Yermish also failed to respond to NASD requests for information.

September Actions

Adam Barkow (Registered Representative, Philadelphia, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barkow consented to the described sanctions and to the entry of findings that he created two life insurance policy applications for two fictitious individuals and submitted such applications to his member firm.

Robert F. Brophy (Registered Representative, Aston, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. In addition, he was ordered to pay restitution of the funds misappropriated from insurance customers. Without admitting or denying the allegations, Brophy consented to the described sanctions and to the entry of findings that he converted to his own use and benefit checks totaling \$20,697.01 issued to policyholders.

Richard A. DeMoss (Registered Representative, Lower Burrell, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, in 17 instances, DeMoss, acting without the authorization or consent of policyholders, caused their addresses of record to be changed to a post office box under his control. Furthermore, the findings stated that DeMoss caused policy loan checks totaling \$30,737.63 to be issued by his member firm to the order of the policyholders. According to the findings, DeMoss forged the policyholders' endorsements on the checks, negotiated the checks, and retained the proceeds thereof.

Max Friedlander II (Registered Representative, Brooklandville, Maryland) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Friedlander consented to the described sanctions and to the entry of findings that he misrepresented on a Limited Trading Authorization form and to an investor that he was associated with a firm when, in fact, he was never associated with such firm in any capacity.

Alan M. Goldstein (Registered Representative, Mor-

ton, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Goldstein consented to the described sanctions and to the entry of findings that, without an insurance customer's knowledge or consent, Goldstein forged an application for a life insurance policy and submitted the application to his member firm. Goldstein also failed to respond to NASD requests for information, according to the findings.

Gary R. Sigman (Registered Representative, Wynnewood, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sigman consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

October Actions

None

District 10—the five boroughs of New York City and the adjacent counties in New York (the counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester) and northern New Jersey (the state of New Jersey, except for the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem)

August Actions

William Bezemer (Registered Representative, Gilching, Germany) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Bezemer consented to the described sanctions and to the entry of findings that he purchased shares of a common stock in the securities account of a public customer without the customer's knowledge or consent.

Adam Stuart Levine (Registered Representative, New York, New York) was fined \$40,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a October 1992 NBCC decision. The sanctions were based on findings that Levine effected seven unauthorized transactions in public customer accounts. In addition, without the knowledge or consent of two public customers, Levine transferred their accounts from one member firm to another.

September Actions

George P. Demakos (Registered Representative, Hauppauge, New York) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$89,000 in restitution to a public customer. The sanctions were based on findings that Demakos made an unsuitable recommendation to a public customer considering her financial situation, investment experience, and needs. In addition, Demakos' false representation to the same customer that the recommendation was a safe investment constituted fraud. Demakos also engaged in private securities transactions without providing prior written notice to his member firm.

Frederic Peter Gray (Registered Principal, Long Beach, New York), Richard Archer (Registered Principal, Bethpage, New York) and Robert Kahan (Registered Principal, Rockville Centre, New York) submitted an Offer of Settlement pursuant to which Gray and Kahan were each fined \$7,500 and suspended from association with any NASD member as general securities principals for 30 business days. Archer was fined \$2,500 and suspended from association with any NASD member as a general securities principal for 45 business days.

Without admitting or denying the allegations, the

respondents consented to the described sanctions and to the entry of findings that they made misrepresentations to customers concerning the risks of arbitrage investing. The findings also stated that Gray, Archer, and Kahan failed to timely advise their customers that the corporate recapitalization underlying the arbitrage would not take place, which permitted certain favored accounts to unwind their arbitrage positions at more favorable prices than other customers received.

The NASD also found that Gray, Archer, and Kahan failed to investigate the facts surrounding the aforementioned investment to public customers and, therefore, did not have a reasonable basis for recommending it to their respective customers. In addition, the NASD determined that Gray, Archer, and Kahan also favored certain customer accounts while other customer orders went unexecuted.

Jerome Anthony Messana (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Messana consented to the described sanction and to the entry of findings that he failed to pay a \$20,756.73 arbitration award.

Frank Paul Ravenna, Jr. (Registered Representative, Pomona, New York) was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and will be barred from association with any NASD member in any capacity if he fails to pay a \$189,596 arbitration award within 30 days. The sanctions were based on findings that Ravenna failed to pay a \$189,596 NASD arbitration award. Ravenna did not comply with the aforementioned sanction; therefore, he is barred in any capacity.

Robert Maximilian Saar (Registered Representative, Ozone Park, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$123,250 in restitution to his member firm. The sanctions were based on findings that Saar converted customer funds totaling \$123,250 intended for investment in an entity by falsely representing to investors that the entity was a division of his member firm when, in fact, it was based at his home address. In addition, Saar failed to respond to NASD requests for information.

James Edward Shickora (Registered Representative, Raritan, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Shickora consented to the described sanction and to the entry of findings that he failed to pay a \$6,600 NYSE arbitration award.

Robert L. Uiterwijk (Registered Representative, Soest, Holland) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$145,000 in restitution to his member firm. The sanctions were based on findings that Uiterwijk exercised discretionary authority over the account of a public customer without having first obtained written authorization from the customer. In addition, Uiterwijk misrepresented to the same customer and one other public customer that deposits had been made in their accounts and sent one of the customers a self-generated summary falsely reflecting such deposit. These misrepresentations were found to have been fraudulent in nature by the DBCC. Uiterwijk also failed to respond to NASD requests for information.

October Actions

Michael Alan Leeds (Registered Principal, Guttenberg, New Jersey) was fined \$238,354 and barred from association with any NASD member in any capacity. The SEC imposed the sanctions following appeal of a November 1990 NBCC decision. The sanctions were based on findings that on the first day of aftermarket trading, a former member firm

acting through Leeds to dominate and control the market for an initial public offering. As a result, the market in the offering was noncompetitive. Under such circumstances and consistent with longstanding NASD and SEC precedent, the firm was required to use its contemporaneous cost of acquiring the offering to compute markups.

In addition, Leeds, acting for a former member firm, engaged in 1,159 fraudulently excessive markups and 590 fraudulently excessive markdowns with public customers. The excessive markups ranged from 12 to 112 percent above the prevailing market price with the excessive markdowns ranging from 5.6 to 57.3 percent below the prevailing market price of the offering.

Furthermore, Leeds failed to register with the NASD as a general securities principal during a period in which he acted as the firm's president.

District 11—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the counties of Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)

August Actions

None

September Actions

Paul H. Fried (Registered Representative, Boston, Massachusetts) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fried failed to respond to NASD requests for information concerning a customer complaint.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Rubin, engaged in a securities business while failing to maintain its required minimum net capital and failed to prepare and maintain its books and records. In addition, the NASD found that Seguin was actively managing the firm without being properly qualified or registered with the NASD as a general securities principal.

Dale C. Trask (Registered Representative, Swampscott, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Trask consented to the described sanctions and to the entry of findings that he engaged in a course of conduct involving the recommendation, purchase, and sale of various mutual funds that were excessive and unsuitable for the account of a public customer in relation to the customer's investment objectives, financial situation, and needs.

Charles H. Wilson (Registered Representative, Leicester, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he created and submitted 12 fictitious insurance policy applications for public customers without their knowledge or consent.

October Actions

Pendrick Reeves Associates, Inc. (New Canaan, Connecticut), Bruce R. Rubin (Registered Principal, New Haven, Connecticut) and Elyas A. Seguin (Registered Principal, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Seguin were fined \$25,000, jointly and severally. In addition, Seguin is required to take and successfully pass the general securities principal

examination. Rubin was fined \$10,000 and required to requalify by examination as a financial and operations principal.

Market Surveillance Committee

August Actions

J. W. Gant & Associates, Inc. (Englewood, Colorado), Charles F. Kirby (Registered Representative, Littleton, Colorado), and James Patrick Driver (Registered Principal, Englewood, Colorado). The firm was fined \$125,000, jointly and severally with one individual, fined another \$125,000, jointly and severally with another individual, and fined \$62,500, jointly and severally with a third individual. The firm was also required to submit satisfactory proof of payment of \$687,500 in restitution, jointly and severally with an individual, to customers. Kirby was fined \$5,000, jointly and severally, and suspended from association with any NASD member in any capacity for five business days. Driver submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity.

The sanctions were based on findings that the firm, acting through Kirby and others, dominated and controlled the market in a stock such that there was no independent, competitive market in the security in that they effected transactions in, and induced others to effect transactions in, the stock at unfair and unreasonable prices with markups ranging from 5.14 to 83.77 percent over the prevailing market price for the securities. Furthermore, the firm, Kirby, and others failed to disclose to their customers that the prices at which they were selling the stock were not fair or reasonable.

In addition, the firm engaged in excessive markups involving two other stocks, in violation of the NASD's Mark-Up Policy, without disclosing these markups to its customers. The markups on these transactions ranged from 5.74 to 77.33 percent over the prevailing market price.

Moreover, J. W. Gant failed to establish and maintain a system to supervise the activities of its registered representatives to assure compliance with respect to markups. James Driver was responsible for the firm's compliance; however, he failed to enforce its supervisory procedures concerning excessive markups.

Driver's suspension commenced July 26, 1993, and concluded August 24, 1993.

Harold B. Hayes (Registered Representative, Pleasant Hill, California) was fined \$300,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision. The sanctions were based on findings that Hayes entered into a payment arrangement with the issuer of common stock whereby he purchased the stock offering with the proceeds from subsequent sales, in violation of SEC Rule 10b-5. Hayes then effected a series of transactions in the common stock that created actual and apparent trading activity for the purpose of inducing the purchase or sale of the stock by others. However, Hayes failed to disclose to his customers the special payment arrangement, the fact that he was paying for the stock with the proceeds of its sales at higher prices to the customers, or that his self-interest could influence recommendations to his customers. As a result of this fraudulent activity, Hayes realized profits of \$277,000.

As a creditor and a customer, Hayes arranged for the extension of credit to himself in his payment arrangement with the issuer of the common stock in violation of Regulation T, and, as a borrower who caused an extension of credit, violated Regulation T, thereby violating Regulation X of the Federal Reserve Board. In furtherance of the manipulative scheme, Hayes solicited customers and recommended purchases of the aforementioned stock by making misrepresentations and omissions of material facts. In addition, he knowingly, or with reckless disregard, executed

transactions in a registered representative's account without using reasonable diligence to determine that the execution of the transactions would not adversely affect the interests of the representative's member firm.

Furthermore, in his plan to manipulate the stock, Hayes was an undisclosed underwriter in the securities in that he purchased the stock from the issuer, and offered and sold the stock for the issuer, in its distribution.

September Actions

Barry A. Bates (Registered Principal, Aurora, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Bates consented to the described sanctions and to the entry of findings that as president of a member firm he failed to establish, maintain, and enforce written supervisory procedures which would have enabled him to properly supervise the activities of the firm's associated persons concerning compliance with the NASD's guidelines for charging markups and markdowns.

Roger M. Brooks (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 15 business days. In addition, Brooks must pay \$16,983.50 in restitution plus interest to customers. Without admitting or denying the allegations, Brooks consented to the described sanctions and to the entry of findings that he sold securities to public customers at unfair and unreasonable prices with gross sales credit charges that ranged from 13.6 to 20 percent of the total cost for the transactions.

In addition, the findings stated that Brooks made misrepresentations, unsuitable recommendations, and omissions of material facts to a public customer in the purchase of the aforementioned securities.

Gary E. Bryant (Registered Principal, Costa Mesa, California) was fined \$150,000 and suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of an August 1991 NBCC decision. The sanctions were based on findings that Bryant engaged in an unregistered distribution of shares of a newly created company formed by a merger of a privately held corporation and a publicly traded shell. The securities were unlawfully sold without registration under the Securities Act, and the distribution involved manipulation of the stock's price and excessive markups. Specifically, Bryant manipulated the price of the stock from \$5.00 to \$1 during a two-day period, and overcharged his firm's customers more than \$20,000 with markups on the transactions ranging from 10.8 to 100 percent. Furthermore, Bryant failed to develop procedures to accomplish sufficient supervision of a registered representative and failed to enforce his firm's existing procedures.

General Bond & Share Co. (Denver, Colorado) was fined \$45,750 and expelled from NASD membership. The Securities and Exchange Commission (SEC) modified the sanctions following appeal of a February 1992 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that General Bond accepted \$25,750 from 45 issuers in consideration for listing the firm as a market maker in the National Quotation Bureau, Inc.'s "Pink Sheets." However, General Bond did not provide bona-fide market-making services in these issues as evidenced by its lack of trading in the securities. Furthermore, the firm continued to accept payments from or for issuers after being advised by the NASD staff that the payments were not permissible and after representing to the NASD that it would cease such practices.

In addition, General Bond failed to demonstrate that financial information in its files for two issuers was reasonably current, in violation of Exchange Act Rule 15c2-11. Moreover, the firm failed to respond fully to NASD requests for information concerning the firm's

practices.

Steven A. Gesualdi (Registered Representative, Danbury, Connecticut) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. In addition, Gesualdi must pay \$2,390.63 in restitution plus interest to customers. Without admitting or denying the allegations, Gesualdi consented to the described sanctions and to the entry of findings that he sold securities to public customers at unfair and unreasonable prices. The gross sales credit charges for the transactions ranged from 15 to 21 percent of the total cost to the customers.

Michael D. Pittman (Registered Principal, Aurora, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Pittman consented to the described sanctions and to the entry of findings that he acted as trader for his member firm and effected transactions in common stocks. Specifically, the findings stated that he dominated and controlled the market for the stocks and charged fraudulently excessive markups in excess of 10 percent over the prevailing market prices of the firm's contemporaneous cost for the securities.

Ray C. Rivera, Jr. (Registered Representative, Buffalo Grove, Illinois) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$9,434.88 in restitution to customers. The sanctions were based on findings that Rivera violated Section 5 of the Securities Act of 1933 by offering and selling unregistered shares of a common stock to public customers on a solicited basis. Rivera also charged customers fraudulently excessive markups and markdowns in principal transactions in the same stock ranging from 10 to 63 percent, and totaling \$148,000. In addition, Rivera charged his retail customers unfair prices on the same stock in that gross sales credits ranged from 10 to 33 percent of the total cost to the customers. Furthermore, Rivera violated SEC's cold-call rule, Rule 15c2-6, by effecting retail sales of a designated security without completing certain required forms.

Steven B. Theys (Registered Principal, Castle Rock, Colorado) was fined \$50,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1992 NBCC decision. The sanctions were based on findings that Theys' former member firm underwrote an initial public offering for units in a blank-check offering, and placed over 90 percent of the underwriting with its own customers. In aftermarket trading, the firm, acting through Theys, dominated and controlled the market in the security such that there was no independent competitive market in the stock. Furthermore, they sold the units to the firm's retail customers at fraudulently excessive markups ranging from 10.33 to 30 percent over the prevailing interdealer price. Moreover, Theys failed to establish, maintain, or enforce written supervisory procedures that would have enabled him to supervise properly the firm's associated persons concerning markups.

October Actions

Gary L. Engel (Registered Representative, Ardsley, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Engel engaged in a series of fictitious transactions over a period of at least 10 months for the stated purpose of deceiving his member firm. Engel engaged in this fraudulent activity to conceal, among other things, trading losses. Furthermore, Engel caused fictitious trade and volume reports to be reported, published, and circulated.

Michael Markowski (Registered Principal, Miami Beach, Florida) was fined \$50,000, barred from association with any NASD member in a principal capacity, barred from maintaining a debt or equity interest in any

member firm, and suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of an NBCC decision.

The sanctions were based on findings that Markowski failed to respond to repeated written and oral requests for information made by the NASD concerning access to his member firm's books and records. Markowski also failed to update his registration to reflect his current address. This action has been appealed to the United States Court of Appeals for the Second Circuit and a stay of the fine and suspension was granted. Further, during the pendency of the stay, Markowski is not required to dispose of any debt or equity interest in a member firm. He may not, however, use such interest in any way to participate in or affect the management of any NASD member firm.

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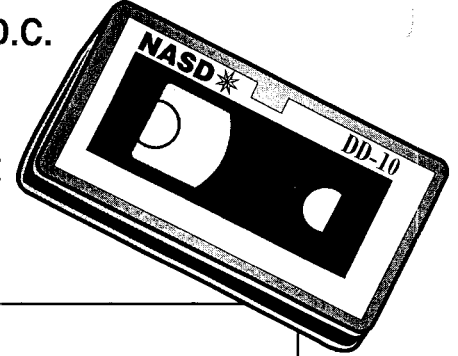
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