

NASD NOTICE TO MEMBERS 94-24

SEC Approves Amendments To Remove The Member Vote Requirement For Amendments To The Rules Of Fair Practice And Incorporate Appendices Into Rules Of Fair Practice

Suggested Routing

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

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments, effective March 8, 1994, to remove the member vote requirement for adoption of, or amendment to, the Rules of Fair Practice, to incorporate Appendices A, B, C, E, and F into Sections 30 through 34 of the Rules of Fair Practice, and to eliminate the authorization provision for ITS/CAES in Article III, Section 37 of the Rules of Fair Practice.

Description Of Amendments

The SEC has approved amendments to the NASD By-Laws and the Rules of Fair Practice that eliminate the requirement for a member vote in connection with the adoption of, or amendment to, the Rules of Fair Practice. As described previously in *Notice to Members 93-15* (March 1993), the amendments are the first of a multi-part program, the purpose of which is to make rule approval and amendment procedures for the Rules of Fair Practice, and other NASD Rules, uniform and to make the *NASD Manual* easier to use. Previously, the Rules of Fair Practice needed full membership approval for adoption, whereas the Appendices to the Rules of Fair Practice and other NASD rules (e.g., the Code of Procedure, Uniform Practice Code, and Code of Arbitration Procedure) only require NASD Board of Governors approval for amendment. The amendments make the NASD's procedures consistent with those of other self-regulatory organizations in the securities industry, which do not require member votes for rule changes. This will not only reduce delays in making rule changes effective, but will also result in administrative cost savings. A member vote is still needed for rule changes to the NASD By-Laws,

and the Board has specifically provided in these By-Law amendments that it may seek a member vote on any rule change whenever it feels such a vote is desirable.

In approving the amendments, which were approved by over 77 percent of votes received from NASD members, the SEC found that the changes do not alter the substance of the NASD Rules of Fair Practice, but rather simplify the NASD's ability to amend its rules.

The SEC noted that mechanisms remain for members to participate in the formulation of, and comment on, NASD proposed rule changes. These include member representation on the Board of Governors and all Standing and District Committees, the opportunity to comment on proposed rule changes filed with the SEC, the receipt of periodic summaries of actions taken at Board of Governors meetings, and the opportunity to comment on significant proposed rule changes that the NASD may elect to circulate prior to filing with the SEC.

The SEC has also approved amendments to the Rules of Fair Practice that incorporate the Appendices under Article III, Sections 30 through 34 into the Rules of Fair Practice they were adopted under. Thus, Appendix A is now in Section 30; Appendix B is in Section 31; Appendix C is in Section 32; Appendix E is in Section 33; and Appendix F is in Section 34, Article III of the Rules of Fair Practice.

The SEC also approved deletion of Section 37, Article III, which authorizes the ITS/CAES and CAES Operating Rules, because such authorization is contained in new Subsections 1(a)(3), (8), and (9) to Article VII of the By-Laws.

Questions concerning this Notice

should be directed to T. Grant Callery, Vice President and Deputy General Counsel, (202) 728-8285.

Below is the text of the changes to the By-Laws approved by the SEC. Members are directed to *Notice to Members 93-15* (March 1993) for the text of the changes to the Rules of Fair Practice.

Text Of Amendments To Article VII And Article XII, NASD By-Laws

(Note: New language is underlined; deletions are in brackets.)

Board of Governors

Powers and Authority of Board of Directors

Sec. 1. (a) The Board of Governors shall be the governing body of the Corporation and, except as otherwise provided by these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the Corporation and the promotion of the Corporation's welfare, objects and purposes. In the exercise of such powers, the Board of Governors, shall have the authority to:

(1) adopt for submission to the membership, as hereinafter provided, such By-Laws[, Rules of Fair Practice] and changes or additions thereto as it deems necessary or appropriate;

(2) adopt such Rules of Fair Practice and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to the Rules of Fair Practice;

[(9)] (3) (a) adopt [for submission to the membership] such rules as the

Board of Governors deems appropriate to implement the provisions of the Act as amended [by the Government Securities Act of 1986] and the rules and regulations promulgated thereunder, and (b) make such regulations, issue such orders, resolutions, interpretations, including interpretations of the rules adopted pursuant to this Section, and directions, and make such decisions as it deems necessary or appropriate.

[(2)] (4) Unchanged.

[(3)] (5) prescribe a code of arbitration procedure providing for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate[, and neither the adoption nor any amendments to the code need be submitted to the membership for approval and the code and any amendments thereto shall become effective as the Board of Governors may prescribe];

[(4)] (6) establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof[, and neither the adoption nor any amendments to such rules and procedures need be submitted to the membership for approval and such rules and procedures and any amendments thereto shall become effective as the Board of Governors may prescribe];

[(5)] (7) Unchanged.

[(6)] (8) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the Corporation or by one or more independent firms under contract with the Corporation as the Board of Governors may deem nec-

essary or appropriate. The Board of Governors may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others[. The Board of Governors shall have power to adopt, amend, supplement or modify such rules, qualifications, classifications, standards and charges from time to time without recourse to the membership for approval, and such rules, qualifications, classifications, standards and charges shall become effective as the Board of Governors may prescribe; and,];

[(7)] (9) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirement may be administered by the Corporation, a division or subsidiary thereof, or a clearing agency registered under the [Securities Exchange] Act [of 1934.]; and

[(8)] (10) engage in any activities or conduct necessary or appropriate to carry out the Corporation's purposes under its Certificate of Incorporation and the federal securities laws.

(b) Unchanged.

* * *

Article XII

Rules of Fair Practice

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the Corporation,

to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Corporation and of the Act, the Board of Governors is hereby authorized to adopt [for submission to the members of the Corporation] such Rules of Fair Practice for the members and persons associated with members, and such amendments thereto as it may, from time to time, deem necessary or appropriate. [The Board of Governors, upon the adoption of any such Rules of Fair Practice of amendments thereto, shall forthwith cause copies thereof to be sent to each member of the Corporation to be voted upon.] If any such Rules of

Fair Practice or amendments thereto [are approved by a majority of the members voting, within thirty (30) days after the date of submission to the membership, and] are approved by the Commission as provided in the Act, they shall become effective Rules of Fair Practice of the Corporation as of such date as the Board of Governors may prescribe. [In any case, however, where a particular provision of a Rule of Fair Practice provides that membership approval is not required, the Board may amend that provision without submission to the membership for a vote as hereinbefore required. In addition, where the Board of Governors by resolution finds an emergency to exist, such Rules of Fair Practice of amendments thereto, if adopted by a two-thirds vote of the Board of Governors, may become effective as of such time as the Board of Governors may prescribe, without submission to the members for a vote as hereinbefore

required. An emergency which is found by the Board of Governors to exist shall continue until the Board of Governors by resolution terminates such but in no event shall an emergency continue for a period in excess of six months. The Board of Governors shall have the authority, however, after, in each instance, reassessing the facts and circumstances which gave rise to the emergency, by resolution to declare, if it deems such appropriate under the facts and circumstances then existing, the emergency to continue to exist for successive six-month periods as required. All emergency rules adopted during the period of the emergency shall cease to be effective upon the termination of the emergency as hereinbefore provided.] The Board of Governors is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules of Fair Practice adopted hereunder.

NASD NOTICE TO MEMBERS 94-25

SEC Approves Amendments To Filing Requirements For Communications Regarding Mutual Fund Rankings And CMOs Effective June 1, 1994

Suggested Routing

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

Executive Summary

On March 17, 1994, the Securities and Exchange Commission (SEC) approved amendments to the NASD Rules of Fair Practice to: (1) require filings of investment company advertisements and sales literature that incorporate mutual fund rankings to include a copy of the ranking or comparison used in the advertisement or sales literature; (2) require filings of investment company advertisements and sales literature that incorporate mutual fund rankings that are not generally published or are the creation of the investment company, its underwriter, or an affiliate to include a copy of the ranking or comparison used in the advertisement or sales literature; and (3) make permanent the pre-filing requirement for advertisements concerning collateral mortgage obligations (CMOs) under the Rules of Fair Practice and the Government Securities Rules. The text of the amendments, which take effect on June 1, 1994, follows this Notice.

Mutual Fund Rankings Background

As the number of mutual funds has increased, so has the number of mutual fund ranking entities (Ranking Entities). Ranking Entities, like mutual funds and fund affiliates, categorize and rank mutual funds under categories such as fund type, performance over a given period of years, total return, standardized yield calculated pursuant to SEC rules, the variations in sales charges, and risk/reward. References to such rankings in mutual fund advertisements and sales literature have also increased substantially in recent years as members have attempted to boost sales by promoting the performance of various funds. The NASD believes it is important to be able to review and regulate the use of ranking materials and the development

of customized rankings to prevent their misleading use.

Description Of The Amendment

General Filing Requirement—The NASD has amended Subsection 35(c)(1) to Article III of the Rules of Fair Practice to require members, who file any advertising or sales literature for review that uses or incorporates mutual fund rankings or comparisons of the investment company with other investment companies, to include in the filing a copy of the ranking or comparison used in the advertising or sales literature. The amendment to Subsection 35(c)(1) will permit the NASD staff to determine immediately whether the use of a ranking complies with the Advertising Rules, thus avoiding the need to research rankings or obtain a copy of the source information in order to verify its accuracy.¹

Pre-Use Filing In Certain Circumstances—The NASD has also amended Subsection 35(c)(2) to require that all investment company advertising or sales literature that incorporates rankings or comparisons of the investment company with other investment companies, where the ranking or comparison is not generally published or is the creation, directly or indirectly, of the investment company, its underwriter, or an affiliate, be filed with the Association's Advertising/Investment Company Regulation Department 10 days prior to use. While the NASD is concerned about

¹ The NASD has also proposed Guidelines for the Use of Rankings in Mutual Fund Advertisements and Sales Literature (Guidelines). These Guidelines were submitted in a separate rule filing to the SEC for review and were published for comment in Securities Exchange Act Release No. 33606 (Feb. 8, 1994); 59 FR 7276 (Feb. 15, 1994).

permitting ranking categories to be created by investment companies or their affiliates, rather than by a Ranking Entity, it recognizes that a customized ranking may provide meaningful information to the investor. Such filings must also include a copy of the data, ranking, or comparison on which the ranking or comparison is based.

Collateralized Mortgage Obligations

The SEC also approved an amendment to Article III, Subsection 35(c)(2) of the Rules of Fair Practice and Subsection 8(c)(1)(B) of the Government Securities Rules eliminating sunset provisions relating to CMOs, which expired on November 16, 1993. This amendment makes the pre-filing requirement for CMO advertisements permanent.

Any questions regarding this Notice may be directed to Elliott R. Curzon, Senior Attorney, (202) 728-8451, Robert J. Smith, Attorney, (202) 728-8176, Office of General Counsel, or R. Clark Hooper, Vice President, Advertising/Investment Companies, (202) 728-8329.

Text Of Amendments To Section 35, Article III Of The Rules Of Fair Practice And Section 8 Of The Government Securities Rules

(Note: New language is underlined; deletions are in brackets.)

Rules of Fair Practice

Communications With the Public

Sec. 35.

(c) Filing Requirements and

Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of Subsection (c)(2) of this Section, and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising Regulation Department within 10 days of first use or publication by any member. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this Subsection that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if

changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, Association approval. Any member filing any investment company advertisement or sales literature pursuant to this Subsection shall include a copy of the data, ranking or comparison on which the ranking or comparison is based. [This subsection (c)(2) shall remain in effect for one year from November 16, 1993 unless modified or extended prior thereto by the Board of Governors.]

Government Securities Rules

Communications With the Public

Sec. 8.

(c) Filing Requirements and Review Procedures

(1) Members shall file advertisements for review with the Association's Advertising Regulation Department as follows:

(B) advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the

Association have been made or, in the event of disapproval, until the advertisement has been refiled for,

and has received, Association approval. [This subsection (c)(1)(B) shall remain in effect for one year

from November 16, 1993 unless modified or extended prior thereto by the Board of Governors.]

NASD NOTICE TO MEMBERS 94-26

SEC Approves Surcharge On Any NASD Member Named As A Party To An Arbitration Proceeding

Suggested Routing

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

Executive Summary

On March 8, 1994, the Securities and Exchange Commission (SEC) issued an order declaring immediate effectiveness of amendments to add a new Section 45 to Part III of the Code of Arbitration Procedure imposing a surcharge on any member named as a party to an arbitration proceeding. The text of the amendments, effective on February 25, 1994, follows this Notice.

Background And Description

Historically, the revenue-to-expense ratio of the NASD's arbitration service has resulted in a deficit, which has been subsidized by other revenues of the Association. Although the deficit has declined recently, the NASD anticipates an increase in the deficit in the immediate future as a result of significantly increased resourcing needs. The NASD anticipates such needs to be ongoing. The increased demands result from, among other things, case growth, more selective arbitrator recruitment, increased arbitrator training, increased arbitrator compensation, and the anticipated overhaul of the arbitration administrative systems. The NASD determined that it should begin recovering its increased costs in the immediate future, and that cost recovery should be directed at those member firms using the NASD's arbitration service.

The SEC has approved adoption of new Section 45 to the Code. New Subsection (a) thereof requires each member named as a party to an arbitration proceeding, whether in a claim, counterclaim, crossclaim, or third-party claim, to be assessed a \$200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. This fee, which is in addi-

tion to fees assessed under Sections 43 and 44 of the Code, applies both to members who file as Claimants and to members who are served by the Arbitration Department as Respondents. Therefore, in claims brought by members, the \$200 fee would be assessed in addition to the \$500 claim filing fee described in the current fee schedule. For an associated person named as a party to an arbitration proceeding, the fee would be assessed against the member firm or firms that employed the associated person at the time of the events that gave rise to the claim. However, no member will be assessed more than a single charge in any arbitration proceeding. Finally, Subsection (a) clarifies that the surcharge is not subject to reimbursement under Subsections 43(c) or 44(c) of the Code.

New Subsection (b) clarifies that service is considered to have been perfected when the Arbitration Department serves the claim under Subsection 25(a) of the Association's Code of Arbitration Procedure.

Questions regarding this rule filing may be directed to Robert J. Smith, Attorney, Office of General Counsel, (202) 728-8176.

Text Of Amendments To Part III Of The Uniform Code Of Arbitration

(Note: New language is underlined.)

* * * * *

Member Surcharge

Sec. 45.

(a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a \$200 non-

refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the asso-

ciated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsections 43(c) or

44(c) of the Code.

(b) For the purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

NASD NOTICE TO MEMBERS 94-27

Increased Advertising Regulation Department Filing Fees Take Effect May 1, 1994

Suggested Routing

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

Executive Summary

Beginning May 1, 1994, the NASD will assess increased charges for the review of certain advertisements and sales literature, including printed material, video and audio media, printed and audio material in excess of a certain amount, and material submitted for expedited review. The text of the amendments follows this Notice.

Background And Description

The NASD's Advertising/Investment Companies Regulation Department began offering an expedited review process in February 1991 for those members who desired review and comment of advertising and sales literature that was faster than the normal review and comment process, which is 10 business days. The expedited process is completed within three business days.

Over the past three years, use of the expedited process has increased far beyond the NASD's expectation. The expedited filing process has become standard operating procedure for many of the program's most frequent users, and many items filed are frequently more difficult to review because they contain new concepts and approaches requiring greater time for research and analysis. The increase in the number of expedited filings has led to a significant increase in the amount of administrative processing and has made it more difficult to provide service within the 10-day turnaround time for normal filings.

The SEC has approved an amendment to Section 13 of Schedule A to the NASD By-Laws which establishes a fee structure that will give members the ability to choose the level of service that best fits their needs, taking into consideration the costs related to that level. Each of

the specific fees has been increased, including the service charge for expedited service. However, the service charge for expedited service will no longer be imposed in addition to the base service charge. In addition, the number of pages or minutes of video that triggers an additional fee has also been increased from 5 to 10 pages and from 5 to 10 minutes. The text of the amendment set forth below identifies each of the changes to the fees. The amendment takes effect on May 1, 1994.

Questions regarding this Notice may be directed to R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation Department, (202) 728-8325, or Robert J. Smith, Attorney, Office of General Counsel, (202) 728-8176.

Text Of Amendments to Section 13, Schedule A To The By-Laws

(Note: New language is underlined; deletions are in brackets)

Service Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a service charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to the Association, except for items that are filed or submitted in response to a written request from the Association's Advertising Regulation Department issued pursuant to the spot check procedures set forth in the Association's Rules of Fair Practice and Government Securities Rules, as follows: (1) for printed material reviewed, \$50.00 [\$25.00] plus \$10.00 [\$5.00] for each page reviewed in excess of 10 [5] pages; and (2) for video or audio media, \$50.00 [\$25.00] plus \$10.00 [\$5.00] per minute for each minute of tape reviewed in excess of 10 [5] minutes.

[In addition, w]Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a[n additional] service charge of \$500.00 [\$200] per item plus \$25 for

each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a

shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

NASD NOTICE TO MEMBERS 94-28

Effectiveness Of New Section 46 Of Article III Of The Rules Of Fair Practice Delayed Until September 15, 1994

Suggested Routing

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

Discussion

In *Notice to Members 94-09*, published in February 1994, the NASD announced Securities and Exchange Commission (SEC) approval of a new Section 46 of Article III of the Rules of Fair Practice requiring members holding open orders to adjust the price and size of such orders by the amount of any dividend, payment, or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. The NASD announced that the effective date of the new rule would be May 15, 1994. The NASD is now announcing that the effective date of new Section 46 is being delayed from May 15, 1994, to September 15, 1994.

The NASD is planning updates of The Nasdaq Stock MarketSM operating systems by, among other things, improving the features of the Small Order Execution System (SOESSM)¹ and implementing the Advanced Computerized Execution System

(ACES[®]). These updates will include automatic repricing of open orders and will permit a member to comply with new Section 46 simply by placing such orders in the system. Notwithstanding the improvements these changes will provide, they will not be in place by May 15, 1994, the effective date of new Section 46. Therefore, the NASD is delaying the effective date of new Section 46 until The Nasdaq Stock Market system improvements permitting automatic repricing are implemented.

Questions regarding this Notice may be directed to Elliott R. Curzon, Senior Attorney, (202) 728-8451, or Robert J. Smith, Attorney, (202) 728-8176, Office of General Counsel.

¹ The NASD recently filed proposed rule change SR-NASD-94-13 to adopt a Nasdaq Primary Retail Order View and Execution System (N•PROVE). The N•PROVE System will replace SOES and will include an automatic repricing feature that will comply with the new Section 46.

NASD NOTICE TO MEMBERS 94-29

SEC Approves Use Of Market-Maker Identifiers For OTCBB And Elimination Of Certain Schedule H Reporting Requirements

Suggested Routing

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

Executive Summary

On March 14, 1994, the Securities and Exchange Commission (SEC) approved an amendment to Section 4 of the OTC Bulletin Board (OTCBB®) rules that requires OTCBB market makers to indicate, by a fifth-character geographic indicator appended to their market-maker identifier (MMID), that the firm's trading desk for a quoted security is located away from the firm's primary trading office.¹

Additionally, on March 4, 1994, the SEC approved a new subsection (c) to Section 2 of Schedule H to the NASD By-Laws.² Subsection (c) eliminates member firms' Schedule H reporting obligations for issues classified as OTC equity securities (OTC equities) and covered by the real-time trade reporting requirements (Part XII of Schedule D to the NASD By-Laws) that became effective December 20, 1993. Essentially, Subsection (c) reflects that trade-by-trade reporting through the Automated Confirmation Transaction (ACTSM) service has superseded the reporting of aggregate volume and price range data under Subsection 2(a) of Schedule H to the NASD By-Laws. The text of the rule change follows the discussion below.

Geographic Identifiers

The amendment to Section 4 of the OTCBB rules requires market-maker participants in the OTCBB to append a fifth-character geographic indicator to their MMIDs when the firm's trading desk for a security quoted on the OTCBB is located away from the firm's primary trading office. If a firm's trading desk for a security quoted on the OTCBB is

at the firm's primary trading desk, the geographic indicator is not required. The fifth-character geographic indicators are necessary to avoid confusion and delay by market participants in contacting market makers in securities quoted on the OTCBB. Geographic indicators will ensure that traders will direct their calls to the appropriate location where the market maker for the stock is located and avoid instances where multiple phone calls are needed to access a market maker's quote. The use of geographic indicators took effect April 4, 1994.

In addition, mandatory use of fifth-character geographic indicators is necessary in light of developments associated with the NASD's Nasdaq Workstation IISM service. Specifically, with Nasdaq Workstation II, market makers' telephone numbers will not be displayed on the OTCBB screen but may be recalled separately. Thus, unless fifth-character geographic indicators are used, there would be confusion among market participants concerning the trading location of securities quoted on the OTCBB once Nasdaq Workstation II is in operation. It should be noted that the use of fifth-character geographic indicators already has been mandated for market makers in securities traded on The Nasdaq Stock Market®. Questions regarding this rule change may be directed to Thomas R. Gira, Assistant General Counsel, (202) 728-8957.

Schedule H Reporting

On March 4, 1994, the SEC approved a new Subsection 2(c), Schedule H to the NASD By-Laws that eliminates the requirements to report aggregate volume and price range data for OTC equity securities. Previously, the Schedule H reporting requirements had extended to mem-

^{1/} Release No. 34-33760 (March 14, 1994).

^{2/} Release No. 34-33713 (March 4, 1994).

bers' over-the-counter (OTC) principal transactions in equity securities not listed on The Nasdaq Stock Market or on a national securities exchange. Schedule H reporting requirements also extended to a small group of equities that are listed on regional exchanges but do not qualify as "eligible securities" for purposes of certain national market system plans governing the collection and dissemination of quotation and transaction information, respectively.

The foregoing categories of securities are now subsumed by the definition of OTC Equity Security in Section 1(b), Part XII of Schedule D to the NASD By-Laws, which took effect December 20, 1993. Part XII contains the requirements and procedures for reporting individual transactions in OTC equities on a real-time basis (i.e., within 90 seconds of execution). These reporting requirements and procedures closely approximate those that apply to NASD members when they effect transactions in Nasdaq-listed securities. Since the advent of real-time reporting for OTC equities pursuant

to Part XII of Schedule D on December 20, 1993, the NASD captures far more information for regulatory purposes than was captured previously via Schedule H reporting. Accordingly, the regulatory purposes underlying the capture of Schedule H information are now satisfied more effectively by the NASD's collection and processing of individual trade reports entered in accord with Part XII of Schedule D. Under these circumstances, Schedule H reporting is no longer mandated for OTC equities and the addition of Subsection (c) to Section 2 of Schedule H effects the removal of that mandate. This change is deemed effective immediately. Questions regarding this amendment may be directed to Michael J. Kulczak, Associate General Counsel, (202) 728-8811.

Text Of Amendments To The OTCBB Rules And Schedule H

(Note: New language is underlined.)

Requirements Applicable to Market Makers

Section 4.

(c) In cases where a market maker has more than one trading location, a fifth-character, geographic indicator shall be appended to the market maker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by the Association and published from time to time in the Nasdaq/CQS symbol directory.

Schedule H

Sec. 2. Price and Volume Reporting

(c) The reporting requirements contained in paragraphs (a) and (b) of this Section shall not apply to any non-Nasdaq security for which members are required to report individual transactions pursuant to Part XII of Schedule D to the NASD By-Laws.

NASD NOTICE TO MEMBERS 94-30

Memorial Day: Trade Date-Settlement Date Schedule

Suggested Routing

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

The Nasdaq Stock MarketSM and the securities exchanges will be closed on Monday, Memorial Day, May 30, 1994. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 20	May 27	Jun. 1
23	31	2
24	Jun. 1	3
25	2	6
26	3	7
27	6	8
30	Markets Closed	—
31	7	9

*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."

Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

NASD NOTICE TO MEMBERS 94-31

Nasdaq National Market
Additions, Changes,
And Deletions As Of
March 28, 1994

Suggested Routing

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

As of March 28, 1994, the following 62 issues joined the Nasdaq National Market, bringing the total number of issues to 3,571:

Symbol	Company	Entry Date	SOES SM Execution Level
CHGNF	AES China Generating Co. Ltd. (CI A)	2/24/94	500
EFCX	Electric Fuel Corporation	2/24/94	500
GVIL	Global Village Communications, Inc.	2/24/94	500
BKLYZ	W. R. Berkley Corporation (Dep Shrs)	2/24/94	500
CNCD	Concord Holding Corporation	2/25/94	200
EMSI	Effective Management Systems, Inc.	2/25/94	500
TCIX	Total Containment, Inc.	2/25/94	200
BRBK	Brenton Banks, Inc.	2/28/94	500
MRVC	MRV Communications, Inc.	2/28/94	500
MRVCW	MRV Communications, Inc. (Wts Exp 12/7/97)	2/28/94	500
QLGC	QLogic Corporation	2/28/94	200
TRBC	Triangle Bancorp, Inc.	2/28/94	500
FUBC	1st United Bancorp	3/1/94	500
CNBL	Citi-Bancshares, Inc.	3/1/94	200
INSO	InfoSoft International, Inc.	3/1/94	500
NRTY	Norton McNaughton, Inc.	3/1/94	500
QDIN	Quality Dining, Inc.	3/2/94	500
CDCO	Cidco Incorporated	3/3/94	500
EFTC	Electronic Fab Technology Corp.	3/3/94	500
HPWR	Health Power, Inc.	3/3/94	500
RKTN	Rock-Tenn Company (CI A)	3/3/94	500
BCRX	BioCryst Pharmaceuticals, Inc.	3/4/94	500
JEFF	Jefferson Savings & Loan Association, F.A.	3/4/94	200
NESMF	International Nesmont Industrial Corporation	3/9/94	500
FEET	Just For Feet, Inc.	3/9/94	500
BORR	Borrer Corporation	3/10/94	500
ZEUS	Olympic Steel, Inc.	3/10/94	500
SILWV	Sunshine Mining Company (Wts WI Exp 2/9/99)	3/10/94	200
TTXG	TransTexas Gas Corporation	3/10/94	500
URMD	UroMed Corporation	3/10/94	500
DYPR	Drypers Corporation	3/11/94	500
PXXI	Prophet 21, Inc.	3/11/94	500
NNBR	NN Ball & Roller, Inc.	3/15/94	500
PRME	Prime Retail, Inc.	3/15/94	500
PRMEP	Prime Retail, Inc. (Conv Pfd Ser B)	3/15/94	500
TRBS	Texas Regional Bancshares Inc. (CI A Voting)	3/16/94	200
CIBR	CIBER, Inc.	3/17/94	500
CPRT	Copart, Inc.	3/17/94	500
TSSS	Triple S Plastics, Inc.	3/17/94	500
CNTL	Cantel Industries, Inc.	3/18/94	500
ENCC	Encore Computer Corporation	3/18/94	200
FLEXF	Flextronics International Ltd.	3/18/94	500

Symbol	Company	Entry Date	SOES SM Execution Level
MHMC	M. H. Meyerson & Co., Inc.	3/18/94	500
MEKK	Minnesota Educational Computing Corporation (MECC)	3/18/94	200
NWAC	Northwest Airlines Corporation (CI A)	3/18/94	500
PETC	Petco Animal Supplies, Inc.	3/18/94	200
WTDI	WTD Industries, Inc.	3/18/94	500
GSNX	GaSonics International	3/22/94	500
DKTH	Dakotah, Incorporated	3/23/94	500
MPAA	Motorcar Parts & Accessories, Inc.	3/23/94	200
NWCG	New World Communications Group Incorporated (CI A)	3/23/94	200
NWPC	The New World Power Corporation	3/23/94	500
CARH	Career Horizons, Inc.	3/24/94	200
GSMS	Gulf South Medical Supply, Inc.	3/24/94	500
IMPTY	Integrated Micro Products plc	3/24/94	200
VTRA	Vectra Banking Corporation	3/24/94	500
BSPR	BioSeptra Inc.	3/25/94	500
MFBC	MFB Corp.	3/25/94	500
LARK	Landmark Bancshares, Inc.	3/28/94	200
MEMYV	Memorex Telex N.V. (New ADR WI)	3/28/94	500
SHUR	Shurgard Storage Centers, Inc. (CI A)	3/28/94	500
VGHN	Vaughn Communications, Inc.	3/28/94	500

Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since February 25, 1994:

New/Old Symbol	New/Old Security	Date of Change
AKZOY/AKZOY	Akzo Nobel N.V. (ADR)/Akzo N.V. (ADR)	2/28/94
AIPNW/AIPWV	American International Petroleum Corporation (CI A Wts Exp 3/1/95) /American International Petroleum Corporation (CI A Wts WI Exp 3/1/95)	2/28/94
LABK/LABK	Lafayette American Bank & Trust Co./ Lafayette American Bancorp Inc.	2/28/94
NWSS/NWSS	Network Six Inc./Network Solutions Inc.	2/28/94
NOELZ/NOEL	Noel Group, Inc. (Combined Cert)/Noel Group, Inc.	2/28/94
TAROF/TAROF	Taro Pharmaceutical Industries Ltd./Taro Vit Industries Ltd.	2/28/94
XCEL/SKIL	Canterbury Corporate Services, Inc./Canterbury Educational Services, Inc.	3/1/94
CELS/CELS	CommNet Cellular Inc./Cellular Inc.	3/1/94
FLAG/FLAG	FLAG Financial Corporation/First Federal Savings Bank of La Grange	3/1/94
AWCI/NPMH	American White Cross, Inc./NPM Healthcare Products Inc.	3/3/94
SKEY/SKEYV	Softkey International Inc.(New)/Softkey International Inc. (New WI)	3/3/94
MASX/BSIM	MasTec Inc./Burnup & Sims Inc.	3/16/94
SILVW/SILWV	Sunshine Mining Company (Wts Exp 2/9/99)/Sunshine Mining Company (WI Wts Exp 2/9/99)	3/25/94

Nasdaq National Market Deletions

Symbol	Security	Date
NAMC	North American National Corporation	2/24/94
WCLB	Warehouse Club, Inc.	2/24/94
WOFG	Wolf Financial Group, Inc.	2/24/94
TERM	Terminal Data Corporation	2/28/94
URIXW	Uranium Resources, Inc. (Wts Exp 2/26/94)	2/28/94
FFWV	First Fidelity Bancorp, Inc.	3/1/94
CSOF	Corporate Software Incorporated	3/3/94
REDX	Red Eagle Resources Corporation	3/4/94
SBRZQ	SANBORN INC. (CI A Wts Exp 7/2/97)	3/7/94
SILVR	Sunshine Mining Company (Rights)	3/10/94
REFC	Refac Technology Development Corporation	3/15/94
CHBC	Chattahoochee Bancorp, Inc.	3/16/94
CBNB	CommerceBancorp	3/17/94
CSTL	Constellation Bancorp	3/17/94
ELDC	Eldec Corporation	3/21/94
AVCR	Advacare, Inc.	3/22/94
CTSCZ	Cellular Technical Services Company, Inc. (CI A Wts)	3/22/94
IKOS	IKOS Systems, Inc	3/22/94
PETT	Pettibone Corporation	3/22/94
WSCI	Washington Scientific Industries, Inc.	3/22/94
TWII	Tital Wheel International, Inc.	3/23/94
TITN	Titan Holdings, Inc.	3/23/94
FRON	Frontier Adjusters of America, Inc.	3/24/94
RHDS	Rhodes, Inc.	3/24/94
CBOCA	Commercial Bancorporation of Colorado	3/25/94
BLVD	Boulevard Bancorp, Inc.	3/28/94
ESBB	ESB Bancorp, Inc.	3/28/94
MGAW	McGaw, Inc.	3/28/94

Questions regarding this notice should be directed to Mark A. Esposito, Supervisor, Market Listing Qualifications, at (202) 728-8002. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

NASD BOARD BRIEFS

Actions Taken By The Board Of Governors In March

President's Report—The first quarter of 1994 is shaping up to be Nasdaq's strongest quarter ever. Through the end of February, daily volume averaged nearly 317 million shares compared to a 1993 average of 263 million shares. The Nasdaq Composite continues to skirt historic highs, achieving an all-time high of 803.93 on March 18. The market value of initial public offerings on Nasdaq is up more than 167 percent from the same period in 1993.

Registrations of new personnel have increased 23 percent indicating that the industry is stepping up hiring and training of new employees. In fact, qualification examination activity is at its highest level since 1987. Another positive sign is the nearly 9 percent decline in customer complaints and, even more significant, the 25 percent drop in terminations of registered persons for cause.

Despite this robust performance, our planning and the resulting budget for 1994 anticipate a 10 percent market decline. It is still too early to change that assumption. Concern over rising interest rates that could dampen trading activity and reduce prices of equities is ever present. The net inflows of cash into equity mutual funds have slowed in recent weeks. Tensions between the United States and Japan and China could adversely affect our international trade with these nations. Unrest continues to prevail in South Africa, South and North Korea, Bosnia, and the Middle East.

On the regulatory front, the Securities and Exchange Commission (SEC) under Chairman Arthur Levitt has launched a public awareness cam-

paign to help investors better understand how to invest in stocks, bonds, and other securities. Key to this campaign is a brochure, jointly authored by the SEC and 11 self-regulatory organizations, *Invest Wisely: Advice From Your Securities Industry Regulators*, and a new Consumer Affairs Advisory Committee to address broad issues of concern to individual investors, including disclosure and communication.

The Chairman has also shown strong interest in the industry's continuing education initiative. In fact, he recently met with the Council on Continuing Education and requested action before year-end on continuing education requirements issues. Other areas of Commission focus are the sale and distribution of mutual funds as well as curbing the activity of brokers who have a history of disciplinary actions.

The Nasdaq Stock MarketSM is accelerating its international focus and now has two specialists each covering Europe, Latin America, and Asia whose responsibilities are to attract listings by overseas companies in The Nasdaq Stock Market. As a result of their efforts and significantly expanded advertising and marketing campaigns, the awareness and acceptance of Nasdaq overseas is increasing. In addition, we are developing the capacity to provide consulting services to emerging markets that wish to emulate The Nasdaq Stock Market.

In connection with marketing in the United States, the Securities Industry Association's Board recently adopted a resolution seeking to have the exchanges and Nasdaq cease their

competitive advertising. Although The Nasdaq Stock Market intends to continue its highly successful advertising campaign, we would entertain participation in, and joint funding of, an investor protection-oriented advertising program sponsored by all the markets.

Regulation—If the SEC approves the Board's action, members effecting short sales would have to note on either the order ticket or a separate record that the selling customer can deliver the stock or the member can borrow the stock for delivery. Under the proposed rule, members would have to record the following information:

- If a customer assures delivery, the member would have to annotate the conversation noting the present location of the securities, whether they are in good deliverable form, and whether they will be delivered by settlement.
- If the member locates the stock for borrowing, the member would have to annotate the identity of the individual and firm contacted for assurance that the shares would be delivered or would be available for borrowing by settlement date and the number of shares needed to cover the short.

This rule will assist the NASD in overseeing its short-sale rules including the mandatory delivery requirements for certain restricted securities as well as compliance with the proposed "bid test," currently under consideration at the SEC.

The Board also approved for filing with the SEC an amendment to Article IV, Section 5 of the Rules of Fair Practice, which requires members and associated persons to respond to NASD regulatory requests, to apply Section 5 to current and former employees who are not "associated persons" of a member firm. In its current form, the rule arguably may not apply to such employees and could make it difficult to enforce NASD regulatory requests directed to employees who are not technically engaged in the "investment banking or securities business" of the member or who do not otherwise satisfy the definition of "associated person."

Charges for review of member advertising will increase if the SEC approves recent fee hikes adopted by the Board. The increases apply to spot-check procedures and requests for expedited review. Under the spot-check procedures, the charge for review of printed material would increase to \$50 from \$25 and the excess-page charge

would double to \$10 per page for more than 10 pages, instead of the current 5 pages. For expedited reviews, members would incur an additional service charge of \$500, instead of the current \$200, as well as a new charge of \$25 for each page reviewed in excess of 10.

Market Services—Members will have the opportunity to comment on a Board proposal that would curtail the practice of adjusting stock positions prior to issuing research reports. Under the proposal, a member would violate just and equitable principles of trade by *purposefully* adjusting its position in specific Nasdaq securities before issuing a research report on such securities. In addition, the proposal recommends, but does not require, that members establish "Chinese Wall" procedures to control the flow of information between their research and trading departments. A member choosing to forego "Chinese Wall" procedures would have to clearly demonstrate that a meaningful adjustment in its positions had not been purposeful. This approach would make Chinese Walls the recommended and preferred, but optional, choice, leaving members free to analyze their own environments and choose whether a Chinese Wall would be the appropriate selection for their firm.

NASD DISCIPLINARY ACTIONS

Disciplinary Actions Reported For April

The NASD® has taken disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice; securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, April 18, 1994. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this edition.

Firms Expelled, Individuals Sanctioned

Expansion Capital Securities, Inc. (San Francisco, California) and Michael Josef Meyer (Registered Principal, San Francisco, California). The firm and Meyer were fined \$145,000, jointly and severally and ordered to pay \$3,275, jointly and severally in restitution to a customer. In addition, the firm was expelled from NASD membership and Meyer was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Meyer, failed to prepare and maintain accurate books and records.

In addition, the firm, acting through Meyer, engaged in the securities business while failing to maintain its required minimum net capital, filed a false and inaccurate FOCUS Part IIA report, and failed to respond, or to timely respond, to an NASD request for information. Furthermore, the firm, acting

through Meyer, purchased securities from a public customer at an unfair and unreasonable price and failed to disclose the fraudulent markdown of 25 percent to the customer. Moreover, the respondents ran the securities through the accounts of seven other customers and the firm's trading account, and then sold them to a market maker in the securities.

Also, in response to a customer who complained to the NASD alleging unauthorized trading in his account, the respondents falsely represented to the customer that both the NASD and the firm had reviewed the allegations and found the claims to be without merit. The firm, acting through Meyer, also effected transactions in Nasdaq National Market® securities but failed to report them to Nasdaq. Furthermore, the respondents engaged in stock transactions with customers without disclosing to them that the firm made a market in the security and without disclosing the difference between the price that should have been reported to Nasdaq and the customer's price.

This action has been appealed to the Securities and Exchange Commission (SEC) and the sanctions, other than the expulsion and bar, are not in effect pending consideration of the appeal.

Firms Fined, Individuals Sanctioned

Bob Hedges Financial Services, Inc. (Delray Beach, Florida), Robert D. Hedges (Registered Principal, Deerfield Beach, Florida), and Donald C. Alger, Sr. (Associated Person, Fort Lauderdale, Florida). The firm and Hedges were fined \$60,000, jointly and severally. The firm was also prohibited from using any form

of advertising or sales literature as defined in NASD rules for one year, and for two years thereafter, required to file or obtain prior written approval for all advertisements and sales literature from the NASD Advertising Department. Hedges was suspended from association with any NASD member as a general securities principal for 30 days and thereafter until he qualifies as a general securities principal by taking and passing the Series 24 examination. Alger was fined \$25,836 and barred from association with any NASD member in any capacity.

The sanctions were based on findings that the firm, acting through Hedges, permitted Alger and another individual to engage in the solicitation or conduct of business in securities for the firm without being qualified and/or registered as representatives of the firm. The firm, acting through Hedges, also failed to file an amendment to a *Uniform Termination Notice for Securities Industry Registration (Form U-5)* in a timely manner for a former registered representative to disclose customer complaints and litigation. The firm, acting through Hedges, failed to keep current its purchase and sales blotter and failed to establish and maintain adequate written supervisory procedures.

In addition, the firm, acting through Hedges, prepared and disseminated written sales communications that failed to comply with applicable rules and regulations of the NASD, SEC, and Municipal Securities Rulemaking Board (MSRB), and sold unregistered securities in violation of Section 5 of the Securities Act of 1933.

Chatfield Dean & Co., Inc. (Englewood, Colorado), Frank J. Custable, Jr. (Registered Representative, Glendale Heights,

Illinois), and Kevin C. Grom (Registered Principal, Chicago, Illinois). The firm and Grom each were fined \$25,000. In addition, Grom was suspended from association with any NASD member in any capacity for 14 business days and required to requalify by examination as a general securities principal within 90 days or he is barred from acting as a principal until he requalifies. Custable was fined \$20,000 and barred from association with any NASD member in any capacity.

The SEC affirmed the sanctions following appeal of a September 1992 NBCC decision. The sanctions were based on findings that Custable executed an unauthorized transaction in a customer's account. Furthermore, Custable deceptively and fraudulently induced another customer to purchase stock by guaranteeing the customer a return on his investment within two weeks. In addition, the firm, acting through Grom, failed to prevent the unauthorized transaction by not supervising Custable's activities properly.

Firms, Individuals Fined

D.E. Wine Investments, Inc. (Houston, Texas), Duncan Eric Wine (Registered Principal, Houston, Texas), William Randal Miller (Registered Principal, Spring, Texas), and Kenneth Browning Karpf (Registered Principal, Spring, Texas) submitted an Offer of Settlement pursuant to which they were fined \$5,000, jointly and severally, and required to pay \$11,429 in restitution to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that in violation of the NASD's Mark-Up Policy, the firm, acting through Wine, Miller, and Karpf, bought securities from and

sold securities to customers of the firm at prices that were not fair with markups or markdowns ranging from 5.02 to 35.38 percent.

Protective Group Securities Corporation (Eden Prairie, Minnesota), Richard James Cochrane (Registered Principal, Edina, Minnesota), Michael Frederick Flannigan (Registered Principal, Excelsior, Minnesota), and Deborah Rae Davidson (Registered Principal, Plymouth, Minnesota) were fined \$5,000, jointly and severally, and required to pay \$7,643.73 in restitution to public customers. The sanctions were based on findings that the firm, acting through Cochrane, Flannigan, and Davidson, charged more than fair commissions in 124 dual-agency transactions.

Individuals Barred Or Suspended

Alfred Abdo, Jr. (Registered Principal, Winston-Salem, North Carolina) was fined \$25,000, suspended from association with any NASD member in any capacity for 30 days and thereafter until he requalifies by examination as a registered representative, and ordered to amend his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to disclose a civil lawsuit filed by public customers. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Abdo recommended the purchase of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers based on their other security holdings, financial situations, and needs. In addition, Abdo guaranteed public customers against losses in their purchase of a limited partnership unit.

Bernard Berger (Registered Representative, Hollywood, Florida) was fined \$25,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Berger prepared and provided public customers with written account valuations that materially overstated the value of the securities positions in the accounts. In addition, Berger failed to respond to NASD requests for information.

Scott L. Bolzan (Registered Representative, Aurora, Illinois) 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, Bolzan consented to the described sanctions and to the entry of findings that he submitted an annuity financial-transaction form requesting a partial withdrawal from an annuity owned by a customer without the customer's knowledge or consent. According to the findings, Bolzan thereafter received a check for \$25,000, payable to the customer, and deposited the funds in an account in which he had a beneficial interest.

Robert Lee Boyd (Registered Principal, Jackson, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Boyd consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prior written notice to his member firm. The NASD also found that Boyd engaged in private

securities transactions outside the regular course or scope of his employment without notifying his member firm in writing.

In addition, the findings stated that Boyd received from public customers, without their knowledge or consent, funds totaling \$774,485 for investment purposes that he commingled with personal funds and used certain funds to pay for personal and other expenses not associated with the intended investments of the individuals.

John T. Butler (Registered Representative, Reading, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days, with the understanding that the suspension will remain in effect until the fine is paid. Without admitting or denying the allegations, Butler consented to the described sanctions and to the entry of findings that he left an offensive/harassing message on a public customer's voice mail after the customer hung up on Butler when he placed a "cold call."

Butler's suspension commenced February 22, 1994, and will conclude once the fine is paid.

Brian D. Carpenter (Registered Representative, Stockton, California) was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. If, at the end of the suspension, Carpenter wishes to re-enter the securities industry, he may do so by requalifying by examination, rather than going through the process required by statutorily disqualified persons. The NBCC imposed the sanctions following appeal of a San Francisco DBCC

decision. The sanctions were based on findings that Carpenter forged the endorsements of two public customers on two checks.

Daniel L. Chabot, Sr. (Associated Person, Cumberland, Rhode Island) submitted a Letter of Acceptance, Waiver and Consent 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, Chabot consented to the described sanctions and to the entry of findings that he endorsed and cashed checks totaling \$13,915.01 belonging to 12 policyholders and misappropriated the proceeds to his own use and benefit without his member firm's knowledge or consent.

Gong Chen (Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$10,000, barred from association with any NASD member in any capacity, and required to repay a \$18,502.29 debit balance in his securities account. Without admitting or denying the allegations, Chen consented to the described sanctions and to the entry of findings that he placed an order for the purchase of securities in his account with his member firm resulting in a debit to his account at a time when he knew or should have known that he lacked the financial resources to pay for the transaction. According to the findings, Chen failed to pay for the transaction, resulting in the position being sold out leaving a debit balance in the account of \$18,502.29 that he thereafter failed to cover.

Thomas P. Corcoran (Registered Representative, Manlius, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined

\$20,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Corcoran consented to the described sanctions and to the entry of findings that he improperly used an application originally prepared for another account but that the customer subsequently canceled. Around the same time, a different customer requested that Corcoran rollover \$200,000 into a Monymax account. In turn, the NASD found that Corcoran placed the funds as requested using the existing application with the intent of changing the name. According to the findings, three years later, Corcoran facilitated the name change by creating two letters and forging the names of the trustees for each account authorizing the change.

Kevin J. Crocker (Registered Principal, Virginia Beach, Virginia) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Crocker consented to the described sanctions and to the entry of findings that he forged customer signatures on various forms causing the liquidation of certain shares and the subsequent purchase of other shares without their authorization. The findings also stated that Crocker executed an unauthorized transaction in a customer's account and forged the customer's signature on a form to transfer the shares sold. In addition, the NASD found that Crocker purchased only 2,000 shares of stock for a customer when instructed to purchase 5,500 shares.

Darrell Steven Dalton (Registered Representative, Las Vegas,

Nevada) was fined \$1,000 and suspended from association with any NASD member in any capacity for 90 days. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Dalton submitted to a member firm, and filed with the NASD, a *Form U-4* falsely representing that an individual had not been convicted of any felony.

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

Douglas Donald DeRose (Registered Representative, Buffalo, New York) 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 capacity. Without admitting or denying the allegations, DeRose consented to the described sanctions and to the entry of findings that he obtained \$2,835.47 of loan proceeds on a whole life insurance policy owned by a public customer without the knowledge or consent of the customer.

Louis Feldman (Registered Principal, Coral Springs, Florida) was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination in any registered capacity that he might function. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Feldman submitted letters on a member firm's letterhead but with his home address to six mutual fund companies. Feldman engaged in this activity for the purpose of changing the broker/dealer of record for 584 customer accounts without having

authority to approve bulk transfers of accounts and without obtaining prior authorization from the firm or from the customers.

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

Gerald L. Fields, Jr. (Registered Representative, Carmichaels, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$30,000, barred from association with any NASD member in any capacity, and required to pay \$1,477.58 plus interest in restitution to customers. Without admitting or denying the allegations, Fields consented to the described sanctions and to the entry of findings that he received from policyholders premium payments that he retained and failed to remit to his member firm. The findings also stated that Fields failed to respond to NASD requests for information.

Manuel H. Godwin, Jr. (Registered Representative, West Bloomfield, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000, barred from association with any NASD member in any capacity, and required to pay \$5,135.65 in restitution to a public customer. Without admitting or denying the allegations, Godwin consented to the described sanctions and to the entry of findings that he received \$28,353.16 from a public customer for investment in an IRA account. According to the findings, Godwin failed to execute the purchase in a timely manner and, instead, held the check for two months before submitting it to his member firm without the customer's knowledge or consent.

The NASD also found that Godwin received a \$5,135.65 check from

the same customer to establish a Keogh account but, instead, converted the funds to his own use and benefit without the customer's knowledge or consent.

Furthermore, in an effort to conceal the conversion of funds from the same customer, the NASD found that Godwin created a false account statement to indicate that funds had been invested.

Gregory L. Greenway (Registered Representative, Tulsa, Oklahoma) was fined \$65,000, barred from association with any NASD member in any capacity, and required to pay \$9,077 in restitution to the appropriate parties. The sanctions were based on findings that Greenway misappropriated insurance customer funds totaling \$9,077 by failing to submit timely such funds to his member firm. In addition, Greenway failed to respond to NASD requests for information.

Peter Thompson Higgins (Registered Principal, Metuchen, New Jersey) was suspended from association with any NASD member in any capacity for three business days. The SEC affirmed the sanction following appeal of an October 1992 NBCC decision. The sanction was based on findings that Higgins failed to pay a \$13,015.63 NASD arbitration award in a timely manner.

Higgins has appealed this action to the U.S. Court of Appeals, however, the appeal does not operate as an automatic stay of the sanctions.

Wayne Darrell Ingbritson (Registered Principal, Walnut Creek, California) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following appeal of a San Francisco DBCC decision. The sanction was

based on findings that a former member firm, acting through Ingbritson, engaged in a securities business while failing to maintain minimum required net capital and filed false and inaccurate FOCUS Parts I and IIA reports. In addition, Ingbritson failed to respond to NASD requests for information.

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

James Sherman Jackson (Registered Representative, Irving, Texas) was fined \$10,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of a Dallas DBCC decision. The sanctions were based on findings that Jackson effected the purchase of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances by giving false account information to a registered representative of a member firm.

Michael G. Keselica (Registered Representative, Gaithersburg, Maryland) was fined \$30,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Washington, D.C. DBCC decision. The sanctions were based on findings that Keselica purchased shares of securities for the account of a public customer without the customer's authorization.

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

Gregory J. Kuczora (Registered Representative, Rockford, Illinois) submitted an Offer of Settlement 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, Kuczora consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give written notice of his intention to engage in such activities to his member firm.

Randy M. Lang (Registered Representative, Altoona, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$5,700, barred from association with any NASD member in any capacity, and ordered to pay \$1,133 plus interest in restitution to a member firm. Without admitting or denying the allegations, Lang consented to the described sanctions and to the entry of findings that he collected from an insurance customer policy loan repayments and failed to remit a total of \$1,000 of such collections to his member firm. The NASD also determined that Lang collected from two additional customers \$133 for payment of an insurance premium and failed to remit the funds to his member firm.

Andrea LaRusso (Registered Representative, La Grange, Illinois) submitted an Offer of Settlement pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LaRusso consented to the described sanction and to the entry of findings that she signed and submitted to the NASD a *Form U-4* that failed to disclose a misdemeanor conviction for theft.

Jonathan J. Leary (Registered Representative, Stow, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent 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, Leary consented to the described sanctions and to the entry of findings that he opened a fictitious checking account in the names of two public customers using a false social security number. Thereafter, according to the findings, Leary made unauthorized transfers from the customers' legitimate account and withdrew \$4,000 that he misappropriated to his own use and benefit.

Michael Lincicome (Registered Representative, Ardmore, Oklahoma) and **James T. Nealy (Registered Representative, Ardmore, Oklahoma)** submitted an Offer of Settlement pursuant to which Lincicome and Nealy were each fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Lincicome and Nealy engaged in the sale of unregistered securities in violation of Section 5 of the Securities Act of 1933. In addition, the findings stated the Lincicome and Nealy failed to respond to NASD requests for information.

Tracey L. Lingle (Registered Representative, Mokena, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lingle consented to the described sanctions and to the entry of findings that he signed customer names to mutual fund purchase forms and submitted the forms to his member firm while failing to inform the firm that he, not the customers, had signed the forms and that the purchases to which the forms related

were solicited.

Jeffrey Scott Lipperer (Registered Representative, Jefferson, Wisconsin) 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 required to pay \$39,323 in restitution to a member firm. Without admitting or denying the allegations, Lipperer consented to the described sanctions and to the entry of findings that he obtained a total of \$39,323 from two insurance customers in payment on their insurance policies. Instead of depositing the funds for the customers' benefit, and without their knowledge or consent, the NASD found that Lipperer deposited the funds in an account that he controlled and retained the funds for his own use and benefit.

The findings also stated that Lipperer signed the name of one of the customers to an account registration form for the purpose of establishing an account without the customer's knowledge or consent. Furthermore, the NASD determined that Lipperer opened a securities account at a member firm and purchased shares of stock without giving prior written notice to the firm of his association with another member.

Steven D. Maliagros (Associated Person, Astoria, New York) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following review of a New York DBCC decision. The sanction was based on findings that during the course of the Series 7 examination, Maliagros was found to be in the possession of, reading and/or otherwise using, printed information that contained material relevant to the subject matter.

Nathan M. Margolin (Registered Representative, Ft. Lauderdale, Florida) 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 required to pay \$555,845 in restitution to his member firm. Without admitting or denying the allegations, Margolin consented to the described sanctions and to the entry of findings that he transferred funds between the accounts of at least 12 customers. Specifically, the NASD found that Margolin falsified letters of authorization, subsequently gained access to the funds, and converted to his own use and benefit \$407,845 of the customers' funds. The NASD also found that Margolin received securities from two public customers valued at \$148,000 that he converted to his own use and benefit.

Frank W. McLaughlin, Jr. (Registered Representative, Vero Beach, Florida) 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 required to pay \$20,000 in restitution to his former member firm. Without admitting or denying the allegation, McLaughlin consented to the described sanctions and to the entry of findings that he received a \$20,000 check from a public customer made payable to a subsidiary of his member firm, negotiated the check, and subsequently converted the proceeds to his own use and benefit.

Kevin A. Murphy (Registered Representative, Elfers, Florida) submitted an Offer of Settlement 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, Murphy consented to the described sanctions and to the entry of findings that he obtained \$455.15 from public customers for the purchase of investment company securities and, instead, converted the funds to his own use and benefit without the knowledge or authorization of the customers.

Larry Wayne Phelps (Registered Representative, Albuquerque, New Mexico) submitted an Offer of Settlement pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$31,739.25 in restitution to customers. Without admitting or denying the allegations, Phelps consented to the described sanctions and to the entry of findings that he obtained checks totalling \$31,739.25 by preparing and submitting falsified loan applications on insurance policies held by four policyholders. According to the findings, Phelps obtained the checks and caused the endorsements of the policyholder payees to be placed on the checks without their knowledge or consent, caused his own endorsement to be placed on the checks, negotiated the checks, and used the proceeds for his own benefit.

Charles E. Placer (Registered Representative, New Martinsville, West Virginia) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Placer consented to the described sanction and to the entry of findings that he received from a public customer \$1,000 in cash for investment purposes. The NASD found that Placer failed to remit the funds to his member firm for its intended purpose and retained the money for his personal use.

Ronnie L. Powell (Registered Representative, Hemlock, New York) 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, Powell consented to the described sanctions and to the entry of findings that he misappropriated, and converted to his own use, an insurance customer's funds totaling \$709.26.

Hugh William Roach, Sr. (Registered Representative, Spartanburg, South Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$90,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roach consented to the described sanctions and to the entry of findings that he secured an \$18,000 loan from the life insurance policy of a public customer without the customer's knowledge or authorization and converted the funds to his own use and benefit. In addition, the NASD found that Roach changed the address of record for the same customer to a post office box over which he exercised control to prevent the customer from receiving information concerning the loan.

Robert T. Roberts (Registered Representative, Lawrenceville, Georgia) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roberts consented to the described sanction and to the entry of findings that he withdrew \$7,718.51 from the life insurance policies of six public customers without their knowledge or authorization and converted the funds to

his own use and benefit.

John H. Romfh (Registered Principal, Jackson, Mississippi) 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 four months. Without admitting or denying the allegations, Romfh consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prior written notice to his member firm. The NASD also found that Romfh engaged in private securities transactions outside the regular course or scope of his employment without notifying his member firm in writing. In addition, the findings stated that Romfh received funds totaling \$73,000 from public customers for investment purposes and that he commingled these with funds from other sources. The findings also stated that Romfh failed to exercise proper oversight of the funds thereby allowing certain funds to be used, without the customers' knowledge or consent, to pay expenses not associated with the intended investments.

Hans J.A. Schmidt (Registered Representative, Edmonds, Washington) 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 required to pay \$67,000 plus interest in restitution to a customer. Without admitting or denying the allegations, Schmidt consented to the described sanctions and to the entry of findings that he received from a public customer \$67,000 to purchase securities. According to the findings, Schmidt failed to remit the funds for their intended purpose.

Roger Anthony Sexter (Registered Representative, Minneapolis, Minnesota) was fined \$2,000 and suspended from association with any NASD member in any capacity for three business days. The NBCC affirmed the sanctions following appeal of a Kansas City DBCC decision. The sanctions were based on findings that Sexter failed to honor a \$25,000 arbitration award plus \$13,000 in interest and \$7,500 in attorneys' fees in a timely manner.

James L. Smith (Registered Representative, Montgomery, Alabama) submitted an Offer of Settlement pursuant to which he was fined \$42,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he received \$23,500 from public customers intended for the purchase of shares in a mutual fund and an annuity, but converted \$8,500 of the funds to his own use and benefit without the customers' knowledge or authorization.

David Ritchie Smith (Registered Principal, Sausalito, California) was fined \$35,000, jointly and severally with other respondents, and barred from association with any NASD member in any principal or supervisory capacity. In addition, Smith was suspended for 90 days from association with any NASD member in any capacity.

The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that a member firm, acting through Smith, failed to comply with the SEC Customer Protection Rule 15c3-3 in that it received and accepted customer funds in contravention of its claimed exemption from the rule

and did not otherwise comply with the full provisions of the rule. In addition, the firm, acting through Smith, failed to file its FOCUS Part II reports on a timely basis, to establish adequate written supervisory procedures, or to implement a supervisory system to prevent violations and achieve compliance with securities rules and regulations.

Charles R. Stedman (Registered Representative, Tucson, Arizona) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Stedman failed to respond to NASD requests for information regarding a customer complaint.

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

Stephen T. Strabala (Registered Representative, Salem, Ohio) 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, Strabala consented to the described sanctions and to the entry of findings that he submitted new account forms to his member firm that were purportedly signed by public customers when, in fact, the forms had been signed by Strabala without the customers' knowledge or consent.

Ronald D. Swayze (Associated Person, Malvern, Arkansas) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$4,976 in restitution to the appropriate parties. The sanctions were based on findings that Swayze received from 23 public customers \$4,976

intended for insurance premium payments and failed to remit the funds to his member firm.

Daniel Thomas Taffe (Registered Representative, Minnetonka, Minnesota) 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, Taffe consented to the described sanctions and to the entry of findings that he forged the signatures of two public customers to a Financial Analysis - Base and Base Plus Agreement and charged \$375 to the customers' credit card in payment for this plan without the knowledge or consent of the customers.

John Vignovich (Registered Representative, Bethel Park, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vignovich consented to the described sanctions and to the entry of findings that he received from a public customer a \$1,200 personal check intended for the purchase of a mutual fund. When the check was received, the "pay to" section of the check was blank. According to the findings, Vignovich filled in his own name as the payee of the check, deposited the check to his personal bank account, retained the proceeds, and failed to remit the funds to his member firm for the purchase of the mutual funds.

The findings also stated that Vignovich received from the same customer a series of seven bank money orders in amounts from \$20 to \$22. According to the findings, Vignovich represented to the customer that the money orders were

payments from a mutual fund purchased by him, thereby deceiving the customer as to the purported existence of such a mutual fund account. The NASD determined that when the customer requested that Vignovich effect the redemption of what he believed to be his mutual fund account, Vignovich further deceived him into executing a request for a loan against an existing life insurance policy by representing that it was a mutual fund redemption request. Vignovich also misinformed the customer by stating that the \$1,131.00 policy loan check was actually mutual fund redemption proceeds.

Scott Reed Warren (Registered Representative, Corpus Christi, Texas) was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by examination. The NBCC affirmed the sanctions following review of a Dallas DBCC decision. The sanctions were based on findings that Warren failed to respond to NASD requests for information concerning the alleged misuse and conversion of customer funds.

Individuals Fined

Theodore G. Peck, IV (Registered Representative, Kingston, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and required to requalify by examination as a general securities registered representative. Without admitting or denying the allegations, Peck consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without the knowledge or consent of his member firm and without giving prior written notification to his member firm.

Nelson Eric Roseland (Registered Representative, Oakland, California) submitted an Offer of Settlement pursuant to which he was fined \$20,000. Without admitting or denying the allegations, Roseland consented to the described sanction and to the entry of findings that he effected the purchase and sale of securities in the accounts of public customers without their prior knowledge or consent. The findings also stated that Roseland recommended and effected the purchases and sales of securities in the account of a public customer that were unsuitable in light of the circumstances disclosed concerning his other securities holdings, and his financial situation and needs.

Firm Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Starboard Capital Corporation,
Hamburg, New York

Firms Suspended

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

Hawthorne Distributors Corp.,
Boston, Massachusetts (March 7, 1994)

Mayfair Planning Associates,
Randolph, New Jersey (March 7, 1994)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations

Andrew H. Geyer, Kings Park,
New York

Paul E. Hendricks, Monroe,
Louisiana

Casimer J. Jaszewski, Hamburg,
New York

Andre D. Johnson, Chicago,
Illinois

William S. Wright, Jr.,
Minneapolis, Minnesota

SEC Affirms Disciplinary Action Against G.K. Scott & Co. Inc.

The NASD has taken disciplinary action against G.K. Scott & Co., Inc., of Plainview, New York; George Kevorkian, Registered Principal of Dix Hills, New York; and John Kevorkian, Registered Representative of Boca Raton, Florida. The SEC affirmed the NASD sanctions following an appeal of a decision by the NBCC.

The firm was fined \$716,000, jointly and severally with J. Kevorkian, the firm's trader, and fined \$50,000, jointly and severally with G. Kevorkian, the firm's president. The firm was fined an additional \$4,000, suspended from acting as a lead underwriter in any underwriting for six months, and required to revise its supervisory procedures for markups within 30 days. G. Kevorkian was also suspended from association with any member of the

NASD in any capacity for 30 days.

Moreover, J. Kevorkian was suspended from association with any member of the NASD in any capacity for 30 days, prohibited from acting as a general securities principal for two years, and required to requalify by examination in any registered capacity in which he proposes to function.

G.K. Scott underwrote an initial public offering (IPO) of First Agate Corporation (First Agate) units, a blind pool offering priced at \$10 a unit. The first day of aftermarket trading, the firm priced the units at a bid of \$15 and an ask of \$30.

In this matter, the SEC upheld the NASD's findings that because it dominated and controlled the market in First Agate units, common stock, and warrants (all of which were over-the-counter securities not traded on Nasdaq), G.K. Scott was required to use its contemporaneous cost as the basis to calculate markups. While the firm argued that it did not control the market in First Agate securities, the SEC stated that "where an integrated dealer dominates the market to the extent that there is no independent, competitive market . . . then the firm controls wholesale prices, absent evidence to the contrary." The SEC found that "G.K. Scott had the ability to exercise control over the market" for the First Agate securities given that the firm placed 100 percent of the First Agate IPO with its customers, it was a market maker in the secondary market for each security,

and it traded 100 percent of the aftermarket volume in the units and warrants and 96.25 percent in the common stock. Accordingly, the SEC found that "the firm, and not a competitive market, set the prices for these securities."

As a consequence of this violative conduct, G.K. Scott, through J. Kevorkian, overcharged customers more than \$666,000 by selling at prices that were marked up as much as 480 percent above the prevailing market price. The vast majority of the transactions charged were marked up more than 10 percent, which constituted a fraud under Section 18 of the NASD Rules of Fair Practice, which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

Importantly, in finding that the firm's trader acted with the requisite scienter required under Section 18, the SEC held that J. Kevorkian is "charged with knowing fundamental standards for charging fair prices to the public" and that his "reckless disregard for determining the actual prevailing market price satisfies the scienter requirement."

In affirming findings that G.K. Scott and G. Kevorkian failed to supervise to prevent the misconduct, the SEC found that the firm failed to establish and enforce effective procedures to supervise employees. The SEC stated that "a firm's failure to establish such guidelines is symptomatic of a failure to supervise reasonably." The firm's proce-

dures merely cautioned employees to review principal markups to ensure compliance with the markup interpretation. The SEC found that such procedure "provided no meaningful guidance on the manner in which compliance could be achieved with respect to the NASD's markup policy."

In several significant procedural rulings, the SEC rejected claims that Applicants were denied an opportunity to prevent a meaningful defense because the NASD refused to compel production of certain records or testimony from certain witnesses. The SEC stated that "it is the Applicant's obligation, not the NASD's, to marshal all the evidence in their defense" and that the record "was void of any showing by Applicants' counsel that he made any attempt to obtain the testimony of witnesses trading in First Agate securities."

Finally, the SEC held that applicants "may not use the discovery process to go on a fishing expedition in the hopes that some evidence will turn up to support an otherwise unsubstantiated theory."

This disciplinary action, taken by the New York DBCC, is part of the NASD's concerted effort to combat fraudulent and deceptive practices used to sell over-the-counter securities not traded on Nasdaq to the public.

Respondents have appealed this action to the U. S. Court of Appeals for the District of Columbia circuit.

FOR YOUR INFORMATION

NASD Mail Insurance Program Provides Low-Cost Security

The NASD Member Purchasing Service is constantly striving to provide protection in areas that are of paramount concern to our member firms. After discussing the shipping schedules and subsequent mail insurance needs of a number of our members, the NASD has developed a comprehensive mail insurance program that is specifically customized for the securities industry.

In our discussions with members, they noted the features they'd like in a mail insurance program. They want coverage that extends to all sources of shipping, including their transfer agents and independent contractors, and that wouldn't require reporting, auditing, or back billing of shipments. They cited their frustration with cumbersome reporting and additional premiums associated with many insurance programs on the market. In response, with the assistance of Seabury & Smith, the program's administrator, and the Aetna Casualty and Surety Company, we have developed the NASD-sponsored Mail Insurance Program. This program covers transfer agents, independent contractors, and incoming shipments. In addition, it does not require reporting, auditing, or back billing of shipments.

Many securities dealers tend to rely on their blanket fidelity bond to provide coverage for their shipments. Although the Form 14 or Securities Dealers Blanket Bond affords protection for securities, coverage is only provided while the shipment is on-premises or in the custody of a messenger, and ceases once the package is placed in the mail or in the custody of a Carrier for Hire. Moreover, most of the overnight carriers fail to provide *any* coverage for shipments. Other firms rely on coverage provided by

the U.S. Postal Service, which provides insurance for shipments via registered mail. Unfortunately, the U.S. Postal Service provides a mere \$25,000 of coverage for registered mail shipments, leaving most members significantly underinsured.

The NASD-sponsored Mail Insurance Program was designed on a "Non-Reporting Basis," which means your initial cost will remain intact throughout the policy term. You might find a less expensive mail insurance product in the marketplace, but it will probably require the maintenance of a shipping log for back-billing purposes and ultimately cost you more money. Not only is the NASD-sponsored Mail Insurance Program cost-effective, its non-reporting feature provides a simplified approach in which to provide coverage for your valuable shipments. Comparable policies would require up to three times as much in annual premiums.

If you'd like more information on the NASD Mail Insurance Program, phone Kathy Jacobson, Seabury & Smith, (800) 922-9242 or direct, (202) 296-9640.

NASD Initiates New Subordination Filing Procedures

As of April 1, 1994, the NASD transferred responsibility for processing and approving subordination agreements to the local district offices. Please note that the transfer date for the New York District Office is July 1. **As of the effective transfer date, members should cease sending these filings to the NASD Washington, D.C., Office.**

Members must now file proposed agreements with the district office for

the district in which the member maintains its principal place of business. All subordination agreements, *with the original copy manually signed*, must be filed, in duplicate, at least 30 days before the agreement's proposed effective date (10 days for temporary subordination agreements).

Renewals of existing subordination agreements, as well as requests for prepayment, assignments, and conversions to capital, also must be filed with the appropriate district office.

The NASD has standardized forms for subordinated loan agreements and secured demand note agreements. Use of the standardized forms, which are available from the district offices, will facilitate review by the NASD and reduce processing time. Members should note that there is no change to how these forms are completed, or to the required documentation; the only change involves sending the completed forms to the appropriate district office, rather than the Washington, D.C., Office.

The NASD believes that this change will result in greater efficiency and will improve service for members. Questions concerning subordination agreements may be directed to members' local district offices.

SEC Approves Several NASD Proposals

On March 7, 1994, the Securities and Exchange Commission (SEC) approved an amendment to add new Subsection (b)(6) (G), Article III, Section 44 of the Rules of Fair Practice. This new rule requires that members file with the Corporate Financing Department a detailed explanation of, and any documents related to, any change in or modification of any item of underwriting compensation made after the NASD has reviewed and approved the proposed compensation arrangements for a public offering. This change ensures that NASD staff are notified of changes to previously approved underwriting arrangements.

The SEC also approved amendments to Subsection (b)(10)(B), Article III, Section 44 of the Rules of Fair Practice and Subsection 6(b), Schedule A to the By-Laws to clarify that the calculation of the additional fee required as a result of additional securities being offered pursuant to an amendment to the initially filed documents shall be equal to .01 percent of the result of the number of new shares being offered multiplied by the offering price of the new shares.

Finally, the SEC approved an

amendment to Subsection 3(c), Schedule E to the By-Laws to remove the phrase "without limitation as to the amount of securities to be distributed by the member." The phrase is a carryover from an early provision of Schedule E, eliminated in 1988, that restricted a member's participation in the syndicate or selling group to an amount not exceeding 10 percent of the dollar amount of the offering underwritten on a firm commitment basis and managed by a qualified independent underwriter. When the restriction was in effect, Schedule E required two qualified independent underwriters. However, if the member's participation was limited to 10 percent or less, Schedule E required only one qualified independent underwriter. The removal of the 10 percent restriction provision renders the quoted phrase unwarranted and no longer operable.

Nasdaq Now Reports Trades In Smaller Fractions

Since Monday, April 4, The Nasdaq Stock MarketSM has been reporting last-sale transactions in fractions smaller than 1/8. Before then, most Nasdaq last-sale transactions were rounded to the nearest 1/8 fraction with certain exceptions. Now all last-sale transactions are rounded to the nearest 1/64 fraction.